

PERMANENT MISSION OF ROMANIA
to the United Nations Office in Geneva
and the International Organizations in
Switzerland



MISSION PERMANENTE DE LA ROUMANIE
auprès de l'Office des Nations Unies à Genève
et des Organisations Internationales en Suisse

No. 1994

Geneva, 10 July 2018

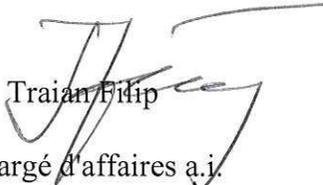
Dear Ms. Fouchard,

As a follow up to our letter *no. 125 from 3 May 2018*, we are writing to you on the joint letter addressed to the Minister of Foreign Affairs of Romania by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on minority issues, dated 23 February 2018 (Reference: AL ROU 2/2018).

In the light of the above mentioned correspondence, we are glad to convey, herewith attached, a comprehensive and hopefully useful answers provided by our minister, H.E. Teodor Meleşcanu, to be used in preparing the report to be considered by the Human Rights Council.

Please accept, Ms. Fouchard, the assurance of my highest consideration.

Enclosure: 7 pages.


Traian Filip
Chargé d'affaires a.i.

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MINISTRY OF FOREIGN AFFAIRS
Minister



No. H2/ 3101

5th of July 2018

Dear Mr. Kaye,

Dear Mr. Forst,

Dear Mr. De Varennes,

Following your letter dated February 23, 2018 as to the allegedly repeated attempts to hamper the exercise of rights of assembly and to the freedom of expression of the Hungarian-speaking Szekler minority in Romania, in relation to the event "The Day of Szekler Freedom", I take this opportunity to hereby present to you a number of factual and legal arguments that I hope will clarify the matter and offer a more clear and accurate perspective over the situation.

At the outset, let me reassure you that it is Romania's strong belief that the freedom of expression, taken alone or in conjunction with the right to freedom of peaceful assembly is beyond any doubt of essence and represents a fundamental value in any democratic society. The two rights are of universal nature, applying to *all persons*, whether belonging to a national minority or not.

Romania does not question the exercise of these rights and reaffirms its full commitment to respect the fundamental human rights, including the freedom of expression and the right to freedom of peaceful assembly, without discrimination on any grounds.

The freedom of expression and the right to free and peaceful assembly are guaranteed in Romania at Constitutional level, which equally provides that international treaties in the field of human rights prevail if their provisions are more favorable. The current Romanian legal system developed in the field of human rights offers sufficient guarantees for their protection and preservation, including access to justice and adequate sanctions against those behaviors violating human rights whether they emanate or not from the State.

As to the particular situation brought to your attention, I hope the following arguments will help you to better assess the situation and to dissipate your concerns that the right to peaceful assembly and to the freedom of expression of the Hungarian-speaking minority had been breached in a systematic way in Romania.

Mr. David Kaye

Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression

Mr. Michael Forst

Special Rapporteur on the situation of human rights defenders

Fernand de Varennes

Special Rapporteur on minority issues

As to the facts

*The Day of Szeklers' Freedom*¹ was celebrated for the first time in 2013. Until then, commemorative gatherings, dedicated to the events of 1854, when Szeklers were executed by the Habsburg authorities, had been taking place on a regular basis. On many of these occasions, political objectives were affirmed by the participants, including, most of the times, high level Hungarian officials.

As such, *the Day of Szeklers' Freedom*, celebrated since 2013, has two components: a commemorative one, at the Szekler Martyr Monument, followed by a protest march (later in the text *march for autonomy*).

In 2013, the National Szekler Council declared the *Day of Szeklers' Freedom* to be celebrated on the 10 March. From that moment on, the ample political component of the manifestations superseded the commemorative significance of the day of 10 March.

On that year, a *march for autonomy* was authorized, according to the procedure regulated by the Romanian laws. Around 5000 participants (according to local authorities) were present at this event, among them, representatives of extremist movements and political parties from Hungary. Unfortunately, during the event, explicit xenophobic, revisionist and anti-constitutional messages were spoken.

In 2014, the commemoration event took place, as every year, but it was followed by a march that had not been authorized by the local authorities. In its decision, the Mayor's Office took into account the necessity to protect public order, to avoid inter-ethnic conflicts and to preserve the peaceful coexistence in between all citizens living in Târgu-Mureş. It also took into account that the commemoration activity should not be compromised by the protest actions, taking into account in the events of 2013 (voicing explicit, revisionist and anti-constitutional messages, hoisting extremist symbols). The decision was upheld by the local court.

Unfortunately, during the march for autonomy that anyhow took place on 10 March 2014, acts of violence targeting forces of public order were committed by some of the participants, the local population was threatened with swords and different objects; this behaviour culminated with the setting on fire of the European Union flag.

Consequently, representatives of the Romanian Gendarmerie intervened and applied fines to 10 participants, sanctioning their misdemeanour behaviour in accordance with law.

It should be emphasized that both during 2013 and 2014, several thousands of persons, members of the Hungarian minority from Harghita, Covasna, Cluj, Sălaj, Bihor and Satu Mare, took part in these events. Upon the requests of the organisers, local authorities ensured the necessary and adequate measures, including adequate parking places..

¹ For the sake of clarity and better understanding, it should be pointed out that the current so called "Szeklerland" has no historic connection with the areas inhabited during the Middle Ages by Szeklers, as well as no connection with Szeklers partial self-rule during the same historical period. We recall that the self-rule status of the Szeklers was abolished in 1876 by the Hungarian Kingdom, as part of the Austro-Hungarian Empire. The current so called „Szeklerland” is an artificial imagological formation gathering under one denomination distinct parts of three Romanian counties (Mureş, Harghita, Covasna) with the purpose to create a compact region with Hungarian majority and to claim territorial autonomy based on ethnic criteria. This contravenes to all international documents which are favorable for the integration of minorities in the societies where they live and not to their segregation, by creating a special territorial units, self-ruled, strictly on ethnic basis.

Equally, national and international mass-media participated so that the march benefited of media exposure both before and during the events.

Against the background of the 2013 and 2014 events, the requests for authorizing public manifestations (*marches for autonomy*) formulated by the organisers on an yearly basis, were constantly assessed by the competent authorities both from the perspective of the right to peaceful assembly and freedom of expression, but also from the perspective of the need to ensure respect for public order and public safety.

In 2015, the commemoration event also took place, while the *march for autonomy* was not approved by the local authorities. In support of this decision, the authorities pointed out to the violent acts committed in the previous year, a threat to the public order and to the peaceful living in Târgu-Mureş, and also the fact that a different public event had been authorized, in advance, for the same place.

As for the events in 2016, the *Siculitas Association* (the association in charge of the organization of the event) had filed, on 2 March 2015, the requests for approval for the events planned in 2016 and 2017.

From the procedural point of view, it is to be mentioned:

- the Advisory Commission (having in its composition the mayor, the Secretary of the irrespective locality and, if necessary, the representatives of the Police and Gendarmerie), decided that it was too early to approve the events, being necessary that such a request be filed in the proximity of the events. Therefore, it informed the organizers that the activities were not approved on the basis of the premature request, but it was not excluded that the decision be reversed on the basis of a new request formulated as suggested in the administrative decision.
- On 1 October 2015, the organisers filed a complaint before the Mureş Tribunal, in accordance with the administrative law. The Tribunal's Decision on January 8, 2016 obliged the authorities to approve the public assembly in accordance with the request registered on March 2, 2015, namely the march and the protest planned on March 10, 2016 on the *Day of Szeklers' Freedom*.
- Târgu-Mureş City Hall appealed on point of law the Tribunal's decision. The appeal on point of law suspends the enforcement of the judgement until the decision in the appeal. Consequently, on 10 March 2016, the decision of the Mayor not to authorise the march was in effect.

It must be pointed out that no new request was introduced by the organisers in the proximity of the event (10 March 2016) following the negative reply (solely on procedural basis) of the Mayor.

However, following the commemoration event at the Szekler Martyr Monument, the organizers guided the participants to a march promoting the autonomy of the so called *ținutul secuiesc* ("Szeklerland"). The march caused traffic bottleneck and public disorder. A firecracker was thrown out into participants at the event causing fear/panic.

The authorities applied fines only to those who took part to the protest acting outside the legal framework. Part of the fined persons complained before the competent tribunal against the inflicted measures taken against them. Some of these cases are pending before competent courts, while in those already finalized, the judges, after having analysed the specific situation of each case, pronounced either in favour of maintaining the administrative sanctions applied, or in favour of annulling those administrative acts.

During 2017, on March 10, a commemorative event took place, with some 2.500 participants; there were no specific incidents. According to the information in the local press, the Mayor's

Office announced that the commemoration event was to take place as in previous years, while there was no authorization for the march. Also, the authorities announced that a number of the representatives of the protesters are to be received at the office of the Prefect to hand over the petition and that participants to the commemoration event should walk from the site only on the sideway, not on the traffic roads.

The participants to the commemoration event marched to the centre of the city and chanted pro-autonomous slogans, some of them against the Constitutional order of Romania (*Ținutul secuiesc nu e Romania/ Ținutul secuiesc is not Romania*). The Police and the Gendarmerie have not impeached the marching of the participants; it only supervised that no violent acts are committed.

The Gendarmerie only applied the lowest administrative sanctions foreseen by law (warning and verbal warning) in some particular cases, in order to preserve the peaceful character of the event. A criminal investigation was equally opened against one participant for carrying out dangerous objects that are prohibited by law during this kind of gatherings for reasons related to the security of participants.

In 2018, the local authorities analysed, like every year, the requests filed by the organizers of the Day of Szeklers' Freedom. The mayor of Târgu-Mureș declared that there is no limitation to the right to file a petition, to the right to assembly, but the authorities are only interested that the safety and the integrity of any person should not be affected. Therefore, the authorization for the march will bear some specific elements².

Around 3.500 persons took part in the commemorative event on March 10, 2018. No incidents causing public disorder or requiring police intervention occurred. Only in some minor and particular cases, some of the lowest administrative sanctions prescribed by law (warning and verbal warning) were applied.

To conclude on the description of the facts, one could not say, under any circumstances, that the right to peaceful assembly of the participants to these events has been frustrated by the Romanian authorities. On the contrary, the Szeklers' leaders and their invitees, including invitees from different European states advocating for political goals pertaining, inherently, to the internal organisation of Romania, freely expressed (during the 10 March manifestations) their opinions in relation to the autonomy objective advocated constantly by the Szeklers-Hungarians. The reasons based on which the local authorities decided, in some cases, not to authorize the protest march had to do with public order, safety of the participants and/or of the citizens of Târgu-Mureș, and also preserving the interest of peaceful living together of the inhabitants of the city and not generating inter-ethnic conflicts.

Despite the decision of the local authorities not to authorize some of the 10 March events, the organisers proceeded nonetheless with the protest march and encouraged the participants to the commemorative event to do the same (thus, detouring the peaceful commemorative event into a fully-fledged protest). Within this context, it is important to mention that neither the Romanian Police nor the Gendarmerie took any measure to forbid the protest marches (even if not authorised according to the law) or to prevent the walking of the participants. The measures that were taken were only meant to ensure that the events unfold safely and peacefully, in compliance with the mandate of the *Romanian Gendarmerie*, namely to ensure the public order and to protect participants during public events taking place in public areas. This is in fact, in accordance with the positive obligations that States have in relation to the dimension of protection of the right to free and peaceful assembly.

² According to national and local media that reported on the preparation for the events on 10th of March

The organizers used to install on every such occasion audio amplifiers, a stage, flags, banners and all other needed items so that their speeches be better heard, without interference from the authorities.

It is worth mentioning that the organizers request every year the Prefect Institution in Mureş county to receive after working hours their petition which is handed over each year on March 10; the request was every time accommodated by the local authorities.

As to the law

The freedom of expression and the right to free and peaceful assembly are guaranteed by the Constitution of Romania (articles 30 and 39).

Romania is Party to the relevant international or regional instruments concluded in the field of human rights. According to the Romanian Constitution, the treaties ratified by the Parliament, become part of national legislation (article 11). Moreover, whenever the provisions of the international instruments in the field of human rights are more favorable, they take precedence over the national legislation (article 20). This is also the case for the *Convention for the Protection of Human Rights and Fundamental Freedoms* of the Council of Europe (together with the interpretation given to this instrument by the judges in Strasbourg), which is the most modern and innovative one.

At the same time, the specific relevant instruments aiming at promoting and protecting the rights of persons belonging to national minorities, naming in particular the Council of Europe's *Framework Convention for the Protection on National Minorities*, guarantee as well the respect for the right of every person belonging to a national minority to the fundamental freedoms of expression and peaceful association (corresponding to articles 10 and 11 of the ECHR).

However, it is also important to highlight that, as foreseen by all these international instruments, the exercise of the two freedoms is not absolute and may be subject to some formalities, conditions, restrictions or penalties which are prescribed by law in the interest of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals.

At the level of domestic legislation, *Law no. 60 of September 23, 1991 regarding the organization and the exercise of public assemblies* regulates the formalities, the procedure to follow, the rights and obligations, the prohibitions and sanctions for the misdemeanour.

Thus, according to these legal provisions, *public assemblies* are approved by the mayors of the territorial units where those assemblies take place (article 4 of the Law).

However, as to the *commemorative assemblies*, the law does not require any approval. The organizers are not even requested to declare *a priori* the holding of the event; they only need to request in advance the support of the competent authorities when they have reasons to believe that the event could lead to public disorder or violent manifestations (article 3 of the Law).

As to the *public assemblies* (as the marches for autonomy are) requiring an approval, the legal procedure establishes that the approval is to be delivered upon request submitted at least three days in advance. A commission including the mayor, the secretary of the locality and, if necessary, the representatives of the Police and of the Gendarmerie, assesses the request (articles 6-8). The law foresees specific circumstances under which the authorities ban the public assemblies, such as: propagation of totalitarian ideas such as fascist, communist, racist, chauvinist ideas, incitement to national or religious hate, to discrimination, to public violence or obscene manifestations; organizing a *coup d'Etat* or any other actions which are contrary to the national security; violation of the public order, of the public safety or morality, violation of the rights and freedoms of citizens or endangering their health (article 9).

Equally, the organization of a public assembly is not allowed: in the immediate neighborhood of a hospital, airports, railway stations, ports, military objectives (article 5); when the competent authorities provide information indicating that the assembly will not be peaceful, or it will impede the functioning of the public or private institutions, or having the potential to degenerate in violent actions jeopardizing the public order, the safety of persons, their corporal integrity, their life or goods (article 10 corroborated with article 2).

The law establishes as well a number of obligations for the public authorities and for the participants to public assemblies, aiming at ensuring that these events unfold without incidents, and that the safety of its participants and the public order are preserved (article 12).

In addition, there are two national laws complementing the provisions of Law no. 60/1991: *Law no 544/2004 regulating the administrative disputes* and the *Ordinance of the Government no 2/2001 concerning the legal regime of administrative offences*. Based on the first law, any interested person can complain against the mayor decision issued following a request for authorising a public assembly. The second legislative act allows to any interested person to lodge a complaint before national courts against the administrative sanctions applied by authorities.

In addition, it is to be pointed out that, since the international documents in the field of human rights assumed by Romania are being part of the national legislation, any interested person can complain before national courts of an alleged violation of such rights, based directly on the relevant international treaty, the access to justice being guaranteed.

Concluding remarks

The Day of Szeklers' Freedom, celebrated since 2013, consists of two parts:

- 1) a commemorative one, at the Szekler Martyr Monument, for which **no approval is needed**, and
- 2) the protest march (march for autonomy), for which **an approval in accordance with the law is required**.

1) At no point in time have the Romanian authorities interfered with the right of the Hungarian speaking minority to express its culture, its identity, by prohibiting the participation to the commemoration events.

Having in mind that the domestic legislation does not even foresee any approval requirement for the commemorative assemblies (not even a pre-notification, should the organisers not anticipate any public disorder), it is hard to imagine how the local authorities would have interfered with the right of the Hungarian minority to commemorate the March 10 event. Moreover, the factual information shows that the commemorative event did take place every year, before and after 2013. Therefore, there is no argument to conclude that the right of the persons belonging to the Hungarian minority to manifest their cultural identity has not been respected.

Furthermore, please note that the Romanian model in the field of the protection of persons belonging to national minorities, as one of the countries ensuring the protection for a large number of minority languages – 20 and at a very ambitious level, is based precisely on multiculturalism and inter-cultural dialog. This approach responds both to the need for the conservation and assertion of the specific identity (ethnic, linguistic, cultural, religious) and to the goal of defining an integrating space, that is tolerant and rests on interethnic dialogue and mutual understanding and respect.

2) As to the protest march (march for autonomy), that the organizers plan every year in connection with the commemoration event, indeed, a procedure of approval must be followed in accordance with the provisions of the national legislation, as detailed above.

Nevertheless, such a procedure is not *de plano* disproportionate, the international legal documents in the field of human rights allowing restrictions to the exercise of freedom of expression and to the right of peaceful assembly in certain circumstances, as prescribed by the national legislation. The sanctions and penalties are neither *per se* prohibited in connection with the two liberties.

It is to be noted that, as communicated by the Romanian competent authorities, the administrative sanctions were applied for the participation to an *unauthorized event* (2016), or for actions of severe public disorder (aggressing the public order forces, threatening and using swords and other objects against local population, arson attack). At the same time, it is important to note that, when confronted with situations that had to be sanctioned, the Romanian authorities always privileged the possibility to apply milder sanctions (i.e. verbal warning). The sanctions are not ethnically motivated nor applied in a discriminative way on reasons of ethnicity – they would have been applied in all similar circumstances independent of the ethnicity of the perpetrators.

The Romanian legal framework presents sufficient guarantees against any presumptive abuse in applying such fines or administrative sanctions in general. Complaints can be lodged before Romanian Courts not only against these administrative acts, but also in order to submit to judicial assessment any allegation related to the interference with the freedom of expression or with the freedom to peaceful assembly, including in the light of the proportionality of such sanctions.

To affirm that the measures undertaken by the competent authorities in regard to the specific situation of the march initiated by the organizers are an “infringement upon the freedom of association and expression” does not correspond at all to the reality. Individuals belonging to the Hungarian minority traditionally celebrate their culture, history or language on numerous occasions, every year (e.g. Hungarian national days, specific cultural or linguistic celebrations). On many of these occasions, political or administrative demands are also affirmed by the participants and transmitted further, sometimes undertaken by politicians from other countries, participating to these events.

In this specific case, authorities primarily responsible with ensuring the public order and the safety of the participants, as well as of the local communities where the march was organized, have carefully assessed the facts and consequences of every year’s events in order, in pursue of a decision that would meet the proportionality requirement

Once again, we wish to emphasize that the commemoration event took place every year, without any intervention from the authorities. As for the protest march, given that, as previously mentioned, incidents were registered, authorities enforced legally prescribed measures that would best serve the public order and the safety of individuals and that, at the same time, affect to the minimum, the freedom of assembly.

I am confident that, in light of the above, the situation brought to your attention does no longer seem as “a systemic violation of the freedom of expression and peaceful assembly” of the persons belonging to Hungarian minority living in Romania, taking also into account that the national legal framework provides sufficient mechanisms to prevent and to fight against any potential violation of human rights.

Please receive, your excellences, the assurances of my highest consideration.


Teodor Meleşcanu



MINISTRY OF FOREIGN AFFAIRS
Minister



No. H2/ 3101

5th of July 2018

Dear Mr. Kaye,

Dear Mr. Forst,

Dear Mr. De Varennes,

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At the outset, let me reassure you that it is Romania's strong belief that the freedom of expression, taken alone or in conjunction with the right to freedom of peaceful assembly is beyond any doubt of essence and represents a fundamental value in any democratic society. The two rights are of universal nature, applying to *all persons*, whether belonging to a national minority or not.

Romania does not question the exercise of these rights and reaffirms its full commitment to respect the fundamental human rights, including the freedom of expression and the right to freedom of peaceful assembly, without discrimination on any grounds.

The freedom of expression and the right to free and peaceful assembly are guaranteed in Romania at Constitutional level, which equally provides that international treaties in the field of human rights prevail if their provisions are more favorable. The current Romanian legal system developed in the field of human rights offers sufficient guarantees for their protection and preservation, including access to justice and adequate sanctions against those behaviors violating human rights whether they emanate or not from the State.

As to the particular situation brought to your attention, I hope the following arguments will help you to better assess the situation and to dissipate your concerns that the right to peaceful assembly and to the freedom of expression of the Hungarian-speaking minority had been breached in a systematic way in Romania.

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As to the facts

*The Day of Szeklers' Freedom*¹ was celebrated for the first time in 2013. Until then, commemorative gatherings, dedicated to the events of 1854, when Szeklers were executed by the Habsburg authorities, had been taking place on a regular basis. On many of these occasions, political objectives were affirmed by the participants, including, most of the times, high level Hungarian officials.

As such, *the Day of Szeklers' Freedom*, celebrated since 2013, has two components: a commemorative one, at the Szekler Martyr Monument, followed by a protest march (later in the text *march for autonomy*).

In 2013, the National Szekler Council declared the *Day of Szeklers' Freedom* to be celebrated on the 10 March. From that moment on, the ample political component of the manifestations superseded the commemorative significance of the day of 10 March.

On that year, a *march for autonomy* was authorized, according to the procedure regulated by the Romanian laws. Around 5000 participants (according to local authorities) were present at this event, among them, representatives of extremist movements and political parties from Hungary. Unfortunately, during the event, explicit xenophobic, revisionist and anti-constitutional messages were spoken.

In 2014, the commemoration event took place, as every year, but it was followed by a march that had not been authorized by the local authorities. In its decision, the Mayor's Office took into account the necessity to protect public order, to avoid inter-ethnic conflicts and to preserve the peaceful coexistence in between all citizens living in Târgu-Mureş. It also took into account that the commemoration activity should not be compromised by the protest actions, taking into account in the events of 2013 (voicing explicit, revisionist and anti-constitutional messages, hoisting extremist symbols). The decision was upheld by the local court.

Unfortunately, during the march for autonomy that anyhow took place on 10 March 2014, acts of violence targeting forces of public order were committed by some of the participants, the local population was threatened with swords and different objects; this behaviour culminated with the setting on fire of the European Union flag.

Consequently, representatives of the Romanian Gendarmerie intervened and applied fines to 10 participants, sanctioning their misdemeanour behaviour in accordance with law.

It should be emphasized that both during 2013 and 2014, several thousands of persons, members of the Hungarian minority from Harghita, Covasna, Cluj, Sălaj, Bihor and Satu Mare, took part in these events. Upon the requests of the organisers, local authorities ensured the necessary and adequate measures, including adequate parking places..

¹ For the sake of clarity and better understanding, it should be pointed out that the current so called "Szeklerland" has no historic connection with the areas inhabited during the Middle Ages by Szeklers, as well as no connection with Szeklers partial self-rule during the same historical period. We recall that the self-rule status of the Szeklers was abolished in 1876 by the Hungarian Kingdom, as part of the Austro-Hungarian Empire. The current so called „Szeklerland” is an artificial imagological formation gathering under one denomination distinct parts of three Romanian counties (Mureş, Harghita, Covasna) with the purpose to create a compact region with Hungarian majority and to claim territorial autonomy based on ethnic criteria. This contravenes to all international documents which are favorable for the integration of minorities in the societies where they live and not to their segregation, by creating a special territorial units, self-ruled, strictly on ethnic basis.

Equally, national and international mass-media participated so that the march benefited of media exposure both before and during the events.

Against the background of the 2013 and 2014 events, the requests for authorizing public manifestations (*marches for autonomy*) formulated by the organisers on an yearly basis, were constantly assessed by the competent authorities both from the perspective of the right to peaceful assembly and freedom of expression, but also from the perspective of the need to ensure respect for public order and public safety.

In **2015**, the commemoration event also took place, while the *march for autonomy* was not approved by the local authorities. In support of this decision, the authorities pointed out to the violent acts committed in the previous year, a threat to the public order and to the peaceful living in Târgu-Mureş, and also the fact that a different public event had been authorized, in advance, for the same place.

As for the events in **2016**, the *Siculitas Association* (the association in charge of the organization of the event) had filed, on 2 March 2015, the requests for approval for the events planned in 2016 and 2017.

From the procedural point of view, it is to be mentioned:

- the Advisory Commission (having in its composition the mayor, the Secretary of the irrespective locality and, if necessary, the representatives of the Police and Gendarmerie), decided that it was too early to approve the events, being necessary that such a request be filed in the proximity of the events. Therefore, it informed the organizers that the activities were not approved on the basis of the premature request, but it was not excluded that the decision be reversed on the basis of a new request formulated as suggested in the administrative decision.
- On 1 October 2015, the organisers filed a complaint before the Mureş Tribunal, in accordance with the administrative law. The Tribunal's Decision on January 8, 2016 obliged the authorities to approve the public assembly in accordance with the request registered on March 2, 2015, namely the march and the protest planned on March 10, 2016 on the *Day of Szeklers' Freedom*.
- Târgu-Mureş City Hall appealed on point of law the Tribunal's decision. The appeal on point of law suspends the enforcement of the judgement until the decision in the appeal. Consequently, on 10 March 2016, the decision of the Mayor not to authorise the march was in effect.

It must be pointed out that no new request was introduced by the organisers in the proximity of the event (10 March 2016) following the negative reply (solely on procedural basis) of the Mayor.

However, following the commemoration event at the Szekler Martyr Monument, the organizers guided the participants to a march promoting the autonomy of the so called *ținutul secuiesc* ("Szeklerland"). The march caused traffic bottleneck and public disorder. A firecracker was thrown out into participants at the event causing fear/panic.

The authorities applied fines only to those who took part to the protest acting outside the legal framework. Part of the fined persons complained before the competent tribunal against the inflicted measures taken against them. Some of these cases are pending before competent courts, while in those already finalized, the judges, after having analysed the specific situation of each case, pronounced either in favour of maintaining the administrative sanctions applied, or in favour of annulling those administrative acts.

During **2017**, on March 10, a commemorative event took place, with some 2.500 participants; there were no specific incidents. According to the information in the local press, the Mayor's

Office announced that the commemoration event was to take place as in previous years, while there was no authorization for the march. Also, the authorities announced that a number of the representatives of the protesters are to be received at the office of the Prefect to hand over the petition and that participants to the commemoration event should walk from the site only on the sideway, not on the traffic roads.

The participants to the commemoration event marched to the centre of the city and chanted pro-autonomous slogans, some of them against the Constitutional order of Romania (*Ținutul secuiesc nu e Romania/ Ținutul secuiesc is not Romania*). The Police and the Gendarmerie have not impeached the marching of the participants; it only supervised that no violent acts are committed.

The Gendarmerie only applied the lowest administrative sanctions foreseen by law (warning and verbal warning) in some particular cases, in order to preserve the peaceful character of the event. A criminal investigation was equally opened against one participant for carrying out dangerous objects that are prohibited by law during this kind of gatherings for reasons related to the security of participants.

In 2018, the local authorities analysed, like every year, the requests filed by the organizers of the Day of Szeklers' Freedom. The mayor of Târgu-Mureș declared that there is no limitation to the right to file a petition, to the right to assembly, but the authorities are only interested that the safety and the integrity of any person should not be affected. Therefore, the authorization for the march will bear some specific elements².

Around 3.500 persons took part in the commemorative event on March 10, 2018. No incidents causing public disorder or requiring police intervention occurred. Only in some minor and particular cases, some of the lowest administrative sanctions prescribed by law (warning and verbal warning) were applied.

To conclude on the description of the facts, one could not say, under any circumstances, that the right to peaceful assembly of the participants to these events has been frustrated by the Romanian authorities. On the contrary, the Szeklers' leaders and their invitees, including invitees from different European states advocating for political goals pertaining, inherently, to the internal organisation of Romania, freely expressed (during the 10 March manifestations) their opinions in relation to the autonomy objective advocated constantly by the Szeklers-Hungarians. The reasons based on which the local authorities decided, in some cases, not to authorize the protest march had to do with public order, safety of the participants and/or of the citizens of Târgu-Mureș, and also preserving the interest of peaceful living together of the inhabitants of the city and not generating inter-ethnic conflicts.

Despite the decision of the local authorities not to authorize some of the 10 March events, the organisers proceeded nonetheless with the protest march and encouraged the participants to the commemorative event to do the same (thus, detouring the peaceful commemorative event into a fully-fledged protest). Within this context, it is important to mention that neither the Romanian Police nor the Gendarmerie took any measure to forbid the protest marches (even if not authorised according to the law) or to prevent the walking of the participants. The measures that were taken were only meant to ensure that the events unfold safely and peacefully, in compliance with the mandate of the *Romanian Gendarmerie*, namely to ensure the public order and to protect participants during public events taking place in public areas. This is in fact, in accordance with the positive obligations that States have in relation to the dimension of protection of the right to free and peaceful assembly.

² According to national and local media that reported on the preparation for the events on 10th of March

The organizers used to install on every such occasion audio amplifiers, a stage, flags, banners and all other needed items so that their speeches be better heard, without interference from the authorities.

It is worth mentioning that the organizers request every year the Prefect Institution in Mureş county to receive after working hours their petition which is handed over each year on March 10; the request was every time accommodated by the local authorities.

As to the law

The freedom of expression and the right to free and peaceful assembly are guaranteed by the Constitution of Romania (articles 30 and 39).

Romania is Party to the relevant international or regional instruments concluded in the field of human rights. According to the Romanian Constitution, the treaties ratified by the Parliament, become part of national legislation (article 11). Moreover, whenever the provisions of the international instruments in the field of human rights are more favorable, they take precedence over the national legislation (article 20). This is also the case for the *Convention for the Protection of Human Rights and Fundamental Freedoms* of the Council of Europe (together with the interpretation given to this instrument by the judges in Strasbourg), which is the most modern and innovative one.

At the same time, the specific relevant instruments aiming at promoting and protecting the rights of persons belonging to national minorities, naming in particular the Council of Europe's *Framework Convention for the Protection on National Minorities*, guarantee as well the respect for the right of every person belonging to a national minority to the fundamental freedoms of expression and peaceful association (corresponding to articles 10 and 11 of the ECHR).

However, it is also important to highlight that, as foreseen by all these international instruments, the exercise of the two freedoms is not absolute and may be subject to some formalities, conditions, restrictions or penalties which are prescribed by law in the interest of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals.

At the level of domestic legislation, *Law no. 60 of September 23, 1991 regarding the organization and the exercise of public assemblies* regulates the formalities, the procedure to follow, the rights and obligations, the prohibitions and sanctions for the misdemeanour.

Thus, according to these legal provisions, *public assemblies* are approved by the mayors of the territorial units where those assemblies take place (article 4 of the Law).

However, as to the *commemorative assemblies*, the law does not require any approval. The organizers are not even requested to declare *a priori* the holding of the event; they only need to request in advance the support of the competent authorities when they have reasons to believe that the event could lead to public disorder or violent manifestations (article 3 of the Law).

As to the *public assemblies* (as the marches for autonomy are) requiring an approval, the legal procedure establishes that the approval is to be delivered upon request submitted at least three days in advance. A commission including the mayor, the secretary of the locality and, if necessary, the representatives of the Police and of the Gendarmerie, assesses the request (articles 6-8). The law foresees specific circumstances under which the authorities ban the public assemblies, such as: propagation of totalitarian ideas such as fascist, communist, racist, chauvinist ideas, incitement to national or religious hate, to discrimination, to public violence or obscene manifestations; organizing a *coup d'Etat* or any other actions which are contrary to the national security; violation of the public order, of the public safety or morality, violation of the rights and freedoms of citizens or endangering their health (article 9).

Equally, the organization of a public assembly is not allowed: in the immediate neighborhood of a hospital, airports, railway stations, ports, military objectives (article 5); when the competent authorities provide information indicating that the assembly will not be peaceful, or it will impede the functioning of the public or private institutions, or having the potential to degenerate in violent actions jeopardizing the public order, the safety of persons, their corporal integrity, their life or goods (article 10 corroborated with article 2).

The law establishes as well a number of obligations for the public authorities and for the participants to public assemblies, aiming at ensuring that these events unfold without incidents, and that the safety of its participants and the public order are preserved (article 12).

In addition, there are two national laws complementing the provisions of Law no. 60/1991: *Law no 544/2004 regulating the administrative disputes* and the *Ordinance of the Government no 2/2001 concerning the legal regime of administrative offences*. Based on the first law, any interested person can complain against the mayor decision issued following a request for authorising a public assembly. The second legislative act allows to any interested person to lodge a complaint before national courts against the administrative sanctions applied by authorities.

In addition, it is to be pointed out that, since the international documents in the field of human rights assumed by Romania are being part of the national legislation, any interested person can complain before national courts of an alleged violation of such rights, based directly on the relevant international treaty, the access to justice being guaranteed.

Concluding remarks

The Day of Szeklers' Freedom, celebrated since 2013, consists of two parts:

- 1) a commemorative one, at the Szekler Martyr Monument, for which **no approval is needed**, and
- 2) the protest march (march for autonomy), for which **an approval in accordance with the law is required**.

1) At no point in time have the Romanian authorities interfered with the right of the Hungarian speaking minority to express its culture, its identity, by prohibiting the participation to the commemoration events.

Having in mind that the domestic legislation does not even foresee any approval requirement for the commemorative assemblies (not even a pre-notification, should the organisers not anticipate any public disorder), it is hard to imagine how the local authorities would have interfered with the right of the Hungarian minority to commemorate the March 10 event. Moreover, the factual information shows that the commemorative event did take place every year, before and after 2013. Therefore, there is no argument to conclude that the right of the persons belonging to the Hungarian minority to manifest their cultural identity has not been respected.

Furthermore, please note that the Romanian model in the field of the protection of persons belonging to national minorities, as one of the countries ensuring the protection for a large number of minority languages – 20 and at a very ambitious level, is based precisely on multiculturalism and inter-cultural dialog. This approach responds both to the need for the conservation and assertion of the specific identity (ethnic, linguistic, cultural, religious) and to the goal of defining an integrating space, that is tolerant and rests on interethnic dialogue and mutual understanding and respect.

2) As to the protest march (march for autonomy), that the organizers plan every year in connection with the commemoration event, indeed, a procedure of approval must be followed in accordance with the provisions of the national legislation, as detailed above.

Nevertheless, such a procedure is not *de plano* disproportionate, the international legal documents in the field of human rights allowing restrictions to the exercise of freedom of expression and to the right of peaceful assembly in certain circumstances, as prescribed by the national legislation. The sanctions and penalties are neither *per se* prohibited in connection with the two liberties.

It is to be noted that, as communicated by the Romanian competent authorities, the administrative sanctions were applied for the participation to an *unauthorized event* (2016), or for actions of severe public disorder (aggressing the public order forces, threatening and using swords and other objects against local population, arson attack). At the same time, it is important to note that, when confronted with situations that had to be sanctioned, the Romanian authorities always privileged the possibility to apply milder sanctions (i.e. verbal warning). The sanctions are not ethnically motivated nor applied in a discriminative way on reasons of ethnicity – they would have been applied in all similar circumstances independent of the ethnicity of the perpetrators.

The Romanian legal framework presents sufficient guarantees against any presumptive abuse in applying such fines or administrative sanctions in general. Complaints can be lodged before Romanian Courts not only against these administrative acts, but also in order to submit to judicial assessment any allegation related to the interference with the freedom of expression or with the freedom to peaceful assembly, including in the light of the proportionality of such sanctions.

To affirm that the measures undertaken by the competent authorities in regard to the specific situation of the march initiated by the organizers are an “infringement upon the freedom of association and expression” does not correspond at all to the reality. Individuals belonging to the Hungarian minority traditionally celebrate their culture, history or language on numerous occasions, every year (e.g. Hungarian national days, specific cultural or linguistic celebrations). On many of these occasions, political or administrative demands are also affirmed by the participants and transmitted further, sometimes undertaken by politicians from other countries, participating to these events.

In this specific case, authorities primarily responsible with ensuring the public order and the safety of the participants, as well as of the local communities where the march was organized, have carefully assessed the facts and consequences of every year’s events in order, in pursue of a decision that would meet the proportionality requirement

Once again, we wish to emphasize that the commemoration event took place every year, without any intervention from the authorities. As for the protest march, given that, as previously mentioned, incidents were registered, authorities enforced legally prescribed measures that would best serve the public order and the safety of individuals and that, at the same time, affect to the minimum, the freedom of assembly.

I am confident that, in light of the above, the situation brought to your attention does no longer seem as “a systemic violation of the freedom of expression and peaceful assembly” of the persons belonging to Hungarian minority living in Romania, taking also into account that the national legal framework provides sufficient mechanisms to prevent and to fight against any potential violation of human rights.

Please receive, your excellences, the assurances of my highest consideration.


Teodor Meleşcanu