

THE ROLE OF LINGUISTIC RIGHTS IN THE POLITICAL REPRESENTATION OF MINORITIES

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If we imagine a conceptual scale with minority languages at one end and the political representation of minorities at the other, we may place two other notions in between, which mediate between, and link them: the linguistic rights, which ensure the use of minority languages, and the linguistic minorities as the subjects of those rights. Positive international law does not acknowledge minority communities as subjects, speaks instead of individual entitlements possessed by individuals belonging to those minorities, of entitlements, which they enjoy together with other members of the minority. In view of the sensitivity of majority states, international law tends not only to avoid talk of collective subjects, but also makes conscious efforts to keep the protection of minority languages and cultures at a safe distance from conceptions, which conjure up the threat of a political division of power. Thus the European Charter for Regional or Minority Languages does not mention neither individual nor collective rights, only state obligations. There is even a possibility of choice with respect to Chapter III., where the obligations are to become concrete measures. The European Charter for Regional or Minority Languages does not speak in terms of subjects of rights either, only in terms of users of regional or minority languages. The Charter protects the regional or minority languages as a part of the European cultural heritage.

Minority rights are human rights, consequently, the state in which the minority lives is the prime duty-bearer of minority rights. The protection basically depends on the domestic constitutional system of the state. But even if the state is a perfect democracy, – which state is that? – it could happen that it is a majoritarian democracy, where „winners take all” and pay no significant attention to minority wishes, without heed as to whether the groups belong to political, ethnic or any other minority. To belong to a minority is never an advantage. Moreover, as one of the founding fathers of the US Constitution, Madison stated: „In all cases, where a majority is united by a common interest or passion, the rights of the minority are in danger.”¹ In this danger the Jacobin con-

¹ As quoted by John Elster: „On Majoritarianism and Rights.” *East European Constitutional Review*, vol. 1, no. 3, 1992 Fall, p. 20.

cept of nation state satisfies itself with the equality before the Constitution, not paying attention to such particularities as language, or culture.

The benevolent effort made in the European Charter for Regional or Minority Languages to separate political sensitivities from state obligations to protect minority languages cannot be considered successful. This is indicated by the fact that as far as Eastern and Central Europe is concerned, only Croatia, Hungary, Slovakia, and recently Armenia take part in the co-operation under the Charter – where are the others? –, and that the Constitutional Council of France declared the French ratification of the document irreconcilable with the idea of the unitary, indivisible republic. If we look for evidence outside the Charter, it is enough to refer to the Act on State Language of Slovakia under Prime Minister Meciar. This Act was planned to eradicate traces of the Czech language from the official communication, and to secure the pure Slovak as possibly the only vehicle of it by severely limiting the official use of minority languages. Another example bearing the same mixture of tragic and comic elements is provided by the efforts of the former president of Croatia, Tudjman, who, according to well established rumours invented (or discovered) every week, probably with the help of linguists, original Croatian words and expressions to replace words or expressions, which sounded identical with, or very similar to the corresponding Serbian words, and who even sent linguists to Burgenland, to the neighbouring Austria to bring home Croatian vocabulary, which had been preserved intact from Serbian influence in the Old Croatian vernacular of the minority Croats living there.

If we think about the question arising implicitly from the title, we will find three areas, which – in my view – deserve special examination. They are: linguistic rights and representation *in a broad sense*, use of the minority language *in the bodies of political representation*, and the issue of minority self-government in linguistic and cultural matters, i.e. the matter of *cultural autonomy*. After a discussion of these matters, I will shortly examine the situation in Hungary.

Language and the culture based on it are somehow automatically synonymous with some sort of representation of the minority. Language is one of the most important expressions of a sense of collective identity, which has been imbued with a mythical significance in Eastern and Central Europe. Count István Széchenyi once said that a nation lives in its vernacular. Language and culture are a kind of mythical home, supposed to substitute for a collective home not existing in reality. The use of geographic and other names of settlements in the minority language in everyday life may be an outward expression of the authentic existence, authentic living of the community in the given physical space. Therefore, if public administration law allows the use of the minority

language for names of settlements and other geographic names, there are only two ways left for a majority nationalist to deny the existence of a minority community. One is to question that the number of the minority reaches the limit stipulated by law, and the other, if the first one does not prove successful, to stick to an interpretation, according to which the law allows only the use of translations of the majority names instead of the use of the original names established in the minority language. That was exactly what happened in certain places, when the new Romanian public administration act came into force on May 2001, which allows the use of the local minority language in public affairs.

The authentic existence of minority communities may undermine majority myths of origin. In such a mythical frame of thought, legislative acts which allow for an official expression of minority existence through the minority language, these being the legal expressions of the majority will, appear as the work of a Satanic conspiracy. Any setting aside of the state language is tantamount to questioning the nation state, those who use their own language appear as traitors to unity. (And if they speak in the majority language, as some hard-headed nationalists think, they must be doing it in order to conceal their nature as infiltrators.)

The use of the minority language in public life extends to organs of political representation. In this case symbolic expression and actual representation are combined. Practical problems arise when the two functions come into conflict. What I am referring to is the possibility that in default of appropriate infra-structural facilities, representatives of local authorities or parliaments may find themselves reducing their chances for an effective representation of interests. They come to be seen as troublemakers, who make the work of representative organs more complicated and more expensive. Thus if oral contributions are made, the minutes will be prepared in the majority language.

From the symbolic point of view the occasional use of a minority language in the national parliament, or the use of the minority language by the head of state, or by other political leaders is of outmost importance. After the death of General Franco in Spain a speech delivered by King Juan Carlos in Catalan in Barcelona proved to be an important factor in the political and social reconciliation process. It is a clear sign of uneasiness towards minority languages that their use in the Slovakian Parliament is still forbidden.

Special difficulty is involved in attempts to reconcile linguistic and political representation in political systems, which are based on linguistic-cum-territorial divisions. A case in point is *Mathieu-Mohin and Clerfayt*,² which arose in

² Mathieu-Mohin and Clerfayt, Judgment of 2 March 1987, A.113 (1987) pp. 22-23.

Belgium and was treated by the European Court of Human Rights. In Belgium there are community and regional councils. The particular community councils have competence in matters of use of Flemish, French and German, as well as in cultural and educational issues concerning the linguistic communities mentioned. In the French speaking territory tasks of administration are performed by the Walloon regional council, while in Flanders this is also attended to by the Flemish community council. This means that in Flanders the community and the regional councils have been united, unlikely to the Walloon part. There are Flemish and Walloon factions in the Parliament, both in the House of Representatives and in the Senate. In the undivided bilingual electoral district Brussels-Hal-Vilvorde, which comprises the French – speaking territory of Hal-Vilvorde, which lies in the Flemish region, and part of the bilingual capital Brussels, representatives are free to decide which linguistic faction they wish to join. They join the faction in which language they take the oath. The Walloon representatives Mathieu-Mohin and Clerfayt were elected in the French – speaking region, which belongs to Flanders. If they take their oath in Dutch, they cannot take part in the work of the French speaking community, whose competence in cultural and educational matters extends over the Walloon citizens in their district. If, on the other hand, they take the oath in French, they exclude themselves from the council of the Flemish community, which administers other matters. Finally, they decided themselves for the French oath, but at the same time they filed a complaint at the European Court of Human Rights in Strasbourg alleging a violation of Article 3 of the First Protocol to the European Convention of Human Rights (the right to free elections) and to Article 14 of the Convention (the prohibition of discrimination). The European Court of Human Rights rejected the complaint, stating that the goal behind the Belgian legal solution was to alleviate linguistic tension, and to promote, while maintaining decision based on qualified majority and other guarantees, the election of minority representatives, who speak the majority language of the region, since participation in the Flemish council was important to the regional French speaking population as well, and was not in breach of the Convention.

In practice, the use of minority languages in representative bodies, as well as the demand for minority languages in general, is a question of a minimal proportion defined by law. In Finland, districts of public administration qualify as bilingual if the percentage of the Swedish-speaking population reaches eight percent of the total population. Under the previous Croatian minority law, the use of the minority language in local governments became obligatory, when the minority was the local majority (at least 51 %). The weakness of international legal regulation is its tendency to avoid saying anything in concrete terms, it only contains general rules – this is the way the most important European instrument has been formulated. Article 10 (2) of the Framework Convention for

the Protection of National Minorities confines itself to saying meaningless generalities leading to no concrete obligations. „In areas inhabited traditionally or in substantial numbers by persons belonging to national minorities, if those persons so request, and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.” On top of all that, the Convention is silent on the situation within local authorities (Article 10). The European Charter for Regional or Minority Languages speaks about protection justified by the number of people using the minority language and establishes the possibility that the party states may choose obligations that will secure the use of the minority language in local or regional assemblies as well.

One of the crucial questions for linguistic minorities is, whether they have an opportunity to take part in decisions on linguistic policies and linguistic planning. This may be decisively influenced by the official view regarding the nature of the linguistic entity involved, i.e. whether the official view defines it as a language or merely as a dialect, since protection is due to the former but not to the latter. Giving a hearing to the organisations advocating use of the minority language is part of a democratic process, but objective circumstances may be at odds with the demands articulated by such organisations. The issue may even be complicated by a difference of scientific opinion, but the debate may of course be of a political nature and may give rise to different opinions of the same linguistic entity in different states. Limburger is a language on its own right in the Netherlands, but only a dialect of Flemish in Belgium. There may also be a debate concerning the character of the language. Kven is acknowledged as a language on its own right by Norwegian authorities, but is considered to be identical with Finnish, while the people who use the language consider it a self-contained, original language. The outcome of the debate seems to be perfectly irrelevant, but really the exact opposite is the case. If Kven is identical with Finnish, it is sufficient to import the educational materials and cultural products from Finland, and to provide for access to Finnish radio and television, while in the contrary case all these are to be provided in the original. The upshot of all this is that, while minorities have educational and cultural autonomy in several states, only the first (existence) of these basic issues is decided by the minorities, the second (language or dialect? what sort of language?) is decided by the majority state. And it is the second kind of question that sets the terms of reference between which the decision on protection is formulated.

In its original cast, cultural autonomy is seen as based on the classic freedoms, which require only toleration from the state. The minority community takes the opportunity offered by freedom of association and education to establish its own institutions and exercise its rights of self-government. The state may lay down quality requirements (concerning curricular, acquisition of certificates etc.) and as was stated by the Supreme Court of the US, may seek guarantees that the schools educate pupils to become 'good citizens'. For a long time, that was the frame of reference invoked by international law to conceive cultural autonomy. The change was ushered in by statements as to the positive obligations of the state vis-a-vis minorities. In fact, in international law this does not involve the requirement that the provision of financial and infrastructural facilities should go together with the transfer to the minorities of the right to decide on these matters affecting these conditions of identity. In Eastern and Central Europe this is supplemented by the problem, which we might call the ambivalent relationship between minorities and the majority states. Minorities have every reason to be afraid of the majority states, since the states have never been neutral in conflicts between coexisting ethnic groups. They have never made an attempt to find and establish the precarious balance between majority interests and minority rights. This is further aggravated by the tendency of majority states to regard the existence of minorities as a threat to national security, so they strive for assimilation. On the other hand, minorities expect the state to provide subsidies for their educational and cultural institutions. This is a consequence not only of the practice of the omnipotent state, but also of the fact that minorities are poor. Of course, it is more advantageous for the majority state to preserve dependence on the central budget, than to give civil associations or churches property or to establish a legal way for them for getting a share from local taxes, so that they can finance their institutions from their own resources. Cultural autonomy, however, if implemented at all, is likely to remain formal as long as every penny depends on the good will of the majority. Even minorities themselves may think twice before undertaking the building up of cultural autonomy. This is exactly the case in Hungary, where the 1993 Minority Act laid down the legal foundations not only for establishing and maintaining educational and cultural facilities, but also provided that minority self-governments should take over their management from territorial authorities. Minority authorities, however, were motivated by fears that the state budget would leave them to their own devices after once facilities had gone over to the control of the minority self-government. (The amendment to the Hungarian Minority Act now being envisaged is hoped to remedy this problem by offering legal and financial guarantees.)

The implementation of minority language rights in Hungary leaves much to be desired. This is so despite the fact that legal regulation is satisfactory, indeed, unrealistically promising. Looking at the causes, we may mention first of all the fact that minorities are in a state of advanced linguistic assimilation, and that they are geographically scattered and fragmented across the country's territory, mostly mixed with the majority population. Not even this geographic location can justify, however, the now valid equal rights of all minorities in complete disregard of numbers (a community of a few hundreds or thousands of citizens as opposed to a hundred thousand, or two). It is equally unreasonable that minority linguistic rights extend to the whole territory of the country.³ If we look at the issue of equal rights for minorities we cannot but think that it will defy implementation: how can one expect to employ officials who master Bulgarian or Armenian, to provide sample forms in these languages, or even to see to the provision of an interpreter in these languages across the whole country. This is an unrealistic expectation, even in case of the most extensive minority languages (German and Croatian) that speakers of these languages should be able to exercise their right to use their mother tongue in the other corner of the country (say a Croatian speaker from the area of the South-Hungarian town of Pécs in Hajdúszoboszló, a town in the north-east.) The lack of nationality registration makes it difficult to designate those territories, where minority language rights should be applied. But it is possible, after all, to combine estimates with census data so as to get to a list of localities inhabited by minorities, where their proportions reach at least ten to twenty percent. Special attention should be paid to the Roma languages 'lovári' and 'beás', since those who use these languages are facing not only the problem of preserving their identity but also, and more importantly, they are in bad need of aid for social integration and alleviation of socio-economic backwardness.

In order to protect minority languages and cultures, appropriate legal regulation is not enough: infrastructural offers are needed on the part of the majority state. However, if minorities are not afforded adequate political representation, they hardly stand a chance of acquiring the opportunities afforded by those offers.

³ It has been underlined by the Expert Committee of the European Charter for regional or Minority Languages. See, ECRML (2001) 4, 4 October 2001, *Application of the Charter in Hungary - Report of the Committee of Experts of the Charter*, para 46.

SUMMARY

**The Role of Linguistic Rights
in the Political Representation of Minorities**

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In the introduction the author examines why it is a sensitive political question for certain countries to grant minorities the right to use their mother tongue. He points out that such sensitivity has made it necessary to create the European Charter for Regional or Minority Languages, which protects minority languages as parts of the European cultural heritage without formally granting linguistic rights. In the main body of the text the author puts forward his thought under four headings, such as (1) the linguistic rights of minorities and the political representation of minorities in general (in this context he states that a minority's independent language and culture represent the very existence of that minority); (2) the use of minority languages in political representative institutions (in that connection he stresses the problems caused by practical obstacles); (3) cultural autonomy (where the guarantees of financing are crucial); (4) and the enforcement of linguistic rights of minorities in Hungary. As for the latter issue, the author emphasizes the negative consequences of the fact that the Hungarian Parliament entered into legal commitments that proved to be overly ambitious.

The essence of the essay is that it is not sufficient to guarantee the linguistic rights of a minority, if this is not accompanied by the insurance of a proper infrastructure for the exercise of those rights. As long as minorities lack proper political representation, their chances of winning those rights remain slim.

RESÜMEE

**Rolle der Sprachenrechte
in der politischen Vertretung von Minderheiten**

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Der Verfasser untersucht in der Einführung des Essays, warum in einigen Staaten die Gewährung des Rechts auf Gebrauch der Muttersprache von Minderheiten als eine politisch brisante Frage behandelt wird. Dabei verweist er darauf, dass diese Empfindlichkeit die Ursache dafür ist, dass die Europäische Charta der Regional- oder Minderheitensprachen diese Sprachen als Teil des europäischen Kulturerbes schützt, ohne Sprachenrechte formal zu garantieren. Im Hauptteil des Essays gruppiert der Verfasser seine Gedanken um die folgenden vier Fragen: (1) die Sprachenrechte der Minderheiten und die politische Vertretung der Minderheiten im Allgemeinen – in diesem Zusammenhang argumentiert er dafür, dass die selbständige Sprache und Kultur eine Art Vertretung der Existenz sind; (2) der Gebrauch der Minderheitensprache in den Organen der politischen Vertretung, wobei er die Probleme betont, welche durch die Barrieren in der Praxis entstehen; (3) das Problem der kulturellen Autonomie, bei der der Verfasser die Wichtigkeit der Garantie der Finanzierung hervorhebt; (4) die Durchsetzung der Sprachenrechte von Minderheiten in Ungarn, wo er auf die misslichen Folgen eines rechtlichen Überbüdens aufmerksam macht.

Der Verfasser ist der Auffassung, dass es seitens des Mehrheitsstaates nicht genügt, die Sprachenrechte der Minderheiten zu garantieren, sondern er müsse den Minderheiten in dieser Hinsicht sozusagen ein infrastrukturelles Angebot machen. Haben die Minderheiten aber keine angemessene politische Vertretung, dann haben sie kaum die Chance, dieses auch tatsächlich zu bekommen.

