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ORIGINAL PAPER

The relationship between linguistic pluralism and legal pluralism

Vlad-Mihai Arjoca[1)]

Abstract:
In order to carry out a relevant analysis of the relationship between linguistic pluralism and legal pluralism, I consider that a clarification of the two notions is required. Legal pluralism has not and we can still say that there is still no unanimously accepted definition by legal experts. In 1982, StigJørgensen was one of the few philosophers in the legal field who used the term legal pluralism, while other philosophers in the legal field approached the subject in the context of describing legal relationships with ethics or philosophy, but without naming it as concrete. legal pluralism. The specialists in constitutional law used this concept in order to make the constitution of the confederation-type states understood. Thus, the name of the rule of law includes both elements related to the law of a sovereign state, but also the hierarchical systems of a confederation consisting of two or more states.

Keywords: *linguistic pluralismș legal pluralism; legal system; constitutional law.*

[1)] Ph.D. student at Law Faculty, University of Craiova; Email: arjoca.vlad@yahoo.com; Phone: 0765927887.

In order to make a pertinent analysis of the relationship between linguistic pluralism and legal pluralism, we consider that a clarification of the two notions is necessary. Legal pluralism has not had and we can still say that there is still no unanimously accepted definition by legal specialists. In 1982, StigJørgensen was one of the few philosophers in the legal field who used the term legal pluralism, while other philosophers in the legal field approached the subject in the context of describing legal relations with ethics or philosophy, but without specifically naming it as legal pluralism (Jørgensen, 1982: 5–57). Specialists in constitutional law have used this concept in order to understand the constitution of confederation-type states (Williams , 1997: 339–55). Thus, the name of rule of law includes both elements relating to the law of a sovereign state, but also the hierarchical systems of a confederation composed of two or more states.

For example, Belgium is known for its federalism, and the Belgian federated entities do not have constitutive power, but Flanders and Wallonia had the initiative of a Charter to establish their own constitution. Wallonia quickly abandoned this idea, but in 2012 Flanders proposed a legislative document called the Charter for Flanders, as a draft constitutional law. The Flemish Parliament did not adopt this legislative proposal, but for specialists in constitutional law, this act of law was a controversial issue (Popelier, 2012: 36-58).

Another federal state, Switzerland, has the peculiarity that the constitutional autonomy of the cantons enjoys an explicit constitutional recognition. Section 4 - Federal guarantees, Article 51: Constitution of the cantons, paragraph 1, makes it very clear that each canton adopts a democratic constitution that requires the approval of citizens, and paragraph 2 states that this constitution must be guaranteed by the Confederation, but only with provided that it does not contravene federal law.

In 2001, the Austrian Constitutional Court repealed a provision in the constitution of the Austrian state of Vorarlberg that provided for certain popular legislation in the state. Consequently, if the initiative of the citizens of the Land was successful, but was not implemented by the Austrian Parliament, the referendum was mandatory. The result of the referendum would have forced the Austrian Parliament to implement the initiative by adopting a consensus law with the aim of the referendum. The instrument was never used in practice, which, however, was not relevant in the opinion of the Constitutional Court, because even the possibility of popular legislation becoming an instrument to compete with ordinary parliamentary law-making processes was rejected by the Constitutional Court. of Austria.

In Italy, as a result of a 2001 constitutional reform, triggered by pressure from the development of the UE and local actors, the distribution of powers between regions and the federal / national level has changed. The federal state has been credited with regulatory or administrative powers in respect of the 17 cross-cutting powers listed in Article 117 subsection 2 (Fabbrini, Brunazzo, 2003: 100-120). However, the federal state may depart from this classification of exclusive, concurrent and residual powers and may legislate, in regional issues, based on the principle of subsidiarity. Residual regional powers and concomitant competences involve administrative implementation by the regions. Adding to this division of legislative powers, Article 118 invokes the principle of subsidiarity and requires the exercise of administrative functions at the lowest possible level of government, regardless of legislative competence. The principle of subsidiarity thus expressed implies a preference for administrative actions at the level of municipalities (Tubertini, 2006: 35-44).

The relationship between linguistic pluralism and legal pluralism

Over time, the analysis of legal pluralism has balanced between an approach to and away from state law, with profound implications in the development of legal theories, legal studies based on the theory that the law has created and creates order. Therefore, based on Anglo-American legal doctrine that focused on jurisprudence and european legal doctrine that focused on the social side of law in the interaction of different legal systems, legal pluralism developed as an analytical tool, and now skepticism this concept has gradually diminished and global legal pluralism has been accepted, which has led to a revival of the role of the state in legal ensembles.

Legal pluralism has become one of the major themes that marked the socio-legal studies, but under this very broad name, one can identify many different trends that share the basic idea that the law is much more than state law. The many conceptions of legal pluralism contain some common fundamental premises regarding the nature of law, its function and its relationship with its cultural environment. This contribution seeks to critically address these premises and to suggest a particular feature of the issue of law, its pluralistic sources and the many practices that apply in relation to it.

Underlying modern constitutional thinking is the idea that the exercise of power is connected to the common good and the interests of citizens who constitute a jurisdiction. This idea reveals the complexity of institutions, constitutions, treaties, public entities and governments, but a pluralistic approach does not always lead to an objective interpretation aimed at harmonizing and supporting legislation at several levels.

A close link between the legality of a rule and its legitimacy is not enough in the context of linguistic pluralism. Concepts such as national sovereignty have become obsolete, and the essence of the democratic principle requires a recalibration from the perspective of legal pluralism.

The legal literature of constitutional pluralism, which theorizes the overlapping of states, is especially related to the vertical dimension of this broader concept of legitimacy. In this order of ideas, a discursive and interactive process of the constitutional argument builds legitimacy at a higher level (Sarmiento, 2012: 324-348).

In this context, it is important that those concepts that presupposed the existence of legal pluralism have been widely debated in academia and have not aroused controversy, even if they conveyed the same message about the plurality of the law. For the related concept of government, for example, it has been generally accepted that state institutions are not the only institutions that produce law. Thus, governance is essential for the study of the relationship between state and state legal institutions, because this link establishes the way of recognizing the existence of global legal pluralism.

We cannot fail to mention John Griffiths' article (Griffiths, 1986: 1–55) which analyzed the trajectories of legal pluralism and which provoked widespread criticism, being interpreted as a value judgment that positioned legal pluralism against the state. Griffiths' controversy was meant to show jurists that a state-centered view of the law diminishes the significance of other types of law used in social interactions.

The complexity of legal pluralism has manifested itself differently over time. At the beginning, there was a normative logic of the state, based on the diversity of constituent citizens from the point of view of normativity, gradually moving from the phrase "where there is a society, there is law" to the phrase "where there is state, there is law", which which led to the establishment of nation-states and the emergence of ideologies that outlined the state-people relationship. In the nineteenth century these

ideologies and their different application made the implementation of legal pluralism difficult.

The colonial states recognized the importance of implementing legal pluralism, but this more as an administrative necessity. Thus, in the colonial empires, a distinction began to be made between the traditional law required to be universally applicable and the customs and traditions of the native populations, which were taken into account and thus, gradually, gradually ignored (Turner, 2017, 213–35).

We must not neglect the fact that the law is what people consider as law, nothing more than that, and the application of legal plurality is limited to those situations in which people are explicitly oriented towards laws and how to apply them. Therefore, it is very important to analyze the situations, mechanisms and processes by which people orient themselves towards the legal norms that they identify as pluralistic.

Transforming the constitutional issues of nation-states into a multilevel legal order, in which competencies and responsibilities are interspersed, can be achieved by promoting the principle of subsidiarity as one of the key components of a multilevel governance system. Subsidiarity is supposed to require the power to integrate minorities from a legal perspective, which involves the allocation and exercise of powers in order to adhere to the optimization of relative efficiency and democratic legitimacy. Therefore, we consider it important to create a legal conception of subsidiarity and to analyze how the principle of subsidiarity plays a key role in ensuring legitimacy, especially in a multi-level governance context. Subsidiarity can help determine the scope of subnational autonomous decisions, if it is based on the set of arguments regarding efficiency and democratic legitimacy that constitute subsidiarity.

Recognition and extension of the rights of citizens speaking a minority and / or regional language leads to a redefinition of nation-states on new cultural and linguistic grounds, in order to better promote the interests of citizens of minority-speaking states and / or especially in this age of globalization when the recognition of multiple linguistic identities is becoming more and more acute.

Assuming that minorities are differentiated and, at the same time, characterized by language, religion and / or culture, it is not surprising that issues of special relevance to minorities concern language rights (in many different fields, including education, media and how to communicate in public life).

Two fundamental themes concern the protection of minorities, namely: substantial, real or full equality (as opposed to mere formal equality) and the right to identity. Regarding the second topic, the right to identity, we can say that when we approach the protection of minorities, the right to identity refers to the different characteristics of the minority and, mainly, language and culture.

In this context, notions such as citizenship, nation-state, the relative status of languages spoken in a given territory, are causing more and more controversy because of the rights and responsibilities that arise for national citizens in this modern age and what is the role of states in redefining the demographic patterns marked by the rapid ethnic and linguistic diversification of national populations constituted by migration, especially in large urban areas. Another issue concerns the need or importance of granting distinct rights to minority groups in terms of the protection, recognition and / or support of their language in nation states, or it would be much easier for these groups to adhere to national rules of cultural assimilation; in exchange for granting citizenship. Therefore, it is noted that the issues of language recognition simultaneously with the recognition of

national identity and citizenship are closely linked and difficult to frame in a single pattern that could be applied to any national state.

The social and political organization of nation-states is a recent historical phenomenon, derived from the rise of political nationalism in Europe from the middle of the last millennium to the present. However, a landmark in the establishment of the modern nation-state is the French Revolution of 1789, considered a form of superior political organization that led to the creation of a homogeneous linguistic field (Coulmas, 1998: 63–72). The period of empires that preceded the nation-state system was much more adapted to the population's linguistics (an eloquent example is the empires created by the Persians and Carthaginians, while the Roman Empire imposed Latin as a language spoken in the territories conquered by a pact that put in the forefront the economic life of the conquered territories considering that if they paid their taxes they could organize their own social life, so the use of Latin by the local elites for administrative purposes was required, but it did not forbid the local elites to preserve and develop own language).

The way in which these issues are approached with profound legal implications has an important impact on the development of language policy and on the language education system in nation states. In particular, these issues require national states to address the balance between social cohesion and the recognition of cultural and linguistic pluralism. Therefore, it is crucial for nation states to build this balance by recognizing and adapting linguistic diversity as a support to maintaining national cohesion and social stability.

Will Kymlicka is one of the theorists who support public multiculturalism in the organization of the nation-state, marching on the importance and respect for individual rights, while developing an understanding of the importance of wider cultural and linguistic belonging to these rights. Kymlicka does not prove a community support for collective rights (Kymlicka, 2001), but rather argues for the need to introduce differentiated group rights, which are not necessarily collective rights, but which can be granted to individual members of a group or group as a whole or to a federal state / province. in which the group forms a majority (Kymlicka, 2007). Kymlicka's thesis is that collective rights do not impose the domination of communities over individuals, but converge on the idea that justice between groups requires that members of different groups be granted and recognized different rights.

This argument can also be applied to minority rights, as an external protection from the majority population, so that a minority group protects its distinct identity, especially the linguistic one.

Stephen May argues on the basis of the rights of the French-speaking population in Canada the right to use French in federal courts, which appears to be an individual right that can be exercised at any time by any citizen of French-speaking origin. In Canada, individual rights converge with international law, for example, the right of French-speaking citizens to educate their children in French middle schools in the province of Quebec. On the other hand, the rights of the people of Quebec to preserve and promote their distinct culture in the province of Quebec are recognized and respected, which argues for the need to maintain a minority language as a legitimate external protection.

We can say that it is necessary to extend democracy to multilingual principles in modern nation-states, because a state with a single language and culture can lead to discrimination against minority groups by manifesting a clear preference for some

citizens through spoken language. Thus, it can be considered that the citizens who speak the majority language are at an advantage within the civic culture of the nation-state, because a dominant language group controls the fields of administration, politics, education and economy and gives priority to those who master the language.

Linguistic pluralism has become a central element of the european dimension, although not specific to it, as the importance of language skills derives from the process of globalization that is taking place worldwide and from the new economic and political order. However, the european dimension offers a particular perspective on this issue: the UE, by protecting the cultural identity of different Member States, promotes linguistic pluralism and should respect and promote the use of different languages. Such an approach, which involves the use of different languages in the education system, must face the challenge of the widespread use of English as a foreign language, whose role has always been to gain new territories.

Each legal system in a pluralistic structure was considered to be integrated into a harmonious structure. In practice, there are many conflicts between pluralistic legal systems, which excludes conflicting coexistence in the whole phase of legal pluralism, which has been seen as an objective construction from the point of view of a third party, ie from an objective perspective.

UE law faces many challenges, but does not seek to further incorporate the basic principle of the legal system, due to the threats and disruptions posed by UE rules, which Member States are trying to resist by expressing a natural situation.

This resistance creates a problem for the functioning of UE law, as UE law consists largely of extremely open rules, which aim to stimulate Member States' reorientation towards openness, while allowing them to protect national interests and values. european linguistic pluralism is not the result of specific rules or decisions, but of an extremely widespread transformation, in which different values and principles, substantive and procedural, are fully integrated into the linguistic and legal systems of the Member States. When Member States and their courts react defensively to UE law, they hinder this process, preventing UE law from reaching its potential.

In the federal states, the issue of public recognition of minority languages is highly controversial, especially in education, as one of the barriers is the traditional organization of the nation state, along with its historical contingency and the related exclusion of minority languages from public life.

In the federal states, one of the most difficult problems facing public administration is choosing the official language or languages that civil servants should use in their dealings with citizens.

Within the federal states, sustained efforts are being made to adopt, in areas such as: education, legislation, government, those representative minority languages that ensure the legitimacy of the minority group itself without changing its relationship with the state. Resizing the language preferences of a federal state must be in line with those of civil society to more clearly reflect the diverse and legitimate interests of all minority groups, which may present new organizational challenges for non-national states embracing public promotion of diversity.

Rethinking the nation state and the federal state on the basis of linguistic and cultural pluralism is a challenge in the age of globalization for both states and international bodies in the legal field.

Legal pluralism is a state of affairs that exists in the EU, in most jurisdictions and leads to constitutional pluralism, as national and EU constitutions coexist in a

somewhat ambiguous relationship, because both national and European courts claim precedence. for their own legal order. For example, the Court of Justice of the European Union (CJEU) and the national constitution take precedence in almost all Member States, while treaties rank second in the legal hierarchy, especially if the CJEU's claims to constitutional supremacy have not been accepted, because if a rule is constitutionalized, the ownership of this rule is considered to belong to the constitutional court (Davies, 2018: 358–375).

In recent years, the scope and impact of EU treaties are determined by their structure and content, and these in turn are determined by the CJEU. Thus, it was concluded that the EU suffers from a lack of legitimacy generated by the over-constitutionalization of the EU (for example, EU treaties have been constitutionalized by the CJEU and contain a number of provisions that would be related to national law. constitutionalization leads to de-politicization, because what has been regulated at the constitutional level can no longer be regulated by political decisions). Consequently, national parliaments are also restricted by constitutional decisions, which very rarely precludes policy interference in decision-making.

Case study: Legal pluralism - English Language Unity Act of 2017

The English Language Unity Act of 2017 of the Congress of the United States of America (USA) aims to declare English as the official language of the USA and in this sense to establish a uniform rule of law. use of English in the event of naturalization in order to avoid misinterpretation of the English texts of US law, in accordance with the powers of Congress to ensure the general welfare of the United States and to establish a uniform naturalization rule in accordance with Article I section 8 of the Constitution.

Relevant is the fact that this bill, in Chapter 6 - Official language, Section § 161 - Official language of the United States, establishes English as the official language.

What are the premises of this imposition of the official language?

To answer this question, we must not neglect the fact that, in the beginning, several languages were spoken in the United States, and at the time of independence (July 4, 1776), non-English European immigrants made up a quarter of the population, and In Pennsylvania, two-fifths of the population spoke German. In other territories, an American Indian dialect or even an African language was spoken, which leads us to conclude that more than a third of Americans spoke a language other than English. Before the end of the 19th century, with the expansion of the USA with new territories, French-speaking and Spanish-speaking citizens appeared, plus native citizens, which generated a linguistic diversity.

Instead of focusing on the preservation and development of minority and / or regional languages, the United States is concerned with what is mentioned in Chapter 6 - Official language, Section § 162 - Preserving and enhancing the role of the official language.

This section confirms that, although historically the USA has been characterized by a great linguistic diversity, especially against the background of intense immigration, on the other hand it has also been marked by the disappearance of minority languages, being replaced gradually and irreversibly. of English. We emphasize that if, from an ethnic point of view, it can be transmitted over several generations, the language of minorities is the most sensitive cultural aspect that disappears much earlier than ethnicity, but not because of an external interference and because of changes within socially, economically and even culturally (Crawford, 2003: 45–60).

A violation of the constitutional obligations of territorial authorities in a federal state has been approached differently, from the institution of federal intervention, as a mechanism for maintaining public order, to the extreme option of dissolving and dissolving territorial unity. Between these two options lies federalism conceived on the basis of German constitutionalism and integrated into the Spanish constitutional order.

The USA has included in its Constitution a form of federal intervention in Article IV.4, in case of public disorder and domestic violence. From a legal point of view, it must be the Legislature of the constituent state or its executive that must request such intervention, but in practice it is produced without the request of the affected state.

The bill stipulates that naturalization ceremonies and official functions of the US government, subject to exceptions, must be conducted in English.

In Chapter 6 - Official language, Section § 163 - The official functions of the government will be conducted in English - it is very clear in letter (A) that the official functions of the US government are conducted in English and in letter (B) Purpose - the term "US" and "official" are defined.

Letter (C) mentions the practical effect of this bill, which is in line with Calvin Veltman's statements (Veltman, 1983), which he has made since 1983, in which he concluded that in the absence of immigration, all minority languages will disappear. at a very fast pace.

Section § 165. Construction rules state very clearly that absolutely no paragraph in this section gives the right to interpretation and specifies from the first paragraph the prohibition of use in public life by members of Congress or by government officials and / or agents. federal, of any minority language other than the official language - English, on the grounds that the official functions are performed in English and the use of any other language is incompatible with the US Constitution.

What seems to contradict the principles of democracy is the mention of the Native American Language Act as a means of diminishing the preservation or use of Native, native, or Alaska dialects, and more, of discouraging anyone from learning or using another language, besides English - the official language of the USA.

The argument in favor of this bill is that a single official language ensures the continuity of a common civic language in the United States, but there is little evidence that the use of multiple languages affects the integration and cohesion of American society. On the contrary, the gradual disappearance of minority languages is a costly loss of valuable human, social and cultural capital, because in a global economy speaking several languages is an important skill.

From the analysis of this text of law we can conclude that in the federal states, if we take as an example the USA, in order to ensure the unitary knowledge and interpretation of the law, only one official language is legislated to be used in public life.

Since the beginning of the 21st century, some specialists have been against the development of the Spanish language (Weber, 1992), considering it as a threat to English that would diminish the chances of children to deepen the language of a larger culture, while other specialists campaigned for a bilingual education. which would ensure the promotion of the culture of national minorities.

We cannot say the same about Europe, where the use and development of minority and / or regional languages is encouraged, being considered an advantage and a multidimensional resource that must be preserved and cultivated, rather than a threat to cohesion and national identity.

Conclusions

We have come to the conclusion that linguistic diversity is a form of diversity that must be analyzed in connection with the rights claims that connect with the liberal-democratic principles of freedom, justice and democracy, but also with issues of race, immigration, nationalism, indigenous peoples and religion. Therefore, the use of minority and / or regional languages in administrative processes involving public decisions is, in many countries, at the heart of the conflict between minority groups and the majority population in the region.

Thus, it must be emphasized that in pluralistic societies, the domination of the majority language and the marginalization of minority languages, on the basis of distinct cultural characteristics, have led to a serious concern for public life. Moreover, the adaptation of minority languages and the protection of the rights of national minorities are a major concern of governments and institutions, as an integral part of international protection of human rights and the nation-building process, the state and administrative reforms, as a multitude of factors I am impressing on the way this process is carried out, among them we list the capacity of the public administration, the establishment of institutions and administrative structures specific to minorities in their territories as a mechanism that can lead to the protection of linguistic rights of minorities and to facilitate obtaining services from public administration. .

Federal states, where there are national minorities and which face the possibility of pursuing integration or accommodation in their approach to minority rights, can be done either by encouraging the assimilation of minority groups with national culture or by allowing minority groups to retain distinctive character through separate administrative institutions. We consider that there are a multitude of possible legal solutions to the problem of efficient management of language communities, and the establishment of a territorial delimitation favorable to minorities is a precondition for effective coordination between local authorities and authorities responsible for managing minority language issues, subject to different institutional competences. involving all levels of government.

Promoting minority languages in public life is a challenge, as for the public administration the dominance of the ethnic majority and their language is a major issue that influences the rights of minorities in the process of meeting their administrative needs at national and local level. This problem is serious enough at the local level when an ethnic group enjoys absolute majority status at the national level, but lives as a minority at the local administrative level.

For the active involvement of minorities in public life, we believe that the development of organizational structures specific to minorities can lead to the creation of better protection of minorities, by creating a mechanism to identify territorial boundaries in which public bodies will operate and some adjustments will be introduced. of existing institutions in support of minorities.

Another conclusion is drawn from the two fundamental themes that refer to the protection of minorities, namely: substantial, real or full equality (as opposed to simple formal equality) and the right to identity. Regarding the second topic, the right to identity, we can say that when we approach the protection of minorities, the right to identity refers to the different characteristics of the minority and, mainly, language and culture. Therefore, notions such as citizenship, nation-state, the relative status of languages spoken in a given territory, are causing more and more controversy because of the rights and responsibilities that arise for national citizens in this modern age and what

is the role of nation states. in redefining the demographic patterns marked by the rapid ethnic and linguistic diversification of national populations constituted by migration, especially in large urban areas. Another issue concerns the need or importance of granting distinct rights to minority groups in terms of the protection, recognition and / or support of their language in nation states, or it would be much easier for these groups to adhere to national rules of cultural assimilation; in exchange for granting citizenship. Therefore, it is noted that the issues of language recognition simultaneously with the recognition of national identity and citizenship are closely linked and difficult to frame in a single pattern that could be applied to any national state.

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