

THE RIGHT OF MINORITIES TO ADDRESS IN THEIR NATIVE SPEECH TO THE ADMINISTRATIVE AUTHORITIES

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Abstract

Changes on the political map of the world at the end of the Cold War, the conflicts that arose following these adjustments, along with awareness of the widespread consequences of the migration phenomenon have reminded the international public opinion the disparity between the trend of homogeneous political communities and the pronounced degree of diversity that characterizes a significant part of the states of the contemporary world. The challenges faced by the political communities in this context have brought back to the agenda older dilemmas related to the tools available to states in terms of their interest in administrative-territorial centralization and economic integration, cultural-linguistic standardization, creation and supporting a common space for identification and political participation.

Keywords: minorities, public administration, native speech, administrative authorities, fundamental rights.

1. Introduction

The changes on the political map of the world at the end of the Cold War, the conflicts that led to their outbreak, along with the widespread awareness of the consequences of migration have brought to the attention of international public the issue of disparities between the tendencies of congruity of political communities and the pronounced degree of intercultural diversity that characterizes a considerable part of the states of the contemporary world. The desire for homogeneity, whose foundations have been deeply rooted in the history of political reflection, has led to the dismemberment of multinational states, justified in the opinion of attempts at ethnic cleansing in several independent states, and grounded autonomous movements in the case of concentrated minorities from a territorial point of view. The challenges faced by the political communities in this situation have brought back to the agenda a number of issues already deliberated in the past regarding the tools available to old and new states regarding their interest in administrative-territorial and economic systematization, cultural-linguistic evenness, creation and support of a common space for identification and political participation. Advancements in the global politics scene have brought back into question the issues surrounding the basis of political communities revealed by a series of studies dedicated to the most diverse situations that have highlighted the fact that a political community is usually the result of a process identifying community members with a set of political institutions that they accept as legitimate in the optimal management of community life, furthermore in ensuring its long-term survival. The conclusive results of the studies reveal that the stability and unity of political communities can be ensured with greater chances if community members speak the same language, share the same culture and religion, under the

conditions given by the principle of homogeneity, and where this circumstance is absent, inevitably will appear bordering categories whose interests are not appropriately defended in the internal organizational structures of the community. The situation of minorities has been a matter of great interest in political debates both nationally and internationally, representing one of the most complicated and newsworthy topics of public debate on which both members have expressed their views and dissatisfaction over minorities disadvantaged by the laws of the states in which they coexist as well as citizens of the majority ethnic groups. Nonetheless, they brought to the surface some challenging situations of a legislative nature that these minorities face, situations that aimed to diversify and expand the current legislative framework to ensure respect for the rights and freedoms of all citizens of a rule of law.

2. Content

2.1. The Legal Management of Minorities in Relation to the European Public Administration from a Comparative Perspective

Following the end of the Cold War, a number of international and regional instruments emerged that are of considerable relevance from the perspective of minority rights as an indispensable part of human rights. Such an instrument is represented by the United Nations Charter of Universal Human Rights, which legislates the application of human rights without discrimination on the basis of race, sex, language or religion since its first article. This is compelling in this case because of the international emphasis on preventing discrimination in the period between the end

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of World War II and the fall of communism¹. Internationally, the most important acts on the rights of minorities are the International Covenant on Civil and Political Rights and the United Nations Declaration on the Rights of Persons belonging to Ethnic, Linguistic and Religious Minorities. While the Convention places the rights of minorities in full human rights, the Declaration speaks of the right of minorities to participate in the decision-making process, of the right to education in their native speech and of participation in economic life. At European level, the main promoters of national minority policies are the CSCE / OSCE and the Council of Europe². Like other international organizations, the events in Central and Eastern Europe after the fall of communism were the main catalyst. The Organization for Security and Cooperation in Europe was established in the first instance as a tool for conflict identification and prevention, crisis management and post-conflict reconciliation, persons belonging to national minorities, which led to the establishment of the High Commissioner for National Minorities. The key documents on the protection of national minorities are: the Helsinki Final Act (1975) and the Document of the Copenhagen Meeting of the CSCE Conference on the Human Dimension. By ratifying the first document, human rights become a legitimate subject of dialogue and a topic of interest, a concern for all CSCE member states, respectively following the adoption of the second act a series of rules on the rights of persons belonging to national minorities are determined, addressing issues such as non-discrimination, the use of minority languages, minority education. Although not a treaty, the document is of legal and political importance, due to the mutual agreement of the OSCE states. The fundamental European document on the linguistic rights of minorities in affiliation to public administration authorities is the European Charter for Regional or Minority Languages³, which was adopted by the Council of Europe on 5 November 1992 in Strasbourg. Fundamentally, in the analysis of the relevant legislation is the 10th article of this Charter which enshrines the right to use minority or regional languages in relations with public services and administrative authorities. We draw attention to the fact that this European normative act encloses arrangements with a more permissive character than the national legislation, in view of the fact that in the counties inhabited by a number of speakers of minority languages, the density necessary for the application of legal provisions is not precisely provided. Thus, each state is free to assess the percentage according to which

the stipulations of the relevant legislation can be implemented. Another document of extensive importance is the Framework Convention for the Protection of National Minorities, which was adopted in 1994 and entered into coercion in 1998. This convention does not include collective rights, but is based on the idea that minorities can be protected by guaranteeing the rights of individuals belonging to these minorities. The Convention actually embodies a normative act that provides for the enactment of general principles regarding the rights of individuals belonging to national minorities, including: non-discrimination, equality, promotion of conditions necessary for the preservation and development of culture, religion, language and traditions, expression, freedom of thought, conscience and religion, use of the mother tongue in public and private, oral and written, as well as in relations with public administration authorities⁴. The protection of the rights of minorities is a recent concern of the Union, determined first of all by the extension to the areas previously governed by a communist regime, and secondly by the problem of immigrants on the territory of the Union. The post-communist space recognizes the progress made in developing the legislative framework on the regime of national minorities under international standards, especially the pressure exerted in the context of the enlargement of the European Union. Electoral systems are the mechanism by which the political representation of minorities can be achieved at the level of central and local state institutions, thus appreciating a special importance. Many states such as Albania, Hungary, Croatia, Macedonia have mixed electoral systems, combining the majority principle with the proportional one, not having special policies for minorities in the first two situations. Other countries such as Bulgaria, Slovakia, Slovenia, the Czech Republic, Montenegro, Poland, Serbia and Romania have opted for proportional representation, with an electoral verge of 5% in the last three countries and 4% in Bulgaria⁵. A successful electoral policy is the provision of reserved seats in parliament for minorities. This is also the case of some states such as Romania, Croatia, Montenegro, Slovenia that have adopted this measure as a form of compensation for non-representation through elections. However, the system may vary from state to state, so if Romania offers a place for each national minority that fails to exceed the electoral threshold, in the case of Slovenia the situation is different, the system benefiting only Hungarians and Italians, while in Croatia has three mandates reserved for Serbs, one each for Italians and Hungarians, one common for Czechs and Slovaks, one

¹ I. Salat, Levente, Policies for the integration of national minorities in Romania. Legal and institutional aspects in a comparative perspective, p.31.

² Idem, p. 33.

³ European Charter for Regional or Minority Languages, art. 10, 1998.

⁴ I. Salat, Levente, Policies for the integration of national minorities in Romania. Legal and institutional aspects in a comparative perspective, p. 34.

⁵ Ljubomir Mikić: National Minorities in Croatia: Status of National Minorities, Legal Instruments and Institutions, lucrare prezentată la Conferința Legal Instruments on the Status of National Minorities in South East Europe, Cluj-Napoca, 17-19 Octombrie 2007.

for the other former Yugoslav minorities, except Serbs, and one for the rest of the minorities, namely Austrians, Bulgarians, Germans, Poles, Romanians, Ruthenians, Russians, Turks, Ukrainians, and Jews⁶. However, we can note many critiques about the application of special places for minorities, starting from the large number of minorities jointly represented by a single representative in the implausible case of common interests for so many minorities such as Croatia, to issues related to the lack of pluralism in the system, in the case of representation by a single mandate. Also, states such as Serbia and Poland have opted not to apply the electoral threshold to minorities, thus stimulating central representation. Regarding the rights of establishment of political parties, Albania and Bulgaria constitute special cases by legislation prohibiting the establishment of political parties on ethnic, racial or religious grounds, while noting that in neither case did the legislation succeed in preventing effective representation of national minorities in Parliament, talking here about the situation of Greeks in Albania and Turks in Bulgaria. An abnormal case is Bosnia and Herzegovina, which has a complex central power structure designed to meet both the multiethnic composition and the need for post-conflict reconciliation. Analyzing the governance formula transposed in the constitution and the state laws, we find a varied and complex form of power division that has as finality the equitable representation of all the rights of minority communities. Thus, the executive has a multiethnic structure, requiring the participation of each ethnic group, with the right of representation and the right of veto. The presidency consists of three representatives, each belonging to an ethnic group, both elected and territorial, although the latter aims to represent ethnic groups, not territorial entities. De facto, the executive power is held by the Office of the High Representative, which is a form of international protectorate that practically has as a designating element the amendment of the dysfunction of the constitution of Bosnia and Herzegovina. The inclusion of minorities in government is another way of ensuring the representation of minority interests in the political decision-making process. Given these issues, the inclusion of minority parties in government is a fairly widespread practice. Thus, in Albania, Bulgaria, Croatia, Montenegro, Romania, Serbia and Slovakia, minority parties have been included in the ruling coalition for at least one term. This form of political participation has been supported and encouraged by European Union fora, which justifies the widespread use of the system. The beneficial effects of this policy are presumed rather than documented, in very few cases

there is an assessment of the participation of minority parties in government⁷. Analyzing the degree of decentralization, we find that Serbia has granted autonomy to the province of Vojvodina, the latter enjoying a limited form of territorial autonomy since 1991. The province enjoys budgetary, legislative, executive and above all, its own decision-making bodies of decisions represented by an Assembly, the Executive Board and administrative bodies. According to 112nd article of the Constitution, the legislator stipulates, instead, the fact that the central bodies can intervene whenever they want in the administrative-political life of the province⁸. Another aspect worth debating is the situation of the many states in the region that have developed minority self-governments, thus allowing minorities not only to participate in decision-making, but also to control their own lives. The system of self-government of minorities in Hungary provides for the possibility of setting them up at two levels of local government: either within local government bodies or in independent organizations under local authorities. These structures are responsible for the cultural life of the community and can influence the relevant legislation only through direct participation in decision-making mechanisms. Special accouterments stipulate the formation of self-government automatically, instead of local authorities, if more than half of the members of local councils belong to a national minority, a rare situation, given that most minorities are geographically dispersed. Following the previous analysis, we find that the role of self-government is to represent minorities and to promote the interests of their own community in relation to public authorities. In this case, self-governments can make a series of decisions at the local level, such as setting up educational or media institutions, displaying community-specific signs and names. Moreover, they can interfere in the development of educational components for minorities, in the formulation of legislation on the protection of historical monuments, thus having a veto on local education issues, media, collective use of language.

2.2. The National Legislative Framework of Minorities Regarding the Right to Address in the Native Speech in Relation to the Public Administration

According to the regulations provided by the Constitution, Romania is qualified as a national state, a phrase that includes the coexistence of a national majority with several minorities, among which we mention Jews, Germans and Hungarians. Analyzing, from the early stage of drafting the theses of the Draft Constitution was debated the existence of the right of

⁷ Monica Robotin, Levent Salat, (eds.): *A New Balance: Democracy and Minorities in Post-Communist Europe*, Budapest: LGI, 2003; Zoltán Kántor, Nándor Bárdi: "The Democratic Alliance of Hungarians in Romania (DAHR) in the Government of Romania from 1996 to 2000", in *Regio*, 2003.

⁸ Aleksandra Sanjevic: *National Minorities in Serbia and National Councils as Institutions of Minority Autonomy*, lucrare prezentată la Conferința Legal Instruments on the Status of National Minorities in South East Europe, Cluj-Napoca, 17-19 Octombrie 2007.

minorities to address in their mother tongue through an amendment belonging to Mr. Hosszu Zoltan containing the following: “unrestricted use of the language of national minorities it is guaranteed”⁹ but it was not voted by the Commission. Subsequently, the issue of consecrating this right was raised, but it was expressly and limitedly provided only in relations with the public administration. Thus, Karoly Kiraly was the one who formulated the following amendment “in the territorial administrative units inhabited by citizens belonging to national minorities with a share of at least 10% of the total population in that region, they are provided with the use of mother tongue in their written and verbal relations. with the local and county public administration”. However, the Commission accepted the idea set out in this amendment from a dual perspective, namely that firstly the acts of local and county public administration authorities will be issued in the official language, and secondly the possibility for national minorities to use the language was recognized in relation to these authorities, in accordance with the law. We can note with bewilderment that the right of minorities to use their native speech in relation to public administration authorities functioned until 2003 without an express provision in the Constitution, when it was stipulated and enshrined in constitutional principle by introducing a new paragraph, which became paragraph (2) of art.120, following the analysis from which we can deduce a series of constitutive elements of the legal regime regarding the right in this case¹⁰. Thus, the main normative act, which regulates the rules for the use of the language of national minorities on the territory of administrative-territorial units, is Law no. 282/2007 for the ratification of the European Charter for Regional or Minority Languages. It is also joined by the Framework Convention for the Protection of National Minorities, concluded in Strasbourg on February 1, 1995, ratified by Romania by Law no. 33/1995¹¹. By dwelling in detail on the above-mentioned settlements, we can extract a first aspect worthy of analysis, regarding the category of beneficiaries of the previously disputed right. Thus, focusing on the constitutional text we find that this right is not recognized to all citizens belonging to a minority but especially to citizens who form a significant share on the territory of the administrative-territorial unit in which they live. The meaning of serious gravity finds its foundation in the provisions of the Administrative Code which in the content of art. 94 mentions the express percentage share of 20%. The legislative innovation that will disrupt the constitutional legislative barriers is found in paragraph (2) of the same article which provides: in which nationals belonging to national minorities do not reach the share provided for

in paragraph 1”. We can appreciate the fact that this legislative provision is likely to jeopardize compliance with the constitutional norm, taking into account the fact that they are allowed to use their native language in relation to public administration authorities even minorities with a share of 1%¹². Following the Constitutional Decision no. 328 of May 10 2017¹³, it was stated in paragraph 37 that, respecting and ensuring the rules of applicability of the European Charter for Regional or Minority Languages, the legislator enjoys the freedom to establish the criteria according to which the state is obliged to grants this type of protection to Romanian citizens belonging to national minorities. However, in the process of establishing these criteria, it is obliged to take into account the specific conditions and traditions of each region, as they have the role of promoting equality between speakers of minority languages and the rest of the population. Another interesting legislative aspect is provided by the Administrative Code in art. 604 which stipulates that in the event that the share of the minority population falls below 20%, the recognition of the right in this case may be maintained until the final results of the next census. It is important to note that the exercise of this right is enforceable only in relation to local public administration authorities, not central ones. The de facto realization of this right is achieved by giving the possibility to persons belonging to a national minority to address themselves in writing and orally and to be able to receive answers to their requests both in Romanian and in their mother language. Moreover, the Administrative Code provides a series of ways in which this right is materialized in relation to the local public administration, of which I will mention: first of all in the content of art.94 in conjunction with 195th article paragraph (1) is recognized the right of minorities with a share of 20% to address in their mother tongue both in relations with the local public administration and in the public institutions subordinated to them as well as in relations with decentralized public services; secondly, 138th article regulates the public character of the local council meetings as well as the manner of their conduct, the rule being that the proceedings of the meetings are conducted in the mother tongue, and the exception refers to local councils where local councilors belonging to a national minorities exceed the percentage of 20%, a situation in which the mother tongue can be used during council meetings, but the documents will be written in Romanian, the official language in the state according to the regulations provided by the constitution. It is important to note that these requirements apply with respect to the relationship between the rule and the exception, noting that it is completely out of the question to turn the

⁹ Genesis of the Romanian Constitution 1991, Proceedings of the Constituent Assembly, Ed. Regia Autonomă Monitorul Oficial 1998, p. 81.

¹⁰ Published in the Official Gazette. No. 752 of November 6, 2006.

¹¹ Published in the Official Gazette. No. 82 of May 4, 1995.

¹² Verginia Vedinaş, Administrative Law, 12th Edition, Universul Juridic Publishing House, Bucharest 2020, p. 226.

¹³ Published in the Official Gazette. No. 424 of June 8, 2017.

exception into a rule. In the spirit of these constitutional and legal provisions, we can see that freedom of expression in the mother tongue is guaranteed for national minorities¹⁴.

3. Conclusions

Through this article, I aimed to present the regime of the rights of national minorities as well as the concrete mention of the forms of its implementation in the countries of the European Union. In the first chapter we analyzed the constitutive elements of the minority rights regime, the main international and European documents, as well as the evolution and diversified conceptualizations of the term national minority found in them. In the second part of the paper I gave a practical perspective on the rules that respect the direct

applicability of constitutional and legal provisions in Romania on the right of national minorities to address in their native speech in relations with local public administration, pursuing both the developed institutional framework and the specific policies. The implementation of the minority rights regime in the Romanian state takes different forms, depending on the types of minorities, their percentage, territorial concentration, as well as the history of interethnic relations and diversity accommodation policies. Thus, following the forms of participation and political representation of minorities, the territorial composition of the state, language, education and citizenship policies outlines a diverse landscape of institutional options for transposing the rights of minorities into practice, but also a series of deficiencies that make accommodating diversity to remain a topic of interest in Romania.

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¹⁴ Ș. Deaconu, *Protection of national minorities in Romania*, in *Annals of the University of Bucharest*, 2002-II, April-June, p. 48.