

Balázs Szabolcs GERENCSÉR

Linguistic rights in the Laws of Procedure

The usage of the mother tongue in legal procedures of the Hungarian communities living in the Carpathian Basin - especially in Slovakia, Ukraine, Romania, Serbia, Croatia and Slovenia

Summary of the doctoral thesis

Budapest, 2006.

1. Summary of the research objectives

The aim of the research is to find out the possibilities, practice and problems of the use of language in legal procedures of the states of the Carpathian-basin in which over two and a half millions of Hungarian live as a minority.

Language is one of the main characteristics of the minorities. Hence, Francesco Capotorti in his famous definition of minorities marks the language on the third place after the ethnic and religious character. Besides definitions in the scientific literature, the principles of anti-discrimination mention the language as a special feature that distinct people.

In minority life the use of language covers a great many areas, such as parliamentarism, the right to associate or to self-government. Two of the most sensible areas are education and the media (freedom of the press). Beside all these the use of language may be regulated in the civil sphere as well (for example in contract law, succession, commercial law, intellectual property law, etc.). If a citizen belonging to a particular minority community may learn his mother tongue in the school, has access to mass media in that language and may sign contracts written in her own language, that language would still be used among the members of the closed community. That is the reason why the states should guarantee the right to use minority language at the authorities either as personal or collective rights.

First in this work I examine the historical background of contemporary legal provisions. During the examination of the different acts in force, I realised that the legal institutions based on these acts have their roots in historical antecedents. (For example, the role of the language acts in Slovakia, the doubled land registration and the deficit of the enforcement of the legal provisions in Romania, the traditions of autonomy and its effect to the linguistic rights in Serbia, etc.) All this historical background should be open up if we are interested in understanding the norms that are presented as the results of the research in this paper.

In the second part of the paper I examine the operating legal regulations concerning linguistic rights of the minorities in the Carpathian-region: the main international documents and the domestic law. Among these international regulations I analyse the Council of Europe's European Charter on Regional or Minority Languages, the Framework Convention for Protection of National Minorities and the OSCE's Oslo Recommendations on the Linguistic Rights of National Minorities. Concerning the treaties, I present their enforcement as well. The domestic law of the states of the Carpathian-basin is examined from the constitution through the language act (if there is

any) and to the acts of procedures (both administrative, civil and criminal procedures). In the end, I compare the presented regulations to daily practice, which I learned on the study-tour in the examined region.

2. Methodology

The norms of the use of language in the examined procedures should not be compared only grammatically. The bibliography for this work was gained in libraries, special collections, through the Internet and public institutions (such as ministries and embassies). I have been collecting the articles of the daily and weekly press in this topic since 1999.

I obtained most of the examined laws in English or German through libraries and embassies. I received some help in the translation of original documents from my interviewees and the members of the *Flachbarth Ernő Minority Research Group* established in the Pázmány Péter Catholic University Faculty of Law and Political Sciences.

After having finished the basic studies of the topic and collecting the bibliography I left for a research tour to the examined states to gather information about the daily practice. The tour endured from 14 May 2005 to 15 August 2005, almost 5000 kilometres in length. My interviewees were judges, prosecutors, solicitors, notaries, legal advisers, and counsellors. I tried to differentiate between people by the level of procedure (first instance and appeal level, local and regional level), furthermore, I tried to learn information on the 'block' and 'scattered' Hungarian minority as well.

During the interviews I got to know the enormous difference between the laws and the practice that was even wider than I imagined. In each region the minority is aware of its situation but up to now there was no comparative research that could bring the existing problems to the surface in all examined regions. For these problems to be solved, a unified action is needed (first of all the knowledge of the legal terminology - that is detailed in the thesis). I had the honour and the pleasure while making the approximately 40 interviews that I could take part in the newly shaped professional information flow between the regions of the Hungarian minority.

The thesis has comparative approach while examining the historical and present regulations of linguistic rights. According to my observations it is necessary to publish more comparative law studies that may help to

develop the legal regulations (*de lege ferenda*) and may be used in the minority policy. The aspects of comparison, that are detailed in the analysing chapters, are defined whether they are able to represent the functioning or even the lack of linguistic rights.

Comparison of the legal regulations in force is based on a questionnaire that was used during the study-tour. It was compiled to be able to get to know the use of language and the problems in detail. To achieve this aim, I sorted the questions around two topics: one was on the implementation of the legal regulations, the other was on the lack of legal terminology, which was a presumption of mine that earned verification by the end of the tour.

3. Results and applicability of research

A) Summary of the results of the research

The thesis presents the historical background of the procedure laws in force. This historical review aims to get the reader to be able to understand the role and place of these regulations in the examined law-systems in a historical context.

Furthermore, the research examines the possibilities of use of minority language in the procedures. The principle that was set in the Hungarian 1968 Nationality Act that the language of the decision follows the language of the petition is not relevant nowadays in the examined countries. Even so the first possibility to use a language different from the official state-language is the petition/action. Most of the examined states do not accept a petition written in minority language. The main part of the proceeding is the evidentiary procedure. Minority language may be used at the trial, questioning of a witness, making a statement and the minutes that is written on all these action. Nowadays in the examined countries, except in the case of the former Yugoslav states, there is no possibility to use minority languages in the abovementioned actions according to the laws in force. If I experienced (Hungarian) minority language in the procedure did not happen in legally regulated way. We may set that it is not possible to take the minutes in minority language in the examined procedure laws. (There is a legal possibility in the former Yugoslav states, but it is not used in the practice because the translation doubles the work of the already overladen judges. The rules of procedure of Slovakia, Ukraine and Romania are prohibiting taking bilingual minutes.) Most of the actions of the evidentiary procedure assumes summons or notification that calls the minority question as well. In my research I found bilingual summons only in Transsylvania, in Csíkszereda/Miercurea Ciuc (Romania). After the clarification of the matters of fact the next step is the

decision making that is related to the minority-protection, in which only the southern former Yugoslav states permit the use of the mother tongue. In Slovakia, despite the fact that it is an EU member state, and in Ukraine and Romania there is no legal possibility for that. According to my observations it is quite frequent that the client does not understand the decision written in the official language. The matters of the second instant need a bit different approach. The official language of the authorities of the second instant is the state-language, according their regional character, which regulation was used in the 1868 Hungarian National Act as well. On this base there are further questions that are detailed in the thesis' concluding chapter such as extra expenses and other organizational tasks. In the end the use of minority language appears in the management of the authorities that is only permitted by law in Serbia, Croatia and Slovenia.

Further result of this comparative research is that it brings such problems to light that are similar in all the regions that are inhabited by the Hungarian minorities and have not been realised yet. These difficulties are not (only) to criticise the legislation but to help in the better practising of the given legal environment. Such problem is the development of the professional qualification, the appropriate education of the Hungarian legal terminology, the improvement of the professional affiliation, the proper informing of the members of the minority about the rights they have, and the change of experience between the regions.

B) Applicability of the results of the research

a) The role of research on Hungarian minority and the collection of facts on the spot

As I mentioned above, one of the experience of my study-tour is that there is a great necessity of comparative research on the Hungarians (and other minorities) living in Central Europe. This paper only examines the right to use a minority language but that is just one important aspect of minority rights. Other topics that are waiting to be published were both suggested by my interviewees and found out during the research.

Without giving a full and detailed list of the further possible topics that might be examined with a comparative approach, such issues came to light during my research:

- the role of regionalism, cross-border cooperation,
- the role and future of self-government,

- the role of national minorities in governmental structures
- comparison of the electionsystems that correlate to national minorities
- right to education (comparison of the levels of education, for example, correlate to admittance to the education or the structure of education)
- enforcement of human rights (such as freedom of association, and freedom of speech).

Furthermore, I experienced that comparative research may lead to applicable result if the collection of facts was elaborated by an “on the spot” visit. All of these abovementioned topics may not be fully investigated only by reading books and articles. The professionals living in the examined region may give the most useful information according to the enforcement of the legal environment. All these information together may give a well-tint picture of the examined area.

b) Linguistic rights in the international representation

The thesis explains the scenes of minority representation of interests: the representation in the homestate, connection with the kin-state and third, the representation at international level. Noteworthy, Hungary highlights the minority-protection in its bi- and multilateral international relations and at the international level (see Hungary's role in the drafting of the EU Constitution). It is also noticeable that the interest of minority protection provokes heavy opposition in international relations.

According to the results of the thesis, it may be suggested to the diplomacy that the notion of linguistic rights might be more acceptable in Central Europe than minority protection. It may be the highlight of the aims of Hungarian diplomacy in minority affairs - being aware of that the linguistic rights are only a small piece of the widespread minority protection.

c) The necessity of the good relations with the Hungarian Diaspora

As the thesis concludes, it is necessary to support the lawyers (and each white-collar worker) of the Hungarian communities in the Carpathian Basin to be able to preserve the Hungarian language outside the borders. This connection with the minority may be developed in various types and levels.

As a result of the research the following areas call for development of relationships, both formal and informal:

- among state and self-governmental bodies; institutions of jurisdiction (ie. courts, public prosecutor's office);

- among lawyers' professional civil organisation;
- among universities and scientific institutions.

Latter have a very important role in the education of the next generation of lawyers bearing the minority language.

d) Equipment of improvement of the usage of the mother tongue in legal procedures

In the last chapter, the thesis summarizes the equipment that may help in developing the judiciary in minority language. Because of their multiple structures and their direction that is against the majority interest, the help of the kin-state is necessary.

The following intersections are highlighted in the thesis among those that are occurred during the research and are considered highly important:

- the development of the education of lawyers; reviving the Hungarian scientific life in the Carpathian-Basin;
- shaping professional trainings and cooperation;
- encouraging professional representation;
- publishing professional legal dictionaries of terminology.

4. List of publication and studies elaborated in relation to the topic of the thesis

Minority protection in international organizations

in: Magyar Kisebbség 2002/1. szám, Kolozsvár (Szerzőtárs: Juhász Albin)

National minorities and connection with their kin-state

Flachbarth emlékkönyv. Ed.: Dr. Szabó Marcel (Budapest, 2003.)

System changing in minority-policy in Hungary - review

Magyar Kisebbség 2003/1. szám, Kolozsvár

Constitutional law research beyond the borders

Doktori Iskola Prelegálások III., PPKE, Budapest, 2004.

Variation of use of language in the history of the Southern-land

In honorem magistrorum Botos Gábor; Neolife, Budapest, 2005

Linguistic rights –acts I.: The 1920 language act, Czechoslovakia

Magyar Kisebbség 2004/4, Kolozsvár

Linguistic rights –acts II.: International treaties after the first world war

Magyar Kisebbség 2005/1-2, Kolozsvár

Linguistic rights – acts III.: The 1868 Nationality Act and Hungary's regulations on linguistic rights

Magyar Kisebbség 2006/1-2, Kolozsvár

The minority act and the use of language –debate

Magyar Kisebbség 2005/1-2, Kolozsvár

A complete linguistic right: the minority autonomy

A Közjogi Államtudományi Kutatócsoport Publikációi I-II; Rejtjel, Budapest, 2006.

Minority research and the Flachbarth Ernő Research Group

Flachbarth Füzetek, 1. kötet, 2005. Bibliotheca Facultatis Iuris Universitatis Catholicae de Petro Pazmany Nominatae, Budapest

Comparative studies aiming law-development

Formatori Iuris Publici, Ünnepi kötet Kilényi Géza Professor hetvenedik születésnapjára; Szent István Társulat, Budapest, 2006.

Comparative examination of constitutional minority-protection
Doktori Iskola Prelegálások (PPKE-JÁK) V. szám, 2006.

Historical review of the linguistic rights in Romania
Romániai Jogtudományi Közlöny 2005/2.