

EUROPEAN LEGAL RELEVANCE IN MATTERS CONCERNING MINORITIES AND HUMAN RIGHTS

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Abstract

Throughout history minorities “problems” appeared practically in two cases:

- 1) In situations where atrocities were committed against certain minorities, which have aroused the disapproval of the international community; and
- 2) When the brutal intervention (enemy) of a country in favor of an ethnic or religious minority generated certain tensions which were amplified when the interventionist power under the protection of minorities umbrella has initiated territorial claims.

In the current stage of development of European law, three major principles have won the European community in issues concerning minorities and human rights:

- a) Human rights issues within the competence of the EU Member State and its authority must be resolved without foreign interference, according to the general principle that each state is sovereign in its territory;
- b) Citizens belonging to national minorities should enjoy equal rights with ethnic majority. In addition, they should ensure the maintenance of cultural identity, respecting them the traditions and the way of life, being unacceptable any attempt to assimilate with the majority population, according with the principle non-discrimination and unpersecution of any kind;
- c) According to the principle of international cooperation of states on the rights of minorities is crucial that all EU Member States to adhere to a set of principles generally recognized corresponding to a particular standard recognized by the Council of Europe.

In Romania the idea of an autonomous community, basically territorial can not be reconciled with the provisions of Article 1 paragraph 1 of the Constitution, which consecrated the national, sovereign, independent, unitary and indivisible character of the Romanian state. In the meeting of experts in Geneva in 1991 for national minorities, the Romanian delegation presented a code of conduct of States for international cooperation on minority issues. The code also specifies that in their cooperation on these issues, Member States of the European Union will fully repeat the 10 principles of the Helsinki Final Act

Key words

Minorities ; human rights ; European law ; autonomous community

1. GENERAL ASPECTS AND ELEMENTS OF HISTORICAL ORDER

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Minority problem one of the main problems in terms of political and legal implications has contributed important subject of negotiations on an international level, even after the first world conflagration. In peace treaties that concluded bilateral agreements or declarations, states have undertaken to protect rights of national minorities. In all democratic constitutions in Central and Eastern Europe requires that each State Party shall ensure and guarantee the rights of minority groups and Czech ethnic. Constitution doesn't include a specific chapter on rights and freedoms, as they are contained in a stand-alone document "having constitutional power - Charter and fundamental freedoms-considered part of the constitutional order of the Czech Republic". In Slovakia there is an important part in the constitution that are mentioned in art. 43 are submitted rights and freedoms including the rights of minority and ethnic groups. Romanian Constitution enshrined in the "general principles - the right to identity" an important article (Article 6) which provides that: "The State recognizes and guarantees the right of persons belonging to national minorities to preserve, develop and express their ethnic, cultural, linguistic and religious, and in paragraph (2) is added as protection in the favor of the persons belonging add as protection for people belonging to national minorities "should conform with the principles of equality and discrimination in relation to other Romanian citizens. In the present communication we shall consider briefly the protection of ethnic identity in the context of international human rights documents and the discussions ongoing in the literature of international law in terms of minority rights. Literature has not succeeded in defining a scientific sense - the concept of minority legal - component of the international regime of protection of human rights. Given the multitude of interests of states in whose territories lives in this group & quot; definitions proposed in the literature of international law and in the UN or the Council of Europe documents are by definition because excellent highlight certain dimensions of the category of minorities. Over time I am aware of some necessary and useful operational definition "in approaching and solving a particular problem in a given time, is clearly influenced by the option or interests they have proposed committees". We believe that the more elaborate definition of the concept of minority has been given to the Council of Europe to draft an additional protocol to the Convention, European, Human Rights on the Rights of National Minorities, 1201 that the 1993 recommendation of the Parliamentary Assembly of the Europa Council. The

recommendation national minority expression refers to a group of people from one state: a) residing in the territory of that State and its citizens b) maintain old ties, solid and durable with the State c) feature ethnic, cultural, religious or linguistic characteristics d) sufficiently representative although they are less numerous than the general population of this state or its region e) are animated by the will to keep together what form their common identity, especially culture, their traditions, religion and language. No one today can deny the existence of minority groups within a state or another and this appeared in international law that the extremes of the twentieth century, was concerned to protect the minority. In their evolution, minority problems have appeared practically in two cases:

1)in time periods that have been committed atrocities against certain minorities that have aroused the disapproval of the international community engage the country that use or encourage such practices in a climate of isolation and political criticism.

2)if the brutal intervention of a community majority in favor of ethnic, religious or sexual, generating tensions related exentuale territorial claims, under the umbrella idea of protection. At the beginning of the third millennium, international law enshrine three principles have won international community in matters concerning minorities and human rights: 1)The first principle advocate for the recognition of territorial sovereignty of each state, and human rights issues are the responsibility of the State as such and should be resolved without outside interference only by its authorities; 2)the second principle refers to the fact that citizens belonging to national minorities should not be discriminated against or persecuted, they must enjoy equal rights with citizens of the majority, and in addition are given maintenance of cultural identity, to have respect how life and traditions, find unacceptable any attempt to assimilate with the majority population; 3)principle of international cooperation of states in the field of minority rights is the third principle, which postulates that all states of the world firmly adhering to the set of generally recognized worldwide; Regarding the application of the principles enunciated in Romania do these specifications:

2. A REALISTIC AND OBJECTIVE EVALUATION OF ROMANIA'S POLICY OF NATIONAL MINORITIES IN THE FIRST DECADE OF XXI CENTURY.

In Romania, the idea of a community-in essence territorial autonomy consecrated the unitary and indivisible national state, sovereign and special independent. The disposition on minorities is in article 6 of the Constitution which stipulates that " The State recognizes and guarantees the right of persons belonging to national minorities the development and expression of their ethnic, cultural, linguistic and religious identity. According to lawyers politicians generally converge to consider the issue of minorities as very important in the life of the country to be solved in a political framework democratic. They insisted that minority issues to be resolved in the legal framework of sovereign nation states, respecting the integrity and

independence. On the other hand has been revealed and the idea of collective rights. Literature scientifically argued specifies that: "all human rights and freedoms are also both individual and collective. This is because the fundamental right is by nature subjective legal right and right is efficiency and subjective existence only in the context of the subject of legal relations with other subjects of law (judicial relationships) ... The man can not oppose the Company but neither should it melted. Relationship should be properly seen because otherwise there is a risk that an item be sacrificed. Yet individuality in the universal value of human rights put personality sa. That's why, whether it is human rights in general or the rights of Romanian citizens, the holder of the rights or freedoms is impossible to a community, a social group, but the person physics, man Roman citizen to those stipulated in the constitution. 2. Romanian Government to guard with each other state institutions to "respect for equal rights for all citizens and the rights of persons belonging to minorities, providing and guaranteeing the preservation of their ethnic, linguistic, cultural and religious. These rights are exercised with respect for unity and territorial integrity of Romania, in conditions of loyalty to the Romanian state, persons belonging to minorities" So, publications (magazines, newspapers, paper and publishing) in Hungarian, German, Serbian, Bulgarian, Russian, French, Italian etc. with repertory theaters in the languages of the nationalities Hungarian, German, Jewish, universities and institutions teaching in Hungarian, German, Turkish, English counties with populations etc.

In the Geneva meetings of experts in matters of national minorities in 1991, the Romanian delegation submitted and discussed "the code of conduct of States in the field of international cooperation on minority issues, on which sets out a series of rules of conduct that must hold Member cooperation on minority issues that states must organize cooperation on minority issues. For the principle of cooperation in the field of minority rights in Romania's initiative was agreed that participating States will comply fully with the 10 principles of the Helsinki Final Act. Particularly interesting was the debate issues of national minorities and their legal status in the international conference "Central Europe and its national minorities" place in Bucharest on 15-16 September 1994, attended by specialists and politicians of the countries of Central . In this Parliamentary Seminar have expressed two main ways: a) reflected a prevailing opinion that should be granted "minority interests in a wide accompanied by administrative decentralization, but the bottom of a required loyalty to the national unit; b) A second perspective has focused idea that "minorities should be given as binding where a demand autonomy"; invoking the precedents set in Europe and presenting a series of conflict situations because "the majority did not would be paid by the obligations referred to minorities. Necessary to point out, within this international colloquium, the opinions expressed by representatives of ethnic minority Hungarian UDMR, Marko Bela held that "in fact in a united Europe all nations are minorities, and their naturally have created mechanisms to

protect minorities from majority. Laszlo Borbely, parliamentary UDMR determined to show a trend that some countries in the region to declare states of national minorities is considered as a real particular assimilation. It's true that during people's democratic regimes there were also trends, bulgarisation refer to ethnic Turks and Roma in Bulgaria even, but in Romania, Hungarian and Roma minority populations have remained intact, observing them the geographical habitat. It notorious that in Harghita county, 93% live population of ethnic Hungarians and the lands inhabited by the Székely, the majority population is of the same ethnicity. UDMR considered the concept of internal self-determination " harm the sovereignty of the state, demanding that in the domestic affairs of the Hungarian minority to decide its representatives. An opposite view was expressed by Academician Prof. Edouard Jonve who claimed that asserted that "the claims of the minority, the state is threatened. Minorities demand rights and powers belonging to the factual and legal people and then ask the question where the boundary between people and minorities? " Romanian point of view was presented at this seminar by the chief parliamentary diplomacy in that period Professor entitled Teodor Melescanu who expressed disagreement on minority problems by drawing borders within the existing " or minor changes to the latter, with reference to the plan as validation of the Balladur; would create a precedent dangerous " Romanian diplomacy DISCLAIMS concept of: "positive discriminate" which includes giving special rights to actually, liquidation discrimination by providing a "surplus" of minority rights. In international practice situations in which they were the majority ethnic minorities has additional advantages, but these provisions were not followed by a proportional increase their loyalty towards the gallant.

3. FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Protection of minorities was is and will be the chief concern of the Council of Europe adopted in 1994 Framework Convention for the Protection of National Minorities-prepared for the first instrument international legal protection, rights of national minorities. The Convention in the spirit of decisions meeting Heads of State or Government of Vienna in October 1993, the protection of minorities, the rights and freedoms of persons belonging to minorities is part of the international protection of human rights and therefore constitutes an area of care international.

To assess, set and checked on the rights covered by the Framework Convention for the Protection of National Minorities are the fundamental rights of individuals and individual rights not collective. In time since the adoption and until present, the Convention has created a practice rights complaint individual and not collective because each statement of the trace that refers to "persons belonging to national minorities "During the discussions for drafting the document specifically designed to protect minorities were no controversy behind which were outlined two views: one that leaves states free to choose ways and means of implementing the

principles over who engaged in the Treaties and another that result of "creating an institutional tool, that an additional document to be such that a content to allow its use as a means of coercion of states, through legal means, by the international court. There appeared some confusion, which persist even now, due to misinterpretation regarding the content of the Recommendation that in 1201 the Assembly formulation of Art. 11 of the draft Protocol (R1211) states "in areas where the majority are persons belonging to national minorities have the right to dispose of the appropriate local government or local, or special status as historical and territorial situation and in accordance with specific legislation National State". Most trenchant position expressed a former general secretary of the EC Catherine Lalumiere who said that the idea of collective rights injuring individual rights, noting that in official documents of the Councils of Europe are submitted individual rights and not support the high group. We can see the above mentioned international officials that "by granting collective rights, is likely to abandon the right to vote (...) is essential to give the individual the right to choose the group in hand and to maintain the freedom to leave". A problem that led to fierce debate has circumscribed the right to identity the minorities. The Convention revealed that the right to identity of ethnic minority can not affect the political-legal status of territories states " Nothing in the present framework Convention or any act contrary to fundamental principles of international law, particularly the principle of ";sovereign equality, territorial integrity and political independence of states"-Established Article 21 of the Convention. It should be noted that the Convention establishes certain goals which member Contracting Parties undertake to comply with its laws and policies such as: equality before the law, adoption of measures for preservation and putting in a different culture their territory, protect religious identity, minority languages and traditions ensuring access to mass media, establishment of free cross-border relations and cooperation with persons lawfully staying in other states.

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