Strasbourg, 21 October 2005

Restricted
CDL-UDT(2005)033
Engl. only

T-10-2005

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

UNIDEM Campus Trieste Seminar

**"THE IMPACT
OF THE ENLARGED EUROPEAN UNION
ON NEW MEMBER STATES AND PROSPECTS
FOR FURTHER ENLARGEMENT"**

MIB School of Management
Palazzo del Ferdinandeo,
Largo Caduti di Nasirya n° 1
tel: +39 040 918 8111

Trieste, Italy

24 to 28 October 2005

REPORT

"FINAL NEGOTIATIONS OPENING THE WAY FOR ROMANIA'S ACCESSION TO THE EU. COUNCIL OF EUROPE'S INFLUENCE ON DOMESTIC REFORMS

by
Mr Bogdan AURESCU,
Ministry of Foreign Affairs of Romania
Substitute Member of the Venice Commission

I. General Remarks

When I was first invited to deliver this lecture, the initial title of my presentation was "Implementing pre-accession strategies: experience from a candidate country". This is the way the idea came **to show to you how powerful the influence of the negotiation process regarding Romania's accession to EU was on the reform in Romania.** At the same time, knowing from my own experience **the high level of intensity** of this process in 2004 (the final year of negotiations) – when I was acting as State Secretary for European Affairs in the MFA of Romania – I thought it is important to focus on these final negotiations, that were concluded in 2004 and, thus, opened the way for signing, on the 25th of April 2005, the Accession Treaty.

Nevertheless, this process – which had an extremely high degree of complexity in itself – would not have been possible **without the precious help of the other pan-European organization – the Council of Europe.** In my both capacities of substitute member of the Venice Commission and former Government Agent for the European Court of Human Right, as well as taking into account all my experience in the MFA of Romania, I became aware of **the huge contribution of the various organs of the Council of Europe to the transformation process of Romania into a valid democratic State,** fully respecting the rule of law and the norms an standards regulating the promotion and protection of human rights, including the minority protection standards.

If we take, for instance, **this very sensitive field of minority protection,** I think that – if we take into account the situation in Romania at the beginning of the '90's, the progress was huge. Not only that we have now – almost permanently – the Democratic Union of Hungarians of Romania in the Government, not only that we have implemented the highest European standards on minority protection, but we are now even going beyond those standards. I was – 10 days ago – in Targu Mures (a beautiful town of Transilvania where, in May 1990, bloody inter-ethnic events took place between Romanians and Hungarians), in order to attend a seminar where majority and minorities discussed, very normally, about **cultural autonomy for minorities** – a concept which is about to be introduced in the Romanian legislation (The draft law on the statute of national minorities was examined, only two days ago, by the Venice Commission).

The contribution of the Council of Europe was crucial – both for the inter-ethnic relations in Romania, and also for the stability of the region. Five years ago it would have been inconceivable to organize a Common Meeting of the Romanian and Hungarian Governments. This meeting took place four days ago in Bucharest (on the 20th of October 2005) and it was a success. I think that this is also a result of the efforts of the Council of Europe to bring stability in Central and South-Eastern Europe by implementing at domestic(and regional level) **the right standards**. Let us, for instance, remember the **contribution,** in this regard, of the **famous Report of the Venice Commission on the "Preferential Treatment of National Minorities by their Kin-State**" (19th of October 2001). It helped a lot in solving the largely debated dispute regarding the extra-territorial, discriminatory and political effects of the Law on Hungarians living in neighboring countries.

The human rights field in Romania, in general, benefited from the activities of the Council of Europe, especially from the **interaction** with the **control mechanism of the European Court of Human Rights.** The judgments of the Strasbourg Court signaling structural problems of the legislation, of the judicial and administrative practice in Romania were important pillars for reforming the system. Of similar importance were the monitoring and post-monitoring mechanisms. Last, but not least, a special remark for the contribution of the

Venice Commission. I would only remind you that the Romanian Constitution (adopted in 1991 and modified in 2003) **was the first such act examined** by this professional expert body; it was followed by a large number of opinions on draft normative acts; the suggestions and observations of the Commission were valuable contributions to reforming the Romanian legal system and society in a democratic way. So, in the third part of this presentation, I will focus on the influence of the ECHR judgments on the Romanian legal system and on the institutional efforts of reforming the activity of the Government Agent for the Court.

Between Council of Europe and European Union there are **close and specific links –** as both organizations share the same objective of a **united Europe**, despite all difficulties that we face now. The opinions and assessments of the Strasbourg organization are always taken into account by the EU when evaluating, for instance, **the political criteria** of a candidate country, the level of implementing and respecting human rights and minority protection standards. The Annual Regular Country Reports of the European Commission are always including, *inter alia*, references to the judgments of the Strasbourg Court and their degree of implementation; they are important in assessing the "health" of the judiciary and the correctness of the reforms in the legislative and administrative field, as far as human rights are concerned. The "GRECO" Reports were taken, *inter alia*, into account by the European Commission in order to evaluate the results of certain measures to combat corruption. One more example of inter-action: the opinions and observations delivered in 2004, upon the request of the Romanian Government, by the General Directorate for Legal Affairs of the Council of Europe on the legislative package on the reform of the judiciary were very important. This package, adopted in June 2004 by the Parliament, was one of the "keys" to close one of the most difficult chapters of negotiations - "Justice and Home Affairs".

I am glad that by fortunate coincidence, last year, when Romania finalized its accession negotiations for the EU, Romania celebrated 10 years since the entry into force of the European Convention on Human Rights. The incoming Romanian Presidency of the Committee of Ministers of the council of Europe has, high on its agenda, the negotiation and conclusion of a Memorandum of Understanding between Council of Europe and EU, as endorsed by the Council of Europe Summit in Warsaw, this year.

The way of action of the two European organizations, as far as the reform impact is concerned is, of course, not identical. The Council of Europe asks for certain prerequisites be respected **before** accepting a new member State (and these conditions are stricter and stricter - see, for instance, the case of Monaco, the newest member). The highest influence is exercised **after** accession, by **the monitoring and post – monitoring processes.** The European Union places the accent on reforms **before** accession, by establishing the **extremely complex system of negotiations,** which also became stricter and stricter, even inside the same wave of enlargement.

One last general remark: **neither the accession to EU, nor to the Council of Europe are objectives *per se.*** In fact, they are **instrumental to domestic reform**, the final beneficiary being each and every citizen of that country, who will use **a better legal system,** with **efficient laws and less corruption**, who will benefit from **a more effective, professional and citizen-oriented public administration,** and who will have **higher living standard in a competitive market economy**, (In reality, "negotiating accession to EU" is a process of in depths adaptation, at various levels, of the candidate country's system according to very specific, strict and technical conditions fixed by the EU, different from a classic diplomatic negotiation. It is an effort to adjust the legislation, to implement it, to take a lot of measures in order to correspond as much as possible to the standards set by EU, and - thus – to meet the level of required convergence with the other EU member states.)

II. Final Negotiations Opening the Way for Romania's Accession to the EU

First of all, some **elements of chronology** regarding Romania-EU relations:

- 1st of February **1993** – the Association Agreement between Romania and European Communities is signed.
- 1st of February **1995** – the Association Agreement enters into force.
- June **1995** – Romania forwards the Official Application for accession to EU.
- July **1997** – the European Commission issues the "Opinion concerning the Official Application of Romania for accession to EU".
- November **1998** – the European Commission issues the first Regular Annual Report on the progress of Romania towards meeting the accession conditions.
- December **1999** – the Helsinki European Council decided to start the negotiations for Romania's accession.
- February **2000** – the official start of the negotiations in the framework of the **Romania-EU Intergovernmental Conference.**
- During the year **2000**, the **first 9 chapters were opened** and **6** were closed.
- During **2001,** another **8** chapters were opened for negotiations and **3** were closed.
- During **2002, the last 13 chapters** were opened and **7** were closed; **the December 2002 Copenhagen European Council** expressed **clear support for Romania's accession to EU in 2007.**
- During **2003,** another **6** chapters were closed.
- June **2003** – the Summer European Council of Thessaloniki expressed, in its conclusions, **support for finalising the negotiations with Romania by the end of 2004.**
- December 2003 – the European Council in Brussels decided on the **precise calendar** of accession: finalising the negotiations in **2004,** signing the Accession Treaty "as soon as possible" in **2005** and accession in **January 2007.** The accession of Romania (and Bulgaria) are considered as a "common objective" of the Union and member states.
- During **2004,** the last chapters were closed (8+1"Others").

The overall European context of 2004 **was not simple:**

- the negotiations for finalising the European Constitution;
- the discussion on the financial perspectives of the Union;
- the debate on Turkey's accession were already difficult;
- the accession *de jure*, on the 1st of May, of the 10 new member states contributed to the shaping of the so-called "enlargement fatigue";
- the elections in June, for the new European Parliament;
- the mandate of the European Commission was coming to an end, and a new Commission was to take up the office.

In Romania, the context **was neither simple:**

- in June, local elections took place;
- in November, general and presidential elections were being prepared.

It is well known that in an electoral year it is highly difficult to make reforms and to take decisions – sometimes unpopular – for that purpose. Fortunately (for Romania's accession), the Romanian Government did what was to be done.

An important contribution, in this context, had the Report of February 2004 of the Committee for External Affairs of the European Parliament, adopted by the plenary in March; it was quite critical towards Romania's accession progress on a number of issues:

- reform of the judiciary;
- anti-corruption measures;
- child protection;
- freedom of the press;
- competition;
- administrative capacity, etc.

The Report was an important signal, its results being a set of decisive measures: the Government was reshuffled – a new minister of Justice was appointed, a chancellery of the Prime minister was created – its main task being the elaboration, together with all institutions involved, of a plan of measures, joined by a calendar. It was the famous **"To do list"** with 39 measures and almost 140 concrete actions, with dead-lines; it was discussed and agreed with the Commission. All these measures were implemented.

The most difficult chapters were" Justice and Home Affairs" and " Competition".

The **June 2004 European Council in Brussels** reiterated the calendar 2004-2005-2006; the Regular Report of the 6th of October expressed firm support for finalizing **by the end of the year.** On **the 14th of December**, the Accession Conference at Ministerial Level closed the negotiations from the technical point of view. On the 16 th of December, the European Parliament adopted a Report supporting the closure of negotiations. Based on these, **the European Council of 16-17 December confirmed politically the finalization of negotiations and reiterated the calendar**: April 2005 for signing the Treaty (it was signed on the 25th of April) and January 2007 for the effective accession.

III. Council of Europe's Influence on Domestic Reforms in Romania- the Role of the ECHR

Coming now to this part of my lecture, I will focus on the influence of the Strasbourg Court's judgments upon Romania's legal system.

First, I have to mention some examples of how these judgments influenced the modification or adoption of new pieces of legislation. For instance, legislative and other measures were taken as a result of the following cases against Romania: **Petra** (1998), **Vasilescu** (1998), **Brumărescu** (1999), **Ignaccolo – Zenide** (2000), **Cotleț (2003), Pantea** (2003), **Notar** (2004, friendly settlement), **Greek – Catholic Parish of Sâmbăta Bihor** (2004, admissibility) and others.

Second, I will present the story of the reform of the institution of Government Agent in Romania, which took place in 2003.

As far as the reform of the institution of Government Agent in 2003 and 2004, a large number of judgments of the Court were issued against Romania in Strasbourg.
For instance, the 2003 Regular Report of European Commission on Romania noticed 34 judgements against Romania issued between October 2002 and July 2003. During 2003, there were 25 judgements against Romania. So, Romania was on the 5th place in number of decisions (after France, Italy, Turkey and Portugal; Greece had 24 decisions).

The Government Agent was functioning in the Ministry of Justice. It had only 3 or 4 persons as a staff. The perception was bad both at Brussels, in Strasbourg and in Romania.

In July 2003, the Government decided to transfer the institution of the Governmental Agent to the MFA and appointed a new Agent. It was imperative to reform the institution, both from the **organizational** point of view, and from the **conceptual** one.

So, a department of 15 persons was created in the MFA, under the coordination of the Agent, that became undersecretary of state (in order to show more authority in front of other Romanian authorities, especially when interventions were needed to try to remedy the violations domestically).

The model for organizing this department was searched throughout Europe, in those Council of Europe member states that organized the Agent in the MFA (which represent about 50% of the Council of Europe's member states).

The model chosen was the French one-with diplomats-lawyers and magistrates-detached in the MFA (10+5).

Two co-agents were appointed: one as the head of this department, and other as a diplomat in the Romanian Mission in Strasbourg

A big contest was organized in order to fill in the 10 vacancies, as well as a search for magistrates suited for this job.

A new concept of functioning was elaborated and approved by the Government. **The basic ideas** were the following:

- to continue to defend the cases as professional as possible, if they were wrong fully directed against Romania;
- to conclude **friendly settlements** in the cases were, obviously, a right or freedom set forth by the Convention and Additional Protocols was violated, **including in the repetitive cases;**
- to promote those **general measures** necessary to correct the Romanian legislation, the administrative and judicial practices; that is to avoid systemic problems;
- to create an early warning system, in order to foresee the incoming cases, both individual (there were hundreds and hundreds of individual complains) and systemic ones (for instance, restitution of Greek-catholic Churches, or the lengths of proceedings).

The main idea was that the agent should not be perceived, by the public, as an "enemy of the citizen", as he / she is, in fact, a State institution - that is **in the service of the citizen.** His / her main objective is not to win case, at any cost, against the **claimants,** but to make sure that **violation of human rights and freedoms** are **addressed and redressed.** (The Agent is an auxiliary to the international (Strasbourg) justice).

That is why the accent fell **on friendly settlements (**No friendly settlements **were concluded before** the transfer to the Ministry of Foreign Affairs). In October, first such friendly settlement was negotiated and finalized. By now, **17** such friendly settlements were concluded.

As a result, if the Regular Report of the European Commission of the **2003** remarked 34 judgments against Romania in the period October 2002 – July 2003, the same Report of **2004** remarked (with certain satisfaction) the reduction to only **12** such decisions. (If in 2003 the overall number of judgments was 25, (26 in 2002), in 2004 the total number was 12).

IV. Conclusion

Both Council of Europe and European Union exercised an important and valuable contribution/influence in/on reforming the legal system of Romania, for the benefit of Romania and its citizens, as well as for the region.