
V.

LAWS AND OFFICIAL BODIES FOR COMBATING EXTREMISM

There are three types of norms – and institutions – which are relevant to the fighting of extremism: (1) legal norms for the prevention and fighting of extremism; (2) laws providing for special measures safeguarding the protection of national minorities; (3) anti-discrimination laws.

Anti-Extremist Norms

The Romanian Constitution contains several provisions that are directly relevant to the issue of anti-extremism, some of which specifically restrict activities and manifestations that are connected with extremism. According to Art. 30.7, “any instigation to war of aggression, to national, racial, class or religious hatred, any incitement to discrimination... or public violence... shall be prohibited by law”. Yet the most important article of the Constitution from this perspective is Art. 37.2: “Any political parties or organizations which, by their aims or activity, militate against political pluralism, the principles of a State governed by the rule of law... shall be unconstitutional.”

These constitutional provisions have correspondents in internal law. For example, the Political Parties Law explicitly prohibits “political parties which, through their status, platform, propaganda or other activities, violate the provisions of Art. 30.7, Art. 37.2 and 37.4 of the Constitution.”¹⁴¹

Moreover, Art. 317 of the Romanian Criminal Law states: “Any nationalist chauvinistic propaganda or incitement to racial or national hatred which does not constitute an offence under Article 166 shall be punishable by a term in prison of 6 months to 5 years.”

141 Political Parties Law no. 27 of 04.26.1996, Art. 3.2. Moreover, paragraph 4 of the same article prohibits the organization of military or para-military activities by the parties.

Yet in spite of widespread racist, chauvinistic, anti-Semite manifestations (either used as political propaganda, or disseminating negative stereotypes), Art. 317 is not put to use by authorized institutions.¹⁴² Ultra-nationalist parties which violate the provisions of the Constitution and of the Political Parties Law have been declared legal, and they are currently conducting activities which are clearly extremist in nature. Although the Constitution is essentially democratic, some formulations do encourage nationalist attitudes which, in Romania, remain the most important resource of extremism.¹⁴³

In March 2002, the Romanian Government adopted Emergency Ordinance no. 31 prohibiting fascist, racist, and xenophobic organizations and symbols, as well as organizations and symbols promoting the cult of personalities guilty of crimes against peace and humanity (see Annex II). The Ordinance came into force upon its publication in the *Official Gazette* on March 28.

The purpose of the Emergency Ordinance no. 31 is the elimination of any extreme right-wing activities. The establishment of a fascist, racist or xenophobic organization is punished with imprisonment between 5 and 15 years and the loss of certain rights. Such organizations include any group “which conducts its activities, on a permanent or temporary basis, for the purpose of promoting fascist, racist, xenophobic ideas, doctrines or conceptions, such as ethnic, racial or religious hatred and violence, the superiority of certain races and the inferiority of others, anti-

142 Only one person was sentenced in Romania on the basis of Art. 317 of the Criminal Law, to a two-year suspended sentence, for an anti-Semite article. From July 1997 to November 1998, Minister György Tokay (UDMR), in charge with the Department for the Protection of National Minorities, informed the General Prosecutor’s Office on the use of statements, banners and chauvinistic articles. The Prosecutor’s Office turned down the request to start proceedings pursuant to the provisions of the Criminal Law.

143 One of the issues raised by the Romanian Constitution was the “ethnic” interpretation of the constitutional text – see Art. 1.1: “Romania is a sovereign, independent, unitary and indivisible National State”; and Art. 4.1: “The State foundation is laid on the unity of the Romanian people”. A consequence of the “ethnic” interpretation of the constitutional text was the pressure brought to bear upon minorities – and especially upon the Hungarian minority, which had to expressly state its loyalty to the state and to commit itself to comply with the Romanian Constitution. Yet the ethnic meaning of “the nation” is emphasized in Romania not just in political positions, but also in writings of doctrine. See *The Constitution of Romania – Comments and annotations*, published in 1992 by the Presses of the “Official Gazette” and signed by the authors of the Constitution themselves: Ion Deleanu, Antonie Iorgovan, Ioan Muraru, Florin Vasilescu, Ioan Vida. The text defines the nation as “a community of ethnic origin” (p. 7). (Gabriel Andreescu, “Shadow Report: June 2000”, <http://www.riga.lv/minelres/>).

Semitism, incitement to xenophobia, advocacy of violent overthrow of the constitutional or democratic order, or extremist nationalism.”

The dissemination, sale or manufacturing of fascist, racist or xenophobic symbols is punished with imprisonment from 6 months to 5 years and the loss of certain rights. The same punishment applies to persons who promote the cult of personalities guilty of crimes against peace and humanity. The fines applicable to legal entities which disseminate, sell or manufacture said symbols start at ROL 25 million and go up to ROL 250 million.

Negationism is punished with imprisonment between 6 months and 5 years and the loss of certain rights.¹⁴⁴ Naming public places after persons guilty of crimes against peace and humanity or erecting statues thereof in public places is prohibited.

Emergency Ordinance 31 was only applied until June 2002 (included) and only against Antonescu’s cult – by demolishing six of the seven statues of Marshall Antonescu. On the other hand, the National Defense College introduced a course on the Holocaust, which is indeed a revolutionary measure.¹⁴⁵ The Ordinance has already been criticized for its lack of coherence¹⁴⁶ and for impairing the balance of rights.¹⁴⁷ It was the subject of protests by extremist Orthodoxist groups.¹⁴⁸

Laws for the Protection of National Minorities

The legislative system set up for the protection of national minorities in Romania is relatively extensive, at least at legal level. Its foundations are to be found in Art. 1.6 of the Constitution, according to which “The

144 On contemporary negationism in Romania see Michael Shafir, “Holocaust Denial, The Legacy of Communism, and <Transition>”, *East European Perspectives*, Vol. 4, No. 6, March 20, 2002.

145 These measures should be accompanied by a course deconstructing anti-Hungarian propaganda, which is at the foundation of patriotic education in Romanian military institutions.

146 See Gabriel Andreescu, “Contra extremismului, nu împotriva libertății”, in *Observatorul cultural*, no.11, 2002, and Annex II.

147 *Ibidem*. An example was the case adjudicated by the European Court of Human Rights in 1998, when France was condemned for its measures against the leaders of two associations – “Association pour défense du mémoire de maréchal Pétain” and “Association nationale Pétain-Verdun” – which had published a commemorative announcement in *Le Monde* (L’ Affaire Léhieux et Isorni c. France: <http://www.echr.coe.int>).

148 The protest of the editors of the journal *Scara* (“a journal of Orthodox oceanography”) and of the Romanian Association for Culture and Orthodoxy, of March 27, 2002.

State recognizes and guarantees the right of persons belonging to national minorities, to the preservation, development and expression of their ethnic, cultural, linguistic and religious identity.” A number of laws – and in particular Education Law no. 84/1995, updated, and the Law of Local Public Administration no. 69/1991, updated – provide for substantial rights for the persons belonging to national minorities. Although the existing political class rejects, as a block, the notion of collective rights, Romanian laws do provide for such rights. For instance, organizations of citizens belonging to national minorities which fail to obtain the number of votes necessary for representation in Parliament have the right to one Deputy Seat each.¹⁴⁹ The representative organizations participate in the Council for National Minorities, which is financed from the state budget.

The practical instruments for the enforcement of this system, however, are less developed.¹⁵⁰ In 1997, the Department for the Protection of National Minorities (DPNM) was established, which included a National Office for Roma. After the elections of 2000, the newly-elected Romanian government relocated the DPNM within the Ministry of Public Information, under the name of the Department for Inter-Ethnic Relations (DIER). The National Office for Roma within the DIER was taken over by the office of the sub-secretary of state for Roma. While the former DPNM was headed by a Minister, the new Department is led by a state-secretary.¹⁵¹

An Inter-Ministerial Committee on National Minorities was established in order to provide coordinated government support for the development and implementation of the strategy for the protection of national minorities. An Inter-Ministerial Sub-Commission for Roma – a mixed body made up of governmental experts and independent experts nominated by Roma NGOs – assists the implementation of the public policy for Roma.¹⁵²

The institution of the Ombudsman, set up in March 1997, has the mandate of defending the rights and freedoms of the citizens against unlawful or abusive interference by administrative authorities. Minority issues are dealt with by the Department for Public Order, military and special bodies, penitentiaries, minorities, cults, foreigners, consumers, and tax-payers.¹⁵³

149 Under the terms of Electoral Law: Art 59.2 of the Romanian Constitution.

150 Gabriel Andreescu, “*Romania: Shadow Report: June 2000*”.

151 Government Decision no. 13/2001.

152 Open Society Institute, *Monitoring the EU Accession Process: Minority Protection*, Budapest, 2001. The National Strategy for Roma adopted in 2001 is intended as a ten-year program, with four-year plans. The Strategy addresses community development, housing, social security, health, childcare, employment, justice and public order, education, culture and communication.

153 See *Monitoring the EU Accession Process: Minority Protection*.

The Anti-Discrimination System

The legislative and institutional system for the prevention and fighting of discrimination has been, up until recently, the weakest link of the system of protection of persons belonging to various ethnic groups. The only binding anti-discrimination norm has been that of Art. 247 of the Criminal Law: “Any public official held guilty of restricting the use or exercise of civil rights, or of creating situations in which a citizen is treated as inferior on the ground of nationality, race, sex or religion, shall be liable to imprisonment between 6 months and 5 years.”¹⁵⁴ No sentences have been pronounced pursuant to this article, in spite of widespread discrimination in Romania, especially against the Roma.¹⁵⁵ For a long time, the enforcement of anti-discrimination norms has been hindered by the official refusal to acknowledge the extent of discrimination.¹⁵⁶

In August 2000, the Parliament issued the Law on Public Advertising, prohibiting the use of discriminatory statements on the grounds of race, sex, language, origin, social origin, ethnic or national identity in advertisements. But this law too failed to have a significant effect upon discriminatory statements in advertisements.

An important change was introduced by the provisional coming into force, in November 2000, of Ordinance no. 137 on the Prevention and Punishment of All Forms of Discrimination.¹⁵⁷ Today, it provides Romania with the most comprehensive anti-discrimination framework among Central and Eastern European countries.

Ordinance 137 provides a definition of discrimination and prohibits discrimination in access to employment, health and other public services, education and housing.¹⁵⁸ The law grants human rights NGOs a

154 Cases can only be initiated *ex officio* by investigative organs.

155 Also the case of the Hungarian Changos, see APADOR-CH Report, Bucharest, 2001.

156 This is true of all reports sent by Romania to the international bodies (see Report submitted on 24 June 1999 by Romania pursuant to Article 25 para.1 of the Framework Convention for the Protection of National Minorities: “Romanian citizens, without any distinction based on race or nationality, may enjoy equally all the principles and freedoms provided for in the Constitution and the law, and may participate to the same extent in political, economic, social and cultural life, without privilege or discrimination.” http://www.riga.lv/minelres/reports/Romania/Romania_NGO.htm

157 Official Gazette no. 432/09.02.2000 (Ordinance 137/31.08.2000). In January, Ordinance 137 had passed the Parliament. On January 16, 2002 it was published in the Official Gazette.

158 Ordinance 137/2000, Art. 2.1: “any difference, exclusion, restriction or preference based on race, nationality, ethnic appurtenance, language, ... or any other criterion, aiming to or resulting in a restriction or prevention of the equal recognition, use or exercise of human rights and fundamental freedoms in the political, economic, social and cultural field or in any other fields of public life.”

locus standi,¹⁵⁹ and allows victims to sue for damages against discriminatory action.¹⁶⁰

Ordinance 137 also provides for the establishment of a specialized monitoring and enforcement body: the National Council for the Prevention of Discrimination, which is subordinated to the government.¹⁶¹ The Government Decision establishing the NCPD was adopted in November 2001, but in June 2002, NCPD does not yet exist.

And yet a special fund set up under the former government for conferences, seminars and roundtables to counter racist attitudes¹⁶² – the National Foundation against Racism, Anti-Semitism, Xenophobia and Intolerance – was abused by young members of extremist parties, such as the Greater Romania Party.

A special part is played by anti-extremist international legislation ratified by Romania. Its important role owes, on the one hand, to the monism of the Romanian constitutional system, which gives priority to international legislation in the field of human rights and, on the other hand, to the impact of the international community's positions with respect to the state of affairs in Romania.

The Ratification of Relevant International Legislation

Romania has ratified the most important international documents addressing racial and ethnic discrimination: ILO Convention No.111/1958; the UN Convention on the Rights of the Child; the UN Convention on the Elimination of All forms of Racial Discrimination; the UN Covenant on Civil and Political Rights and the Optional Protocol, the UN Covenant on Economic, Social and Cultural Rights, the European Convention of Human Rights and all its Protocols, and the Framework Convention for the Protection of National Minorities.

Romania also ratified bilateral treaties with Hungary (1996) and Ukraine (1997), which include several provisions on the protection of persons belonging to national minorities. These instruments obligate Romania to implement the standards of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic

159 Ordinance 137/2000, Art. 22.

160 Ordinance 137/2000 Art. 21.1. Two such cases have been lodged with Romanian courts since the adoption of Ordinance 137 and are presently pending. The cases have been brought by the NGO Romani Criss.

161 Ordinance 137/2000, Art. 23.

162 These included "Tolerance workshops", "Youth and the campaign against racism, anti-Semitism, xenophobia and intolerance", and "Tolerance in politics."

Minorities; the Copenhagen Document of the CSCE Conference on the Human Dimension and other OSCE documents; and Council of Europe's FCNM and Recommendation 1201.¹⁶³ The international treaties become part of domestic law following ratification, and they take precedence over other domestic laws whenever conflicts arise.¹⁶⁴

The Enforcement of Available Laws and Norms

As a very general assessment, one may say that the anti-extremist provisions of the Constitution and of the Criminal Law are relatively strict. The special measures for the protection of national minorities are far-reaching, and they go beyond the levels set by international standards. By adopting Ordinance 137/2000 and the Decision establishing the National Council for the Prevention of Discrimination (December 2001), the government finally put an end to a long period during which the anti-discrimination means were severely lacking in strength. One should add that Romania adopted most of the relevant international laws in the field.

Under such circumstances, the crucial question in Romania is that of the enforcement of available laws and norms, i.e. the respect for the rule of law. From this perspective, the state of affairs appears hardly satisfactory. The development of extremist manifestations during the last decade, as well as widespread discriminatory behavior, continued in spite of the legal instruments available to state authorities.

The use of norms depends, on the one hand, on institutional traditions and political will and, on the other hand, on the education of citizens, on their willingness to ask for and ability to secure the enforcement of the law. It is beyond doubt that Romania is lacking in each of these three departments.¹⁶⁵

163 The Bilateral Treaty with Hungary was signed on 16 September 1996; the Bilateral Treaty with Ukraine was signed on 3 May 1997.

164 Constitution of the Republic of Romania, 1991, Art. 11, para. 2.

165 A sustained effort pressuring the competent institutions into the enforcement of anti-extremist laws was made by civil society organizations. An example is the action started by several such organizations (Group for Social Dialogue, Romanian Helsinki Committee, Civic Alliance) in 1999, during the "Fifth Miners' Crusade", to outlaw the Greater Romanian Party.

