

GENERAL ASPECTS REGARDING THE PROTECTION OF NATIONAL MINORITIES WITHIN THE INTERNATIONAL LEGAL ORDER AND THE CONSTITUTIONAL SYSTEM FROM ROMANIA

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ABSTRACT: *The protection of the rights of national minorities has always been a topic of interest at the international level, but more importantly at the national level, still remaining a topical subject in the contemporary legal landscape. Made out of the need to contribute to the continuous promotion of the protection of the rights of national minorities, through the correct understanding of the legal nature and content of the rights specific to this category of persons, present work, structured in three sections, offers the opportunity to respond to concerns in the field of human rights protection, in general, and the protection of the rights of national minorities at the international level and at the level of the Romanian constitutional system, in particular.*

KEYWORDS: *protection; rights; national minorities; international legal order; constitutional system.*

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1. PRELIMINARIES

In an attempt to define the minority, a current issue at the level of the international community, we will stop at a few theoretical aspects from the local doctrine.

„In a very broad sense, *minorities* are social, political, ethnic, racial, linguistic, religious, cultural, etc. groups which exist in a society and have a smaller number of members than that of the collectivities they belong to (the collectivity, representing the majority). Nowadays, minorities are present in almost all countries of the world, their number and the volume of constituent members varying from one country to another. For example, Jews are widespread in most countries, especially economically developed ones. Statistical data show that over 200 national minorities lived in the former Soviet Union.

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On U.S. territory there are numerous ethnic, racial and religious minorities, blacks and Hispanics (18 million in 1986) representing the biggest minority groups. At the end of the 20th century, it was estimated that there were over 12.000 ethnic groups in the world¹.

In the documents of the Council of Europe and the Organization for Security and Cooperation in Europe, the expression used is that of *national minority*, not taking into account that a minority tends or can become a nation, but that the minority is of national importance².

Therefore, to answer the question of what is the criterion for defining the minority, the specialized literature³ took into account several aspects. Thus, a numerical criterion could only be arbitrary, by establishing such a criterion, inequalities would be reached in the political and legal treatment of various minorities. That's exactly why a qualitative criterion is preferable⁴.

Even the United Nations, after 40 years of trying to define minority, they were to admit the difficulty of giving a satisfactory answer. Finally, a definition was agreed, thus the term minority denoting a numerical group inferior to the rest of the population of a state, whose members, holding the citizenship of that state, have ethnic, religious or linguistic characteristics different from the rest of the population and are animated by the will to preserve culture, traditions, religion or language⁵.

The term „*national minority*” as a legal category also refers to communities that can be defined as ethnic minorities⁶. This fact happens in the idea of using a single term to avoid confusion in the application of international regulations and, at the same time, in the idea of excluding the possibility of a differentiated treatment applied to communities or groups of persons.

„About 5.000 minority groups live in the nearly 200 countries around the globe, and in two-thirds of these states there is at least one significant national or religious minority”⁷. For this reason, the field of protection of the rights of national minorities is a continuous concern both for international organizations, as well as for the doctrine and precisely for that reason, it is in a continuous evolution, both from the point of view of international and national legislation and jurisprudence, as well as through the prism of existing conflicts on the political scene, considering the fact that no continent is bypassed by the problem of ethnic conflicts.

¹ Otovescu, C., 2006, *Aspecte privind principalele documente juridice referitoare la minorități*, Available at [https://drept.ucv.ro/R SJ4/B13OtovescuCristina.pdf](https://drept.ucv.ro/RSJ/images/articole/2006/R SJ4/B13OtovescuCristina.pdf), Accessed 20.02.2024.

² Diaconu, I., 1998, *Minoritățile. Identitate. Egalitate*. Bucharest: Romanian Institute for Human Rights, p.23.

³ Deleanu, I., 1996, *Drept constituțional și instituții politice - Tratat, vol.II*. Bucharest: Europa Nova Publishing House, p.15.

⁴ *Idem*.

⁵ The Human Rights Commission of the Economic and Social Council, in its 47th session in January 1991, did not reach a concrete result, the participating states considering either that the attempt to define the minority is not yet satisfactory, or that it is useless. However, the proposals made by the European Commission for Democracy by Law (Venice Commission) in terms of defining the minority were similar to those formulated in the French doctrine in 1985 (for details see Deleanu, I., *op.cit.*, p.15).

⁶ See art.14 of *Framework Convention for the protection of national minorities*, Available at <https://rm.coe.int/16800c1314>, Accessed 21.02.2024.

⁷ Petraru, R. A., 2015, *Minoritățile în context legislativ internațional*, Available at <https://www.everand.com/book/298388864/Minorit%C4%83%C5%A3ile-in-context-legislativ-interna%C5%A3ional>, Accessed 21.02.2024.

„Ignoring national minorities, as a historical reality, can have extremely harmful consequences. Tense relations or even conflicts between minorities or between them and the majority population have acquired the character of a phenomenon with often unpredictable consequences. From the Basque Country to Cyprus, from Northern Ireland to Sri Lanka, from South Africa to India or North America, from Tibet to Iraq, from Croatia to Israel, from Romania to Japan, etc., almost within all nations like relationships or conflicts pose problems that are difficult to solve, but not insoluble”⁸.

2. THE PROTECTION OF THE RIGHTS OF NATIONAL MINORITIES IN THE LIGHT OF THE PROVISIONS OF THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

2.1. History

The history of the Framework Convention for the Protection of National Minorities and its objectives are presented in the Explanatory Report of the Convention, which also includes clarifications regarding the meaning of the regulations⁹.

The Council of Europe has examined the situation of national minorities for more than 40 years, in 1961 the Parliamentary Assembly recommended the inclusion, in a second additional protocol, of an article¹⁰ which will guarantee national minorities certain rights not included in the European Convention on Human Rights¹¹. In 1973, the Committee of Experts, which was to examine whether it was possible and desirable to develop such a protocol¹², opined that, „from a legal point of view, there is no specific need to make minority rights the subject of a new protocol, but also that there is no major legal obstacle to the adoption of such a protocol, should it be considered advisable”¹³.

„In May 1992, the Committee of Ministers requested the Steering Committee for Human Rights to examine the possibility of formulating specific legal standards regarding the protection of national minorities, an examination that was completed on September 8, 1993, noting at the same time the lack of consensus on the interpretation of the term *national minority*”¹⁴.

⁸ Deleanu, I., 2006, *Instituții și proceduri constituționale în dreptul român și în dreptul comparat*, Bucharest: CH Beck Publishing House, p.338.

⁹ *Explanatory Report to the Framework Convention for the Protection of National Minorities*, Available at <https://rm.coe.int/16800c1314>, Accessed 21.02.2024.

¹⁰ *The Recommendation 285/1961 proposed the following wording*: "Persons belonging to a national minority shall not be denied the right, jointly with other members of their group and to the extent that it is compatible with public order, to benefit from their own culture, to use their own language, to establish schools and be taught in the language they choose, or to profess and practice their own religion".

¹¹ The Convention for Human Rights and Fundamental Freedoms was concluded in Rome on November 4, 1950 and entered into force on September 3, 1953, being amended and supplemented by 16 protocols (for details see Bobaru, A. D., 2023, *Protecția internațională și europeană a drepturilor omului. University course*. Craiova: Sitech Publishing House, pp.208-229).

¹² The Committee has suspended its activities until a final decision has been reached in the Belgian linguistic cases concerning the language used in education. In this sense, the European Court, by the Decision of July 27, 1968, series A, no. 6, decided that there can be no question of a „linguistic privilege” in education. The reasonable report of proportionality between the request and the possibilities, between the request and the means used or between the means used and the purpose pursued constitutes the axis of the regulations of the Framework Convention.

¹³ *Explanatory Report to the Framework Convention*

¹⁴ *Idem*.

„The summit in Vienna held on October 8-9, 1993 of the heads of state and government of the member states of the Council of Europe decided to draw up legal commitments regarding the protection of national minorities, giving instructions to the Committee of Ministers in this regard. It created an ad hoc Committee which, in October 1994, submitted the draft of the Framework Convention. The Committee of Ministers adopted it on November 10, 1994, the Framework Convention being thus open for signature to all member states of the Council of Europe”¹⁵.

2.2. Considerations regarding the normative content of the Framework Convention for the Protection of National Minorities

„The document represents the first legally binding multilateral instrument dedicated to the protection of national minorities in general. Its objective is to specify the legal principles that states undertake to respect in order to ensure the protection of national minorities, Europe thereby responding to the call by the Vienna Declaration for the transformation, to the widest possible extent, of the political commitments adopted by the Conference on Security and Cooperation in Europe (CSCE) into legal obligations”¹⁶.

The Convention defines various objectives that the signatory states undertake to pursue through legislation and national policies, such as: equality before the law, adopting measures to preserve and enhance the various cultures on their territory, protecting identities, minority religions, languages and traditions, guaranteeing access to mass media, establishing free cross-border relations and cooperation with people who legally live on the territory of other states.

From the examination of the norms of this international document, we note several aspects, which we will highlight in a short exposition.

The provisions of art. 1 of the Convention refer to the protection of national minorities as such and to the rights and freedoms of persons belonging to such minorities. This distinction shows us that the recognition of collective rights is not sought. By the way, the signatory parties to the Convention have recognized that the protection of a national minority can be achieved by protecting the rights of persons belonging to such a minority.

The provisions of art. 3 contain two principles: the freedom of the person belonging to a minority to choose whether or not to be treated as such and the person's choice is inseparably linked to objective criteria, the individual not having the right to arbitrarily choose to belong to any national minority.

Rights and freedoms can be exercised *individually or jointly with others*, a norm distinct from the notion of *collective rights*. It follows that the term *others* must be understood in the widest sense, including persons belonging to *the same minority or another minority or majority*.

The purpose of the provisions of art.4 is to ensure the applicability of the principles of equality and non-discrimination for persons belonging to national minorities, which means *negative non-discrimination*, not positive non-discrimination, provided of course that this does not turn into „privilege”.

Under this aspect, states may impose certain measures to ensure the promotion of full and effective equality between persons belonging to a national minority and those

¹⁵ *Idem*.

¹⁶ *Framework Convention for the protection of national minorities*.

belonging to the majority, but such measures must comply with the principle of proportionality, to avoid violating the rights of others, as well as their discrimination.

Regarding the provisions contained in art.5, they refer, in essence, to the obligation of the signatory states to ensure that persons belonging to national minorities can maintain and develop their own culture and preserve their identity, enumerating in this meaning the essential elements for the identity of a national minority, this provision not implying that any ethnic, cultural, linguistic or religious difference necessarily leads to the creation of national minorities. The traditions mentioned here do not imply the approval or acceptance of practices contrary to national law or international standards, traditional practices finding their limits in the demands of public order. It should also be noted that the rule that requires states to refrain from any policy or practice aimed at the assimilation of persons belonging to national minorities against their will, does not prohibit voluntary assimilation.

According to the provisions of art.6, the signatory states must ensure the promotion of tolerance and dialogue, by removing barriers between people belonging to ethnic, cultural, linguistic and religious groups and, under the conditions of preserving their identity, integrate these people into society.

Regarding the right to use the minority language, the provisions of art. 10 have clear and precise rules. In this sense, in areas inhabited traditionally or by a substantial number of persons belonging to national minorities, if these persons request and if this request corresponds to a real need (assessed by the respective state based on objective criteria, the possibility of satisfying it being reserved for the state's discretion), states will endeavor to ensure as far as possible conditions that allow the use of the minority language in the relations between these persons and the administrative authorities.

From the point of view of judicial activity, states must guarantee the right of the person belonging to a national minority to be informed, promptly, in a language he understands, about the reasons for the arrest, the nature and causes of the accusation, as well as the right to defend himself in this language, in this sense resorting, if necessary, to the free assistance of an interpreter.

It is noted that these regulations do not cover all relations between persons belonging to a national minority and public authorities, but only in relation to administrative authorities, but even in this context, the rules were formulated in a flexible manner, but the obligation of states to ensure the use of the minority language must not affect the status of the official language.

It is to be noted that the provisions of art. 11 refer, among other things, to the right to display signs, inscriptions and other information in the minority language, but only of a private nature, which means that they can only be displayed for what does not have public, official character. In the sense of the same regulation, traditional local names, street names or other topographical indications intended for the public can be displayed in the minority language, the states being able to apply this provision only in situations where they take into account their specific conditions and their legal system, implicitly when where applicable, by agreements with other states. Regardless of the situation, the provisions do not imply any official recognition of local names in minority languages.

The provisions of art.13 refer to the commitment of states to recognize persons belonging to national minorities the right to establish and administer their own private educational and training institutions, a norm formulated subject to their educational system and without implying a financial obligation for them.

In addition, the provisions of art. 14 show that the states are committed to recognize the right of any person belonging to a national minority to learn his minority language, which does not imply any positive obligation for the state, especially of a financial nature. The right of these persons to receive an education in the minority language is subject to several conditions, namely: the formulation of a request by these persons, as well as the possibility of satisfying this request. Regarding the possibilities of teaching the minority language or receiving an education in this language, the following mention is required: they must not affect the learning of the official language or the education in this language, thus, the knowledge of the official language being a factor of cohesion and social integration.

We underline and the regulations contained in art. 20 that require persons belonging to national minorities to respect national legislation and the rights of others, especially persons belonging to the majority or other national minorities, especially considering the situation of persons belonging to national minorities who represent a minority at the national level, but make up the majority in a certain geographical area of the state, the Committee of Ministers of the Council of Europe being tasked, by the provisions of art. 24, point 1 of the Framework Convention, to oversee its application by the states.

In relation to what has been presented, we note that the rules included in the Framework Convention have a series of rights for persons belonging to national minorities located in the signatory states of this document, as well as a series of obligations for the states, aimed at ensuring guarantees of respect for these rights.

3. THE FUNDAMENTAL REGULATORY FRAMEWORK FOR THE PROTECTION OF THE RIGHTS OF NATIONAL MINORITIES FROM ROMANIA

The protection of national minorities by removing any form of discrimination and by guaranteeing the right to identity is a major concern for a democratic and civilized state in general, but also for the Romanian state, which through democratic norms offers minorities a legal status according to the standards provided by international documents.

„Contemporary Romania represents a homogeneous state, from the point of view of the majority population. But it is no less true that an important number of ethnic or national minorities live in Romania, which offer a variety of historical and cultural traditions, constituting a wealth for the Romanian civilization as a whole. All these national minorities are the result of a long history, but they are equally the result of the complexity of the phenomena of culture and civilization that forced populations and ethnicities of great diversity to live together, sometimes in harmony and understanding, sometimes in situations of competition and even adversity”¹⁷.

„The idea proclaimed and constitutionally consolidated by the provisions of art. 1 para. 1 of the Constitution sparked numerous debates in the Constituent Assembly, noting, among other things, that no modern constitution integrates the concept of nation in the system of its political and legal values, therefore, not far from the idea that the nation it is an archaic, antiquated, outdated or even anachronistic concept, but the reality is different,

¹⁷ For details see Nicoară, T., 2005, *Istoria și tradițiile minorităților în România*, Available at https://hiphi.ubbcluj.ro/Public/File/sup_curs/istorie24.pdf, Accessed 23.02.2024.

if we refer to the constitutions of other states, taking as an example the Constitution of Spain, that of Sweden, France, Finland or Ukraine”¹⁸.

The national feeling implies the protection of minorities, the removal of any discrimination, the affirmation and guarantee the equality to the rights for all citizens, the cohesion and solidarity of those who make up the Romanian people.

Such ideas are enshrined in the provisions of art. 4 of the Constitution, which show that „*the state is based on the unity of the Romanian people and the solidarity of its citizens, and Romania is the common and indivisible homeland of all its citizens, regardless of race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, wealth or social origin*”¹⁹.

Persons belonging to national minorities, the Romanian state recognizes their right to identity, which it guarantees. Under this aspect, we note that the regulation recognizes this right for persons belonging to national minorities and not minorities as a whole, thus, we are in the presence of a recognized and guaranteed individual right and not a collective right to identity, which could lead to the promotion of certain tendencies of territorial separatism, particularly dangerous for the integrity of the Romanian state²⁰.

In addition, the constitutional provisions show in art. 6 para. 1, that „*the state recognizes and guarantees to persons belonging to national minorities the right to preserve, develop and express their ethnic, cultural, linguistic and religious identity*”. Thus, the institution that adopted the constitution closed the way to some privileges to the detriment of the majority population and regulated, in para. 2, thus, „*the protective measures taken by the state to value the right to identity of persons belonging to national minorities must comply with the principles of equality and non-discrimination in relation to other Romanian citizens*”²¹.

In the doctrine, it was noted that the regulation contained in art. 6 para. 1 of the Constitution is a framework text that present general principles. Some of these are transposed into concrete norms, even through the Constitution²².

Indeed, only the consecration of this right at the level of principle, without being accompanied by the constitutional guarantee of its exercise, would prove useless, precisely for that reason, the fundamental law contains provisions by which the right to identity can be valued.

Thus, the constitutional norm identifies means intended to guarantee the right to identity of persons belonging to national minorities, among which:

a) legal representation in the Chamber of Deputies of citizen organizations belonging to national minorities that do not obtain the necessary number of votes in elections to be

¹⁸ Deleanu, I. *op.cit. (Drept constituțional.....)*, pp.15-16.

¹⁹ Art. 4. Unity of the people and equality between citizens, *the Constitution of Romania* republished in the Official Monitor from Romania no. 767 of October 31, 2003.

²⁰ From the Explanatory Report and from the preamble of the Convention adopted by the Committee of Ministers of the Council of Europe on November 10, 1994, it follows that states undertake to ensure protection for persons belonging to national minorities, which does not imply the recognition of collective rights. At the same time, an important mention is made of the fact that the effective protection of national minorities must take place within the framework of the rule of law by respecting the territorial integrity and national sovereignty of states (Zamfirescu, Z., 2005, *Sistemul actual constituțional românesc*. Craiova: Sitech Publishing House, p.28).

²¹ Art. 6. The right to identity, *the Romanian Constitution*.

²² Ionescu, C., 2001, *Drept constituțional și instituții politice. Sistemul constituțional românesc, vol.II*. Bucharest: Lumina Lex Publishing House, p.139.

represented in Parliament²³, they have the right to a place of deputy, under the conditions of the electoral law, with the express mention that the citizens of a national minority can only be represented by single organization, which means a situation of positive discrimination, assumed by the Romanian people, through a referendum;

b) enshrining the principles of decentralization, local autonomy and deconcentration of public services²⁴;

c) the use of the mother tongue, in writing and orally, in relations with local public administrative authorities and with decentralized public services, in administrative-territorial units where the respective minority has a significant proportion²⁵, as well as the recognition of the right to express oneself in the mother tongue in front of the courts²⁶;

d) recognition of the right of persons belonging to national minorities to learn and be able to be trained in their mother tongue²⁷;

e) the consecration of freedom of conscience and the autonomy of religious cults from the state²⁸;

f) the institutionalization of the popular legislative initiative, an initiative that can belong to a number of at least 100.000 citizens with the right to vote, in the case of proposals for organic and ordinary laws, or to a number of at least 500.000 citizens in the case of proposals for constitutional laws²⁹.

In fact, the entire system of citizen rights and freedoms, as regulated by the fundamental law, represents, by itself, a real and permanent guarantee of the right to identity.

Thus, it can be stated that the entire Romanian constitutional construction in the matter was carried out in full accordance with the provisions of the Framework Convention for the Protection of National Minorities³⁰ and with those of the European Charter of regional or minority languages³¹.

In addition, the national legislation, through G. O. no. 137/2000 regarding the prevention and sanctioning of all forms of discrimination³², as well as by Law no. 202/2002 regarding equal opportunities and treatment between women and men³³, ensures, through its provisions, the legal framework specific to the protection of the rights of persons belonging to national minorities.

Moreover, the Constitutional Court of Romania emphasizes through its jurisprudence the supremacy of the law, ruling in decisions 818/2008, 819/2008, 820/2008³⁴ that the

²³ Art. 62 para. 2, *the Romanian Constitution*.

²⁴ Art.120 para. 1, *the Romanian Constitution*.

²⁵ Art.120 para. 2, *the Romanian Constitution*.

²⁶ Art.128 para. 2, *the Romanian Constitution*.

²⁷ Art.32 para. 3, *the Romanian Constitution*.

²⁸ Art.29 para. 1, 3 and 5, *the Romanian Constitution*.

²⁹ Art.74 and art.150 para. 1, *the Romanian Constitution*.

³⁰ Romania ratified the Framework Convention for the Protection of National Minorities through Law no. 33 of April 29, 1995, published in the Official Monitor from Romania, Part I, no. 82 of May 4, 1995.

³¹ Romania ratified the European Charter of Regional or Minority Languages through Law no. 282 of October 24, 2007, published in the Official Monitor from Romania, Part I, no. 752 of November 6, 2007.

³² Available at <https://lege5.ro/Gratuit/gm4temzygu/principii-si-definitii-ordonanta-137-2000?dp=gy3temrtgq2da>, Accessed 21.02.2024.

³³ Available at <https://lege5.ro/Gratuit/gm3denryga/dispozitii-generale-lege-202-2002?dp=gy2tambzgeytc>, Accessed 21.02.2024.

³⁴ Published in the Official Monitor from Romania, Part I, no. 537 of July 16, 2008.

provisions of art. 1 of G. O. no. 137/2000, republished are unconstitutional to the extent that it implies that the courts have the power to cancel or refuse to apply normative acts with the force of law, considering them to be discriminatory, and to replace them with norms created through judicial means or with provisions contained in other normative acts, and by decision no. 997/2008³⁵ clearly underlines the role of the National Council for Combating Discrimination, in the sense that he does not have the competence in the jurisdictional activity, to cumulate or refuse the application of normative acts with the force of law considering that they are discriminatory and to replace them with norms created by judicial means or with provisions contained in other normative acts.

We underline, also, as guarantees and the provisions contained in the Administrative Code³⁶, Pre-university education Law no. 198/2023³⁷ and Higher Education Law no. 199/2023³⁸, Law no. 489/2006 regarding religious freedom and the general regime of cults³⁹, Law no. 217/2015 for the amendment and completion of the G. E. O. no. 31/2002 regarding the prohibition of fascist, racist or xenophobic organizations and symbols and the promotion of the cult of persons guilty of crimes against peace and mankind⁴⁰, Law no. 157/2018 regarding some measures to prevent and combat anti-Semitism⁴¹, Law no. 2/2021 regarding some measures to prevent and combat anti-gypsyism⁴², Law no. 612/2002 for the formulation of a statement regarding Romania's recognition of the competence of the Committee for the Elimination of Racial Discrimination, in accordance with art. 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the United Nations General Assembly in New York on December 21, 1965⁴³.

Therefore, the Romanian constitutional system has numerous normative guarantees regarding the protection of the rights of persons who constitute national minorities, this field being a permanent concern for the Romanian authorities⁴⁴, in the last 30 years, has developed a complex system of protection of national minorities, the result of intense activity and constant, effective and responsible participation of all actors (organizations, public authorities, communities).

4. CONCLUSIONS

The protection of human rights is a central issue of public international law, and the institution of the defense of the rights of national minorities constitutes a component part of the international protection of human rights, to which all the provisions of the respective branch apply. Through the study I have shown that this institution presents particularities

³⁵ Published in the Official Monitor from Romania, Part I, no. 774 of November 18, 2008.

³⁶ Republished in Official Monitor from Romania no. 792 of September 1, 2023.

³⁷ Published in the Official Monitor from Romania no. 613 of July 5, 2023.

³⁸ Published in the Official Monitor from Romania no. 614 of July 5, 2023.

³⁹ Published in the Official Monitor from Romania no. 11 of January 8, 2007.

⁴⁰ Published in the Official Monitor from Romania no. 558 of July 27, 2015.

⁴¹ Published in the Official Monitor from Romania no. 561 of July 4, 2018.

⁴² Published in the Official Monitor from Romania no. 8 of January 5, 2021.

⁴³ Published in the Official Monitor from Romania no. 851 of November 26, 2002.

⁴⁴ For details see Bălan, M. (2022) *Provocări actuale în reglementarea statutului minorităților naționale în România*, Available at <https://drept.uvt.ro/administrare/files/1658873702-articol-m-balan.pdf>, Accessed 21.02.2024.

in that national minorities, due to the problems they have faced throughout history, require special attention and additional protection from the states, starting from the international legal framework and up to the permanent updating of national legislation, taking into account the challenges of the contemporary world.

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