

CONSTITUTIONAL LEGAL SYSTEM'S CUSTOMIZATION IN THE SERBIA WITH THE *EU ACQUIS* *CONTEXT OF THE NATIONAL MINORITIES*

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1.

Individual and collective human rights as well as rights of national minorities, belong to a very sensitive area of political and everyday life in Serbia. Since 2006, the above-mentioned rights have been incorporated into the Serbian Constitution and by several different laws, however, in Serbia, prior to 2006, the roots of the problems were not the missing laws rather the lack of proper execution of the existing ones.

2.

The adjustment of the Serbian constitutional system to the *EU acquis* is a really demanding work, especially, if we keep in mind that the Serbian legal system is in a crisis because of the poor reform of the judicial system a few years ago. Serbia's potential accession to the EU requires, among many other laws and documents, the acceptance of the convention on the protection of human rights and fundamental freedoms, and the incorporation of it in the fundamentals of the law, like the Constitution. It is often said that Serbia respects all of the international standards in the domain of human rights, and according to that, they are all supposed to be part of the Serbian Constitution of 2006.

Since 2006, constitutional provisions on the freedoms, rights and duties of people and citizens, where the rights of national minorities are integral part of the Constitution, right after the Basic provisions. Content analysis of this part of the Constitution lead us to the conclusion that almost all human rights which protect physical and mental integrity, political freedoms and rights of the individual, as well as a number of social and economic rights, are included in it. The Republic of Serbia is a multinational state and everyone is free to express his/her nationality but is not obliged to do so (Article 47 of the 2006 Constitution). Creating a special subsection devoted to national minority rights can be seen as an attempt of positive discrimination or affirmative action, if we take the percentage of national minorities in population in account. Affirmative action is a measure aimed at improving the situation of vulnerable groups in the society. Vulnerable groups in the society are often the poor, the sick, women, people being in criminal record, and of course, minorities and many others. Generally, vulnerable groups are disabled or have difficulties in

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achieving all or some of the rights. The main goal of affirmative action is to allow these groups to reach out to the majority. Examples of affirmative action include: chance for the less frequent number of ethnic minorities in terms of state functions, representation in the parliament, education and job, where quotas had been introduced for ethnic minorities and providing in order to provide greater and certain access to public services.

Discrimination is any unequal treatments, exclusions, restrictions or preferences to someone, which are based on prohibited grounds such as skin color, race, origin, language, religion, sexual orientation, economic status, ethnic or national origin, political affiliation, which often leads to the disabling of the enjoyment of human rights in general. This area is regulated by a significant number of legal acts, namely the European convention of 1950, the Convention on the Elimination of All Forms of Racial Discrimination of 1965 and several important documents issued in the Republic of Serbia. According to Article 14 of the European Convention on Human Rights, discrimination is forbidden. At this point, we shall point out that the international documents carry narrower and broader notions of discrimination.

Based on the following documents, the narrower term of discrimination includes freedom from discrimination in the enjoyment of human rights: Article 2 of the 1948 Universal Declaration on Human Rights, Article 2 of the 1966 International Covenant on Civil and Political Rights and Article 14 of the European Convention on Human Rights.

The broader sense of discrimination involves a general guarantee of equality in front of the law and that everyone deserves to have equal protection against discrimination. This is guaranteed by Article 7 of the 1948 Universal Declaration, and Article 26 of the 1966 International Covenant on Civil and Political Rights.

In the Anti-Discrimination Act of 2009, Article 2 says the followings: the terms „discrimination” and „discriminatory treatment” mean any unjustified discrimination or unequal treatment, or omission (exclusion, restriction or preference), in relation to individuals or groups as well as members of their family or persons close to them, open or covert, that is based on race, color, ancestry, citizenship, nationality or ethnic origin, language, religious or political beliefs, sex, gender identity, sexual orientation, property, birth, genetic characteristics, health, disability, marital and family status, criminal record, age, appearance, membership in political, trade union and other organizations, and other real or supposed personal characteristics. Article 24 is about discrimination against ethnic minorities: discrimination against ethnic minorities and their members on the basis of nationality, ethnic origin, religious beliefs and languages is prohibited. Way of practicing and protecting the rights of personal belongings of national minorities shall be regulated by a special law.

There are six conditions that need to be fulfilled for any community which has the intention to be declared as a national minority:

- ❖ Members of the community must be citizens of the Republic of Serbia.
- ❖ Their number has to be less than 50% of the total of the population.
- ❖ They must be representative enough.
- ❖ They must be long-term inhabitants of the Republic of Serbia.
- ❖ They must differ from the rest of the population – by nation, religion, language, etc.
- ❖ They must want to preserve their identity.

The first problem with defining which community can be identified and named as a national minority is that the law defines only upper numerical limit of members of certain

community (their participation in total population must be less than 50%) and does not provide a minimum number of group members.

The second problem with defining is deciding about how much time is needed for a group to reside in the territory of Serbia so that they can be considered as long-term inhabitants. These two conditions allow a wide arbitrariness in deciding which group can be considered as a national minority and which cannot.

The third problem is the term national minority which is a legal term used in Serbia. However, in the Autonomous province of Vojvodina, they use the term national community. Vojvodinians believe that it is inappropriate to call someone minority because what follows is inferior position compared to majority. But if all citizens enjoy the same rights, there is no need to emphasize any numerical minority or majority.

National minorities also have, beside rights which are common to all citizens, individual and collective rights. Collective rights are not mentioned in any relevant international (chiefly European) documents. However, there are certain countries that guarantee collective rights for their minorities and Serbia is one of those. What are the collective rights according to the Serbian Constitution? According to the Serbian Constitution of 2006, collective rights are realized in community with others. This is the first mistake that writers of the Serbian Constitution made. Council of Europe, in its No. 157 explanatory report on Framework Convention of the Protection of National Minorities wrote that the term „others” shall be understood in the widest possible sense and shall include persons belonging to the same national minority, to another national minority, or to the majority. This would mean that the term ‘in a community with others’ is inappropriate. But it should not be surprising given that the universal definition of collective rights does not exist because of the difficulty of their specification. It is even stranger than the attempt of the writers of the Serbian Constitution to define collective rights.

As a part of the collective rights, national minorities have the right to decide on issues related to culture, education, information and the official use of language, in accordance with the Serbian law. In order to achieve self-government in these areas, representatives of national minorities have the opportunity to form their own national council. The law on the protection of rights and freedoms of national minorities defines conditions for creating national councils and their role in establishing self-government in areas of culture, education, information and the official use of language. Bodies of the state, territorial autonomy and local governments are obliged to consult with national councils when deciding in those areas. Most of the problems in its practice occur with financing these institutions as the state does not set aside enough financial assistance to fund them, therefore, these rights are not adequately realized. Cultural and historical heritage of national minorities should be represented in State Museum galleries after consultations with national councils.

When the collective rights of national minorities in education are concerned, members of national minorities have the right to attend pre-school, elementary school and secondary school in their own language. Education must be carried out with elements of the national culture and the history of the national minorities. Curriculum shall be developed in consultation with the national councils. National minorities can establish private educational institutions in the minority language or bilingually. However, the minority also has to learn the Serbian language. Therefore, there must be a possibility that members of the majority learn minority languages in areas where the minority language is in the official use.

Collective rights of national minorities in the area of information consist of the right to obtain, express, receive and exchange information in their own language. In the official

programs of the state televisions there must be enough content in the languages of national minorities and national minorities have the right to establish media in their own language.

Collective rights of national minorities in the official use of language are: the right to register personal names in accordance with the language and spelling of the national minority, the right to equal language and script usage in areas where national minorities are present more than 15% of the population, the right to conduct judicial and administrative proceedings in the language of national minority, the right to use toponyms in the minority language where the officially used language is minority language. National minorities have the right to use their own symbols, however, these symbols cannot be identical to any symbols of other states.

Position of national minorities in any country seems to be and it is a very complex question which cannot be solved in an easy or fast way. Their positions in the EU countries are solved in different ways but some basic rights are present in each of them. In that sense, Serbian basics of law 'cover' that area very well. But it is not enough to have those rights guaranteed only in paper – people live their life in reality, in every day's life. Execution of the regulations being in force is crucial to achieve the wished and planned aims.