

Mandates of 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

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 34/18, 34/5 and 34/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the repeated attempts to hamper the exercise of rights of assembly and expression of the Hungarian-speaking Szekler minority in Romania during their annual commemoration event, the "Day of Szekler Freedom".

According to the information received:

Since 2013, public authorities have consistently tried to restrict the right of peaceful assembly of the Hungarian speaking Szekler minority during/after their annual event, the "Day of Szekler Freedom". In the past two years, these restrictions have increased, particularly through prior restraint on and sanctions and penalties imposed on protestors during the "Day of Szekler Freedom".

Every year, on 10 March, the Day of Szekler Freedom is organised in Tîrgu Mureş/Marosvásárhely, by the Szekler National Council (SNC). This event, mainly consisting of a peaceful march, convenes around 10.000-40.000 participants. It is a remembrance day for the execution, on 10 March 1854 in Tîrgu Mureş/Marosvásárhely, of three Szekler revolutionaries advocating for independence from the Habsburg rule. Nowadays, the march has also become a platform for Szekler Hungarians to advocate for autonomy in the regions of their presence and to oppose the Romanian Government's plans to reform the country's administrative organization. The reform would merge three counties with the Szekler-Hungarian population into a larger administrative region (together with overwhelmingly Romanian Alba, Sibiu, and Braşov counties), in which the proportion of Szekler-Hungarians would drop below 30%.

Law 60/1991, requires organisers to submit an advance notice of the intent to hold an assembly but not a request for permission from the law enforcement agency. Article 9 of the law stipulates very special circumstances under which the authorities can ban an event within 48 hours of the submission of the notification from the organizers. These requirements are the following: a) propagation of

totalitarian ideas such as fascism, or communism, or incendiary, racist, chauvinist messages; b) organizing a coup d'etat or other actions contrary to national security; c) violation of public order, endangering public safety, health, and morality or the citizens' rights and freedoms.

On 8 June 2013, and in compliance with Law 60/1991, the organizers notified the authorities about the upcoming March 2014 protest, notification that was reiterated on 9 December 2013 due to lack of answer from the Mayor's Office. Since organisers received no response from authorities within 48 hours of the submission of the notification indicating any restrictions, they assumed that they had a right to proceed.

On 10 March 2014, following the demonstration, the local law enforcement agency fined the organisers with a fine of 12.000 RON (2.700 EUR) for "organising and conducting undeclared, unregistered or prohibited public meetings" as they failed to obtain a prior authorisation from the police.

In 2015, the Mayor issued a prior place and manner restriction in relation to the event, claiming that it leads to "ethnic unrest", and turns the city into a "conflict zone".

On 2 March 2015, the organisers submitted a notice to public authorities about the holding of the Day of Szekler Freedom in the following years. The authorities responded that the notification came too early, and argued that organising the event in 2016 would be problematic, considering that it coincides with an election year, and that road construction works had been planned due to which public security across the town would be constantly changing.

After the 2016 Day of Szekler Freedom march was held peacefully, the authorities fined the organizers as well as the participants. Fines up to a total of 66.000 RON (13.700 EUR) were issued against 50 individuals for "participating in an undeclared, unregistered or prohibited public meeting" and up to a total of 9.800 RON (2.200 EUR) in more than forty cases for "noise disturbance". The highest fine (4.000 RON (865 EUR)) was issued for the President of the Szekler National Council.

In 2017, on 9 March 2017, the Mayor issued a communication restricting the number of people who could approach the Prefect's office to hand over the petition adopted as part of the event. This time, financial penalties were not issued. The same year, the organizers notified again the holding of assemblies for the upcoming years.

In 2018, several attempts to hamper the holding of the Day of Szekler Freedom march have been implemented by the authorities. Among the justifications to deny the holding of the event, the Mayor's Office argued that the route of the march is

too close to a local hospital, even if the route of the march had remained unchanged over the years.

The different penalties and decisions to hamper the holding of the Day of Szekler Freedom march has deterred many participants to demonstrate as they fear the authorities could impose penalties such as fines. Other movements, including extremist political parties such as Noua Dreaptă, repeatedly organize similar marches without any interference from the authorities.

The organisers have filed a lawsuit with the court of first instance, against the Mayor for abuse of office. Up till now, no judgement has been reached in the case

We express serious concern over the alleged decisions taken by the authorities as well as the penalties issued against protestors that appear to unlawfully restrict the rights to freedom of expression and freedom of peaceful assembly of the Hungarian-speaking Szekler minority. These measures also negatively impact on the right of this minority to manifest its culture and identity.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information concerning the legal grounds for the measures adopted by local authorities to prevent the holding of the Day of Szekler Freedom march and how they are in compliance with international human rights law, in particular, with article 19 and 21 of the International Covenant on Civil and Political Rights.
3. Please provide detailed information concerning measures to ensure that protestors, including protestors from the Hungarian-speaking Szekler minority can exercise their rights to freedom of peaceful assembly and expression in Romania, including the ability to peacefully express views critical of the human rights situation and of the conduct of the Government or government officials.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Michel Forst
Special Rapporteur on the situation of human rights defenders

Fernand de Varennes
Special Rapporteur on minority issues

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the rights to freedom of opinion and expression and freedom of association as set forth in articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Romania on 9 December 1974.

Furthermore, we would like to refer to resolution 24/5 of the Human Rights Council in which the Council "Reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law".

We would also like to draw the attention of your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Human Rights and Fundamental Freedoms, and in particular Article 1 and 2 which states that "Everyone has the right, individually or in association with others, to promote the protection and realization of human rights and fundamental freedoms at the national level. "and that" each State has the primary responsibility and the duty to protect, promote and render effective all human rights and fundamental freedoms, including by adopting the necessary measures to establish social conditions, economic, political and other, as well as the legal guarantees required to ensure that all within its jurisdiction may, individually or in association with others, enjoy in practice all these rights and freedoms ".

Likewise, we would like to draw the attention of your Excellency's Government to the provisions of Article 5 (a) and (b) of the same Declaration which state that in order to promote and protect human rights and fundamental freedoms, everyone has the right to assemble and peacefully assemble and to form, join and participate in non-governmental organizations, associations or groups.

Recognizing that Szekler Hungarians constitute a minority in Romania, we would like to bring to your Excellency's Government attention the international standards regarding the protection of the rights of persons belonging to minorities, in particular to article 27 of the ICCPR and the 1992 Declaration on the Rights of Persons Belonging to national or Ethnic, Religious and Linguistic Minorities, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt the measures to that end (article 1) as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4).

Finally, we refer to the report of the former Special Rapporteur on the right to peaceful assembly and freedom of association, in which he asserts that States also have a negative obligation not to unduly interfere with the right of peaceful assembly and that any restrictions imposed must be necessary and proportional to the objective pursued (A/HRC / 20/27, paras 39 and 40).