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9067041912 - Minority Protection: Standards and Reality - Implementation of Council of Europe Standards in Slovakia, Romania and Bulgaria

Anna K. Meijknecht

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Part I
INTRODUCTION

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Chapter 1

PURPOSE AND OVERVIEW OF THIS STUDY

1.1 PURPOSE

The situation of minorities and the way they are treated by their State is increasingly relevant as one of the requirements for admission to international organizations, in particular the Council of Europe and the European Union.¹ However, international principles with regard to minority protection, once they are laid down in an international legally binding document, must pass several stages before they can become effective. The first stage is called ‘national Constitutions and legislation’, the second, ‘State practice and policy’ and the third, ‘the actual situation of minorities (reality)’. The following comment by Gabriel Andreescu, Strasbourg Ombudsperson for National Minorities in Romania, illustrates how the different stages can become gaps:

‘It is important to monitor the differences between legal provisions and the actual practices. In Romania there is a significant difference between the value of some provisions and the fact that they are not enforced in practice. This difference is highlighted by the proliferation of hate speech and by the discrimination of Roma in the labour market. The distance between legislation and practice is due to the weakness of the rule of law.’²

This study intends to deal, from a comparative perspective, with the implementation of international minority rights in national legislation, State practice and reality. Since they share several characteristics, which

¹For instance, until 1998, the insufficient protection of minorities by the Slovak government was considered by the European Union as failing to fulfil the political requirements for candidate membership of the European Union. See: Ondrej Dostál, ‘Národnostné menšiny’, in: Kollár, Miroslav, Meseznikov, Grigorij (eds.), *Slovensko 2000, Súhrnná správa o stave spoločnosti*, Bratislava, 2000, p. 176.

² Gabriel Andreescu, Strasbourg Ombudsperson for National Minorities, Romania, *Shadow Report*, October 1999, Comment on Art. 4, paras. 1 and 4, <www.minelres.lv/reports/romania/romania_NGO.htm>.

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enables a comparison to be made, the cases of Slovakia, Romania, and Bulgaria have been selected for this study. These three States share the following: the fact that they have several relatively large groups of national minorities with a kin-state; the fact that they all have a large Roma community; and a difficult socio-economic situation which is partly due to a recent communist past, and to the requirements posed in the transitional period towards a free market economy. Finally, all three States are Member States of the Council of Europe and have ratified the Council of Europe Framework Convention on National Minorities (hereinafter: Framework Convention)³ which entered into force more than five years ago, on 1 February 1998. Chronologically speaking, the Framework Convention was ratified by Romania on 11 May 1995, by Slovakia on 14 September 1995, and by Bulgaria on 7 May 1999.

The purpose of this study is to describe and analyse in the case of Slovakia, Romania and Bulgaria, the practical results of the obligations and commitments concerning the protection of minorities following from the Framework Convention. In other words, the purpose is to assess how the standards of the Framework Convention function in reality.

This study will describe and evaluate the situation of minorities in Slovakia, Romania and Bulgaria in the light of two specific international obligations concerning minority protection: non-discrimination and linguistic rights, both of which are embodied in the Framework Convention. It should be emphasised that this study does not intend to give a detailed description of the minority situation of each minority in each of the States mentioned, but that the focus will be on these two standards of the Framework Convention and that this study will examine what happens to these standards in 'practice' and 'reality'. 'Practice' is what the State does, this includes national legislation and other administrative or legal measures taken by the State with regard to minorities. 'Reality' means everyday life and the situation of the beneficiaries (or subjects) of those international standards, thus, the minorities themselves.

First, the standard of non-discrimination and the State practice based on this international standard will be assessed through an analysis of international documents and national legislation and measures with regard to minorities. 'Reality' will be described with regard to the Roma minori-

³ For the complete text of the Council of Europe Framework Convention on the Protection of National Minorities, see Annex I.

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ties in Slovakia, Romania and Bulgaria, the Muslim minority in Bulgaria, and the German and Hungarian minorities in Slovakia in relation to the Beneš Decrees. Although there are many other minorities in this region of Europe which have to cope with discrimination, I have chosen to describe only the situation of some minorities, whose situation is, unfortunately, illustrative of several specific forms of discrimination.

Second, international standards and State practice with regard to linguistic rights as embodied in Articles 10-14 of the Framework Convention will be discussed. The way these standards function in reality will be analysed on the basis of the situation of the Hungarian minority in Slovakia and the Hungarian minority in Romania and the Roma in Slovakia, Romania and Bulgaria.

1.2 POLITICAL COMMITMENTS WITH REGARD TO MINORITIES FOLLOWING FROM THE OPINIONS OF THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE

In this study several documents and sources of information will be used in order to determine a) the international obligations with regard to minorities as established by the Council of Europe, b) the practice of States with regard to the implementation of these standards, c) the situation in 'reality' as experienced by minorities themselves and as described by different observers, and d) the supplementary measures proposed – and sometimes taken – by States to overcome urgent minority problems.

As far as the determination of international obligations/standards is concerned, it must be taken into account that the Parliamentary Assembly of the Council of Europe imposed specific political commitments on States when they applied for membership of the Council of Europe in the early 1990s, thus, several years before the Framework Convention was concluded. This sub-section will provide an overview of the specific commitments with regard to minorities which Slovakia, Romania and Bulgaria accepted when becoming members of the Council of Europe.

The democratisation process in Central and Eastern Europe led to Bulgaria's accession on 7 May 1992 and to Romania's accession on 7 October 1993; membership of the Slovak Republic replaced Czechoslovakia's accession from 1991 on 30 June 1993.

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The admission process usually begins with a request to the Secretary General of the Council of Europe, who transmits it to the Committee of Ministers for consideration. The latter consults the Parliamentary Assembly, which in turn commences an enquiry into whether the candidate fulfils all the necessary requirements. This is done by an 'on the spot' investigation by parliamentary committees and also, since the 1990s, by fact-finding missions. Although not a statutory provision, it has also become customary to require the acceptance of the European Convention on Human Rights and Fundamental Freedoms by any new candidate. Slovakia has already considered itself bound by the Convention since 1 January 1993; Romania ratified it on 20 June 1994; and Bulgaria on 7 September 1992. The three States ratified most⁴ of the additional Protocols to the European Convention on Human Rights and Fundamental Freedoms and recognized Articles 25 and 46 of the European Convention. At present this means that they recognize the jurisdiction of the European Court of Human Rights. Since 1 November 1998, the date when Protocol 11 to the European Convention entered into force, the jurisdiction of this Court has been compulsory.

The Opinion adopted by the Assembly then determines the invitation from the Committee of Ministers to the State to become a full member. Generally speaking, Opinions are expressed by the Parliamentary Assembly of the Council of Europe on questions put to it by the Committee of Ministers, such as the admission of new Member States to the Council of Europe, but also on draft conventions, the budget, and the implementation of the Social Charter. The Parliamentary Assembly of the Council of Europe is not a legislative organ. Opinions of the Parliamentary Assembly are not legally binding.

Recent Parliamentary Assembly Opinions on applications for membership of the Council of Europe refer to specific commitments entered into by the authorities of the candidate States concerning issues related to the basic principles of the Organization. The Assembly considers that the honouring of these commitments is a condition for the full participation of parliamentary delegations of new Member States in its work. Subsequently, the honouring of commitments entered into by the authorities of new Member States is closely monitored by the Political Affairs Commit-

⁴ Bulgaria did not sign Protocols 9, 10 and 12; Protocol No. 12 has not been signed by Romania and Slovakia; and Protocol 13 has not been signed by Slovakia (June 2004).

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tee and the Committee on Legal Affairs and Human Rights and reported to the Bureau at regular six-monthly intervals until all undertakings have been honoured.⁵ The Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) took over the monitoring procedure in 1997.

The specific political commitments for the States in question are listed in the following Opinions:

- Opinion No. 175 of the Parliamentary Assembly of the Council of Europe on the application by the Slovak Republic for membership of the Council of Europe, adopted on 29 June 1993.
- Opinion No. 176 of the Parliamentary Assembly of the Council of Europe on the application by Romania for membership of the Council of Europe, adopted on 28 September 1993.
- Opinion No. 161 of the Parliamentary Assembly of the Council of Europe on the application by Bulgaria for membership of the Council of Europe, adopted on 5 May 1992.

1.2.1 Slovakia

The specific political commitments which Slovakia entered into are listed in Opinion No. 175 (1993) of the Parliamentary Assembly of the Council of Europe on the application by the Slovak Republic for membership of the Council of Europe. They mainly concern the protection of the rights of minorities. In general, three commitments on the part of the Slovak Republic can be deduced from the text of Opinion No. 175 and the Framework Convention:

- The first commitment is to base Slovak policy regarding the protection of minorities on the principles laid down in Recommendation 1201 (1993) on an additional protocol on the rights of national minorities to the European Convention on Human Rights (para. 8 of Opinion No. 175).

As far as Recommendation 1201 on an additional protocol on the rights of national minorities to the European Convention on Human

⁵ COE PA Order No. 488 (1993), on the Honouring of Commitments Entered Into by New Member States.

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Rights is concerned, it has not (yet) resulted in the adoption of an additional protocol. Recommendation 1201 is not legally binding. Yet, Article 15 para. 4 of the Treaty of Good Neighbourliness and Friendly Cooperation between the Slovak Republic and the Republic of Hungary provides that the norms and political commitments enshrined in Recommendation 1201 shall be applied, in respect of *inter alia* persons belonging to the Hungarian minority in the Slovak Republic, ‘as legal obligations’. The Slovak Republic has ratified this Treaty with Hungary after a long discussion on the meaning of the territorial autonomy mentioned in Article 11 of Recommendation 1201.

Article 2 of the Framework Convention, states that ‘the provisions of this framework Convention shall be applied (...) in conformity with the principles of good neighbourliness, friendly relations and co-operation between States’. On 9 December 1998, the Slovak Government approved the Protocol between the Ministry of Foreign Affairs of the Slovak Republic and the Ministry of Foreign Affairs of the Republic of Hungary concerning the creation of a mechanism facilitating the application of the Treaty. On its basis, 11 mixed expert commissions would gradually be set up, one of which will engage in national minority issues. The Slovak Government assigned the ministries responsible the task of ensuring that the mixed commissions started to operate by the end of January 1999.

- The second commitment is to adopt legislation granting to every person belonging to a minority the right to use his/her surname and first names in his/her mother tongue and, in the regions in which substantial numbers of a national minority are settled, the right for the persons belonging to this minority to display in their language local names, signs, inscriptions and other similar information, in accordance with the principles contained in Recommendation 1201 (1993) (para. 9 of Opinion No. 175). These commitments correspond with Art.11-14 of the Framework Convention.
- The third commitment is to continue to eliminate from Slovak legislation all the laws or decrees adopted by previous governments which are likely to contain elements discriminating against a group of persons or an ethnic, national community living on its territory, particularly those concerning ‘collective guilt’ (para. 11 of Opinion No.

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175). These commitments correspond with Article 4 of the Framework Convention and Article 14 of the ECHR.⁶

In 1999 the Monitoring Committee (rapporteurs G. Magnusson and J. Sinka) presented a thorough report on the Honouring of Obligations and Commitments by Slovakia⁷ in which the developments in Slovakia were assessed in an ‘essentially positive’ way. Consequently, the draft recommendation proposed, *inter alia*, to close the then current monitoring procedure and recommended to the Committee of Ministers to ‘address the minority issues mentioned in the text when monitoring the implementation of the Framework Convention on the Protection of National Minorities’.⁸ The minority issues mentioned were the consequences of the law on the State language, the need for a law on the use of minority languages, and the measures to address the problems of the Roma population.

1.2.2 Romania

The specific political commitments which Romania entered into are listed in Opinion No. 176 (1993) on the application by Romania for membership of the Council of Europe. In general, the following commitments on the part of Romania can be deduced from the text of Opinion No. 176: Although the Assembly

‘appreciates the written declaration of the Romanian authorities in which they commit themselves to basing their policy regarding the protection of minorities on the principles laid down in Recommendation 1201 (1993) on an additional protocol on the rights of national minorities to the European Convention on Human Rights’, it further:

- calls ‘upon the Romanian Government to return property to the churches and to permit the establishment and operation of church schools with a particular view to teaching children of minority groups their mother tongue’ (para. 8 of Opinion No. 176).
- urges the Romanian authorities ‘to implement improvements in conditions of detention. It also calls upon the competent Romanian

⁶ See Chapter 7 of present study which deals with the Beneš Decrees.

⁷ Monitoring Committee, Doc. No. 8496, 6 September 1999, Honouring of Obligations and Commitments by Slovakia, (rapporteurs: Magnusson, Sinka).

⁸ Monitoring Committee, Doc. No. 8496, 6 September 1999, p. 5.

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political leaders to reconsider in a positive manner the issue of releasing those persons imprisoned on political or ethnic grounds' (para. 9 of Opinion No. 176).

- proposes that the Romanian authorities and the Romanian Parliament: adopt and implement as soon as possible, in keeping with the commitments they have made and with Assembly Recommendation 1201, legislation on national minorities and education;
- makes use of all means available to a constitutional State in order to combat racism and anti-Semitism, as well as all forms of nationalist and religious discrimination and incitement thereto.
- Finally, the Assembly recommends that Romania ratifies the European Charter for Regional or Minority Languages as soon as possible.⁹

In 1997, the Parliamentary Assembly observed in a resolution that Romania had 'made considerable progress towards the fulfilment of her obligations and commitments since joining the Council of Europe on 7 October 1993' and 'it takes note of the Romanian authorities' resolve to further the rights of national minorities and especially to amend the 1995 Education Act so as to allow mother tongue instruction for members of national minorities'. However, the Assembly still urged Romania 'to be firmly committed to fighting racism, xenophobia and intolerance, particularly in respect of the Rom population, while committing itself to basing its policy regarding the protection of minorities upon the principles laid down in Recommendation 1201 (1993)'. Concretely, the Assembly asked Romania to 'promote a campaign against racism, xenophobia and intolerance and take all appropriate measures for the social integration of the Rom population'.¹⁰

⁹ The European Charter for Regional or Minority Languages was ratified by Slovakia in September 2001 with several reservations (<http://conventions.coe.int/treaty/EN/cadreprincipal.htm>). The European Charter for Regional or Minority Languages was signed by Romania on 17 July 1995, but has not been ratified. In 2003, the Department for Inter-ethnic Relations at the Ministry of Public Information yet prepared a Bill to ratify the European Charter for Regional or Minority Languages. This Bill has been sent to the ministries for opinion and comment. The European Charter for Regional or Minority Languages has not been signed by Bulgaria.

¹⁰ COE PA Resolution 1123 (1997), on the Honouring of Obligations and Commitments by Romania.

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Finally, considering that Romania has honoured her most important obligations and commitments, the Assembly decided to close the monitoring procedure. In its recommendation to the Committee of Ministers the Assembly added that ‘in view of the remaining obligations and commitments, which Romania is bound to fulfil within a year, the Assembly recommends that the Committee of Ministers aid Romania’s efforts to, *inter alia*, carry out a campaign against racism, xenophobia and intolerance.¹¹

1.2.3 Bulgaria

The political commitments which Bulgaria entered into when applying for membership of the Council of Europe are listed in Opinion No. 161 (1992). However, this Opinion contains no references at all to minorities and only provides general information (similar texts can be found in the Opinions concerning Slovakia and Romania) to the effect that ‘the Republic of Bulgaria is able and willing: i. to fulfil the provisions of Article 3 of the Statute (...) ii. to collaborate sincerely and effectively in the realisation of the aim of the Council of Europe as specified in Chapter I of the Statute of the Council of Europe thereby fulfilling the conditions for accession to the Council of Europe as laid down in Article 4 of the Statute’.

After two reports by the Monitoring Committee on Bulgaria’s honouring of obligations and commitments¹², the Parliamentary Assembly of the Council of Europe was ‘convinced that Bulgaria is committed to democratic reform and welcomes, *inter alia*, the ratification of the Framework Convention for the Protection of National Minorities’. However, with regard to minorities the Assembly also expressed its concern about ‘the insufficient implementation of minorities’ constitutional rights as regards education and information in their mother tongue through electronic media’ and ‘continuing cases of police brutality, particularly towards Roma’.¹³ Notwithstanding those and several other points of

¹¹ COE PA Recommendation 1326 (1997), on the Honouring of Obligations and Commitments by Romania.

¹² Monitoring Committee Doc. 8616, 26 January 2000, Honouring of Obligations and Commitments by Bulgaria (rapporteurs: Atkinson and Gjellerod).

¹³ COE PA Resolution 1211 (2000), on the Honouring of Obligations and Commitments by Bulgaria.