

Analysis of Specific Character Identity in the Light of Relevant International Documents

Gabriel MICU*

University lecturer, National School of Political and Administrative Studies, Bucharest, Romania

***Corresponding Author:** Gabriel MICU, University lecturer, National School of Political and Administrative Studies, Bucharest, Romania.

ABSTRACT

One of the first consequences of the globalization process is the generation of a phenomenon of state integration into federal-like structures, even if they are not necessarily of the known, classical type, like the European Union, for instance. State practice and the literature argue the superiority of the federal form of state organization compared to that of the unitary state, especially in terms of the chances of economic development. Taking into account the closely link between the economy and politics, there are opinions stretching the benefits of the federal system beyond what it can actually offer. In this respect, the authors argues that federalism may be the solution to other categories of political issues that the unitary states face, like the national minorities are, for instance. Our opinion is different, and we are trying to argue the irrelevance of the state structure in solving the issues arising from the status of the persons belonging to a national minority.

Keywords: unitary state, federal state, national minority, decentralisation, regionalisation

GENERAL REMARKS

National authorities are entitled to decide on the type of government that serves the national interest best. The current international community has preserved two main forms of political and administrative state structures, i.e. the unitary state and the federal state. (Dinstein, 1993, 221ff)

One approach that was not embraced by the experts in the field of international relations nor was it recognised in the doctrine and practice of the states is federalisation based on another type of identity, namely historical identity. In order to justify or to ground a federalist projection, other aspects have been debated, such as the identities shaped by *ethical attitudes towards work* and the political attitudes associated to it, or a *territory*, which break down to a specific character, after all.

Other opinion consider federations as a result of the historical developments taking place on certain territories, where a *historical* or *territorial identity* was shaped, beyond differences in culture, language or religion. This type of identity (Molnar, 1998, 56) is deemed to prevail on the evolution of the respective communities, where a specific situation sparked the adoption of a federative solution for a

certain territory, given the coexistence of group minorities. (Molnar, 1998, 61)

The main general international documents regulating the field of national minorities adopted in the latest decades are the Copenhagen Document on the Human Dimension adopted by the OSCE in 1990, the Declaration on the Rights of Persons Belonging to National Minorities adopted by the UN General Assembly in 1992, the Framework Convention for the Protection of National Minorities adopted by the Council of Europe in 1994. According to those documents, the elements defining the identity of human groups, which distinguish one population from another are: *ethnicity, culture, language and religion*.

Through their historical experience, unitary and federal states alike are a living proof that coexistence on a territory has not resulted in the annihilation of cultural, linguistic or religious identity. However, there have been some exceptions, such as natural mixing, the mix of cultures, which inevitably caused some of them to become extinct.

In other words, here have been indeed situations when some cultures died, either because of a natural process of osmosis or the forced assimilation of some ethnic groups.

Consequently, ethnic, linguistic or cultural identity cannot compete against *historical identity*, because that would mean denying all the rights of the minority populations living together with the majority on the same territory. For empires or multi-nation states, that would mean denying the rights of peoples to self-determination.

In this respect, some authors claim that particularly in Western Europe there were confrontation among states and its regional authorities in order to obtain the right to establish their own regional parliaments, a situation defined as “a typical state of civil war of the post-modern (post-national state) age” (Newhouse, 1997, 123). Based on this interpretation, other authors consider that the outcome situation would generate a pluralism of territories that, through a process of secession, devolution, would turn into subjects of the state, i.e. component states. (Newhouse, 1997, 123)

Such interpretation, having cultural roots, was the basis for some author in their argumentation, for instance, that Transylvania would be part of another culture but the other historical Romanian provinces, being rightly entitled to choose another future, politically speaking. This thesis is however countered with political and legal arguments by authors specialising in matters of human and national minority rights. (Andreescu, 1998, 67ff)

As for the *attitude towards work*, we may say that such a criterion does not define the identity of a population but it rather represents a social issue, not an ethnic or cultural issue in nature. On the other hand, such an assumption would violate the principle of the freedom of movement and inter-human exchange, having taken place all the time and having generated substantive changes in human behaviour (Ciongaru, 2109, 17).

Consequently, the so-called *historical identity* or *the identity outlined by the attitude towards work can neither compete against nor are more significant than cultural, linguistic and religious identity*. Should we admit the opposite, it would inevitably lead to another organisational framework of the state, including that of the federal states, one that would not reflect the will of the population concerned.

As most of the states in the world show it in practice, such theses are regarded as an attempt to found the phenomenon of identity on insignificant differences among human groups

or on pure fabrications and even to attach to it consequences it does not cause, not even there where it operates with true and varied identities. In fact, it is inadequate to use the phrase of territorial identity, because it links a socio-human element, i.e. identity, to another element like territory that is not defined by the features of human groups such as ethnicity, language, religion, but by elements of the landscape.

The international documents adopted on the protection of persons belonging to national minorities, both those of universal and regional outreach, approach the right to an identity of those belonging to a minority group in the context of the institution of the specific rights of the respective persons to preserve and express their culture and traditions, to use their mother tongue and to practise their own religion. Without exception, the documents in the field *do not link the issues of identity and the protection of minority groups as a whole to the state structure*, either unitary or federal, or the status of the units that form them.

On the other hand, history has witnessed the development of other unrealistic theories as well, such as the concept of *personal federalism* that relies on none of the credible arguments found in the international documents regulating the issues associated to national minorities. In order to clarify the notion, *personal federalism* is a concept launched in early 19th century to prevent the numerous nationalities subjects of the Austro-Hungarian Empire from taking action towards its dissolution.

The concept is essentially based on uniting people of the same language and culture, irrespective of the place they are found on the territory of a state, in *national corporations*, legal entities of public law order. Such “unifying” entities, placed somewhere in between the state and the individual, were supposed to drive the promotion of the language, culture, religion and the *preservation of historic traditions*.

This vision is nowhere to be found in the international documents adopted in the field of minorities, which provide for the protection of the ethnic, linguistic, cultural and religious identity of the minority group members, including the right to free organisation in both international and national associations and organisations, without the hurdle of concepts such as personal federalism or personal autonomy (Niemesch, 2018, 125).

THE RELATIONSHIP BETWEEN DECENTRALISATION, FEDERALISM AND THE RIGHT OF THE PERSONS BELONGING TO NATIONAL MINORITIES

Federalism, as well as decentralisation, primarily depends on the domestic law of each state. As far as federalism concerns, it is not a matter of international law, but rather one attached to domestic legislation. As for the type of federative organisation, it exclusively depends on the constitutional law of the states (Diaconu, 1999, 237ff) adopting this form of political and administrative structure.

The international doctrine and practice uses the concept of decentralisation, in its widest sense, to designate all the situations when the central authority of and its component units share competencies. However, in its narrow sense, decentralisation is taken for local autonomy, i.e. the limited delegation of competencies conditioned by the control and accountability of central authorities.

The guiding principle of decentralisation provides for the equality of territorial units both in terms of quantity and quality with regards to the competences they are given, wide or narrow, *irrespective of the ethnic structure of their population*. Decentralisation is typical of a democratic system and is used precisely to facilitate the citizens' access to public life, to the adoption of the decisions that concern them.

Considering that, there follows that in the application of the democratic principles, decentralisation equally regards all the citizens of a region, *irrespective of their belonging to an ethnic group*. Only in exceptional situations, did some states accepted or created, for particular reasons, a special regime for one or some of their component territorial units, either by means of international agreements or internal legislation.

As for federalism, it is generally safeguarded in the constitution and it can only be altered through a new constitutional arrangement, a process that involves the component states in the exercise of their federal state executive, legislative and judiciary functions.

As he has already shown, *none of these state structures bears causality to the minority issues*. As decentralised government systems, in the wide sense of the concept, they allow for a more efficient and adequate solution to local problems, offering a more favourable

framework, including for the exercise of the rights that are specific to the persons belonging to minority groups, subject to conditions that should not alter the preservation of the minority identities.

The community political-legal edifice is a particular case of decentralisation process, where two parallel trends become apparent, i.e. globalisation and regionalisation. (Newhouse, 1997, 67ff) In this context, the community legal culture keeps expanding the principle of subsidiarity, which facilitated a development that favoured regionalism, which however must be taken with a grain of salt.

To encourage the local authorities to adopt the most efficient form of self-organisation inevitably leads to gaps in the pace of growth of the regions inside a state, with some of them becoming strong enough to act relatively independently, which in turn leads to the wish of the local authorities to promote their own interests, not only in their relationships with the other regions, but also in their relationships with other countries or regions from other countries.

However, some of these regions find substantive support in the development and consolidation of the European integration, in the community institutions taking over the duty of uniform regulation of various fields, such as national minorities, among others. According to the community legal and institutional framework, regions promote direct economic ties, in fields such as communication or high speed trains, based on geographical proximity, the development and expansion of trade, and cooperation within the production process.

The project "the four highways association" is noteworthy in this respect. It contributes to increasing the competencies of the German states as well as the influence of their lobby offices in Brussels, to the development of Catalanian autonomy, it encourages the federalisation movements in the North of Italy and contributes to the growth of the economic power and the political authority of the Rhône-Alpes area around the city of Lyon in France. (Newhouse, 1997, 71-80)

It becomes apparent that following centralisation cities and regions in Europe have acquired, will strengthen and even expand their set of responsibilities and that they are playing an increasing role in solving economic, social, educational and cultural problems and others alike.

However, irrespective of the level of regional development or the form of organisation, local authorities will never be able to uphold the *social contract* as a whole. Neither will they be able to safeguard social security for all citizens. On the other hand, neither can the European Union be built on regions only, since the Member States are and will probably still make the basic units in the community edifice long time form now.

The issue of regional independence obviously emerges only in the situation it is required by some regions that explicitly claim they want to play such a role, the richest and best positioned regions in the post industrial age, able to cope with the current economic competition by themselves, with no support from the states they are part of. However, we must emphasise that regionalist movements are mainly driven by economic reasons.

It is difficult to imagine that the other regions, which naturally form the majority in the respective state, will agree to such individual developments that will only end up in their isolation from the mechanisms of national solidarity, placing them in an area of economic and respectively political isolation.

Supposing, by a stretch of imagination, that there will be such a local authority that will single-handedly express a political will to expand its area of regional competencies at the expense of central competencies. We would find ourselves in the paradoxical situation where the nation-state would disappear, whereas so far it has been considered to be the highest form of human community political-legal organisation.

More than that, national state gained recognition in the international community as the only instrument able to render justice, to promote effectively tolerance and protect human values. (Newhouse, 1997, 84) On the other hand, the European institutions can only work based on the approval of the states and can only evolve in the direction they agree.

We must not ignore the fact that regionalisation was born as a socio-political reaction both to globalisation and the integration processes, within certain limits nonetheless. First, globalisation and economic integration require consistent solutions taken at the national level, which can only be managed at the state level. Second, however developed or well-intended, regions are not able to solve all problems.

In line with the logic of this section, we can see that *regionalisation bears no connection to the minority issues*, since the principles governing its functioning and development are not connected at all with the protection of the rights or the identity of the persons belonging to minorities. The same logic applies to Euro regions, a concept promoted by the Council of Europe, shaped and developed in the framework of cross-border cooperation.

Even if there may be minorities in an Euro region nearby the border that perceive cooperation with territorial units in the neighbouring states as an efficient way to protect their interest in the preservation and expression of their ethnic, linguistic, cultural or religious identity, the concept of Euro region is subordinated to the principles guiding the activity of the Council of Europe.

According to the rules developed under the aegis of the Council of Europe, the only entity able to regulate the situation of persons belonging to national minorities is they state they are bound to, legally speaking. Based on this assumption, any wish to regulate things in a regional cross-border approach shall make the object of negotiations among neighbouring states whose administrative subunits form the respective Euro region.

In conclusion, Euro region is not entitled to solve the issues concerning minorities, it does not depend on the ethnic mix of the neighbouring regions and does not show a tendency towards federalism, it only has to do with regions found in two or more states.

CONCLUSION

Given all the aspects mentioned before, federalism is rooted in different situations, based on the historical conditions typical of each county where it develops. Seen through the prism of democracy, a federal structure is not necessarily higher than the unitary government system, because decentralisation and the extension of generalised local autonomy can more and more now secure direct participation of the territorial units.

We may even think of generalised local autonomy as a form of participative government, a highly effective political-legal instrument to counter the fight for power among the centre and the component states, an instrument that channels competences based on pragmatic criteria, insensitive to politics, aimed

at finding the most efficient way to solve problems.

In large federal states, the democratic system has imposed one way or another some form of local autonomy, which leads to the conclusion that federalism does not have too much to offer compared to unitary states. Moreover, we can see that long established federations, with a tradition of tens or even hundreds of years, undergo a process of permanent change, of re-negotiating their legal and institutional framework, of finding a new balance among the central authorities and the member states, as a result of the political, economic and social developments from those countries.

As for the countries in Central and Eastern Europe, we can see that they adopted the unitary state, according to their own specific historical tradition, of course. The democratisation process these countries are undergoing includes finding a solution to the problems associated to national minorities, in the sense that they must create the legal and institutional framework safeguarding the rights of the persons belonging to ethnic minorities. In all these states there is a tendency towards local autonomy, not federalisation.

This is the very goal of the regulations developed by the competent European bodies, which reflect the generally accepted concepts in Europe. The proof lies in the conventions adopted by the Council of Europe, which encourage the promotion of local autonomy as a way to develop democracy and safeguard the human rights and fundamental freedoms.

Irrespective of the form of state, the identity of national minority members and the identity

defining the ethnic features of the majority group alike stays *based on language, culture, religion and excludes from the definition territorial, occupational or any other element of different nature*. On the other hand, the international doctrine and practice in the evolution of federations have shown that, for all its different or unique characteristics, there is nothing in the ethnic, cultural or linguistic identity of the populations living on a territory that can shape or influence in any way the federative structures or trends.

REFERENCES

- [1] Dinstein, Yoram, *The degree of self-rule of minorities in Unitarian and Federal States*, în Peoples and Minorities in International law, edited by Catherine Brolmann, Rene Lefeber, Marjoleine Zieck, 1993.
- [2] Molnar, Ferenc, *The Transylvanian Questions*, în Hungarian Quarterly, vol. 39, nr. 149, 1998.
- [3] Newhouse, John, *Europe's Rising Regionalism*, în Foreign Affairs, vol. 76, no. 1/1997.
- [4] Andreescu, Gabriel, *De la „ problema transilvană” la „ problema europeană”*, in Altera no. 8/1998.
- [5] Ciongaru, Emilian, *Human Rights, International and Constitutional Guarantees - Concept and Evolution. Elements that Lead to the Need for Coding of Human Rights*, in Review of International Conference European Integration - Realities and Perspectives 14th Edition, Danubius Publishing House, Galati, 2019.
- [6] Niemesch, Mihai, *International public Law*, Hamangiu Publishing House, Bucharest, 2018.
- [7] Diaconu, Ion, *Minorities in the third millennium*, Romanian Association for Democratic Education Publishing House, 1999.

Citation: Gabriel MICU. “Analysis of Specific Character Identity in the Light of Relevant International Documents”, *International Journal of Research in Humanities and Social Studies*, 7(11), 2020, pp. 1-5.

Copyright: © 2020 Gabriel MICU. This is an open-access article distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.