I. The structure and the purpose of the dissertation

1.1. The purpose of the theses and of the dissertation. The theses aim to arouse the wish to read the entire dissertation. Given the space constraints the theses can only offer an overview.

The objectives of the dissertation are determined by the fact that Romania after the transition to constitutional democracy began the progress of developing the common norms of the rule of law. It is true that even after 1989, Romania could not achieve as many changes in the democratic transition as it would be expected by Western Europe. Aforesaid, it is to admit that the country has made significant steps to establish the constitutional state in order to democratize the country. The challenging task of establishing the foundations of the constitutional state raised plenty of issues in the constitutional and political practice. I will focus on the ones related to human and minority rights.

Any power, especially the state power tends towards and exercises violence. Individuals can seek protection against this overwhelming force if they have recourse to supreme powers beyond the state. This may be God, nature, the state-forming communities, and more recently international organizations or EU institutions.

The aim of this research is by no way merely just „*wandering in the forests of the theory*". I am not trying to describe a mere legal knowledge in a narrow minded professional way. In my view theoretical writings should be confronted with practice. Thus, my goals can be summarized as follows:

a) the nature of human rights, the ways of preserving the diversity despite globalization;

b) analysis of the difficulties in the regulation of the legal position of minorities, comparison and evaluation of the minority/ethnicity definition in Romania and Hungary;

c) presentation of the constitutional development in Romania before and after the fall off communism; comparative study of international law – in particular, the Romanian and Hungarian constitutional development which show different evolution in many cases but many common features as well;

d) analysis of the practical evaluation of the implementation of the compliance reports presented by the Copenhagen political and legal criteria Commission;

e) scientific analysis of the constitutional framework of fundamental rights and freedoms;

f) exploration and evaluation of the theoretical and practical aspects of the Romanian legislation in the view of human rights.

Due to the space limitations I faced a serious dilemma: although much can be said about the subject, some topics needed to be skipped and others abridged (for example, the Romanian Constitutional Court, II. Section 1.4.3. Chapter). This shortage should not be a problem, because this dissertation is open to and suitable for further consideration.

The primary scope of my previous dissertations and publications was constitutional law, European law and human rights – but of course they were not so extensive and scientifically not so elaborated. I started the investigation in these fields during my university years in Cluj. I hope to continue, to expand and to deepen those mentioned above. Since 2007 I have been publishing the results of these studies (see point IV).

1.2. The structure of the dissertation – The dissertation consists of three parts.

In the first part [*Clarifying concepts*] I analyse the history, the definition, the forms as well as the techniques of the regulation of human and minority rights; I also present the system and structure of the protection of European (regional) human rights.

In the second part [*Contributions to the history of law*] I consider the evolution and description of the Romanian Constitution drawing parallels to the major features of the development of the Hungarian constitution. At certain points I extended the comparison of rights, constitutional development and regulation encompassing Western European states. This is followed by a brief presentation of the European integration, as well as the analysis of Romania's accession to the EU and finally its purposes regarding the Schengen area.

In the third part [*Legislation*] I examine the constitutional framework of the fundamental rights, the regulation and the system of the subsidiary elimination of discrimination. Then I examine the draft of the Romanian minority act. After this, I present the local police (policing), which are subordinated to the local councils, as a form of decentralization in Romania.

II. The methods used in the dissertation

2.1. Overview of the research methodology – The dissertation is based on several research methods of social science: historical analysis, comparison, analysis of facts, theoretical analysis and conclusions. I apply all those methods according to the nature of research in jurisprudence.

2.2. Historical Method – For the sake of discussion about the topic – mostly in the first and the second part of the dissertation – it is inevitable to use the historical method. Using this method, I present the nature of human rights, the development of the regulations of minority rights, the preliminaries of the international and regional protection of human rights, the circumstances of Romania's foundation, the constitutional development of the country and the history of the idea of European unity. Furthermore, in the third part, there can be found a historical analysis, too, which is essential to identify some local policing-related problems.

2.3. Comparative method – The primary subject of comparison are two neighbouring countries – Hungary and Romania: their post-communist constitutional development and their direct experience of constitutional democracy, especially after the fall of the socialist state system. Both countries chose a European Constitution model of development: the Romanian Constitution is essentially influenced by the French, while the Hungarian was inspired by the German Basic Law. Of course, it is not the automatic acceptance of the models, since both states have specific „*historical models*", experiences, views and political ideas that shaped the constitutions.

2.4. Analysis of facts – The differences between theory and reality can be detected in many cases with empirical methods. In the third part of the thesis I present the findings of my opinion research regarding the Romanian local policing and I also draw the necessary conclusions.

2.5. Theoretical analysis method – The essence of the theoretical analysis method is that the problems in the text of the legal norms must be clearly defined; the context must be examined with regard to all the questions and variants of interpretation. I use this method mostly in the third part of the thesis.

2.6. The conclusion method – In strict connection with the previously discussed method, the conclusion method is based on theoretical analyses, which can lead to new points of view. Likewise, it supports or reviews existing statements. This is a method used in the second and third parts.

III. Major scientific results – proposals de lege ferenda

Accession to the European Union has substantial direct and indirect effects on the legal protection systems of all the member states, especially those of the newly joining Central and Eastern European countries. European integration has given rise to a historically new organizational and institutional structure as a whole, and furthermore created an independent, individual legal system within the framework of the EU. In spite of the fact that the United States of Europe seems to be more of a vision than a realizable entity for the time being, the current membership in the Union and the full-scale adoption of the EU law are true reality that one should conform to.

Hereunder, I list the key problem areas – in view of minority law – where modifications would be necessary in order to make the Constitution and the related legal regulations fully comply with these criteria. Thereafter, I make a proposal for the practical implementation and application of the harmonized legal regulations, as well as the acceptance of a minority legislative bill; finally, I will specify the steps of legal harmonization which have already been implemented and can be regarded as positive processes.

3. 1. First of all, I summarize the fundamental legal concerns related to minority rights and then mention the most important reasons of the delay in joining the Schengen area.

a) There are contradictions in the wording of the Romanian constitution. The first clear sign of the existence of these discrepancies is the appearance and rejection of the concept of a „*nation state*" on the part of the national minorities. The concept of a „*nation state*" as defined in Section (1) of Article 1 of the Constitution should be handled with sharp criticism, as the essence of a nation state – in simple terms – is the enforcement of a single language and culture, sometimes

religion, among the population living within the borders of the given state, meaning that a nation state fundamentally refers to the suppression of the minorities. Nation states are emphatically questioned by current international tendencies, the rule of law, as well as the requirements of equal chances and equality before law, while it is not in line with the actual realities of demography and nationalities, nor with the political and legal practices of the EU.

In the above-referenced articles of the Romanian Constitution, the legislators want to express implicitly that within the framework of the currently effective Constitution the existence of territorial autonomies should not be assumed. In my opinion, however, there is no contradiction between a sovereign, independent, uniform and indivisible state one the one hand, and the existence of autonomy on the other hand, because not even territorial autonomy, among the various forms of autonomy, is equivalent with independence. Most of the forms of autonomy/autonomous provinces can be found in uniform states, such as South Tyrol in Italy, Crimea in Ukraine, the Åland Islands in Finland or Greenland in Denmark.

From a legal aspect, there is a discrepancy between the provisions of Section (2) of Article 4 of the Constitution *„Romania is the common and indivisible homeland of all its citizens, without any discrimination on account of race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin"* and the essence of the above-mentioned expression of a *„nation state*". Either all the citizens in Romania are of a Romanian ethnic background, and then we can talk about a nation state, or there are citizens of non-Romanian ethnic backgrounds as well, but then one cannot claim that it is a nation state.

As a consequence, Romania's self-definition as a nation state is at least outdated, obsolete, and therefore this expression should be proposed to be deleted from the Constitution. On the other hand, the Constitution sets forth the theorem of the existence of the nation state as an unalterable provision, meaning that it may not be subject to any modification or amendment of the Constitution. As a result, this change becomes feasible only if a new Constitution is accepted.

b) The antagonism of individual and collective rights is a basic dilemma, as the Constitution of Romania does not acknowledge collective rights, but only accepts individual rights. Nevertheless, when certain fundamental rights are examined, collective rights, e.g. the parliamentary representation of national minorities (for the communities, the representative of the given minority is positively discriminated when receiving a mandate), the autonomy of churches, the right to establish independent educational institutions. Most of the Romanian constitutional experts think that considering national minorities as national communities is in conflict with the provisions of Section (1) of Article 4 of the Constitution.[2] There are also opinions that regard national minorities to be parts of the Romanian people – which can be deduced from the Constitution –, and then their definition as state-forming factors can be originated from the notion of popular sovereignty. As this issue is not unambiguously resolved, Article 6 of the Constitution is *de lege ferenda* proposed to be amended, particularly with respect to the definition of national minorities as national communities, which qualify as state-forming elements. In legal terms, the most necessary move would be to acknowledge collective rights for Hungarians living in Romania as a national minority.

[2] *„The State foundation is laid on the unity of the Romanian people."*

c) The single most serious deficiency of the constitutional catalogue of the effective Romanian Constitution is that it primarily and nearly exclusively contains the declaration of rights. This catalogue may serve as a universal declaration of fundamental human rights, and thus its political value and significance are undoubted, as it is a value-related standard for the constitutions of all the democratic constitutional states. On the other hand, the constitution is a set of legal regulations, meaning that the declaration of rights is not sufficient, but it is necessary to secure them by legal means, regulate them by an efficient system of guarantees on the level of the constitution.

d) Romania has been going through a transition process. During this period, it would be important to allow for changes in the Constitution in such a way that it can be amended according to the changing social needs. But the Constitution is rigid, its amendments require a special procedure. In Hungary, during and after the fall of communism, the Constitution has changed many times due to a more flexible procedure. Such flexibility in the post-communist countries would have been inevitable, given the fact that the legal foundation of the new political system required quantitatively significant legislative work.

The difficulty of amendment should rather characterize stable, standardized constitutional systems, where the main issues are clarified. This situation also raises the self-replicating problem of the old and new issue of constitutional norms and reality. Even the most far-sighted and wisest regulations become problematic at a certain point after a certain period of time. At that point the task of interpreting the constitution comes into the picture. It is not always necessary to modify the Constitution, because it is the task of the protecting body of the constitution, the Constitutional Court to clarify and interpret concepts, and they should do all of this on the basis of primary rights and constitutional principles. There may be regulation deficiencies in the fundamental law but this does not mean that the

Constitution has to be modified all the time. We need to find a balance between the goal of developing a more normative regulation and the abstract interpretation of the Constitution by the Constitutional Court.

e) The key hindrance to the country joining the Schengen area is the slowness and gradualness of the reform of the jurisdictional system. In consequence, the judicial bodies are unable to counteract corruption with sufficient efficiency. In Romania, there is a need for calculable and stable legal regulations to provide for legal security, because what people appealing to jurisdiction tend to mention as „*corruption*" has nearly nothing to do with bribery, but rather express their exacerbation with juridical insecurity. In general, it can be claimed that in several instances the quality of legislation in Romania is not appropriate, and as a result of the low-standard legal policy, the modifications and amendments of the legal regulations closely follow each other. The performance of effect analysis should be made mandatory, while the „*fire-fighting*" nature of the individual amendments needs to be eliminated.

3. 2. In view of the application of law, it is very important that the protection of minorities should actually be suitable for contributing to the promotion of minority interests, and not just for serving as a means of the betterment of the country image.

Acceptance and application are two extremely important aspects of the success of any political document. Even if the Parliament accepts legal, itemized legal regulations, opposition may arise on the level of application. One of the problems is that the legal regulation is far too generic, while detailed rules should be stipulated on the lower levels of legislation. If there is no cooperation among the institutions of public administration, or the sanctions against the non-fulfilment of the objectives set previously are not in place, it is highly likely that the regulations pertaining to minorities will remain in a „*concept paper*" status.

a) A specific problem of the application of law to be highlighted is that in many cases declared minority rights are not matched with particularly determined scopes of tasks and responsibilities, and therefore – through lack of strict sanctions – the application of laws is often dependent on the benevolence and good will of the officers of the competent authorities. It would be very important to accept detailed legal regulations for enforcement, and thus fulfil the proper execution of minority rights.

On many instances, the general regulatory framework is in place, e.g. on the basis of the effective legal regulations persons belonging to national minorities may express their views and opinions in their mother tongues – both verbally and in writing – at judicial bodies, when contacting the local authorities of public administration, and even at the meetings of the organizations concerned. In this respect, the existing legal frameworks should be filled with real content and substance. Primarily, it is on the level of the local councils where the use of minority languages should be strengthened, meaning that written contacts on the municipal level can be regarded as the communicational situation where the best results could be achieved in the reinforcement of the use of Hungarian language.

b) The system of the protection of human rights does not only include the legislative field and execution, but also civil law protection agencies, and therefore it is proposed that governmental bodies should focus more strongly on cooperating with them. Even the number of non-governmental organizations promoting the interests of Hungarian minorities reflects a shortfall. Partnership between the Office of Interethnic Relations and the civil law protection agencies in Romania should be promoted by organising joint programs and projects, and by participating in various public events.

c) The application of the regulations on the rights of national minorities is largely aggravated by the fact that the existing internal regulations are overwhelmingly scattered, and included in the most various legislative texts. A difficulty in the field of the application of law is that a comprehensive, standardized and uniformly applicable minority legislation still has not been drafted. The acceptance of such a bill may/should at least target the establishment of the institutions of cultural autonomy.

The Democratic Alliance of Hungarians in Romania (RMDSZ) prepared and conducted the consultations, but eventually the bill was propounded by the government, which reflected a change in the political approach after the former minority-related legislative bills. It is sad but true that in the past seven years, in spite of repeated efforts, the bill has not been approved; the MPs put the document aside as early as the committee discussion. It is not included in the agenda, and therefore not discussed at the plenary meetings, nor is the bill subjected to voting. For a simple nationalistic cause, they are unwilling to accept it, though they do not dare to turn the bill down for good and all either, because they are afraid of the international or internal political consequences. It is a fact that the House of Representatives has not had a debate on the bill for more than a year, which is in conflict with the spirit of the democratic constitution, even if it is not stated expressis verbis in the Constitution.

By not having accepted any minority act, Romania has fallen in violation of all the obligations that Romania has undertaken in writing, and promised to enact upon the country's admission to the European Council. When Romania ratified the Framework Convention for the Protection of National Minorities, they thought there was no need for further minority legislation, because the Framework Convention has this function, though it is the very requirements accepted by EC (Chapter II) which stipulate the need to elaborate such legislation.

3.3. Concerning the legislative bill on the legal status of national minorities, the following major deficiencies can be exposed:

a) One of the critical points of the bill is the absence of the regulation of financing issues, because the fulfilment of the associated financial conditions is one of the crucial criteria of the operation of any autonomy. If it only takes place after the effective date, there will be an increased potential that the detailed regulation of the necessary modifications and rules will not be realised because of political interests, and therefore the nicely shaped principle, objectives and provisions cannot be filled with appropriate content.

b) Another deficiency of the draft bill is that it fails to regulate active and passive franchise in connection with the election of the bodies of minority cultural autonomy. As a result, the bill does not exclude the potential for „*ethno-business*", which is fully inconsistent with the principles of democracy. There have already been examples for such practices in the case of the organizations participating in the general elections of Romania, and the same applies to some of the minority local councils in Hungary.

In spite of the deficiencies described above, the practical significance of the legislative bill on minorities is outstanding, because it should take the role of a „*minority constitution*" in Romania. It would be subject to the constitutional rules of the state, and at the same time it would require the alignment of the Romanian legal system to its provisions concerning all the issues that are related to the national minorities.

3.4. Positive aspects: a) Considerable guarantees can be seen in the participation of national minorities in political life. Hungarian minorities take an active role in Romanian public life and try to influence the minority protection policy of the state – for years, they were involved in government. The Constitution grants a mandate to the representative of each national minority in the Parliament in case the given minority is unable to reach the election threshold during the general elections.

b) The acceptance of the government decree pertaining to the prevention and penalization of all forms of discrimination, as well as the amendment of the Criminal Code harmonized the legal regulations of anti-discrimination efforts with European law, thereby creating guarantees for the more efficient application of the legislative acts and policies relating to the protection of national minorities. By accepting the decree, Romanian legislation transposed two EU directives, and on the other hand it qualified a set of „*specific*" racist behaviours as crimes, introducing discriminative motives as an aggravating circumstance.

c) In line with the expectations of the EC and the EU, Romania has taken steps towards novel solutions: they set up a complementary system for the protection of human rights and the prevention of discrimination. In connection with the operation of this system, I would like to highlight the foundation of the National Anti-Discrimination Council (NADC), which harmonized the legal regulation of anti-discrimination struggles with the European law, and, at the same time, created a guarantee for the effective application of legislative acts and policies pertaining to the protection of national minorities. A related problem is, however, that Hungarians living in Romania rely on this option to enforce their rights less frequently than they should. In my experience, NADC is hardly known by the Hungarian community, and whoever has heard about it would primarily recognize the Council as an „*organization protecting Roma people*". Yet, it is a mistaken

approach, because with the assistance of this organization all forms of discrimination can be counteracted, and, in addition, simpler and quicker results can be achieved in legal proceedings.

d) Minority rights should be a part of human rights, but the rights of minorities – in certain aspects – are broader and more complex in nature than conventional human rights. Minority rights include elements such as the structure of the governmental organization, the centralized or decentralized setup of the governmental organization, the regions and territorial forms of autonomy that cannot be handled as classic human right issues.

From the perspective of the enforcement of minority rights, decentralization is a very important factor, because it allows the participation and involvement of those governed in the making of the decisions that concern them the most directly. By arranging matters locally, there is an opportunity to use local resources as efficiently as possible and take immediate action, as the local bodies have a thorough knowledge of the circumstances serving as the basis of the decisions to be made. The community has an important role in determining what means and methods the police should rely on in the place where they live.

Romanian minorities are interested in giving all possible forms of autonomy to the local communities even by subordinating the police to local public administration. This would also be important because it has been found that the relationship between the police and the citizens is still not based on trust – as it would otherwise be desirable in a constitutional state –, or such a trust-based relationship has not become firm enough to avoid the suspicion of prejudice, nationality-related discrimination behind certain police actions, which is sometimes unfortunately not ungrounded.

It is largely dependent on the management, organization and legal background of the police how a policeman handles the citizens, how much he would respect

fundamental rights. In Romania, positive tendencies have been witnessed after the turn of the millennium, as a comprehensive program was implemented, through which local police (policing) forces were set up, while, at the same time, changes serving the realization of the municipal police model were carried out (demilitarization).

It is not very fortunate to have such „*new-coming*" policemen, without any knowledge of the local circumstances, executing central concepts, especially in smaller villages where everyone knows everyone and the number of minorities is high. A policeman arriving from a purely Romanian area will hardly be able to handle matters in a Sekler Hungarian village, because he does not speak Hungarian, he is not familiar with the local customs, social problems etc. In view of the enforcement of minority rights, it is much better for a local council, where the votes and ideas of the minorities also count, to employ its own citizens, because they can see and judge the local ideas and minorities without a bias, or even with positive discrimination.

In addition to the central organization of public security and defence, municipal police forces have been operating successfully, though with minor deficiencies, since the fall of communism not only in Romania, but – with the exception of Hungary – also across the Visegrád Group.

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The above theses reflect that the legal protection of ethnic minorities suffers from a number of deficiencies under Romanian law. Experience shows that Romanian legislation and the application of law today are far from being perfect, and therefore it is possible and necessary to make corrections, improvements. My proposals aim to draw attention to these potentials.

IV. The author's publications related to the dissertation

1. Móré Sándor: *Gondolatok az Alaptörvény elfogadásáról*, [*Thoughts about the adoption of the Fundamental Law*], In: Állam és Közösség (válogatott közjogi tanulmányok Magyarország Alaptörvényének tiszteletére), szerk.: Rixer Ádám, Lőrincz Lajos Közjogi Kutatóműhely, KRE ÁJK, Patrocinium, 2012. (megjelenés alatt – *in press*)
2. Móré Sándor: *A helyi rendőrség létrehozása és szabályozása Romániában* [*Establishing and regulation of the local policing in Romania*], De iurisprudencia et iure publico, (megjelenés alatt – *in press*)
3. Móré Sándor: *A Schengeni Együttműködés és Románia,* [*The Schengen cooperation and Romania*], Scientia Iuris, Magyar–Román Jogtudományi Közlöny, 2012/1. szám, ISSN: 2069 – 9301, (79-100. o.)
4. Móré Sándor: *Az önkormányzati rendőrség létrehozásának lehetősége az új helyi önkormányzatokról szóló törvényben*, [*The possibility of establishing the local policing in the new Local Government Act*], In: Jegyző és Közigazgatás, XIV. évfolyam, 2012./1. szám, (12-13. o.)
5. Móré Sándor: *Az alapvető jogok és szabadságok alkotmányos kerete Romániában,* [*The constitutional framework of fundamental rights and freedoms in Romania*], Jog és állam 17. Jogász doktoranduszok konferenciája 2011; Károli Gáspár Református Egyetem ÁJK, Budapest, 2012. ISSN: 1787-0607, (29-47. o.)
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9. Móré Sándor: *Gondolatok az Alkotmányról*, [*Thoughts on the Constitution*], In: Magyar Rendészet, 2008/3. szám, ISSN: 1586 – 2895, (52-61. o.)
10. Móré Sándor: *Románia rendszerváltás előtti alkotmányfejlődése nemzetközi kontextusban*, [*Constitutional development of Romania before the change of regime in international context*], In: Tavaszi Szél 2008, KGRE ÁJK, Doktoranduszok Országos Szövetsége, Budapest, 2008. ISBN: 978-963-87569-2-3, (57-268. o.)
11. Móré Sándor: *Magyarország rendszerváltás utáni alkotmányfejlődésének néhány jellemzői* [*Some characteristics of the hungarian constitution development after the change of regime*], In: „20. századi magyar gazdaság és társadalom", Széchenyi István Egyetem Kautz Gyula Gazdaságtudományi Kara, Győr, 2008. ISBN: 978-963-7175-38-1, (387-403. o.)
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13. Móré Sándor – Szilvásy György Péter: *Az Európai Unió közjoga*, [*European public law*], (főiskolai jegyzet – *textbook*), Rendőrtiszti Főiskola, Budapest, 2005; második átdolgozott kiadás 2007. (5-22; 44-76. o.)

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