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**THE LEGAL PROTECTION OF THE LINGUISTIC
RIGHTS OF THE NATIONAL MINORITIES**

- ABSTRACT -

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The existence of some minority groups on the territories of the states represents an incontestable reality. Nowadays, there are thousands of minority groups in the world, different from the majority ones, which are also diverse through race, ethnicity, religion, culture or language.

Migration has always been a phenomenon that allowed the distinct minority groups to circulate searching for better jobs and for obtaining better income. The forming of the minorities was determined by varied causes, starting from the slave trade, continuing with the colonisation or the need for manpower, generated by industrialisation, and leading to the falling of empires and the generated consequences of new state formation, or the division and the reorganisation of the world.

The linguistic rights of the minorities, as a fundamental element of the human rights, work for the free constituency of the personal identity, through language, which is regarded as a way for transmitting the culture. The linguistic rights protect both the languages and their speakers.

In Chapter I, headed “The national minorities and the right to identity”, there are analysed the notion of national minority, international juridical instruments on addressing the protection of the national minorities, the recognition and the guarantee of the right to identity, the bearers, the object, the juridical protection and the limitations of the right to identity, along with the explanation of the linguistic rights and the mentioning of the exercising principles for these.

The problem of the national minorities generates in the modern period of Europe, an era dominated by the religious conflicts among the different groups sharing a territory, in the states that used to know only one official confession.

The existence of religious wars generated certain concerns inside the international communities. There was more and more accentuated the need for creating an international system for the protection of the religious minorities. Such a system was to be later extended towards the protection of the ethnic and religious minorities.

The complexity and the difficulty generated by the existence of the minorities was considered by the international community in the inter-wars period. The states formed after the fall of the Tsarist, Ottoman or Austro-Hungarian empires, had on their territories ethnic, religious and linguistic groups that were different from the cultural, religious and linguistic point of view, as related to the majority population.

After World War II, the international community accentuated the protection of rights and the human freedoms. The Charter of the United Nations from 1945, adopted at San Francisco Conference, proclaimed the promotion and the encouragement for the observation of the fundamental human rights and freedoms, regardless the race, gender, language or religion, without mentioning anything on addressing the minority problem.

In the international law, there is not a normative definition of the minorities. Such a situation generated contradictory problems when it came to the perception of the states regarding the problem of the national minorities. Some states assert that there are not any minorities on their territory (for example France, or few Latino-American states), along with those that recognise the existence of the minorities on their territories, having in their constitutions dispositions on the rights of the minorities. The first international treaties on the protection of the religious minorities, enclosed dispositions through which there was provided that

the Protestants and the Catholics have to live together in peace and harmony, along with other dispositions in which there was affirmed the principle of religious freedom and equality. This principle was later confirmed at the Congress of Vienna, in 1815.

The concept of national minority was approached in the system of the United Nations Organisation and in the European law.

The reports drafted after the studies ordered by the United Nations Organisation Sub-commission on the protection of the human rights, established the concept of minority on the numeric and sociologic criteria, introducing a certain subjective connotation.

In the European law system, the notion of minority was approached in 1993, by the Commission for Democracy through Law of the Council of Europe, and in a bill, an annex to the Recommendation 1201 of the Council of Europe Parliamentary Assembly.

The definitions provided for the concept of minority present certain limitations too: the construction of the definition based on the supposition of a conflict between the minority and the majority; the accentuating of the subjective criteria; the tendency to exclude certain ethnic, linguistic or religious groups; the use of the numeric criterion.

In the Romanian Constitution, the concept of minority has the following connotations: the equality in rights and non-discrimination of the citizens; the guarantee of the rights, for the people who belong to the national minority, to keep, develop and express their ethnic identity; the declaration of an ethnic, linguistic or religious community as national minority.

The main international juridical instruments on addressing the protection of the national minorities are: the Universal Declaration on Human Rights; the International Covenant on the civil and political rights; the United Nations Declaration on the rights of persons belonging to national, ethnic, religious or linguistic minorities; the Framework Convention on the protection of the national minorities; the European Charter of the regional or minority languages.

The right to identity is an inherent right that belongs to the national minorities, which has as correlative obligation, the duty of the states to protect this right.

The object of the right to identity of the people belonging to the national minorities encompasses: the ethnic identity; the cultural identity; the linguistic identity; the religious identity.

The right to the linguistic identity has as purpose the free construction of a person's identity through language, as a means for transmitting culture. The right to identity is an individual right, and not a collective one. The linguistic rights represent a category of the human rights, which are undoubtedly necessary for the speakers of a minority language. They protect the persons who belong to a national minority against seclusion and linguistic intolerance.

The principles for exercising the linguistic rights are: the principle of the territorial exercised right; the principle of personality.

In Chapter II, entitled "The linguistic rights of the national minorities in education", there are examined the problems regarding the right to education, to studying, the free access to any form of education, the organisation in structures with teaching in the language of the national minorities, the providing of human resources for the carrying out of the education in the languages of the national

minorities, the providing of material conditions, proper for the teaching in the mother tongue.

The right to education is among the fundamental human rights. Through this right, there are transmitted the values, the language, the religion, the customs and other cultural elements of a society.

The right to education was qualified as an economic right, social right or cultural right. Nevertheless, it contains all the three dimensions.

The right to studying is a component part of the right to education, which every human enjoys, representing, alongside, a way in which the manpower is formed and trained. It has a great impact inside the society, the state being involved in its accomplishment. The state guarantees the right to education for all the citizens. The education is done in Romanian. The persons who belong to the national minority have the right to study in their mother tongue. They have access to all the forms of education from our country, both with teaching in the majority language and those with teaching in the language of the national minorities, or in an international language.

For all the levels, types and forms of education, there can be organised functional structures for the teaching in the national minorities' language.

The educational structures with teaching in the language of the national minorities are organised according to the concrete situations, officially or on the request of the parents or legal tutors, consistent with the law.

In the administrative territorial departments, where there are more schools with teaching in the national minority's language, there has to be at least one school with juridical personality for each mother tongue, regardless the number of students.

The providing of the human resources for the carrying out of education in the languages of the national minorities, is done through their right to representation in the leading boards of the schools, through specialists among the national minorities, having professional competence in that specific language, from their leading or executing positions.

The people belonging to the national minorities are provided with the material conditions for the study of the subject matters taught in the mother tongue, by making available for them the specific didactic materials, the transportation from home towards school, a free meal and the basic financing of the schools.

The third chapter, having the title “The linguistic rights of the national minorities in justice”, brings forward extremely sensitive issues regarding the rule of law and the justice, the right to a fair trial as a guarantee for the observing of the national minority linguistic rights and the protection of the linguistic rights of the national minorities in case of actions at law.

The relations that are established between the state and the law, are sometimes complex and difficult to explain, having considered the fact that the state is, on one side, a legislator, and on the other side it is itself subjected to the created laws.

The state governed by the rule of law is not based only on a formal law, but also on the human dignity and freedom, on the participation of the citizens and the limitation of the state’s interference in those actions that do not infringe its existence and interests.

The guarantee of the human rights observation, through the right to a fair trial, represents, in the same time, a guarantee for the observing of the national minorities linguistic rights in justice.

The official language, for the actions at law in Romania, is Romanian.

The citizens who belong to the national minorities have the right to express themselves in the mother tongue in courts, under the provisions of the organic law.

The exercising of the right to express themselves in the mother tongue in courts, by the Romanian citizens who belong to the national minorities, is done with the use of interpreters or translators.

The right of the persons who belong to the national minorities to express themselves in the mother tongue can be requested both in trials, suits and administrative jurisdictions.

In Chapter IV, entitled “The linguistic rights of the national minorities in the public administration”, there are presented juridical aspects on addressing the notion and the structure of the public administration, the valences of the public administration, the use of the mother tongue, in the relations between the public authorities and the citizens that belong to the national minorities, the linguistic rights of the national minorities in the public services.

The public administration represents all the activities realised by the public administration authorities, as public power, through which there are fulfilled the laws and carrying out the public services, both for the society, from the general point of view, and for its different segments.

The public administration is tightly connected to the social environment, politic environment and juridical environment.

The linguistic rights of the national minorities in the public administration are exercised and materialised in the relations between the authorities of the public administration and the citizens belonging to the national minorities through: the use of the mother tongue in the local and county meetings; the asking of questions

and the answering to them in the mother tongue, by the local public administration; the use of the mother tongue in the official ceremonies; the use of the mother tongue in case of marriages; the writing of the name of localities and public institutions in the mother tongue; the display of the public interest announcements in the mother tongue too.

The manifestation of the national minorities' linguistic rights in the public services is concretised through: the use, by a child of their own language along with the community members; the communication, in the mother tongue, to a patient of the medical relevant information; the sustaining of the writing test in the mother tongue, for obtaining the driving licence; the use of the mother tongue in the fiscal administration; the call of the emergency service in the mother tongue; the use of the mother tongue in case of social inspection; the informing in the mother tongue about the conditions from the social protection centres, of the disabled people; the use of the mother tongue by the police officers.

In Chapter V, which has the title "The linguistic rights of the national minorities in mass media", there are evidenced concepts as: mass media and the society; the right to information; the guarantee of the linguistic right of minorities in radio, television and print media.

Mass media represents an extremely important factor from the social life. It has always exercised a strong influence on all the social segments.

Mass media is present in the political, economic, social life, being, in its turn, a huge industry. Due to the role and the influence that it has in a society, it has been called the fourth power in a state.

The most important functions of mass media are: the function of information; the function of communication; the cultural-educative function; the

function of interpretation; the function of entertainment; the function of speaking and language.

The right to information is a real fundamental right because it protects the development of a human's personality and the exercising of freedoms given to them. The expression of thoughts, opinions, religious beliefs and any kind of creativity, is nonetheless conditioned by the human's possibility to receive data and information regarding the socio-political, economical, scientific and cultural life.

The right to information is directly connected to the freedom of speech and, moreover, to the freedom of opinion.

The right to information includes: a person's right to be promptly, correctly and clearly informed about the preconized, and especially, the already taken measures by the public authorities; the free access to the sources of public information; the possibility of people to receive directly and normally the radio and television shows; the obligation of the governmental authorities to create material and juridical conditions for the free and ample broadcasting of any kind of information.

The linguistic rights of the national minorities are guaranteed and protected in radio and television by the providing of radio stations and shows in the minority languages, and through the channels and programmes in these languages. In the printed media, the linguistic rights of the national minorities are guaranteed through the creation and the maintaining of press bodies in the regional or minority languages, and by publishing of articles in these languages.

The supplementary costs for the public radio and television services, along with the press services in the languages of the national minorities, are supported from public funds.

The support for the training of the journalists and the media staff that use the minority languages, constitutes another form of endorsement for the exercising of the linguistic rights in mass media.

The freedom to live transmission of the radio and television shows, or to distribute the printed materials in the language of the national minorities, is guaranteed under the limitations of law, in the areas where there are national minorities.

The interests of the minority language speakers are protected through their representatives too, in the public structures for the regulation of the mass media activity.

In the last chapter, headed “The protection of the linguistic rights of the national minorities in the cultural activity”, there are made evaluations regarding the culture and the cultural diversity, the globalization and the culture, the cultural rights, the use of the minority languages in libraries, in cinema, in museums and public collections, in theatre, in the printed press and other cultural activities.

The culture is an inheritance transmitted successively through specific codes of communication, as the gestures, the words, the writing, the arts, or mass media.

The culture represents all the material and spiritual values created by the human kind, along with the necessary institution that spread these values, for the creation of an individual or a collectivity, for the definition of their identities.

The cultural diversity is the particularity of culture that refers to the existence of multiple ways in which there is expressed the culture of groups and societies, and which is manifested in varied forms of expression, development and

transmission of the cultural patrimony, alongside other ways of creation, artistic production and dissemination, regardless the used means or technology.

The cultural globalisation is one of the most obvious, perceived and experienced forms of the globalisation. The cultural interactions between the communities, the circulation of images and symbols and the diversity of the ways of thinking and communication, facilitated by the infrastructure of telecommunications and transportation, marked the contemporary era and laid the foundation for “the new global cultural architecture”.

The cultural rights are an integrant part of the human rights. The human rights are universal, indivisible and independent. They express the possibility for every person to take part freely to the cultural life of the collectivity, to enjoy the arts and participate to the scientific programme and its advantages. Each person has the right to the protection of the moral and material interests that come from any scientific, literary or artistic work, whose author they are.

The cultural rights represent the support of the cultural diversity. The cultural diversity could not exist unless the freedoms as the freedom of speech, the freedom of information, communication etc. would be recognised.

The regional or minority languages belong to the cultural richness of the humanity in general, and nations, in particular. In Romania, there are 20 recognised national minorities, which are represented into the Parliament, and speaker of the same number of modern languages.

The modern languages of the ethnic minorities are used in libraries, through the organisation and preservation of collections of books and publications, and through the organisation and carrying out of projects and programmes in these languages. In cinema, the languages of the national minorities can be used in the

subtitling of the Romanian films in the mother tongue of the minorities and through the making of cinematographic productions, which have as central theme the traditions and the culture of those minorities, in any language spoken in the minority communities.

The museums constitute a genuine background for the use of the minority languages, from the existence of the exhibits drawn in the minority languages, or with bilingual inscriptions, until the use of the modern language in the presentations delivered by the curators, ethnographers, guides, or other people accredited in this position.

The theatres are cultural institutions that promote the cultural values through the staging and the presentation of theatre shows. In Romania, there are 22 theatres in the languages of the national minorities. The German minority has three theatres that are designed for the German audience, the Hungarian minority has eleven theatres for the Hungarian audience, and the other minorities are owners of theatre institutions, where there are carried out activities in their languages.

The writing culture is a landmark that encompasses books, magazines and other publications with literary artistic, technical-scientific character, edited on various supports.

The national minorities from Romania have their own publishing houses that edit and print, each year, a remarkable number of books in their mother tongues. Relevant for this aspect, are the publishing houses of the Armenian, Jewish, Hungarian, German, Russian or Serbian minorities.

The promotion of the culture for the twenty minority groups from Romania, and the use of those minorities' mother tongues, is done through other cultural activities too, other than the previously mentioned ones.

The national minorities are organised and involved in various projects and cultural activities, in which the presentation is done in the languages of those minorities, or bilingual (for example, the ProEtnica Festival from Sighiș oara; the Interethnic Festival from Timiș oara; Folclorica Sărbătoarea Văii Caraș ului Festival; The Cultural Days of the Germans from Banat Festival; etc.)

The minority languages are used in other areas than the ones with preponderant people belonging to the national minorities (for example, the German language, the Hungarian language, the Turkish language etc.)

The cultural external relations constitute a proper background for the use of the minority languages. The German minority from Romania enjoy the cultural Romanian-German collaboration (for example, „Bavaria meets Romania” Bavarian Film Festival). The Hungarian minority also enjoys the Romania-Hungarian cultural collaboration (for example, The Romanian Film Week in Hungary and the Hungarian Film Week in Romania). Other national minorities from Romania also have external cultural collaborations in which there are valued their mother tongues.

The Romanian state recognises and guarantees, for the people who belong to the national minorities, their right to keep, develop and express their ethnic, cultural and religious identity. The protection measures taken by the state to preserve, develop and express the identity of the people belonging to the national minorities are accordingly to the principles of equality and indiscrimination, in relation to the other Romanian citizens.

The right to the linguistic identity is an individual right that aims the people who belong to the national minorities and that commonly exercise it, without transforming this exercising into a collective right. The right to a linguistic identity

has as a purpose the free construction of the person's identity through the language, as means for the transmission of culture.

In Romania, there is recognised the right to use the minority languages in justice, in education, in mass media and in the cultural environment, without transforming these languages in the official ones, and without them affecting the official character of the Romanian language.

The relevance of the European Charter for the regional and minority languages is obvious and can be found on the Romanian territory in all the fields and departments of the social life, in which the people belonging to the national minorities have juridical connections with the state authorities, and which are specifically regulated in the Romanian law system.