

ABSTRACTS

Radu Chiriță: *Ethnic and Racial Discrimination in the Jurisprudence of the European Court of Human Rights*

The present paper focuses mainly on the jurisprudence of the European Court of Human Rights as far as discrimination on ethnic or racial bases is concerned, as well as the relationship of Romania with this jurisprudence, given the conditions of the Romanian state being on the third place in a “top list” of the number of condemnations pronounced by the European Court because of treatments discriminatory from an ethnic or a racial point of view.

The first part of the paper is a quick synthesis of the criteria on the basis of what the existence of an ethnicity or race-based discrimination is determined in the jurisprudence of the European Court of Human Rights. From this perspective we must emphasize especially that, according to the very recent jurisprudence, the existence of such a treatment can be also determined on statistical bases, a criteria the introduction of which is quite far away in our internal jurisprudence, even if some of the decisions of the ECHR are already introduced.

The second part of the paper synthesizes those situations in which Romania was condemned as a follow-up to the procedure in front of the European Court of Human Rights, trying to identify the eventual consequences of these decisions in the internal legislation and jurisprudence

Finally, the paper presents some personal opinions referring to the compatibility of the internal right system of ethnic and racial minority protection against discrimination and the jurisprudence of European instances in the matter.

Keywords: ethnic discrimination, racial discrimination, minority protection

András Cieger: *Liberalism and Reason of State. Politician's Dilemmas on Freedom Rights in Hungary after 1867*

The aim of this paper is to draw a possible context of the Law XLIV of 1868: 'On the Equality of Nationality Rights': what kind of role did the codification of freedom rights play in the reform plans of the ruling (liberal) elite?

Firstly the author shortly summarises the positive effects of the Lawful Revolution (1848) on the freedom rights, than he tries to find answers to the following problem: after the Austro-Hungarian Compromise of 1867, despite of the good antecedents and the promises of the political elite, the codification of freedom rights was slow and incomplete. According to the historian the reasons of this phenomenon are: (1) the new political system of 1867 had not got complete legitimacy, the system was legitimated formally, but not substantially (the moral identification of the subjects with the political regime was missing). (2) the system-stabilizing efficiency of governments was low and the reform questions divided the ruling party (and the opposition too). (3) At last the author analyses the modification of the Hungarian liberal program in the second half of the 19th Century. During this period the liberal ideas did not disappear totally, but a more pragmatic and state-defending liberalism replaced doctrinal liberalism. The idea of national superiority triumphed over the principles of equality.

Keywords: nationality rights, equality, liberalism

Vasile Ciobanu: *Projects for a National Minorities Law in Romania between the World Wars*

After 1918 28,1% of Romania's total population belonged to national minorities. The union declarations adopted at Chişinău (March 27th, Aprilie 9th 1918), Cernăuţi (November 28th 1918) and Alba Iulia (December 1st 1918) stipulated that the rights of the national minorities would be granted. These rights were also written in the Minorities' Treaty signed by Romania on December 10th 1919.

The political parties included the regulation of the minorities' rights in their programmes. Once they reached power, these parties made several attempts to propose projects of bills for the minorities. In 1920–1921, the Averescu government founded a State Under-secretariate office for minorities, which was however dissolved later on. Projects for a bill of the minorities were also suggested by some of the national minorities' representative (V. Dutceak, L. Kecskemety, L. Epstein). They were closely following the laws for cultural autonomy adopted in Latvia (1924) and Estonia (1925).

The government formed by the National Peasant Party in 1928 initiated the preparation of a project for the minorities' bill. Deputy Ghiţă Pop visited the European countries which had minorities and drafted a bill project.

But it never got to be discussed in the Parliament due to the political upheaval and the economic crisis. This situation led to the dissatisfaction of the minorities.

It was only during the authoritarian regime of King Carol II, on August 1st 1938, that the Statute of the Minorities as published and a Ministry for the National Minorities was founded, which was to be dissolved by the national - legionary which came to power on September 14th 1940.

Keywords: national minorities' rights, project for the minorities' bill, statute of the minorities

Sergiu Constantin: *The Italian and Slovenian legal frameworks for protection of national minorities*

The article provides a concise analysis of two complex national systems for protection of national minorities. Italy and Slovenia represent interesting case-studies for the Central and South Eastern European context. They are neighboring countries, members of the European Union and both have a kin minority living on the territory of the other.

While the brief introductory part answers the question "who are the officially recognized minorities?", the main part of the paper deals with the Italian and Slovenian legal and institutional frameworks for minorities in two key areas: education and political participation. The research focuses on the so-called minorities with special status meaning the German speaking South Tyroleans and the Ladins in Italy, and the Italian and Hungarian communities in Slovenia.

The conclusions offer a short comparison of the two systems highlighting the asymmetric features of the protection of minorities in these countries.

Keywords: protection of national minorities, legal frameworks for minorities, institutional frameworks for minorities

Ágnes Deák: *The Nationality Act of 1868 and its antecedents in the Habsburg Monarchy*

In Hungarian historiography the different programmes of the national groups living in Hungary in the 19th century have been already thoroughly investigated. However, comparative studies have mostly neglected a very

important point of view: the national elites had been strongly influenced, whether encouraged or deterred, by political forces and processes of the „other part” of the common empire. All government efforts and failures from 1849 onwards, first of all concerning language use regulation in public sphere, have to be outlined and analyzed in order to evaluate the characteristic features of the regulation of 1868 but at the same time to range it among the former similar initiatives launched by Viennese governments.

In the 1860s political pressure exerted on Hungarian political elite by the imperial central government was aimed at forcing the formers to ensure the use of different native tongues in public administration, jurisdiction and education, moreover to establish autonomous national administrative territorial units in Hungary. Among the Hungarian national orientated intellectuals, however, this kind of constant pressure resulted rather in strengthening of the feeling of being politically threatened than in any strengthening of willingness to compromises. On the other hand, the non-Hungarian national movements rightly resented the restrictive language use regulation and practice enforced after the so-called October Diploma of 1860 and once more regarded the monarch and the Viennese government as their mighty protector against Hungarian politicians. Thus they were driven to represent their national demands without any compromise and not to accept any sort of politics of short steps.

The Bill and its passionate debate in Hungarian parliament in 1868 reflected on both sides not only temporary political strains and views but political experiences of the former last decades as well. The former initiatives of the imperial political centre constituted both stimulating and impeding factors in this process.

Keywords: nationality law, national movements, October Diploma

Attila Demeter M.: *József Eötvös's views on the nationality problem in "Uralkodó eszmék"*

The present paper is a synopsis of József Eötvös's views on the nationality problem, as treated in his seminal work in two volumes entitled *The Dominant Ideas*. In this treatise Eötvös rejects the claims of nationalities for territorial autonomy, yet, at the same time, he emphasizes the importance of local self-government. This reasoning can only be understood by taking into consideration Eötvös's long-term objective, namely the reinterpretation of the dominant ideas of his age. In his view national ambitions

are rooted in the new interpretation that the concept of self-determination acquired after the French Revolution, that is, in nationalism. As a consequence, both the dominant nationality's and the minorities' aspirations gravitate towards achieving supremacy and sovereignty. Furthermore, he argues that the nationality problem can only be settled successfully by turning against its triggering cause, against nationalism. Local self-government is not only a model for a possible solution of the nationality-problem. Along with Tocqueville, Eötvös hopes that self-governance will contribute to an upsurge of patriotism among nationalities, which can be regarded as a political form of collective loyalty.

Keywords: nationality problem, local self-government, self-determination

Balázs Dobos: *The Aims and Concepts of Minority Policy in Hungary (1988-1993)*

The study aims to introduce and analyze the main objectives and concepts represented by the major actors within the framework of formulation of the 1993 law on the rights of national and ethnic minorities in Hungary. On the whole it concentrates on the examination of both the substantive issues of minority interests and the way they made attempts to prevail over others. In consideration of Hungarian minorities living abroad it challenges the prevalent hypothesis stating that granting extended individual and collective rights and non-territorial cultural autonomy for the minority groups in Hungary, however, proved to be just an instrument for Hungary to set an example for the neighbouring countries. I argue that indeed this could be one of the major aims but this was complemented by other, mostly more powerful political and financial interests and concepts at domestic level.

Keywords: minority policy, nationality law, individual and collective rights

Ákos Egyed: *Count Imre Mikó and the Question of Nationalities*

Baron Mikó Imre was called the Széchenyi of Transylvania by even his contemporaries, because as a founder of institutions and as a protector, he closely resembled the great ideal. His conception concerning the question

of nationalities was not an exception to this. In his work published in 1860 and entitled *Principal Ideas* he wrote that national rights “are regarded by the world as sacred possessions which can not and must not be taken away or suppressed. The conscience of the world protests against this, as do the citizens and humanity as such.”

He stated several times that he lists the erasure of the laws referring to feudalism and aristocracy, and the constitutional announcement of the citizen equality rights among the greatest achievements of the 1848 Hungarian revolution. In the tensioned political situation following the repression of freedom fight, in the period of neoabsolutism – when the empire politics eager to melt together nations and ethnicities constituted a danger for the identity of the different ethnic communities within the monarchy – he concluded: “The fact that we are feeling passionately about our nationality does not suppose that we distance ourselves from the others, or that we regard them as our enemies – a Hungarian should remain Hungarian, a Saxon should stay a Saxon, while a Romanian a Romanian, and each of them should attend to their own nationality, thus they live together in peace, and if the common interest of their country should demand, they need to hold each other’s hands to help her.”

Therefore the views of count Imre Mikó may be summarized as: guarding one’s identity, recognizing difference and cooperation in common issues.

Keywords: nationality problem, national rights, ethnic communities

Csilla Fedinec: How Should the Rusyn Autonomy Look Like? The Question of the Transcarpathian Mini-State

In the period between the two world wars the official circles of Hungary offered material help to parties militating for autonomy in Transcarpathia, with a clear political intent. After the region – following the first Vienna dictate, and then the armed intervention in March 1939 – reentered again under the authority of Hungary, Prime Minister Pál Teleki strongly urged the autonomy of the Rusyns to be granted. My aim is to analyze the argumentation system of plans and public opinions issued between the 18th of March 1939, when the Prime Minister held the first official conference on the question, and the 5th of August 1940, when he revoked the legal plan presented to parliament, with a special attention paid to allusions to the 1868 nationality law.

Keywords: autonomy, Transcarpathia, nationality law

Gábor Gángó: *The Hungarian Minorities Act 1868: 44. and Its Aftermath*

The study through revisitation of the parliamentary debates of and some political writings on the Hungarian Minorities Act 1868: 44, seeks the answer of how far this legislation process predetermined the framework of reasoning on nationality matters in Hungarian legislation up to the present days.

It argues that the spiritual father of this Act, Ferenc Deák, was not as much motivated by arrogant nationalism as by intentions to defend the then existing playground of Hungarian political community. His notorious formulation of the one and indivisible Hungarian nation, however, returned in the 2000's in Hungarian legislation on ethnic Hungarians living in the neighbouring countries.

Keywords: nationality law, Hungarian legislation, nationalism

István Horváth: *Minority Language Rights and Minority Language Use in Romania*

In the last approximately two decades a specific change of trends characterized minority language policies in Romania. The language policy of the first years following the change of political systems (approx. the period 1990-1996) was not beneficial for the minorities in many respects, then, beginning with 1996 (even if not in a fluent manner and also paradoxical to a certain degree) a new language policy course started, which tolerated pluralism and also supported some of its aspects. In the first part of our paper we will analyze the characteristic features of the different language policy directions, and also the specificities of the current language policy in Romania. In the second part, based on data concerning characteristics of language use of the Hungarians in Romania, we will evaluate the efficiency of the current language policy course, from the perspective of minority language use.

Keywords: language rights, language policy, minorities

Judit Pál: *Union or Autonomy? The Legal Regulation of Transylvania's Union*

The paper examines the terms of coming into being of legal article nr. XLIII. from the year 1868 which regulated the union of Hungary with Tran-

sylvania. As a consequence of the conciliation, union came again into being, however this was not legally approved for two more years, and it was accepted by the parliament only at the end of 1868, together with the nationality law. The delay (besides many other causes) – and here we must mention the delicate minority question as a first one – was also motivated by the fact that the government did not have a clear conception concerning the integration of Transylvania, and not only Hungarians, Romanians, and Saxons could not reach a consensus in the question, but this was the case within the circles of the Hungarian political elite as well. And it was not a coincidence that the two laws reached the parliament's agenda simultaneously, as these related to each other in many ways. Transylvania's question was a question of minorities as well. Because of Transylvania's former autonomy, the question of minorities was most sharply raised here, and rights of the minorities – primarily concerning language use – were most developed here. However, the standpoints of Hungarian and minority politicians rigidly differed both concerning the union and the unified political nation. After long processes of delay the law turned out to be only partly satisfactory, and the conditions of its acceptance illustrate well the difficulties of Transylvania's integration.

Keywords: nationality problem, Transylvania, autonomy, integration

István-Gergő Székely: *Specific Election-Rights Solutions for Minorities - Romanian Legislation in a Comparative Frame*

The aim of this paper is twofold: to review some examples of special institutional solutions meant to facilitate the political representation of national minorities, and to analyze the Romanian regulations in force by comparing them to these examples that can be found worldwide. The paper is structured in the following way: first, we distinguish between general and special electoral rules, the latter type being those rules that apply only to the minorities and are meant to facilitate their participation in decision making. Second, we present the main types of special electoral rules (statutory quotas, reserved seats, exceptions from the electoral threshold etc.), offering examples for each type.

Szekely Istvan: Third, we discuss two fundamental dilemmas that have to be addressed by any of these special solutions: defining the groups entitled to preferential treatment and the compatibility of affirmative action with the principle of the equality of votes. The remainder of the paper is

dedicated to the special electoral rules employed in Romania: the analysis covers the regulations in force both at the level of the Parliament and of the local councils. In the final section, some possibilities for improving the current Romanian system are explored.

Keywords: election-rights, national minorities, special electoral rules

Mihály Tóth: *Creation of Minority Protection Laws and their Validation in Ukraine. Experiences of a New Nation State's Minority Politics*

The minority politics of Ukraine underwent significant changes from the period of independence and up to our days. The author intends to clarify the birth and differentiation(s) of this politics, presenting the main stations and characteristics of the legal context regulating relations of nationalities and languages. Changes occurred in the judgment of the minority question constitute a part of the evolution of the conception referring to the construction of the state, which, in a relatively short historical period, from a state ideal liberal from every perspective gradually arrives at the conception of an administratively absurdly centralized one nation-state with one language. In the framework of this conception a politics of minority protection is gradually replaced by the protection of the majority from the minorities.

Keywords: minority policy, minority protection, Ukraine

Attila Varga: *A System of Minority Rights and the Cultural Autonomy in the Law-Project on the Situation of National Minorities*

After the year 1989, which is generally accepted as the date of the change of political systems, in the Central and Eastern European region in general, and in Romania in particular, a bad, mistaken interpretation of freedom, a precocious situation of the law state, and as a result of the euphoric atmosphere caused by the independence and sovereignty of the state, the ideal of national exclusivity, national unity and of an agreement without conditions came to the forefront, which manifested itself politically in the constitutional anchorage of the nation state.

In such a political situation and constitutional framework the natural presence and reality of national, ethnic, linguistic, cultural and religious di-

versity came face to face with the illusion of the majority nation's uniqueness, singularity, exclusivity, and even if belatedly acquired power.

In the last fifteen years the relationship of the majority and the national communities living in minority changed and formed on the different platforms of the social and political public sphere, and as a result of this (process) minority protection dispositions appeared in the different legal conventions, conditions of social coexistence normalized to a great extent, however, true and overall legal regulation has not happened up to now.

That the necessity of the law referring to the rights of national minorities was accepted can not be considered a change of paradigms in political public thinking, still, if the law project prepared by the DAHR will be accepted in legislation and be applied in practice, it could be evaluated as a serious breakthrough, that can open new perspectives in minority protection regulations, and the quality of minority life as such.

Keywords: minority policy,, minority rights, cultural autonomy

Bálint Varga-Kuna: *The Millennium and the Minorities*

The millennium celebrations in 1896 were meant to propagate the idea of Hungarian statehood on the whole territory of Hungary. As the a propos of the millennium was constituted by the Hungarians' occupying their state territory, that is the armed victory of the Hungarian tribes over the indigenous population, it is not surprising that non-Hungarian inhabitants of the country could not identify with the celebrations. The Hungarian state wished to immortalize the dominance of the Hungarian ethnicity throughout the country with festivities, statues, and monuments, therefore they represented political reality through symbolic gestures. On their turn, (national) minorities intended to demonstrate their disagreement with similar symbolic steps.

A comparative analysis of the national minorities' reactions flatters us with the result that in a given moment we will be able to measure and compare the power and the strategy of the national movements vis-à-vis the Hungarian nation-building. Moreover, the reactions given to the millennium celebrations also present the dividing lines or the regional, religious, generational differences within the national movements as well.

Keywords: nation-building, national movements, national minorities

Csaba Zahorán: A little Hungary in Greater Romania. Alternatives regarding Szeklerland in Hungarian plans from the interwar period

The study analyses the Hungarian plans and propositions regarding ‘the Transylvania question’ in the interwar period (1918-1940) and focuses on the issue of Szeklerland – a region with a Hungarian (Szekler) majority in the very centre of Greater Romania. Suggestions ranged from setting up an independent or autonomous Transylvania or Szeklerland within Hungary or Romania to the region having cultural and educational autonomy within the Romanian state. The 31 examined drafts concerning the region’s integration in Hungary or Romania varied in accordance with the actual political situation and with chances of a change in the status quo. The study concentrates on the parallels and common aspects of the different plans. The documents reveal Hungarian ideas concerning the building of the Romanian nation-state and the government’s minority policy in the two decades between the two world wars, as well as the Hungarian elite’s conceptions of Transylvania and Szeklerland and their future.

Keywords: Szeklerland, minority policy, nation-building