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## **Roma political participation in Romania – from presence to influence**

ROXANA PRISACARIU

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University of Fribourg  
Institute of Federalism  
Av. Beauregard 1  
CH-1700 Fribourg

Phone +41 (0) 26 300 81 25

[www.federalism.ch](http://www.federalism.ch)



**UNIVERSITÉ DE FRIBOURG** FACULTÉ DE DROIT  
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Institute of Federalism, University of Fribourg  
Avenue Beauregard 1  
1700 Fribourg  
Switzerland  
[federalism@unifr.ch](mailto:federalism@unifr.ch)



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Author: Roxana Prisacariu

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## Abstract

This report analyses the current situation of Roma participation to public decision in Romania to inquire why Roma presence seems to have little influence on decision-making when comparing to Roma numeric weight in the Romanian nations and to the influence of other minorities as the Hungarians.

On the basis of the current conceptual, normative and political framework, this writing applies the Framework Convention Advisory Committee 2008 scheme to the current Roma political participation in Romanian public life and considers it from the point of view of its effectiveness on a scale starting from presence and ending with control.

Influenced by the European developments, Roma political participation in Romania ranges below effective influence but not because of the scarcity of the instruments Romania's laws provide for, but because of the selective co-optation of Roma representatives it supports complemented with the weak connection between key Roma representatives and the grassroots Roma communities.

**Key-words:** Roma inclusion, political participation, presence, influence, Romanian nation

## 1. Introduction

The international acknowledgement of a national minorities' right to political participation carries great hopes for the world peace. Notwithstanding the generosity of the idea, the shift from majority's decision to minority inclusion in decision-making is a long and challenging process. Even more so if thinking that in some cases states may have difficulties in implementing the first requirement of democracy: majority's will.

The literature on national minorities' political participation is concentrating on both the clarification of the conceptual tools and on the diverse national and international practice. Additionally, the social sciences advanced in understanding the Roma<sup>1</sup> minority, the inclusion processes and policies as well as the practice and challenges of Roma political participation. Nevertheless, there is still unclear why, with all those convergent efforts and resources allocation, Roma perspective(s) seems missing from the decision-making table in Romania and in Europe as well.

In 2008, the Framework Convention Advisory Committee has published its Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs<sup>2</sup> (The Commentary) complementing the 1999 Lund Recommendations on the Effective Participation of National Minorities in Public Life<sup>3</sup> on the basis of the Advisory Committee 10 years' experience in monitoring the Framework Convention. On the basis of the current conceptual, normative and political framework, this writing aims to make its contribution by applying the Framework Convention Advisory Committee 2008 scheme to the current Roma political participation in Romanian public life and by considering it from the point of view of its effectiveness on a scale starting from presence and ending with control.

It argues that currently, **Roma political participation in Romania seems to range below effective influence but mostly not because of the scarcity of the instruments Romania's laws provide for, but because of the selective co-optation of Roma representatives it supports complemented with the apparently weak connection between key Roma representatives and the grassroots Roma communities.**

This research tackles mainly the mechanisms which may be defined as special measures to include national minorities to public decision-making, by difference to those available to everyone on the basis of citizenship or residence. It is materially limited to political participation, excluding the cultural, social and economic elements and autonomy arrangements from its main scope. It is territorially limited to Romania and personally limited to Roma people's involvement in the design, implementation and assessment of their own social inclusion.

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<sup>1</sup> Here «Roma» is used as a generic name for diverse ethnic groups auto-identified as Roma, Gypsy, Tzigans, Sinti, Manouchs, Romanichels, Kales, Bohemians while nevertheless confess sharing a common history, or comparable traditions, cultures, languages and a feeling of solidarity. The Swiss, German and Austrian Janisches may not pertain to this group, for example.

<sup>2</sup> The Advisory Committee on the Framework Convention for the Protection of National Minorities, Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs, adopted on 27 February 2008, ACFC/31DOC(2008)001.

<sup>3</sup> OSCE High Commissioner on National Minorities (HCNM), ed., The Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note, September 1999 (Lund Recommendations).

## 2. The national minorities' and the Roma right to political participation

The idea to internationally recognise a citizen's right to take part in the government of his country – with a larger content than the traditional political rights to vote and to be elected – first took expression in the 1948 Declaration of Human Rights (Art. 21), after the Second World War. After the Cold War, similar circumstances pushed to the acknowledgement of a right to effective participation to public life for national minorities members<sup>4</sup> (1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Art. 2 and 1995 Council of Europe Framework Convention for the Protection of National Minorities (Art. 15)).

The justification of such an international minority right generally stands on three sets of arguments: the security concern, the substantial equality principle and the legitimation of democratic states. But the now-a-days emphasis put on this still vague concept appears to rest mainly in its ability to provide a framework for states and national minorities to democratically settle their own disputes.

The states entrusted the hope and competence to advance on the road of including national minorities to decision-making to specialised international advisory or jurisdictional organs acting independently under the supervision of decisional institution of international/ supranational organisations as the United Nations, Council of Europe or European Union. Their tools are mostly their wisdom and professional expertise embodied in soft law instruments like opinions, recommendations, guidelines. Their observance lies mostly on the political power of negotiation resulted from the now-a-days growing interdependences between states and other international actors and less on international juridical instruments of coercion.

As a previous research highlighted<sup>5</sup>, the minority right to political participation implies for the state an obligation of result: to establish an inclusive procedure of decision presumably outreaching majority voting. But how far the policy of national minorities' inclusion in public affairs has to go – for a state to meet its obligations under Article 15 of the Framework Convention – is a matter of evolving interpretation. As most of the human rights documents, this too, defines a 'living' standard, partially because of the indeterminacy of its vocabulary. The meaning of 'participation' may go on a continuum from mere 'presence' to 'consultation' and further from 'influence' to 'control'<sup>6</sup>. Nevertheless, the 'effectiveness' of 'participation' seems to ask that participation must have at least the chance to change the outcome of the decision-making<sup>7</sup>.

For this, in most views<sup>8</sup>, it is the state's obligation to ensure to national minorities a certain degree of 'influence' on the outcome of the decision, while scholars<sup>9</sup> and the Advisory Committee<sup>10</sup> clearly

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<sup>4</sup> I use expressions such as *(national) minorities' right to effective participation in public life* or *(national) minorities' political participation* in the sense of *right or participation of the persons belonging to national minorities*.

<sup>5</sup> See my second research on *Roma right to effective participation in public affairs – between soft and hard law*, p. 16.

<sup>6</sup> Verstichel, Annelies, *Understanding Minority Participation and Representation and the Issue of Citizenship* in Mark Weller and Katherine Nobbs, eds., *Political participation of minorities*, Oxford Univ. Press, 2010, p. 79.

<sup>7</sup> Kristin Henrard, 'Participation', 'Representation' and 'Autonomy' in the Lund Recommendations and their Reflections in the Supervision of the FCNM and Several Human Rights Conventions, *International Journal on Minority and group Rights* 12, 2005, p. 133–168.

<sup>8</sup> Annelies Verstichel, *supra* note no. 7, p. 79.

states that consultation is not participation. Yet, the explicit duty of consultation currently appears in the United Nations Human Rights Committee and other international organisms' opinions or recommendations only in connection with indigenous people<sup>11</sup> or disadvantaged minorities, and not with the general category of 'national minorities'<sup>12</sup>. It appears also clearly stated in Framework Convention Advisory Committee Third Opinion on Romania<sup>13</sup> in relation to Roma. These soft law instruments interpret the minorities' right to effectively participate in public affairs, and particularly in those affecting them as covering, for the disadvantaged minorities, all aspects of the inclusion policies. Consequently, Romania's obligations under the International Covenant on Civil and Political Rights (Art. 25) and the Council of Europe Framework Convention for the Protection of National Minorities (Art. 15) include Roma representative consultation in elaborating, implementing, monitoring and evaluating the effectiveness of integration policies. While there is clear that consultation has to go beyond mere tokenism and to allow at least the chance to influence the outcome of the decision process, the idea of sharing power, while somehow implied in the notion of political participation, isn't expressly mentioned.

From a political sciences perspective, the political participation<sup>14</sup> of national minorities' members is conceptually embedded – as a procedural requirement – in social inclusion policies. This is visible in the Roma inclusion policies in European countries. Active participation of Roma is listed as the last of the 10<sup>th</sup> common principles<sup>15</sup> to be followed in this field.

For Europe mostly, Roma integration has become an assumed objective for the realisation of which Roma themselves need to participate. The European Union's Roma inclusion policy and the Council of Europe Framework Convention monitoring mechanism seems to advance European integration but, on the level of social justice, the success of the national and European Roma inclusion seems to depend, among other factors, on the ability to ensure that Roma interests and perspectives are legitimately and accountably represented, and that responsibility is shared.

But who represent Roma, their interests<sup>16</sup> and perspectives and has to be, consequently, included in the decision? This aspect apparently still needs more light at the European and, to some extent, at the Romanian level as well.

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<sup>9</sup> Knut Vollebaek, *Foreword*, in Mark Weller and Katherine Nobbs, eds., *Political participation of minorities*, Oxford Univ. Press, 2010, p. viii.

<sup>10</sup> The Commentary, supra note 3, p.7: «mere consultation does not constitute a sufficient mechanism for ensuring effective participation of persons belonging to national minorities».

<sup>11</sup> Human Rights Committee, General Comment 23, Article 27 (Fiftieth session, 1994), *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.1 at 38 (1994).

<sup>12</sup> The Ljubljana Guidelines on Integration of Diverse Societies & Explanatory Note, November 2012, p. 10.

<sup>13</sup> See Framework Convention Advisory Committee Third Opinion on Romania, 2012, p. 2 and 37.

<sup>14</sup> Acknowledging the possible differences in meanings, I use the notion of *political participation* as synonym for *participation in public life or participation in public affairs*.

<sup>15</sup> *EU Council's Conclusions on inclusion of the Roma* (Common Basic Principles on Roma Inclusion – presented at the June 2009 meeting), available at [www.consilium.europa.eu/.../108377.pdf](http://www.consilium.europa.eu/.../108377.pdf).

<sup>16</sup> On McGarry, interests are aggregated bundles of opinions and affiliations which are inter-subjectively constructed by communities. Group identities (and interests) are produced and continually re-defined by the process of collective action. See Aidan McGarry, *Political participation and Interest Articulation of Roma in Romania*, JEMIE 7, 2008, p. 6–7.

### 3. The Roma place in the Romanian nation

As founding principle, the Constitution declares Romania a nation-state (Article 1) and also the common and indivisible homeland of its citizens, irrespective of their race, nationality, ethnic origin, language etc. (Article 4). These provisions are complemented with those of Art. 11 and 20 of the Constitution stating that international human right hard law takes priority against internal legislation. This way, the international and European standard on equality and effective participation<sup>17</sup> are part of the Romanian law. These provisions would devise Romania as a civic rather than an ethnic nation<sup>18</sup>. But for Romania, the old debate about the feature of the nation: civic or ethnic seems still important. The public speeches and the public opinion seem splitted on the issue who pertains to the Romanian nation<sup>19</sup>, which kind of nation is the Romanian one according to the Constitution. As I had already argued<sup>20</sup>, the constitutional statement that ‘Romania is a nation-state’ (Article 1) have been received three interpretations.

According to the first, which is shared by a part of the Romanian and Hungarian ethnics, Romania is an ethnic nation-state. From this assumption, it seems safely to infer that, while Romania is also the common homeland of all its citizens, without ethnical discriminations (Article 4) a constitutional amendment might be needed to fill the gap of legitimate entitlements concerning the ownership of the Romanian state. It would state that national minorities are constitutive elements of the state, together with the Romanian ethnic community which otherwise would be privileged, contrary to the equality principle.

On the second reading – which seems to be privileged in the Romanian academia<sup>21</sup> but presumably without substantially penetrating the public speech and opinion – both constitutional provisions – Article 1 and Article 4 – has to be interpreted together – case in which only the understanding that Romania is a civic nation-state stands. In this understanding, Romania is a civic nation-state because this is the only coherent interpretation of the Constitution, in line with the principle of equality.

Tudor Drăganu<sup>22</sup> proposes a third interpretation: the Constitutional provision stating that ‘Romania is a nation-state’ aims to remember to the next generations that Romania was formed in the XIX-th–XX-th centuries through the application of the principle of nationalities – the precursor of the now-a-days principle of self-determination – by difference to occupying a foreign territory. In this reading, the Article 1 provision does not say by itself which kind of nation is Romania today and does not limit in any way further developments on this issue. From this perspective, the Romanian nation has space to develop from a predominant ethnic nation into a civic one, according to the equality principle. I appreciate this opinion for having the advantage of coherently linking the Romanian reality,

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<sup>17</sup> See the respective provisions of the 1966 International Covenant on Civil and Political Rights (Art. 25), the European Convention on Human Rights (the 1<sup>st</sup> Protocol) and the Framework Convention for the Protection of National Minorities (Art. 15) as well as to all the other human rights treaties and 1948 Universal Declaration of Human Rights (Art. 21).

<sup>18</sup> The utility of this distinction between civic and ethnic nation is questioned now-a-days.

<sup>19</sup> Interestingly, the question of whom pertains the Romanian state seems to be less interesting.

<sup>20</sup> Roxana Prisacariu, *Responsibility to protect and the national minorities’ participation to decision-making in the nation state*, published in Volumul Conferinței internaționale KBO a Academiei Forțelor Terestre, Sibiu, 15 iunie 2012.

<sup>21</sup> See A. Năstase R. Miga Beșteliu, B. Aurescu, I. Donciu, *Protecting Minorities in the Future Europe*, Ed. Monitorul Oficial, București, 2002, p. 21–22.

<sup>22</sup> Opinion presented with the occasion of a personal discussion while supervising my PhD work.

which seems to favour the ethnic-nation understanding, with the normativity, which goes on the civic-nation path, into the framework of the current Constitution.

On the Framework Convention Advisory Committee's reasoning<sup>23</sup>, enhanced participatory rights are needed when the state is designed as pertaining especially to the ethnic majority community. While no ethnic community is formally privileged through the Romanian Constitution, presumably more arguments are needed to sustain eventual national minorities' entitlement to be recognised as constitutive element of the state<sup>24</sup>.

How does the understanding of the Romanian nation relate to Roma inclusion and Roma political participation? As Gabriela Mirescu already highlighted, the exclusion of Roma as citizens with equal entitlements in the Romanian states may be explained through 'the ethno-nationalist logic' which 'is opposing to any efforts aiming at integrating the ethno-cultural distinct Roma, excluding them'<sup>25</sup>. Presumably this might not be the only explanation – while Roma exclusion can be detected also in states based on multicultural nationhood, as Switzerland, for example. Nevertheless, there seems to be reasons to believe that associating the Roma and the other national minorities to the reflections on Romanian nationhood might be conducive to structural inclusion directly – through actual participation to debates – and indirectly – through country-wide acknowledgement of all national minorities to equal legitimacy as Romanian citizens.

#### **4. The framework of the Roma participation to public affairs in Romania**

In Romania, the national minority status is granted to historical ethnic groups made of Romanian citizens. Currently, there are 20 national minorities officially recognised<sup>26</sup>, while others, as Csango or Aromanians did not managed to acquire this status, at least not yet.

Roma is the second large national minority in Romania, after the Hungarians, with 621600 self-identified Roma (3.3% of the Romanian population) in the 2011 census<sup>27</sup>. Aware of the Europe wide controversy surrounding Roma number, I will use this figures as minimum – giving the fact that all the estimates, notwithstanding the availability of their procedure, advance bigger figures, some up to 1.5 – 2 millions<sup>28</sup>.

Roma situation in Romania differs from the one of others 19 national minorities in Romania because it is a non-territorial minority whose members are to be found in most of the European countries and which does not benefit from the support of a kin-state. In Romania, as in other Easter European

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<sup>23</sup> See Advisory Committee on Framework Convention, Second Opinion on Croatia, 2002, para. 62.

<sup>24</sup> Because this constitutional provision did not yet amounted to a shared attitude among Romanians, some Hungarian scholars argue for Romania as an ethnic nation-state and, consequently, for the need to recognize national minorities as founding communities of the state, together with the Romanian one...

<sup>25</sup> Gabriela Mirescu, *Between Ethno Nationalism, Social Exclusion and Multicultural Policies. The case of Roma in Romania*, 2010, licence research, p. 83.

<sup>26</sup> Those are: Albanians, Armenians, Bulgarians, Croats, Czechs, Germans, Greeks, Hungarians, Italians, Jewish, Macedonians, Polish, Roma, Russians, Ruthenians, Serbians, Slovaks, Tatars, Turks, Ukrainians.

<sup>27</sup> See [http://www.recensamantromania.ro/wp-content/uploads/2013/07/REZULTATE-DEFINITIVE-RPL\\_2011.pdf](http://www.recensamantromania.ro/wp-content/uploads/2013/07/REZULTATE-DEFINITIVE-RPL_2011.pdf).

<sup>28</sup> See for example <http://hub.coe.int/google-search/?q=Roma+estimates+Romania&x=0&y=0&site=search=coe.int>.

countries, Roma identity is seldom related to an unfavourable social situation<sup>29</sup>, but it has a particular motivation in Romania where Roma were slaves for 500 years<sup>30</sup>.

The Romanian system of including national minorities to decision-making is symmetric for all recognised national minorities – with the exception of a preferential treatment for Roma – but this does not mean that every national minorities exercise the same rights. The differences in their number, territorial distribution and concentration, mother language knowledge and religious preferences are just some of the features which differentiate some historical minorities from others and affect the applicability of norms designed for the use of all of them.

The Romanian national minority political participation system currently consists in guaranteed parliamentary representation, a consultation mechanism with the Government (through the Council of National Minorities), elected local bodies and civil society. Some special asymmetric arrangements are put in place for Roma participation. They consist in consultative bodies or official positions at the central executive level and appointed consultative local officials as well as measures to promote Roma recruitment in administration and police force.

The internal framework for national minorities and Roma political participation has been influenced by the international and European negotiations. Most consequential seemed to be the communications in the EU and Framework Convention structures which may have argued for the advancement on minorities' inclusion in decision-making processes.

## 5. Roma participation in the legislative process – from presence to influence

The participation of Roma in the legislative process depends among others on the interplay of the Constitution, the electoral law and the parliamentary practice. They define how national minorities are identified in Romania, how they obtain parliamentary representation, who represents them and which powers do they have.

This section argues that Roma presence in the Romanian legislative does not go yet so far to influence the decision-making process, but not because the current Romanian constitutional framework would inhibit the minorities' effective participation<sup>31</sup>. More likely the subsequent legislation seems to favour a selective co-optation of national minorities' representatives to power<sup>32</sup> which artificially

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<sup>29</sup> <http://hub.coe.int/web/coe-portal/roma/>.

<sup>30</sup> The « average wages paid to Roma are significantly lower than those paid to other persons with comparable education» while «per capita income is almost 50% lower in Roma households as compared to the majority's average», Framework Convention Advisory Committee Third Opinion on Romania, adopted on 12 March 2012, p.32 Data sustain a smaller life expectancy, poorer education and a reduced standard of living comparing with the majority or the other national minorities members.

<sup>31</sup> National Democratic Institute, *Evaluarea barierelor participării politice a Romilor din Romania*, September, 2009, p. 7.

<sup>32</sup> Istvan Horvath and Istvan Gergo Szekely, *Diversity recognition and Minority Representation in central and Southeast Europe: A comparative Analysis*, « Differential treatment leads to democracy deficit and is indicative of the fact that minority rights regime is built on the idea of selective cooptation rather than true inclusion, let alone power sharing.» Upcoming.

favours some Roma representatives and weakens their incentives to represent Roma interests<sup>33</sup>. I will argue each statement at a time to finish with some implications and proposals.

- a) Romanian constitutional framework does not inhabit minorities' effective political participation

Not only ethnic political parties are not banned by the Romanian Constitution but it provides for a special measure which guarantees the presence of each national minority representative in the Parliament.

The national minorities' right to be represented in the lower chamber of the Romanian Parliament is guaranteed by Art. 62 para. 2 of the Constitution, if the national minority gains at least 10% of the average number of votes needed to elect a deputy<sup>34</sup>. There are currently 18 special representatives of 19 national minorities. Their number of members ranges from over 600.000 to less than 1200 persons according to the 2011 official census<sup>35</sup>. In addition to the 18 deputies who gained their seats in Parliament through preferential treatment, there are also 18 deputies and 9 senators representing the Hungarian national minority which didn't make use of the special mechanism for minorities' representative and managed to gain those seats through ordinary electoral rules/process.

Through special representatives, every minority is equally represented, irrespective of the number of their members, with the exception of one of them who represent two national minorities<sup>36</sup>. Nevertheless, this seems to lead to the under-representation of Roma, as will be argued in the following.

The solution Romanian Constitution found to include national minorities in the legislative power is appreciated<sup>37</sup> in the doctrine for its openness, equality and simplicity comparing with the other countries' experience. In fact, Romania is one of the few countries<sup>38</sup> which guarantee a seat in the national legislative for Roma.

- b) Subsequent legislation favours selective co-optation of national minorities to power

The subsequent electoral legislation gives right to vote and to be elected on citizenship basis<sup>39</sup>. National minorities' members, including Roma, have no special right to vote, but there are distinct

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<sup>33</sup> Aidan McGarry has highlighted Roma interests as being directly connected to their experience as a vilified group: education, employment and social affairs including housing and political participation, the access to all these through affirmative actions and preferential treatment, as well as reducing poverty through social justice and fighting marginalisation and stigmatisation. See Aidan McGarry, *supra* note 17, p. 6–7.

<sup>34</sup> Law 35/2008 for the election of the Chamber of Deputies and the Senate ..., published in the Official Monitor no. 196/2008 with amendments, Art. 9 para. 1.

<sup>35</sup> Albanians and Rutenians have less than 1200 members self-identified in the 2011 official census.

<sup>36</sup> The Democratic Union of Slovaks and Czechs in Romania.

<sup>37</sup> Oleh Protsyk, *Representation of minorities in the Romanian Parliament*, edited by Inter-Parliamentary Union and United Nations Development Programme, 2010, <http://www.ipu.org/splz-e/chiapas10/romania.pdf>, Ciprian-Calin Alionescu, *Parliamentary Representation of Minorities in Romania*, Southeast European politics, June 2004, vol. V, No.1, pp. 60–75.

<sup>38</sup> So does the Kosovo Constitution. See Istvan Horvath and Istvan Gergo Szekely, *Diversity recognition and Minority Representation in central and Southeast Europe: A comparative Analysis*, upcoming.

<sup>39</sup> Additionally, EU citizens have limited rights – actively and passively – to participate in local elections. See the Law 67/2005 on local elections republished in the Official Monitor no. 333/2007.

provisions to implement the special constitutional right of each national minority to be represented in Parliament. Still, the official Romanian rhetoric strongly rejects any reference to collective rights<sup>40</sup>.

The Romanian legislation provides no definition of national minorities or of their representing organisations, but the officially recognised one are, according to the electoral law, those represented in the Parliament and consequently, in the Council of National Minorities – the consultative body established at the central executive level.

A particularity of the Romanian framework for national minorities political participation is their representation through organisations established according to the general rules for nongovernmental organisations<sup>41</sup> and only exceptionally, as it will be detailed above, through political parties. This particularity was questioned by Aidan McGarry who point out that ‘in Romania there is no separation of the civil and political spheres of society when it comes to minority participation and representation. Indeed, an NGO’s inability to remain detached from the political life will impact on its claims to legitimacy<sup>42</sup>, particularly since in Romania the RPPE (Roma Party Pro Europa) receives state funding as a group represented in Parliament’<sup>43</sup>. While, as will be argued in the following, the registration of political parties in Romania is quite restrictive, the fact that small or regional national minorities can politically engage through easier-to-establish NGOs potentially opens the Romanian political scene for those otherwise excluded actors. Also, there is possible to question the actual detachment of all NGOs from the political life since there are some which support democracy, rule of law and equality in politics or others which openly ensures the financing of political parties. Thirdly, state funding for minority representing organisations which managed to gain electoral support may be necessary for the promotion of the specific minority identity and also legitimate as long as the electoral process is fair. That is why I am not convinced that, as a general rule, minority organisations established as NGO’s, as distinctive as it may look, are unsuitable to represent minorities’ interests in the current Romanian political environment. Possibly, these flows might become visible during the consolidation of the democratic political competition in Romania.

As mentioned, while the requirements to register and maintain a political party are quite restrictive, those for forming a national minority representative organisation, a NGO, are simple. They become nevertheless more restrictive if those organisations aim to run for local and general elections, their right to do so being expressly established in the electoral laws<sup>44</sup>.

The registration of a political party is quite restrictive by comparing with other states systems<sup>45</sup>. It requires for 25000 members, 700 in each of 18 counties from the all 41, including the capital city,

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<sup>40</sup> Which may be wrong – as public rhetoric – and right – as public decision – on procedural arguments related to the minority as legal subject. Tudor Draganu explained this. See Tudor Drăganu, *Câteva considerații privitoare la problema «drepturilor colective» ale minorităților naționale*, în *The Romanian Review of Human Rights* no. 18/2000, p. 45.

<sup>41</sup> The Government Ordinance no. 26/2000 on associations and foundations, published in the Official Monitor No. 39/2000.

<sup>42</sup> In Aidan McGarry view ‘Legitimacy is a social construct, like interest and group identity and is something which must be tacitly agreed upon in order to have a meaning’. See Aidan McGarry, *supra* note 17.

<sup>43</sup> Aidan McGarry, *supra* note 17, p. 12.

<sup>44</sup> See Law 35/2008 for the election of the Chamber of Deputies and the Senate ..., published in the Official Monitor no. 196/2008 with amendments and Law 67/2005 on local elections republished in the Official Monitor no. 333/2007.

<sup>45</sup> Law no.14/2003 of the political parties published in the Official Monitor no. 25/2003.

without any distinction for ethnic parties which are nevertheless legal. Once registered, the party faces the danger of losing this status if it does not obtain 50.000 votes in two consecutive elections<sup>46</sup>. This makes regional parties difficult to establish, as well as national minorities' parties. In fact, from almost 50 political parties, only two are ethnic parties, representing the Hungarian minority<sup>47</sup>, none of whom obtained parliamentary representation.

On the other part, NGOs can be registered only by 3 persons on a rather simple judicial procedure. Some of them call themselves minority representative NGOs, having arguments to do so while they have among their members persons who declare themselves as pertaining to that national or ethnic group and among their aims the protection and promotion of the interests of that minority. These minority representative NGOs have, at a first sight, the right to participate to elections, in this case being assimilated with political parties. Nevertheless, the conditions to participate in elections put an especially high standard: to have 20000 members, 300 in each of 15 counties from all 41, including the capital city or, for smaller minorities, to have as members at least 15% of the people who declared themselves as belonging to that minority at the last official census. The organisation has also to have been declared of public utility by Government decision.

But what has been continuously criticised is that those conditions are not required from the organisations that are already represented in the Parliament<sup>48</sup>. The unfairness of the electoral competition as well as the lack of mechanisms to review membership in the Council of National Minorities are constantly pointed out in the scientific literature and in Framework Convention Advisory Committee opinions on Romania<sup>49</sup>. For example, while there are many Roma NGOs registered in Romania, since 1992, the parliamentary representative organisation for the Roma minority has been continuously the Roma Party Pro Europa (Roma Party) despite the ever smaller number of votes it received. This seems to be a more general trend since the majority of the 18 organisations which represent the national minorities in Parliament have continued to do so for most of the electoral cycles since the minority gained the special seat of deputy<sup>50</sup>.

As mentioned, the conditionality link between this differential electoral treatment of organisations representing the same national minority and the continuity of the minority representation by the same organisation or deputy for several mandates had been continuously assessed in the scientific

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<sup>46</sup> See Law no.14/2003 of the political parties published in the Official Monitor no. 25/2003.

<sup>47</sup> The Civic Hungarian Party and the Popular Hungarian Party from Transylvania. See the Register of political parties [www.becparlamentare2012.ro%2FA-DOCUMENT-TE%2FComunicate%2FRegistrul\\_Partidelor\\_Politice\\_10oct%25202012.doc&ei=RO4dUoiOE4KI0QX8jYGwCg&usg=AFOjCNEi7YPgeV54ZqhiNxhl86K2bOxLNO&sig2=Wy7vuurnr57FhE94a6otw&bvm=bv.51156542,d.d2k](http://www.becparlamentare2012.ro%2FA-DOCUMENT-TE%2FComunicate%2FRegistrul_Partidelor_Politice_10oct%25202012.doc&ei=RO4dUoiOE4KI0QX8jYGwCg&usg=AFOjCNEi7YPgeV54ZqhiNxhl86K2bOxLNO&sig2=Wy7vuurnr57FhE94a6otw&bvm=bv.51156542,d.d2k)

<sup>48</sup> Framework Convention Advisory Committee Third Opinion on Romania, adopted on 12 March 2012, p. 31.

<sup>49</sup> Framework Convention Advisory Committee Third Opinion on Romania, adopted on 12 March 2012.

<sup>50</sup> For details about the organisations representing national minorities in Parliament since 1990 see Székely István Gergő, *Reprezentarea politică a minorităților naționale în România / The political representation of national minorities in Romania*. Studii de Atelier. Cercetarea Minorităților Naționale din România – Working Papers in Romanian Minority Studies, Institutul pentru Studiarea Problemelor Minorităților Naționale, Cluj-Napoca (WP 20/2009) and the official site of the Chamber of Deputies in the Romanian Parliament [http://www.cdep.ro/pls/parlam/structura\\_gp?idg=6](http://www.cdep.ro/pls/parlam/structura_gp?idg=6). Another study highlights the peculiar history of parliamentary minority representation practice since 1990 until 2008.

literature. Istvan Horvath and Istvan Gergo Szekely framed it as ‘selective co-optation’<sup>51</sup>. If it would be possible to prove that the privileged position at the starting point in the election race might have been conditioned of a specific political behaviour in Parliament as, for example, the sustaining of the governing party’s interests, it could have also been an indicator of ‘conditional inclusion’. In Kim’s perspective it refers to inclusive practices that entail racial performance for their maintenance<sup>52</sup> requiring ‘racial minorities to «disidentify» with their communities in order to make their White counterparts «racially comfortable.»’<sup>53</sup>. I will try to advance on this path later.

c) The system of selective co-optation favours some Roma representatives

Roma are represented in the Romanian Parliament since 1990 through the special seats for national minorities system. Since 1992, the Roma Party Pro Europa represented the Roma minority continuously for 6 legislative terms until now. Allegedly, this performance was supported by the Romanian electoral provisions which since 2004 became more restrictive ‘to limit the competition for the reserved seats and their number’<sup>54</sup> (my translation), as have been argued above.

In this period, the number of electoral competitors for the Roma reserved seat decreased significantly. If in 1992 there were five Roma organisations competing for parliamentary mandates in both chambers, their number decreased at four in 1992 and 1996 elections, at two in 2002 and 2004, for the Roma Party to become the only electoral competitor for Roma ethnics representation in 2008 and 2012, while also limiting its candidature to the reserved seat in the lowest Chamber<sup>55</sup>.

That argues for the statement that Roma Party Pro Europa is privileged comparing to other Roma organisations aiming to challenge the representativeness of the Roma Party. When comparing it with other Roma organisations, the Roma Party current position on the Romanian political scene has to be appreciated in the context of its privileged presence in several power structures in the last 10 years. This may have already strengthened its resources and experience and continue to do so in an unfair manner, contradicting the assumption that ‘the failure to articulate the interest of Roma will impact *directly* on their time spent in the public office’<sup>56</sup> (my emphasis). Roma Party doesn’t seem yet to worry enough about its unsustainable development in order to consolidate its position through Roma grassroots connection.

<sup>51</sup> Istvan Horvath and Istvan Gergo Szekely, *Diversity recognition and Minority Representation in central and Southeast Europe: A comparative Analysis*, «Differential treatment leads to democracy deficit and is indicative of the fact that minority rights regime is built on the idea of selective cooptation rather than true inclusion, let alone power sharing.»

<sup>52</sup> Kim, Janine Young, *Postracialism: Race after Exclusion* (July 31, 2013). Lewis & Clark Law Review, Forthcoming. Available at SSRN: <http://ssrn.com/abstract=2304338>, p. 53.

<sup>53</sup> Devon W. Carbado & Mitu Gulati, *Working Identity*, 85 CORNELL L. REV. 1259 (2000); apud. Kim, Janine Young, *Postracialism: Race after Exclusion* (July 31, 2013). Lewis & Clark Law Review, Forthcoming. Available at SSRN: <http://ssrn.com/abstract=2304338> p. 53.

<sup>54</sup> Monica Caluser, *Reprezentarea minorităților naționale pe locurile rezervate în Parlament*, in Salat Levente, ed., *Politici de integrare a minorităților naționale din Romania*, published by Centrul de resurse pentru Diversitate EtnoCulturală, Cluj-Napoca, 2008, p.170 (mentioned as 2008 I) and See Monica Caluser, *Minority participation at local and national level in Romania*, in *Political Parties and Minority Participation*, Friedrich Ebert Stiftung – Office Macedonia, 2008, p. 36–40 (mentioned as 2008 II).

<sup>55</sup> See Septimius Parvu, *Ghidul consilierului local*, p. 10–11, [http://www.apd.ro/files/publicatii/ghidul\\_consilierului\\_local\\_r.pdf](http://www.apd.ro/files/publicatii/ghidul_consilierului_local_r.pdf)

<sup>56</sup> See Aidan McGarry, supra note 17.

d) The privileged Roma representatives seems weakly connected to Roma interests

This de facto monopoly of the Roma Party in representing the minorities presumably seems to affect, beside equality, the connection with the Roma communities. 'Pro Europa' Roma Party, received approximately 300.000 votes in 1992, 60.000 in 2008 and only 22.000 in 2012 parliamentary elections. The reasons could be that i) the Roma Party presumably adjusted its campaigning efforts to the goal of gaining the special deputy seat while gradually weakening its interests in gathering more Roma votes that it needs to secure the special seat and ii) that fewer Roma trust their political representatives while iii) opting for the general parties.

Scholars have found that the existence of the special seats had initially supported the political mobilisation of national minorities in Romania while the restrictions imposed to electoral competitors from 2004 had the effect to demobilise them<sup>57</sup>. For the Roma communities the unequally severe requirements imposed to non-parliamentarian organisations supported the decline of the number of organisations participating in the elections and, consequently, the interest of Roma electorate in casting the vote for the already known 'winner'. This is why Monica Caluser notices that 'the way in which the electoral system was conceived does not generate a strong connection between the minorities and the elected deputies able to translate into support and promotion for the minorities agenda at the level of the political institutions'<sup>58</sup>.

As previous research have also documented, from the all 19 national minorities, only Roma is strongly under-represented in Parliament, while the other minority groups are over-represented<sup>59</sup>. In fact, Roma, with more than 621.000 members is represented by one deputy as the Armenians, Macedonians, Albanian or Rutenians each with less than 1400 members<sup>60</sup>. This may argue for indirect discrimination. That is why, allegedly, this system of formal equality has to be complemented by other inclusive measures to promote Roma parliamentary representation in order to reach substantial equality. Some indication of such developments will be mentioned latter.

The way in which national minorities representatives in Parliament, Roma included, connect to the minorities and majority interests was also documented through statistics realised by the Romanian Institute for Public Policies and other studies<sup>61</sup>. Analysing the influence of the Roma and other national minorities' deputies in advancing minorities and Roma interests, neither the Roma deputies or the commission they head, nor the Minorities' Group didn't seem to succeed in advancing a specific legislative agenda<sup>62</sup>. They have shown that the special minorities' representatives were, in the past legislative term (2008–2012), less political actively through speeches, questions, interpellations and legislative proposals than their colleagues both with regard to the specific minority agenda and the

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<sup>57</sup> Oleh Protsyk, supra note 38.

<sup>58</sup> Monica Caluser, supra note 55, 2008 I, p.175 « modul în care a fost conceput sistemul electoral nu gene-rează o legătură foarte strânsă între minorităţi şi deputaţii aleşi, care să se transforme în susţinerea şi promovarea agendei minorităţilor la nivelul instituţiilor politice prin intermediul aleşilor de pe locurile rezervate».

<sup>59</sup> The Hungarian minority is slightly over represented while the other 17 minorities are strongly over represented. See Oleh Protsyk, supra note 38, p. 6.

<sup>60</sup> See the 2011 Official Census results. The historical minority of Cszango, with more declared members in the late census than the Macedonians, Albanian or Rutenians is not represented. The same is true for the immigrant Chinese minority which has more members than each of the Armenians, Macedonians, Albanian or Rutenians minorities which are nevertheless represented in the Romanian Parliament.

<sup>61</sup> Monica Caluser, supra note 55, 2008 I, p. 170.

<sup>62</sup> National Democratic Institute, supra note 32, p. 13.

general one<sup>63</sup>, but ‘occupied a pivotal position in a considerable number of legislative votes’<sup>64</sup>. Statistics have proven that pro-government voting behaviour of minorities’ deputies<sup>65</sup>, but it was not possible to show a connection between the electoral privileges granted to current minorities’ parliamentary representatives and the support they gave to the governing party/parties. In this context, Roma Party legitimisation seems limited to mirror representation – due to assumed share ethnicity between the leaders and their constituencies.

On the connection between the Roma Party and its constituencies previous research has shown that comparing to the other electoral competitors – the political parties or the Hungarian ethnics representing organisation – the Roma Party seems less efficient. It seemed less developed on communicating its vision, political position and activities to the electorate.<sup>66</sup> For example, until 2012, the Roma Party was the only parliamentary representative minority organisation that did not finance and established a newspaper<sup>67</sup>. The present one was established after the issue was internationally highlighted through the Framework Convention Advisory Committee Third Opinion on Romania, adopted on 12 March 2012. Roma Party Pro Europa was criticised for having a less developed political platform, less ‘clearly defined political objectives’, no national action plan and a weak ‘ability to reach compromises’<sup>68</sup>. Also for being satisfied ‘to legitimize governmental policies through consultations and tokenistic representation’ while having a weak bargaining power<sup>69</sup>. In general Romani organizations were characterized as showing mutual distain, suspicions and infighting<sup>70</sup>. While this may be explained through the lack of local human resources, it seems regrettable that this party wasn’t able to use the privileged position to consolidate its legitimisation as Roma representative.

Allegedly, it can be inferred that the way in which the electoral law organizes the competition between representing organisation of national minorities favour the one already in Parliament which would be, arguably, also ready to support the governing party. Those parliamentarians seem also less politically active than the average and have little visibility in promoting minorities’ interests. While all these apply equally to all national minorities, Roma included, additionally, the formal equality systems of parliamentary representation disadvantage Roma comparing with the other national minorities. As their special seat seems to depend more on the privilege established in the electoral law adopted by the majority than on the will of the Roma electorate as a whole, the incentives to connect to the grassroots communities seems weak. These arguments support the need to complement the special seats provisions with additional inclusive measures insuring a better representation of Roma in Parliament.

In this respect it can be noticed that an electoral and parliamentary practice seems to already develop in order to attenuate these disadvantages. From the general parties, the Social Democratic Party (PSD) and the National Liberal Party (PNL) supported Roma candidates, one of whom,

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<sup>63</sup> Monica Caluser, *supra* note 55, 2008 I, p. 175.

<sup>64</sup> Oleh Protsyk, *supra* note 38, p. 11.

<sup>65</sup> Monica Caluser, *supra* note 55, 2008 II, p. 44.

<sup>66</sup> National Democratic Institute, *supra* note 32, p. 20–21.

<sup>67</sup> See Framework Convention Advisory Committee Third Opinion on Romania, 2012.

<sup>68</sup> Aidan McGarry, *Ambiguous nationalism?: Explaining the parliamentary under-representation of Roma in Hungary and Romania*, *Romani Studies*, Volume 19, Number 2, December, 2009.

<sup>69</sup> Aidan McGarry, *Ambiguous nationalism?: Explaining the parliamentary under-representation of Roma in Hungary and Romania*, *Romani Studies*, Volume 19, Number 2, December, 2009, pp. 104.

<sup>70</sup> Aidan McGarry, *supra* note 70.

Mădălin Voicu (PSD) was elected since 2000, before having served for a mandate as Roma Party representative. In 2012 one more Roma was elected senator (Damian Draghici) as PSD member, amounting to 3 the number of Roma parliamentarians. At the moment this represent only 0,5% of the nation's direct representatives (currently 588 parliamentarians) but also triples Roma presence in Parliament<sup>71</sup>. Also, the Roma party representative (Nicolae Paun), deputy since 2000, is heading the Human Rights, Cults, and National Minority Issues Committee while the PSR Roma deputy, parliamentarian since 1996, is the Vice-President of the Culture, Art and Mass-Media Committee in the lower Chamber. The PSR Roma senator, at his first mandate, is member of the two similar committees in the higher Chamber. Each of the three parliamentarians enjoy all the specific rights related to their elected mandate, including the right to legislative initiative and to vote in committees and in plenum. These argue for a small but certain and, to some extent, guaranteed Roma presence in Romanian Parliament, while at this point, there is no evidence of Roma influence in the Romanian Parliament.

e) Implications and proposals

If social justice is the goal and proper Roma inclusion at the legislative level is one of its means, then is obvious need for a change. Two alternatives may be considered: to amend the Constitution and include a stronger, asymmetric parliamentary representation for Roma or to complement the present system with a similar tool through the electoral law or practice, remaining nevertheless in the margins of discretion allowed by the fundamental law.

Considering the advantages of the current special seats provisions of securing the legitimate expectations of minorities' members while being also accepted by the wide Romanian population, the second choice might be favoured. On this alternative, the political practice of the left side political party PSD (Social Democratic Party) which managed to support the election of a Roma deputy and of a Roma senator could put the seeds for an enhanced Roma parliamentary representation supported by the national non-ethnic parties. Several limitations have to be acknowledged though: first, political parties may fear a political cost of supporting a Roma candidate – this would allegedly determine the loss of two other votes for one Roma vote gained<sup>72</sup>, secondly, studies have already documented the steady trend of the Roma electorate to vote for left wing parties<sup>73</sup>, and thirdly, the present electoral system with uninominal constituencies seems to favour the election of Roma candidates supported by major political parties<sup>74</sup> by comparing with the former 1990–2008 pure proportional representation with blocked party lists system. All these may explain why the election of supplementary Roma parliamentarian was intermediated by the left Social Democratic Party even if none of major political parties platforms tackles Roma integration<sup>75</sup>. While the current, 2008 electoral system, besides privileging the minorities representing organisations already in Parliament, shrinks the chances

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<sup>71</sup> From 0.15 to 0.45%.

<sup>72</sup> Zoltan Barany, *Romani Electoral Politics and Behaviour*, Journal of Ethnopolitics and Minority Issues in Europe, 2/200, p. 4, Available at: <http://ecmi.de/jemie/download/Focus11-2001Barany.pdf> – he cites a Hungarian political analyst referring to this country.

<sup>73</sup> National Democratic Institute, supra note 32.

<sup>74</sup> See National Democratic Institute, supra note 32.

<sup>75</sup> « Desigur, nici unul dintre partidele dominante nu a făcut din dezvoltarea socio-economică a romilor o prioritate pentru țară și nu a furnizat propuneri concrete de abordare a acestui segment critic al populației, de fapt nici un partid politic dominant nu face nici măcar referire la romi în platforma sa. » National Democratic Institute, supra note 32, p. 20.

of independent candidates to be elected at both national and local levels<sup>76</sup>. This is why the election of independent Roma in Parliament has little chances under the current electoral law<sup>77</sup> the probabilities being stronger for Roma to enter parliament as major parties representatives. Of course, being a political practice, there are no guarantees that Roma candidates will increasingly – if at all – be supported by those parties. The alternative might be to introduce in the electoral law a corresponding requirement, for example that all electoral concurrent parties have to effectively support a certain number of Roma candidates, as a form of Roma inclusion policy. This provision would presumably pass the test of substantial equality vis-à-vis the other national minorities, as a form of temporary affirmative action, but even if adopted<sup>78</sup>, unless genuinely accepted by those political competitors, it would be perhaps applied in a tokenistic manner and remain one more formal provision. Consequently, providing supplementary parliamentary representation for Roma depends equally on the political abilities of Roma elites and on the will of the main political parties, from which the PSD being the best placed to provide it.

Also, if it is at all possible to delineate an electoral behaviour of the Romani electorate or a specific way of communication between Romani representative organisations – which may also be a too big generalisation – then those may not be totally unrelated with the political behaviour of the main parties. The main political forces favouring a selective co-optation of Roma<sup>79</sup> argues that the majority is, if not directly choosing between the potential Roma representatives, at least supporting those which proved loyal in backing the interests of those major parties and perhaps less challenging in demands<sup>80</sup>. This could explain why Roma presence in Parliament is not yet reaching effective influence in supporting Roma interests.

## **6. Roma participation through subnational forms of government – from presence to influence**

Subnational forms of government are, in Romania, the county and local levels. Direct elections are organised every 4 years to elect executive (uni-personal) and deliberative (collegial) authorities at both levels with administrative decentralised tasks. The local election law introduced since 2004

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<sup>76</sup> Eventually, none of the independent candidates managed to gain seats in Parliament in 2012.

<sup>77</sup> Before elections, parliamentarians seems to have the tendency to change electoral rules – presumably in order to benefit the political majority – which diminish the interest for long term political strategies and undermines predictability, as a rule of law requirement. It perhaps makes more difficult to make proposals for political strategies and to learn from previous experience.

<sup>78</sup> With European support as it was the case of the two Roma inclusion strategies.

<sup>79</sup> Istvan Horvath and Istvan Gergo Szekely, *Diversity recognition and Minority Representation in central and Southeast Europe: A comparative Analysis*, « Differential treatment leads to democracy deficit and is indicative of the fact that minority rights regime is built on the idea of selective cooptation rather than true inclusion, let alone power sharing.»

<sup>80</sup> While real political reasoning may show understanding for such a choice, there may be more difficult to defend it against sustainability arguments. Rule of law, good governance and sustainable development reasoning advice majority's parties to look for credible political partners and minority's parties to aim to a constant and as large as possible people's support to ensure a wide margin of political discretion and power to negotiate. While evidently this is not happening currently, it can be concluded that the weakness of the Roma political elite and the practice of selective co-optation of Roma partners sustain one each other for the moment presumably until something might change in this equilibrium. Pressure coming already from the European level and Romanian academic media may need to wait until Roma elites would be able to counter Romanian interest in having the less demanding partner.

special measures intended to facilitate national minority participation. It states that «if no organisation of the citizens belonging to national minorities, other than the Hungarian one, have obtained at least a seat, than one counsellor seat, from those remained from the first round, is attributed to the organization which overpassed the threshold and obtained the biggest number of correctly expressed votes comparing to all other organizations»<sup>81</sup>. An analysis of its effects in 2004 and 2008 local elections<sup>82</sup> highlighted that it led in 2004 to a net gain of two local counsellor mandates and, in 2008, to the loss of one mandate, while discriminating against the Hungarian minority and complicated the repartition of seats in local elections.

Overall, in the 2004 elections, Roma gained 189 local counsellor seats and no mayor<sup>83</sup>, in 2008 it gained 203 local counsellors and two<sup>84</sup>/six mayors<sup>85</sup> and in 2012, 161 local counsellors and one mayor seat<sup>86</sup> out of 3171 towns and villages, each with one mayor and one local council formed of 9 to 31 counsellors, depending on its population<sup>87</sup>.

The 5% threshold applied at the general and local elections both to political parties and independent candidates and represented a major obstacle for Roma organisations and for all independents candidates, the latter being also disadvantaged by the prohibition to have electoral signs, by difference of parties.

Giving the reduced number of Roma representatives at this level and the lack of data about their political activity it can be inferred that Roma presence through subnational forms of government is almost symbolic while there is no prove of their influence.

For example, in cases of forced Roma evictions which were documented in Romania<sup>88</sup> as in several other European countries<sup>89</sup> the participation of local Roma representatives, if at all, seemed formal and slipped unnoticed.

A Roma initiative to connect virtually all Roma NGO's at the local level in order to, among others, ensure timely informed participation to Local Councils meetings – which are generally public – could have a wide potential beside preventing future misunderstandings with regard to forced evic-

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<sup>81</sup> Art. 96 para 4 of the Law 67/2005.

<sup>82</sup> Istvan Szekely, *Reprezentarea minorităților naționale la nivel local – o evaluare a legislației electorale românești pe baza rezultatelor alegerilor locale din 2004 și 2008* [The representation of national minorities in the local councils – an evaluation of Romanian electoral legislation in light of the results of the 2004 and 2008 local elections]. In Salat Levente (ed.) *Politici de integrare a minorităților naționale din România. Aspecte legale și instituționale într-o perspectivă comparată*. Cluj: Centrul de Resurse pentru Diversitate Etnoculturală, pp. 179–202.

<sup>83</sup> See Third Report submitted by Romania pursuant to Article 25, Paragraph 2 of the Framework Convention for the Protection of National Minorities, 201, p. 92.

<sup>84</sup> See the See Third Report submitted by Romania pursuant to Article 25, Paragraph 2 of the Framework Convention for the Protection of National Minorities, 2011, p. 85 citing the Central Electoral Bureau document from 3 July 2008.

<sup>85</sup> See Septimius Parvu, Ghidul consilierului local, p.7, citing the Central Electoral Bureau documents from 27.03.2009, [http://www.apd.ro/files/publicatii/ghidul\\_consilierului\\_local\\_r.pdf](http://www.apd.ro/files/publicatii/ghidul_consilierului_local_r.pdf).

<sup>86</sup> The Commentary, supra note 3, p. 25

<sup>87</sup> See Law no 215/2001 art. 29

<sup>88</sup> In Bucharest, Miercurea Ciuc, Tulcea, Cluj Napoca and Baia Mare.

<sup>89</sup> In Albania, France, Italy, Serbia, Slovakia.

tions. Initial observatory status can develop into consultation and advisory position, with the ability to influence not only the decisions but also the choosing of subjects on the agenda.

## **7. Roma participation through consultative mechanisms – from presence to influence**

Besides elected positions in Parliament or at the subnational levels, Romania put in place a central executive body devised especially for minority issues, the Department for Inter-Ethnic Relations (DRI) which, without having juridical personality, functions under the Prime Minister's direction through the General Secretary of the Government. It is customary managed by a national minority member<sup>90</sup>, usually a Hungarian ethnic. The DIR ensures the logistics for the Council of National Minorities (CMN) – the consultative body comprising representatives of all twenty officially recognised national minorities. The Council decides by majority votes, each national minority having one vote so the weight of Roma vote is 1/19. One of its tasks is to distribute state funding to national minorities representing organisations. According to the Government, 'no minority group is disadvantaged as resources are allocated proportionally'<sup>91</sup>, the beneficiaries of the financial support being the organisations members of the CNM, other organisations representing the same minorities or organisations of other ethnic groups non-represented in the Council<sup>92</sup>.

Regrettably, the Council has no legal personality, as the Framework Convention Advisory Committee recommends<sup>93</sup>, no publicly available functioning regulation and composition.

From the small share of available information, there seems difficult to assess if the Roma presence in the Council has any effects on the decision-making inside this consultative organ.

## **8. Roma participation through specialised bodies – from presence to influence**

As already mentioned, beside a symmetric system of political participation for all recognised national minorities, special measures are available for Roma participation. These measures were introduced in central and local administration, through specialised or/and consultative Roma representative bodies or officials as well as through measures to promote Roma recruitment in administration including police force.

The application of the two Governmental strategies for Roma inclusion<sup>94</sup> as well as the National Plan of Action for Roma are appreciated as having positive but small influence in Roma participa-

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<sup>90</sup> See Third Report submitted by Romania pursuant to Article 25, Paragraph 2 of the Framework Convention for the Protection of National Minorities, 2011, p. 6.

<sup>91</sup> The Comments of the Government of Romania on the Third Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities by Romania, p. 3.

<sup>92</sup> See Third Report submitted by Romania pursuant to Article 25, Paragraph 2 of the Framework Convention for the Protection of National Minorities, 2011, p. 5 and 17.

<sup>93</sup> The Commentary, supra note 3, p. 30, para 116.

tion mechanisms<sup>95</sup>. Nevertheless, these documents may have supported Roma presence in administration.

Roma are present at the central administration level through the National Agency for Roma (ANR), subordinated through the General Secretary to the Government, and the National Centre for Culture of the Roma *Romano Kher*, subordinated to the Ministry of Culture<sup>96</sup>, as well as through appointed councillors in some ministries as the ones for social affairs, work or education. Following the recommendations of ECRI in 2006, a Roma representative proposed by the party of this ethnic group was nominated to the Steering Board of the National Council for Combating Discrimination (NCCD), an autonomous deliberative and decision-making body whose members hold State Secretary position. Also, as the Romanian Government affirms, the structure of executive staff of NCCD includes Roma. The Prime-Minister appointed in June 2012 a state counsellor on Roma issues<sup>97</sup>. Since he became PSD senator, in December 2012, the position remained vacated.

The ANR functions since 2004 both as an central administrative institution specialised in Roma issues and as a Roma representative body whose president, ranking as state secretary, is until now the highest hierarchical executive position of a Roma representative in Romania. If, from the personal point of view of its competences, it deals with issues of interest for Roma Romanians, territorially ANR coordinates its seven Regional Offices in the country. Materially, its competences are general and presumably overlapping with the specialised ministries<sup>98</sup>, while the culture of institutional cooperation seems deficient at the country level<sup>99</sup>. The institution is responsible with the implementation of the Roma inclusion Strategy, having planning, coordination and also specific project implementation responsibilities. Previous research show that ANR is limited in its action due to several reasons as: its hierarchical position, under the level of a ministry, gives it no authority on the matters, Government support is lacking<sup>100</sup>, it is little known in the Roma community, which makes it more vulnerable to marginalisation from Government, its heading position is very politicised and exposed to politically motivated changes, which does not support a long term vision and commitment<sup>101</sup>. Research suggests also that National Agency for Roma (ANR) should be clearly defined as a Prime Minister's specialised body limited in its competences to monitoring, assessment and support of the implementation of the Roma social inclusion public policies<sup>102</sup> while the social inclusion specific measures should be included in sectorial policies<sup>103</sup> and the implementation specific projects should

<sup>94</sup> Government Decision no. 430/2001 for the approval of the *Romanian Government Strategy for improving Roma situation* published in Official Journal no.252/2001; *2012–2020 Romanian Government Strategy for the inclusion of Romanian citizens belonging to Roma minority*, published in Official Journal no. 6 bis/04.01.2012.

<sup>95</sup> National Democratic Institute, supra note 32, p. 12.

<sup>96</sup> See Third Report submitted by Romania pursuant to Article 25, Paragraph 2 of the Framework Convention for the Protection of National Minorities, 2011, p. 92.

<sup>97</sup> The Comments of the Government of Romania on the Third Opinion supra note 92, p. 7.

<sup>98</sup> The coordination with the specialised ministers is ensured through a Consultative Council, See the ANR President's Order no. 22/ 1.03.2013.

<sup>99</sup> Administrația Prezidențială, Comisia Prezidențială Pentru Analiza Riscurilor Sociale și Demografice, Riscuri și inechități sociale în România, Septembrie 2009, <http://cparsd.presidency.ro/?pag=36>, p.210 (raportul extins).

<sup>100</sup> Administrația Prezidențială, Comisia Prezidențială Pentru Analiza Riscurilor Sociale și Demografice, Riscuri și inechități sociale în România, Septembrie 2009, <http://cparsd.presidency.ro/?pag=36>, p.210 (raportul extins).

<sup>101</sup> National Democratic Institute, supra note 32, p. 17.

<sup>102</sup> Presidential Administration, Presidential Commission for the Analysis of the Social and Demographic Risks and Social Inequalities in Romania, September 2009.

<sup>103</sup> Administrația Prezidențială, Comisia Prezidențială Pentru Analiza Riscurilor Sociale și Demografice, Riscuri și inechități sociale în România, Septembrie 2009, <http://cparsd.presidency.ro/?pag=36>, p.44 (sinteza raportului).

fall outside its competences<sup>104</sup>. On McGarry, ‘due to the absence of mobilisation and direct interaction with Roma communities, these structures have tenuous claims to legitimacy’<sup>105</sup>.

Roma are present at the county and local level, beside the democratically elected local councillors and mayor, through county and local offices for Roma or through local Roma counsellors, depending on the local finances and needs, as reflected in mayors proposals. Roma experts are hired in county administrative institutions specialised in education, social services, employment. For those appointed through individual decision, their employment period is limited to the mandate of the political official who appointed them. Others, especially those working in specialised institutions, are politically independent public servants. On Government opinion, at county level, the offices of each Mayor and President of County Council have employed local Roma experts that are in direct contact with the local Roma communities. A total number of 339 (out of 3171 towns and villages) Roma experts are currently employed at local administration level, both urban and rural<sup>106</sup>. The National Council for Combating Discrimination declared in a 2009 case that a local council decision to terminate the function of a local Roma expert on lack of financial means was discriminatory in the sense that the restriction on the affirmative measure of opening this position was disproportionate with the public interest which justified it<sup>107</sup>.

The influence of the those Roma public servants and counsellors in advancing Roma interests seems to depends on circumstances of every case, on personal and professional abilities of each person and on the margin of discretion they receive from each hierarchical supervisor. The lack of transparent reporting and assessment practice limits the possibilities for further scientific analysis.

## **9. Roma participation in public administration, judiciary and in the executive – from presence to influence**

2002 statistics shows that from 87.625 professionally active Roma (out of a total 535.140 registered Roma), 1313 Roma (1032 men and 218 women) were active in public administration as members of Parliament, Government, locally elected persons or managers of administrative, socio-economic and political entities and 435 (257 men and 178 women) were public servants<sup>108</sup>.

The promotion of Roma recruitment in police force is slowly improving. While admitting there is such concern since 2001, in 2005 and 2006 Government didn’t furnish a number of Roma hired in police force<sup>109</sup>, but it did in 2012 with regard to the situation in January 2009. At that moment there

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<sup>104</sup> Administrația Prezidențială, Comisia Prezidențială Pentru Analiza Riscurilor Sociale și Demografice, Riscuri și inechități sociale în România, Septembrie 2009, <http://cparsd.presidency.ro/?pag=36>, p.210.

<sup>105</sup> Aidan McGarry, supra note 17.

<sup>106</sup> The Commentary, supra note 3, p. 6.

<sup>107</sup> See National Council for Combating Discrimination Decision on the cancellation of the Roma issues local expert position from 2009, in New Review on Human Rights no. 1/2010, p. 43–50.

<sup>108</sup> See Septimul Parvu, *Ghidul consilierului local*, p. 7,

[http://www.apd.ro/files/publicatii/ghidul\\_consilierului\\_local\\_r.pdf](http://www.apd.ro/files/publicatii/ghidul_consilierului_local_r.pdf).

<sup>109</sup> See Second Report submitted by Romania pursuant to Article 25, Paragraph 2 of the Framework Convention for the Protection of National Minorities, 2005, p. 30 and The Comments of the Government of Romania on the Second Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities in Romania (received on 5 December 2006), p. 12.

were 96 Roma policemen of a total of 59,195<sup>110</sup>. In 2013 there were 156 police employees (126 men and 27 women) of Roma ethnicity<sup>111</sup> employed as policeman/women or on other contractual basis<sup>112</sup>. There are no data about Roma preferential hiring policies in judiciary or in administration other than in specialised positions for Roma issues.

Roma presence in the police force, besides being very limited yet, does not however count for group's interest representation and accountability to the minority group because police force positions are neutral *per se*. Mirror representation<sup>113</sup> – as hiring of national minority ethnics to fulfil the respective tasks without any responsibility in advancing particular interests – seems the most usual form of minority representation in police, administration and justice. Nevertheless, to count the level of mirror representation of ethnic minorities and especially Roma in Romania is to be treated cautiously: If gender representation in various social environments is quite easy to count, to determine the proportion of ethnic minorities is more difficult because of the multiple and divided identities and because of the lack or misleading visible criteria to assess appurtenance to a national minority recognised as such in Romania. That is why official counting refers to those positions filled through preferential recruitment procedures directly aiming to promote hiring of Roma in such positions.

## 10. Roma Representation in Romanian public affairs – from presence to influence

The gap between political elites and local citizens was identified as perhaps the greatest barrier to Roma empowerment and inclusion.<sup>114</sup>

Roma may participate in the Romanian public life, as all other citizens, directly or through their representatives. Directly, Roma has the right to vote or to be elected. Nevertheless, the right to be elected seems very much linked with political organisation enrolment because in Romania independent candidacies are seriously and arguably unfairly restricted, as previously mentioned. Also directly, Roma may participate through preferential hiring in police force or administrative positions of Roma experts or consultants. Representation in the sense of acting in the interest of the represented, in a manner responsive to them<sup>115</sup> especially involves, when applied to Roma, ethnic parties, NGOs and traditional leaders.

It is regrettable, as I have previously argued, that mainstream parties don't publicly show much interest in improving Roma situation. Their motives for doing so may be i) the typically majoritarian unawareness about minorities' needs, ii) the presumption that the Romanian state has already done

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<sup>110</sup> See Framework Convention Advisory Committee Third Opinion on Romania, 2012, p. 22, See Third Report submitted by Romania pursuant to Article 25, Paragraph 2 of the Framework Convention for the Protection of National Minorities, 2011, p. 47.

<sup>111</sup> The Commentary, supra note 3, p. 7.

<sup>112</sup> The Commentary, supra note 3, p. 17.

<sup>113</sup> More about mirror representation in Verstichel, Annelies, *Understanding Minority Participation and Representation and the Issue of Citizenship* in Mark Weller and Katherine Nobbs, eds., *Political participation of minorities*, Oxford Univ. Press, 2010.

<sup>114</sup> Catherine Messina Pajic, *Roma as Active Citizens: Closing the Gap between Political Elites and Local Communities*, p.3, <http://www.ndi.org/files/Catherine-Pajic-Roma-Chapter.pdf>.

<sup>115</sup> Aidan McGarry, supra note 17, citing Pitkin.

what it had to do in this respect by providing political space – through the special seats and executive organs presented above – for Roma to take care of their own issues or iii) the reluctance to publically tackle this sensitive area which may eventually result in loosing votes from Romanian nationalists. As previously argued, the special mechanisms for minorities' representation in decision-making bodies – legislatives and executives, central or local ensures formal equal representation for all minorities but result in Roma under-representation in Parliament, locally elected bodies, administration including police forces while there are no data about Roma ethnics being preferentially hired in judiciary. The special mechanisms for Roma representation in executive – at the central level, through the National Agency for Roma, the National Council for Combating Discrimination, and at the local level, through Roma counsellors and experts – may partially compensate for the previously mentioned under-representation if proving effective. In this context, one solution may be for the major parties to overpass these obstacles and to involve effectively in Roma inclusion in all their structures and strategies. This converges with the idea of Roma being internally diverse while many Roma having multiples identities and also with the findings on Roma voting with mainstream parties by difference to Hungarians who seems to vote mainly with specific ethnic organisations.

Ethnic parties and NGOs qualify generally as legal right-holders for the communities because their entitlement is legally founded. As already mentioned, there are no Roma political parties *per se* in Romania while Roma NGO's may act as minority political representatives, but research has highlights weaknesses in respect to the power of representation.

Roma traditional leaders, *bulibashas*, are informal leaders, which nevertheless represent their communities even there seems difficult to explain the procedure of their selection. They generally connect with the grassroots Roma, but are suspected for having allegedly 'sold' their communities votes<sup>116</sup> which would presumably mean that they have negotiated with the political parties (Roma or non-Roma) but pursued personal interest instead of those of the communities they pretended to represent. While there is little data about local Roma informal leaders and their activity, there is difficult to assess on a trend. There is nevertheless data about Roma informal leaders interest in strengthen their legitimation and influence through registering and chairing Roma NGOs<sup>117</sup> or local Roma Party sections.

Roma engaged NGOs influence Romanian public life because of their role in implementing Roma inclusion strategy, working close together with Roma representatives in deliberative, executive or administrative bodies at the central and local levels and they share the same human resource with the political and administrative milieu. In fact many of the currently elected or appointed Roma representatives or public servants have previous NGO activity and vice-versa prominent national and international NGO recruit their Roma staff from former political or administrative personnel<sup>118</sup>.

In the case of local Roma NGOs and Roma informal leaders legitimacy derives from the proximity to the Romani communities. It is not the democratic election, but it is the local community which empowers and legitimises an NGO or a *bulibasha* by awarding their trust. As previous researched framed it, this is an 'output' or 'performance based' legitimacy deriving from the process of organis-

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<sup>116</sup> National Democratic Institute, *supra* note 32.

<sup>117</sup> National Democratic Institute, *supra* note 32.

<sup>118</sup> Project on Ethnic Relations, *Leadership, Representation and Status of the Roma*, Princeton, 2001.

ing the local community and articulating its shared interest and is not dependent of electoral results, but on the ability to promote Roma interests.

As previously mentioned, the official political representative of the Roma minority at central level is the Roma Party Pro Europa. Its legitimacy as representative of the majority of Roma in Romania is nevertheless questionable because i) its position on the Romanian political scene is based on the votes of only a small minority of (Roma) constituents, ii) its connection with the grassroots communities seems weak and iii) its activity in promoting Roma interests and perspective have been proven to be unconvincing. Nevertheless, the experience of Roma Party representative arguably gained in more than 10 years of parliamentarian and governmental work may be valuable for the Roma provided that it wasn't distorted by improper conduct evaluable only on a case-by-case basis.

Even if Roma representatives time in Parliament and executive seems not directly affected by their weak connection with their constituencies, their questionable legitimacy seems to reflect on their influence. Staying 'next to power' seems different from being 'in power' or 'having some power'. I propose this distinction on the ability to influence the destiny of only some determinate persons – for example by gaining some advantages for close partners due to position 'near power' – by difference to the ability to influence the destiny of indeterminate persons – for example Roma children or unemployed due to 'having power'.

To evaluate the individual capacity of representation some inspiration may be found in the literature and practice of multiculturalism. The theory and experience of integrating diverse communities stress the need for the minorities to i) linguistically integrate, ii) respect the laws, including individual human rights and iii) to be open to inter-ethnic co-operation<sup>119</sup>. I believe especially the last two aspects to be useful prerequisites in assessing the capacity of representation of leaders, irrespective of ethnicity. For Roma informal leaders, the respect of human rights including sexual equality of the members of the community they pretend to represent might be especially important as it may help limiting the promotion of early age marriage<sup>120</sup> for example.

Additionally, the introduction – if not already in place – of functioning tools to ensure transparency, internal democracy and accountability<sup>121</sup> in the basic procedures of the minorities' organisations may help to improve their representativeness. Correspondingly, these three aspects may function as requirements in assessing the representation capacity of presumably any organisations, including minorities ones. Other studies highlight the importance of reflecting internal diversity – aspect especially important for Roma representation – while avoiding social elitism and hypocrisy<sup>122</sup>.

More specific, recruiting more experts to serve on its committees may increase the Roma Party policy development capacity and efficiency. Its confidence among Romani and mainstream political communities may be augmented through democratisation of internal elections while the outreach to

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<sup>119</sup> See Will Kymlicka, *Politics in a Vernacular*, Oxford University Press, 2001, p. 172–175.

<sup>120</sup> In 2003 one prominent international Romanian Roma leader, Florin Cioaba, publicly approved the marriage of 12 years old his daughter with a 15 years boy. After international reactions, he became an advocate for education of Roma children and against early marriage. See <http://news.bbc.co.uk/2/hi/europe/3148364.stm>.

<sup>121</sup> M.Weller, *Introduction* in *Political participation of minorities*, Mark Weller and Katherine Nobbs, Editors, Oxford Univ. Press, 2010, p. lxiii.

<sup>122</sup> Alan Philips, *Foreword – The journey towards the Effective participation of national Minorities in Political participation of minorities*, Mark Weller and Katherine Nobbs, Editors, Oxford Univ. Press, 2010, p. viii.

constituencies may be strengthened through increased financing for local sections, particularly in larger towns, through public events and visits to Romani communities. While those suggestions may fit any other Roma organisation, there is still the question of resources which may limit their growth more severely than in the Roma Party case.

To internal political participation, the inclusion of Romanian Roma in leading positions in international – International Roma Union<sup>123</sup> – and European – European Roma and Travellers Forum<sup>124</sup> and European Roma Rights Center<sup>125</sup> – Roma representing organisations must be mentioned. Also, the long-time heading of the OSCE Contact Point for Roma and Sinti by the renowned Roma sociologist Nicolae Gheorghe<sup>126</sup> may be appreciated, together with the involvement of Roma NGOs, between which RomaniCriss is the most known, in the monitoring of the Framework Convention implementation. The Third State Report highlights that Romania has achieved significant expertise in the field of Roma integration policy measures. Roma elites are recognized throughout Europe as very well trained and involved in solving the problems of Roma, with an active contribution not only nationally, but also at European level.<sup>127</sup> On this basis, the National Agency for Roma is currently involved in shared experience in the neighbouring Republic of Moldavia<sup>128</sup>. The presence and eventual influence of Roma leaders at the international level may arguably represent leverage for more effective involvement of Roma in internal political decision-making. It should also be noticed that, it is still unclear how much these international positions are circumstantial or trend-setting. Nevertheless, these questions are to be partially answered in the near future since two of these positions have been vacanted recently.

## 11. Conclusion

In the Third Opinion of Romania, the Framework Convention Advisory Committee interprets the national minorities' right to effective participation to public affairs, especially those affecting them as implying Roma 'right to consultation in all instances'<sup>129</sup>. The instances refer to all the aspects of Roma inclusion policies, which seem to be wider than the cultural or regional aspects considered in other circumstances<sup>130</sup>. The Advisory Committee interpretation stating that 'mere consultation does not constitute a sufficient mechanism for ensuring effective participation of persons belonging to

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<sup>123</sup> Chaired by the auto proclaimed king of the Gypsies, Florin Cioaba, recently deceased.

<sup>124</sup> Where Gheorghe Raducanu is a member of the Executive Committee.

<sup>125</sup> Who's executive director is Dezideriu Gherghely – Human rights lawyer and auto-identified Romanian Roma ethnic.

<sup>126</sup> He also passed this year.

<sup>127</sup> See The Third Report submitted by Romania pursuant to Article 25, Paragraph 2 of the Framework Convention for the Protection of National Minorities, 2011, p. 95.

<sup>128</sup> See The Comments of the Government of Romania on the Third Opinion, supra note 92, p. 7.

<sup>129</sup> See The Framework Convention Advisory Committee Third Opinion on Romania, 2012, p. 37.

<sup>130</sup> Human Rights Committee, General Comment 23, Article 27 (Fiftieth session, 1994), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 38 (1994).

national minorities'<sup>131</sup> is coherent with the Ljubljana guidelines on integration of diverse societies<sup>132</sup>.

The Roma political participate to the whole country and local politics directly and through political representative. While the representation of Roma interests through mainstream parties seems a work-in-progress Roma special representatives comes mostly from the NGO environments, the Roma Party Pro Europa being the association which managed to be co-opted to symbolically represent the Roma in Parliament and because of this, also in the executive consultative and specialised organs.

Roma are under-represented in decision-making bodies, be they deliberative or executive, central or local. When participating, their presence hardly amount to influence. The explanation seems to reside less in the scarcity of legal and political instruments for Roma influence but in the electoral system which privileges the Roma Party among other Roma organisations. Additionally, political majority provides alternative support to this representing organisation which compensates its weak connection with Roma constituencies. But, if the privileged position ensures Roma Party presence in Romanian politics, its weak legitimacy – due to poor connection with Roma communities and interests – deprives it from influencing decision-making.

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<sup>131</sup> See The Framework Convention Advisory Committee Third Opinion on Romania, 2012, p. 7.

<sup>132</sup> The Ljubljana Guidelines on Integration of Diverse Societies & Explanatory Note, November 2012.

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