

CULTURAL, RELIGIOUS AND LINGUISTIC DIVERSITY AS A RIGHT LEGITIMISED BY EUROPEAN UNION NORMATIVE AND JURISPRUDENTIAL FRAMEWORK

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Abstract: The article aims to analyse the right of cultural, religious and linguistic diversity, regulated by one of the most recent and original legal instrument in the area of human rights: Charter of fundamental rights, which is part of Lisbon Treaty. Firstly, it is necessary to be done several conceptual delimitations, such as „national identity”, “unity in diversity” and “European identity”. Taking into consideration the multitude of legal sources existing in European Union, it is important to be accomplished their characterization and prioritization. As well, the domain of application of the right is outlined in order to facilitate the understanding of its content. The demarcation of other rights of the Charter satisfies the role of eliminating any confusion related to their distinct significance. The specification of the principles which describe the totality of essential features of the right, also, appears appropriate. Finally, it is underlined that, by the side of other international and national regulations, European Union normative framework and case law of the Court of Justice of European Union offer strong guarantees for the respect and the support of European cultural or regional minorities.

Keywords: national identity, European identity, minorities, European Union

1. Introduction

Currently, the most prolific regional organization, European Union, operates in accordance with one its symbols to which, only indirectly, are referring the Lisbon Treaty: the motto “United in diversity”. Being in a constant reformation and redefinition, European Union has constantly affirmed principles related to the human rights. Intending to put in practice community law in an efficient manner, it has been established the necessity to pay special attention to the diversity. Thus, European Union goal has been to transpose into reality the political and economical goal of unification of European states after the Second World War, following the model of United States of America, but without being properly assessed that the specific features of national states differ from traits of national communities. Even principle of equality is proclaimed as a fundamental principle of the organization, its conceptual essence is not put in practice, and thus being infringed the premise of good working of the unification. The powerful character of the nations which compose European Union, indifferently of size or influence exerted upon other states, cannot be ignored or denied. Only taking into consideration what is defining them as a nation can be obtained the fulfilment of the initial intentions of the European Union’s sages. Nevertheless, this approach doesn’t have to be done in any manner; the application of principle of non-discrimination would be useful to create the ideal opportunities for any nation of European Union to manifest its system of values and its psychological profile.

Going further in the study of reality from European states it can be justified all the same time approaches on vertical and horizontal. One of the current particularities of the majority of states is diversity. Considering that diversity is a positive challenge for evolution to the national level, premises for an efficient cooperation to an upper stadium are created. Between all kinds of expression of diversity manifested to the national level, the cultural, religious and linguistic diversity are the most prominent ones. They are transposed to the organization level as the minorities’ issues which have distinctive character for Europe.

An ideal relation between member states and organization in matters of minorities is reflected by the principle of subsidiary because it ensures that decisions are taken as closely as possible to the citizen and that constant checks are made to verify that action at organization's level is justified in light of the possibilities available at national, regional or local level. Consequently, the European Union does not take action – as it happens in the areas that fall within its exclusive competence – unless it is more effective than what is decided related to minorities at national, regional or local level. On this line is achieved an undisguised connection with the principle of proportionality, which requires that any action of the organization concerning minorities should be in perfect accordance with what is necessary to achieve the objectives of the Treaties.

2. Conceptual delimitations

The clarification of the concept of cultural, religious and linguistic diversity requires explanations, in a gradual order, of “identity”, “national identity”, “unity in diversity” and “European identity”.

The term “identity” has two quite distinct—psychological and sociological—meanings that needed to be distinguished to retain any conceptual clarity [1]. It involves the conceptualization of all affinities and affiliations, all forms of belonging, all experiences of commonality, connectedness, and cohesion, all self-understandings and self-identifications [2].

Going to the next idiom, the “national identity”, it has to be taken into account the two directions existing in the contemporary political philosophy. Common ancestry and ethnicity are the criteria which are essential for the strict delimitation of the sphere of national identity [3]. By contrary, nationality, which is the substance of the concept, may be defined using more malleable terms, which are making compatible self determination with liberal principles [4]. Or, in a general meaning, “national identity” represents consciousness of belonging to a nation.

A unification of nations in an organization implies the achievement of a coherence of values and principles for a good working of the organization. The unity may be based on cultural, linguistic, physical, social, religious, political, ideological and psychological differences or may be established on the understanding that difference enriches the human interaction.

In that context the new concept of “European identity” appears like a natural goal even it had not been one in the beginning of the organization. It guarantees of founding a viable solution for challenges of all kind which appear to both to national and regional level. It cumulates the national ideas transposed to an upper level.

Concerning the specific idioms analyzed in this paper, it may be made some general remarks. The concept “cultural, linguistic and religious diversity” may be analyzed or as a concept compound by distinct concepts with particular availability or as a complex concept which has a special meaning only conjunctively.

First of all, it may be observed the emergence of the notion of “cultural diversity” as incorporating a distinct set of policy objectives and choices at the global level [5]. As well, it may be underlined that there are two ways of assessing “linguistic diversity”, absolute number of languages and the percentage of the population speaking the largest language [6] in a certain geographical area. “Religious diversity” is defined as acceptance of various religions [7].

“Cultural, linguistic and religious diversity” is a very broad concept and include comprehensively the differences that exist between people, such as values system, language, traditions, societal structures, art and religion. In the field of human rights, it is covered by the term of “national minorities” which has provoked constant controversies both to the regional and international level. In the absence of a unanimously accepted definition, “national

minorities” are a group of persons numerically inferior related to state population, whose members are citizens of the state who have distinctive ethnic, religious or linguistic identity from the majority population and who desire to preserve their own peculiarities [8].

3. Legal framework

The issue of cultural, religious and linguistic diversity, being considered component of *ius cogens* [9], has been regulated to the international, regional and national level, taking into consideration both general and particular approaches.

3.1 International legal framework

3.1.1 United Nations

The main instruments relative to the minorities are [International Covenant on Civil and Political Rights](#) (ICCPR) of 16 December 1966 which in article 27 provides: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language”; [International Covenant on Economic, Social and Cultural Rights](#) (ICESCR) of 16 December 1966 which stipulate in article 13 : “1. [The States Parties to the present Covenant] (.) that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms(.)

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, (.), and to ensure the religious and moral education of their children in conformity with their own convictions”; [Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief](#) of 25 November 1981. (Resolution 36/55 of the General Assembly); [Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities](#) of 18 December 1992 (Resolution 47/135 of the General Assembly); [Resolution 2005/79](#), Rights of persons belonging to national or ethnic, religious and linguistic minorities - Human Rights Resolution [10].

3.1.2 UNESCO

It has to be mentioned as well the UNESCO instruments, such as [Declaration of the Principles of International Cultural Co-operation](#) of 4 November 1966, Convention for the Protection of the World Cultural and National Heritage of November 1983, [Declaration of Principles on Tolerance](#) of 16 November 1995, [Geneva spiritual Appeal](#), [Convention on the protection and promotion of the diversity of cultural expressions](#) of 20 October 2005 [10].

3.2 European legal framework

3.2.1 Council of Europe

More instruments have been adopted to the European level, especially by the main European organization specialized in human rights: [European Cultural Convention](#) of 19 December 1954, [European Charter for Regional or Minority Languages](#) of 5 November 1992, [Framework Convention for the Protection of National Minorities](#) of 1 February 1995; Recommendations of the Committee of Ministers: [R \(98\) 6](#), of 17 March 1998 concerning Modern Languages, [R \(2000\) 4](#), of 3 February 2000 on the education of Roma/Gypsy children in Europe, [R\(2001\) 17](#), of 27 November 2001 on improving the economic and employment situation of Roma/Gypsies and Travelers in Europe, [R \(2004\) 14](#), of 1 December 2004 on the movement and encampment of Travelers in Europe, [Reply adopted by the Committee of Ministers on 15 December 2004 to Recommendation 1623 \(2003\)](#) of the Parliamentary Assembly on the Rights of national minorities, [R\(2005\)3](#) of the Committee of Ministers to member states on teaching neighboring languages in border regions; Recommendations of the Parliamentary Assembly: [Recommendation 1134 \(1990\)](#), on the rights of minorities, 1

October 1990, [Recommendation 1202 \(1993\)](#), on religious tolerance in a democratic society, 2 February 1993, [Recommendation 1557 \(2002\)](#), The legal situation of Roma in Europe, 25 April 2002, [Recommendation 1566 \(2002\)](#), European cultural co-operation and the future role of the Assembly, 24 June 2002, [Recommendation 1623 \(2003\)](#), of 29 September 2003, 'Rights of national minorities, [Recommendation 1633 \(2003\)](#), of 25 November 2003, 'Forced returns of Roma from the former Federal Republic of Yugoslavia, including Kosovo, to Serbia and Montenegro from Council of Europe member states', [Recommendation 1688 \(2004\)](#), of 23 November 2004, 'Diaspora cultures' [10].

3.2.2 European Union

Even the European Communities didn't consecrate to the minorities many texts, European Union has retrieved the loopholes, providing a proper regulation in the field. Thus, dispositions regarding minorities are stipulated in Treaty on establishing European Community (EC; articles 3, 149, 151), Treaty on European Union (TEU, article 6), Declaration No 11 annexed to the Final Act of Amsterdam on the status of churches and non-confessional organizations; [Decision 96/664/EC](#), of 21 November 1996, on the adoption of a multiannual programme to promote the linguistic diversity of the Community in the information society; [Declaration of the Council, on respecting diversity and combating racism and xenophobia](#), of 3 January 1998; [Decision 508/2000/EC](#), of the European Parliament and of the Council of 14 February 2000, establishing the Culture 2000 Programme, [Communication of 28 May 2001](#), from the Commission concerning the final evaluations of the multi-annual Programme to stimulate the development of a European multimedia content industry and to encourage the use of multimedia content in the emerging information society (INFO2000) and of the multi-annual programme to promote the linguistic diversity of the Community in the information society, [Decision 2001/48/EC](#), of 22 December 2000, adopting a multiannual Community programme to stimulate the development and use of European digital content on the global networks and to promote linguistic diversity in the information society, [Communication COM \(2003\) 449](#), "Promoting Language Learning and Linguistic Diversity: An Action Plan 2004 – 2006, [Communication from the Commission from 9 March 2004](#), Making citizenship Work: fostering European culture and diversity through programmes for Youth, Culture, Audiovisual and Civic Participation.COM (2004) 154, [Decision 792/2004/EC](#), of the European Parliament and of the Council of 21 April 2004 establishing a Community action programme to promote bodies active at European level in the field of culture, Green paper - Equality and non-discrimination in an enlarged European Union, [Decision establishing for the period 2007-2013 the programme "Citizens for Europe" to promote active European citizenship](#), of 6 April 2005, [Decision concerning the European Year of Intercultural Dialogue](#) of 5 October 2005. As well, The Directorate General Education and Culture (European Commission) designates [European Capitals of Culture](#) and supports the awarding of [prizes](#) in cultural heritage, architecture, literature and music [10].

The most important document adopted in the field of human rights is the Charter of Fundamental Rights of European Union, proclaimed in 2000 and become legally bounding in 2009. Having an original structure on six chapters: Dignity, Freedoms, Equality, Solidarity, Citizens' Rights, and Justice, it is considered the most updated text because it was written taking into consideration the changes of society, social progress and technological and scientific developments.

4. Domain of application of the right to cultural, religious and linguistic diversity

Being founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States – article 6 of TEU, European Union respects fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed

in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law – article 3 of EC Treaty.

As well, the European Union contributes to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organization of education systems and their cultural and linguistic diversity – article 149 of EC Treaty. More particularly, the organization contributes to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore, takes cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures – article 151 of EC Treaty – and respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States and equally respects the status of philosophical and non-confessional organizations – Declaration 11, Final Act.

Included in the chapter on Equality – article 22 of the Charter of Fundamental Rights, the **right to cultural, religious and linguistic diversity** is a commitment done by the Union, its institutions and bodies and its Member States, to organize its activities and to draft its acts in order to respect diversity, especially cultural, linguistic and religious one. It has been preferred this formulation of the right – **cultural, religious and linguistic diversity and not minorities rights** – precisely to avoid more discussions, taking into consideration that some member States of European Union, such as France, don't recognize "minorities" [11].

Article 22 of the Charter is not therefore a traditional fundamental right, but the commitment it contains is liable to strengthen the guarantee of non-discrimination ([article 21 of the Charter](#), beside EC Treaty and TEU, expressly forbid any forms of discrimination based on national minorities), the freedom of conscience and religion (article 10 of the Charter), the freedom of expression and information ([article 11 of the Charter](#)) and the freedom of assembly and of association ([article 12 of the Charter](#)) or indeed the right to education, ([article 14 of the Charter](#)).

5. Legal status of the right to cultural, religious and linguistic diversity

Given the evolution of the legal status of the minorities' rights [12], it has to be specified whether the cultural, linguistic and religious diversity is a collective right or an individual one. In the first stage of their regulation, the rights of the persons belonging to the national minorities were considered collective rights on the grounds of nationality, fact which had as consequence establishment of national states. Currently, the minorities' rights are appreciated as being individual rights which can be exercised collectively [13].

Consequently, taking into consideration the features of each category of rights – collective and individual – and the core and meaning of the right, it can be declared that **the right to cultural, religious and linguistic diversity** is an individual right which can be exercised collectively.

6. Content of the right to cultural, religious and linguistic diversity

The right to cultural, religious and linguistic diversity, being a complex right, is composed by several components which can be determined, not exhaustively, taking into consideration other international and regional documents and courts decisions, such as: right to enjoy own culture, the right to participate to the cultural, social, economic, religious life, right to speak own language, right to practice own religion, right to participate in the making decision, right to participate to the economical development of the country, right to association.

The content of the right being still under discussion to the European Union level, it would be useful to clarify some of its elements presenting some principles from case law of

European Court on Human Rights belonging to Council of Europe (ECHR) and Court of Justice of European Union (CJCE) .

a. Right to enjoy own culture

Under the pressure of development and diverse policies or from their own volition, many gypsies no longer live a wholly nomadic existence and increasingly settle for long periods in one place in order to facilitate, for example, the education of their children. Measures which affect the gypsies' stationing of their caravans have therefore a wider impact than on the right to respect for home. They also affect their ability to maintain their identity as a gypsy and to lead their private and family life in accordance with that tradition. Nonetheless, although the fact of being a member of a minority with a traditional lifestyle different from that of the majority of a society does not confer an immunity from general laws intended to safeguard assets common to the whole society such as the environment, it may have an incidence on the manner in which such laws are to be implemented. The vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in arriving at the decisions in particular cases. To this extent there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 of European Convention of Human Rights to facilitate the gypsy way of life. The Court of Strasbourg does not, however, accept the argument that, because statistically the number of gypsies is greater than the number of places available in authorised gypsy sites, the decision not to allow the applicant gypsy family to occupy land where they wished in order to install their caravan in itself, and without more, constituted a violation of Article 8. Having regard to its findings above under Article 8 of the Convention that any interference with the applicant's rights was proportionate to the legitimate aim of preservation of the environment, the Court concludes that there has been no discrimination contrary to Article 14 of the Convention – ECHR, [Chapman v UK](#), Decision of 18 January 2001.

Gypsies following a traditional lifestyle required special consideration in planning matters does not necessarily go so far as to allow individuals' preferences as to their place of residence to override the general interest – ECHR, [Buckley v United Kingdom](#), Decision of 25 August 1996.

Discriminatory living conditions imposed by Turkey on Greek Cypriots in the northern part of the island (isolation, restrictions on their movements, controls and lack of prospects for renewing or developing their community) are contrary to Article 3 ECHR, [Cyprus v Turkey](#), Decision of 10 May 2001.

b. The right to speak own language

In particular the first sentence of Article 2 of European Convention of Human Rights does not specify the language in which education must be conducted in order that the right to education should be respected. States should, in the sphere of education or teaching, respect parents' linguistic preferences, but only their religious and philosophical convictions. Both Article 2 of the Protocol and Article 8 of the Convention must be interpreted and applied by the Court not only in isolation but also having regard to the guarantee laid down in Article 14. According to Article 14 of the Convention, the enjoyment of the rights and freedoms set forth therein shall be secured without discrimination on the ground, inter alia, of language. Article 14, even when read in conjunction with Article 2 of the Protocol, does not have the effect of guaranteeing to a child or to his parent the right to obtain instruction in a language of his choice. Article 14, even when read in conjunction with Article 2 of the Protocol, does not have the effect of guaranteeing to a child or to his parent the right to obtain instruction in a language of his choice. The object of these two Articles, read in conjunction, is more limited: it is to ensure that the right to education shall be secured by each Contracting Party to everyone within its jurisdiction without discrimination on the ground, for instance, of

language. It remains true that, by virtue of Article 14, the enjoyment of the right to education and the right to respect of family life, guaranteed respectively by Article 2 of the Protocol and Article 8 of the Convention, are to be secured to everyone without discrimination on the ground, inter alia, of language – ECHR, "[Case relating to certain aspects of the laws on the use of languages in education in Belgium](#)," Decision of 23 July 1968.

The linguistic requirement for a post of permanent full-time post of lecturer in public vocational education institutions is imposed as part of a policy for the promotion of the national language which is, at the same time, the first official language and provided that this requirement is applied in a proportionate and non-discriminatory manner. Moreover, the principle of non-discrimination precludes the imposition of any requirement that the linguistic knowledge in question must have been acquired within the national territory – CJCE, "[Groener v Minister for Education and the City of Dublin Vocational Educational Committee](#)," Decision of 28 November 1989.

The adoption of a multi-annual programme for the promotion of the linguistic diversity of the Community in the information society implies that, in addition to Article 130 of Treaty of establishing European Community (measures to ensure the competitiveness of Community industry), the decision should also have been based on Article 128 of Treaty of establishing European Community which obliges flowering of the cultures of the Member States, while respecting their national and regional diversity. The development of infrastructures, the use of technologies and resources, the reduction of costs through centralization of the tools available and the promotion of technical standards in linguistic fields. It cannot be regarded as having the direct effect of improving the dissemination of culture, conserving or safeguarding cultural heritage of European significance or encouraging artistic and literary creation within the meaning of Article 128(2) of the Treaty. The main aim of those actions is to ensure that undertakings do not disappear from the market or have their competitiveness undermined by communications costs caused by linguistic diversity. It must be regarded as one of the elements of a comprehensive programme pursuing above all rationalization of the development of linguistic tools and the rapid establishment of multilingual infrastructures – CJCE, "[Parliament v Council](#)," Decision of 23 February 1999.

The prohibition of discrimination on grounds of nationality laid down in Article 48 of the Treaty also applies to conditions of employment fixed by private persons: to provide evidence of their linguistic knowledge exclusively by means of one particular diploma issued only in one particular province of a Member State. That requirement puts nationals of the other Member States at a disadvantage, since persons not resident in that province have little chance of acquiring the diploma, a certificate of bilingualism, and it will be difficult, or even impossible, for them to gain access to the employment in question. The requirement is not justified by any objective factors unrelated to the nationality of the persons concerned and in proportion to the aim legitimately pursued – CJCE, "[Angonese v Cassa di Risparmio di Bolzano SpA](#)," Decision of 6 June 2000.

The more favorable treatment of these two languages could not be justified nor even motivated, which would constitute in this regard a violation of the obligation of justification provided for under Article 253 of Treaty of establishing European Community. To require candidates complete certain documents and conditions in English in the calls for applications, concerning knowledge of English and French, constitutes clear discrimination based on nationality, since it favors candidates whose native language is English or French. Article 41 of Treaty of establishing European Community does not provide that Article 230 of Treaty of establishing European Community is to apply to the provisions on police and judicial cooperation in criminal matters in Title VI of the Treaty on European Union – CJCE, "[Kingdom of Spain v Eurojust](#)," Decision of 15 March 2005.

c. Right to participate to the political life

The Court of Justice of European Communities stressed the importance of freedom of association and of the principle of pluralism in a democratic society and recognised that this freedom is particularly important for persons belonging to minorities, including national and ethnic minorities. its memorandum of association refer to Silesians as a "national minority" suggesting the intent of circumventing the Elections Act and obtaining electoral privileges and rights granted only to national minorities .the interference in question was not directed against the substance of freedom of association, because it "was essentially concerned with the label which the association could use in law – with whether it could call itself a 'national minority' – rather than with its ability to act collectively in a field of mutual interest - [Gorzelik and others v Poland](#), Decision of 17 February 2004.

d. **Right to practice own religion**

If a candidate informs in good time the appointing authority that religious reasons make certain dates impossible for him the appointing authority should take this into account in fixing the date for written tests, and endeavor to avoid such dates - [Vivien Prais v Council](#), Decision of 27 October 1976.

7. Conclusions

Considering what happens nowadays in Ukraine – army war – is a regrettable exception which has the role to underline the conditions of accomplishment of the rule in the field of confrontations, policy and economy criteria are completed by the criterion of cultures. Nevertheless, this cultural warfare existing in European Union is a positive one since the European identity begins to take shape as a natural phenomenon. Only in this manner, the success of the European Union as organization is proved; its inside efficiency influences the relations with other states or organizations. Withal, the price of the cultural unification of European Union cannot be omitted: lost symbols, traditions buried to the local level, switched values, breached principles which can outline false identity features.

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