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OF NATIONAL MINORITIES IN TRANSNISTRIA**

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A LEGAL OVERVIEW OF THE SITUATION OF NATIONAL MINORITIES IN TRANSNISTRIA

The present study seeks to elucidate the situation of national minorities in Transnistria by considering the region's legislative framework. The primary objective of the research is to explain how national minorities' rights are regulated in the context of secessionist Transnistria, which is de jure a territory of the Republic of Moldova. The paper examines the legal framework of the region by using the de facto doctrine. In particular, the research highlights that while the Republic of Moldova's normative aligns with international standards, its application in the Transnistrian region is limited. At the same time, the de facto region's legislation is ambiguous and lacks regulations regarding people belonging to national minorities. Finally, the study presents legal and institutional recommendations that aim to improve the situation of national minorities in the region.

KEY WORDS: *national minority, de facto authorities, de facto legislation, Transnistrian region*

INTRODUCTION

The changing context of the Soviet Union in the last years of the 1980s allowed the formation of political movements in the Moldavian SSR which had divergent views, especially concerning the national identity. As a result, the Transnistrian region declared independence on 2 September 1990 which fuelled a conflict with Moldovan authorities. The active phase of the conflict started on 2 March 1992 and ended with the Agreement on the Principles of Peaceful Regulation, signed in Moscow on 21 July 1992. This document formally concluded the military phase of the Transnistrian conflict. It created the Security Zone, tripartite peacekeeping forces and established the crossing points between the two sides. At the end of the hostilities, the Transnistrian secessionist authorities controlled most of the territory on the left bank of the Nistru River and retained control over several adjacent communities on the right bank. Virtually all of the public and economic institutions in these territories became subordinate to the newly established Transnistrian de facto authorities. Only a small number of institutions remained under the effective control of the Moldovan authorities.

The inability of the Republic of Moldova to uphold its human rights commitments in the Transnistrian region has led to the introduction of disclaimers in the ratification of international documents that limit Moldova's liability for human rights violations in the territory until the final settlement of the dispute. Accordingly, the legal and institutional framework created by the Moldovan authorities is inapplicable in Transnistria. Instead, the de facto authorities have created their own legislative and institutional framework that has limitations and infringes the rights of people belonging to national minorities.

The constitutional provisions of the two sides reveal distinctively different approaches to the state's policies towards national minorities. Respectively, the foundation of the Republic of Moldova as a state represents the titular ethnic group – Moldovans (with the Constitution of the Republic of Moldova “taking into account the continuation of the statehood of the Moldovan people in the historical and ethnic context of their becoming a nation”). To preserve the cultures, languages and identities of other nationalities, the State of the Republic of Moldova accepted the obligation to ensure that the specific rights of these individuals were respected by developing a comprehensive legal and institutional framework. Moreover, because Moldova's national minorities are mostly Russian speakers, the state granted this language the status of a “language of communication among nations”¹. Gagauzia, in the southern part of the country, which was granted territorial autonomy on ethnic grounds, completes Moldova's ethnic landscape.

However, the approach taken in the Transnistrian region was different. The de facto Constitution refers only to the unifying element of territorial identification and peaceful cohabitation of different “nationalities”. The Constitution and the legislation set out three official languages, which are declared to have equal status: the Moldovan language written in Cyrillic script, Russian and Ukrainian. The region lacks a legal framework on people belonging to national minorities and tries to portray through legislation and institutional setting the non-existence of national minorities.

¹ Art. 3, Law of the Republic of Moldova No 3465 on Functioning of Languages on the Territory of the Moldavian SSR.

Consequently, in the context of the present research, the main research questions are:

- How is the legislation of the Republic of Moldova regarding national minorities applied on the left bank (Transnistria)?
- What is the legal framework (if any exists) regulating the treatment of national minorities on the left bank?

METHODOLOGY

This paper's methodology relied on qualitative and quantitative approaches. The author used an interdisciplinary approach to produce the findings and make recommendations for relevant stakeholders as well. The initial stage of the research included gathering information that offered initial insights into the situation of national minorities in Transnistria. The desk research included an analysis of the following sources: legislation, census data, an overview of the institutional framework, open source information on the authorities' actions in this area, and information published on the websites of the Moldovan authorities and the de facto authorities of the Transnistrian region. Reports of international organisations and non-governmental organisations (NGOs) in the field of human rights, scientific articles and rulings of the European Court of Human Rights (ECHR) and the International Court of Justice were used as well.

Upon completion of the desk research, field research was conducted by organising meetings with the main actors that provided information on the situation of national minorities in Transnistria. The objectives of the field research phase were to assess institutional and legislative frameworks, to meet with representatives of the relevant institutions to better understand how their policies and procedures are designed to meet the needs of national minorities and to uncover the main limitations/challenges. Twelve interviews were organised with representatives of governmental agencies on both sides, including those from international organisations and civil society. An impediment to the research process was the low transparency of institutions in the Transnistrian region, limited visibility of the activities of NGOs in Transnistria and reduced willingness to answer questions on the part of the de facto authorities.

FINDINGS

Speaking about ethnic statistics, the censuses organised in 2004 and 2014 by the National Bureau of Statistics of the Republic of Moldova did not include the residents of the Transnistrian region. Instead, the de facto authorities of the Transnistrian region organised a separate census in November 2004; however, it was not recognised by the authorities of the Republic of Moldova. It was carried out by Transnistria's State Statistics Service and covered the communities under the control of the de facto authorities, and only part of the census data was made public.

Referring to the application of legislation, the Moldovan law does not apply in the communities that fall under the control of the Transnistrian de facto authorities, and Moldovan agencies do not have access to the region. At the same time, the Transnistrian legal framework lacks regulations on interethnic relations and policies on national minorities. The Moldovan authorities use disclaimers in their ratification of international agreements stating that it will not be possible for them to ensure their commitments are respected in the territory under the control of the de facto authorities before the conflict is finally settled.

The situation of the schools functioning under the jurisdiction of Moldovan authorities in Transnistria remains complicated. The ECHR issued a decision on this situation, stating that the treatment of these schools and the situation of the children who attend them violate the provisions of the European Convention on Human Rights.

Finally, according to the legislation of the Republic of Moldova, citizens who belong to an ethnic group other than Moldovan are considered "national minorities". The state has developed a comprehensive legal and institutional framework that protects their identity. In the case of the Transnistrian region, the de facto authorities have opted for the nonexistence of national minorities which means the lack of recognition for the people belonging to national minorities. In the law, the terms "nations" and "nationality" are used to refer to those belonging to a particular ethnic group. At the same time, the legislation does not define these terms, nor is there any legal basis for the protection of their specific rights. Transposed in practice, the approach of Transnistrian de facto authorities limits the access of national minorities to rights that preserve their cultural, linguistic and religious identity.

DISCUSSION

THE APPLICATION OF THE LEGAL FRAMEWORK OF THE REPUBLIC OF MOLDOVA IN TRANSNISTRIA

A comprehensive legal framework for protecting the rights of national minorities has been approved in the Republic of Moldova but is not applied in the Transnistrian region. Therefore, within the process of monitoring the implementation of the Framework Convention for the Protection of National Minorities in the Republic of Moldova, both the Moldovan authorities in their periodic reports, as well as the Opinions of the Consultative Committee, reiterate that the implementation of the Convention in the Transnistrian region depends directly on the settlement of the conflict (ECRI 2008).

The exemption of liability of the Republic of Moldova in the case of the Transnistrian region also applies to the International Convention on the Elimination of All Forms of Racial Discrimination, which reads that the region is beyond the effective control of the Republic of Moldova and it is not possible to monitor its application/implementation in this territory (Committee for the Elimination of Racial Discrimination 2011). The same clause also applies in the case of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the ratification document for which reads that it will not be possible for Moldova to ensure the respect of the provisions of the Convention *“for opt-outs and acts committed by the bodies of the self-proclaimed Transnistrian republic on the territory under the control of these bodies, until the final settlement of the conflict in the region”* (Human Rights Centre of Moldova 2001). In fact, this formulation became standard wording in the ratification of the international treaties and conventions to which the Republic of Moldova is a party.²

The institution in charge for the application of the State policy in the area of interethnic relations and functioning of the languages on the territory of the Republic

2 The author believes that the exemption of liability on human rights violations on behalf of the de facto authorities in the region was introduced into the ratification instruments after the Republic of Moldova was convicted by the European Court of Human Rights in the case *Ilascu et al. vs. the Russian Federation and the Republic of Moldova*. The European Court established the liability of the Russian Federation for the violation of fundamental rights in this region, starting from the effective exercise of its jurisdiction on this territory, for its military, economic and other support measures provided by the Russian Federation to the separatist regime. At the same time, the Court found the Republic of Moldova liable for violating positive obligations from the moment it was established that the Republic of Moldova had ceased making further efforts to reestablish the violated rights.

of Moldova – the Bureau for Interethnic Relations – cannot monitor the state of play in the Transnistrian region, which has been confirmed in the periodic reports submitted to the Council of Europe. The Human Rights Centre (Ombudsman institution) does not have access to the left bank of Nistru, nor do the citizens residing there dare to call upon the Ombudsman in the Republic of Moldova (Human Rights Centre of Moldova 2001). In the activity reports of the Human Rights Centre of the Republic of Moldova, it is highlighted that very few complaints are received from the Transnistrian region. The documents read that this is because the authorities of Chisinau have limited credibility in terms of settling issues that arise in the region, where the laws of the Republic of Moldova do not apply, and also because people fear persecution by the authorities of Transnistria for having called upon Chisinau for help (Human Rights Centre of Moldova 2001).

Therefore, one can conclude that the international and Moldovan legal frameworks on the protection of national minorities do not apply to the Transnistrian region and that there is no efficient and institutionalised monitoring of the state of affairs in the region.

PREVIEW OF THE DE FACTO LEGAL FRAMEWORK

Besides the customary international law, which obliges the de facto authorities to support the fundamental human rights norms, the de facto authorities have also unilaterally committed to respecting some essential international treaties. In this regard, several international human rights agreements have been ratified in the Transnistrian region, among which are the following (Minority Rights Group International n.d.):

- Convention on the Prevention and Punishment for Crimes of Genocide
- International Covenant on Civil and Political Rights
- European Convention on Human Rights
- International Covenant on Economic, Social and Cultural Rights (Decision on unilateral decision n.d.).

Regarding national minorities, there is no legal framework in the region that explicitly regulates interethnic relations or ensures the rights of persons belonging to national minorities. The legislation of the region does not offer any definition for what constitutes a “national minority” or an “ethnic minority”; nor does it offer alternative terminology. To refer to ethnic groups, the legislation of the region uses the lexeme “nationalities” (without explanation).

The Constitution of the Transnistrian region, adopted on 24 December 1995 and amended in 2000, recognises the multi-nationality of this entity by specifically setting it out in the preamble: “*the multinational people of the Transnistrian Moldovan Republic*”. There are three official languages in the region: “*Official language status with equal weight is granted to Moldovan, Russian and Ukrainian languages*” (art.12). The document sets out that “The protection of human and citizen rights and freedoms represents the supreme value and is an obligation of the state” (art. 16). The non-discrimination clause is worded as follows: “*All have equal rights and freedoms, all are equal before the law without distinguishing based on sex, race, nationality, language, religion, social background, beliefs and social status*” (art. 17).

The principle of self-identification with an ethnic group is formulated in art. 43: “*Everyone is entitled to preserve their national affiliation; no one can be obliged to identify himself and specify a certain national affiliation*”. The same article regulates the right to free use of language in private and public, verbally and in writing, is stated by the following: “*Everyone is entitled to use their mother tongue and chose their language of communication*”.

As regards the linguistic legislation, the *Law on Languages (1992)* is the main document in this respect. The preamble of the law reads that the de facto authorities assure equal development and preservation of the languages used in the respective territory. It is emphasised that since 1924 there has been a precedent of using the three official languages. The law reconfirms the freedom to choose the language of expression (art. 1) and the status of Russian, Moldovan and Ukrainian as official languages (art. 3). It is noted that the communities have the right to independently choose, based on a referendum, which language will take priority. The languages used for interethnic communication are the three official languages (art. 5).

The working language of the state administrative bodies is one of the official languages, which is decided by each body in part (art. 9). The document reads that the laws and other acts issued by the state administrative bodies shall be published in the three official languages (art. 10). When organising elections, the competent bodies, or the population of the community where the elections are taking place, shall choose one of the official languages in which the ballots are to be printed (art. 11). It is noted that for the activities of the judicial bodies, notary services, and in the areas of services, transportation, etc., only one of the three official languages is used.

The *Law on Education (2003)* sets out in art. 7 that the language of instruction in the education system is established in compliance with the *Law on Languages (1992)*. In the schools, where studies are organised in one of the official languages of the region,

an additional second official language is taught. If the language of instruction in a school is different from one of the three official languages, then the law states that it is mandatory to teach one of the official languages of the Transnistrian region as well.

The *Law on Citizen Complaints (2003)* states in art. 5 that citizens’ complaints may be submitted to the state administrative bodies in one of the three official languages of the region. Respectively, the answer to the complaint shall also be submitted in one of the official languages (art. 9-1).

The *Law on the Functioning of the Constitutional Court (2002)* reads that the operation of this institution is to be carried out in Russian (art. 40). Parties to proceedings that do not speak Russian are entitled to provide their statements in another language and use the services of an interpreter. At the same time, applications to the Constitutional Court shall be made in Russian (art. 45, g).

Similarly, the *Law on the Judiciary Proceedings (2005)* states in art. 15 (1) that the judiciary proceedings are to be conducted in one of the official languages. At the same time, art. 15 (2) stipulates that the parties involved in the judiciary proceedings that do not speak the language in which the proceedings are conducted shall be entitled to make their testimonials in their mother tongue or another tongue that they speak, with the services of an interpreter being allowed. In practice, these provisions are not observed. The highlighted cases are explained in some reports drafted by human rights organisations.³

The *Civil Code (2002)* reads in its art. 56 (2) that the name of an enterprise shall be written in one of the official languages. The *Labour Code (2002)*, through its art. 54 (2), bans direct or indirect discrimination in employment based on sex, race, nationality, spoken language, etc.. The *Law on the Coat of Arms (2013)* in the art. 1 mentions that on the coat of arms of the region the inscription of the name of the entity shall be made in the official languages. The *Law on the Anthem (2013)* in the art. 1 approves the text of the anthem in the official languages. The *Law on the Passport of the Citizen (2002)* sets out that in the passport the one “nationality” shall be included and the line can be filled in according to the holder’s wishes. It is noted that the inscription of the nationality can no longer be changed. The passport is filled out in the three official languages. The *Law on Legislative Acts (2002)* in the art. 15 reads that laws can be published in Russian, Moldovan, and Ukrainian. The *Law on the Notary (2007)* in art. 12 reads that notaries may operate in one of the three official languages.

³ See UN, OSCE, Promo-Lex reports.

As concerns the development of the territory's cultural and linguistic heritage, significant efforts were made mainly in the early 1990s. For instance, a set of measures to encourage the Ukrainians' cultural-linguistic heritage was approved by Order of the President no. 34 of 12.02.1992 (*The Order on Measures to Encourage Cultural-linguistic Heritage of the Ukrainians 1992*) for a period of ten years. However, no other documents followed to either complement or further these initiatives. Also, similar decisions were taken to promote and protect Moldovan (*The Order on Measures to Encourage Cultural-linguistic Heritage of Moldovans 1992*) and Jewish (*The Order on Measures to Encourage Cultural-linguistic Heritage of the Jews 1992*) cultures (in both cases in 1992); but similar to the above-quoted cases, there was no continuity.

To conclude, the legislation of the region concerning national minorities and use of languages is ambiguous. Despite the fact that at the legal and declarative level the equal status of all three official languages is highlighted, the language that is used in practice in the public arena is Russian. The situation in the region can be described as declared trilingualism, de facto monolingualism, based on the widespread use of the Russian language both in public and in private. Moreover, the websites of the state institutions, decisions and documents issued by public administrative bodies, as well as the declarations and interviews of the officials of the region are written in the Russian language without translation into the other two languages.

Another major challenge to assess the application of the legal framework concerning the rights of persons belonging to national minorities in this region is the fact that no reports on how the linguistic legislation is implemented have been made, and there are no studies or reports on the situation of the national minorities in the region.

THE SITUATION OF THE SCHOOLS UNDER THE JURISPRUDENCE OF THE REPUBLIC OF MOLDOVA

Regarding schools attempting to teach using Latin script, the situation is dire. The issue dates back to the first years following the secession of the region when the de facto authorities took action to halt the operation of these schools. For instance, the de facto authorities approved the decision of Executive no. 332 of 15.09.1995 on the Operation on the Territory of the Transnistrian Moldovan Republic of Schools on Teaching in Romanian (Decision of the de facto Executive no. 332 1995).

In the preamble of the document, it is noted that these entities disregard the provisions of the *Law on Languages (1992)* and the *Law on Education (2003)* by expressly deciding to:

- Prohibit the operation of these schools in the territory of the region;
- Take punitive measures against the management of these schools;
- Cease funding these schools as of 10.11.1995.

As a result, these schools are managed by the authorities of the Republic of Moldova. Two out of the eight schools, those in Dubăsari and Grigoriopol, were previously closed by the Transnistrian authorities and they had to move into the territory controlled by the Moldovan authorities. The other remains in the region under the control of the Transnistrian authorities. The schools experienced a range of difficulties with the authorities; there were disputes related to their buildings, teachers and parents were intimidated, and there were obstacles to gaining access to the schools. In 2004, there was an attempt to close the schools in Tiraspol, Tighina and Rybnitsa forcibly.

The European Court of Human Rights expressed its opinion on this situation, invoking that the treatment of these schools and the situation of children who attend these institutions violates the provisions of the ECHR. A more detailed description of the situation of schools in Transnistria is presented in a study prepared by the Organization for Security and Cooperation in Europe (OSCE) Mission to Moldova in cooperation with the OSCE High Commissioner on National Minorities (OSCE 2013).

RECOMMENDATIONS

Based on the findings of this study, it is recommended to take into consideration the following steps, which refer to the situation of the national minorities. The implementation of these recommendations shall contribute to improving interethnic relations and building confidence between the two sides.

RECOMMENDATION FOR THE AUTHORITIES OF THE REPUBLIC OF MOLDOVA:

- Exemption from liability in the case of the Transnistrian region should not impede the responsible public institutions from enhancing their efforts to monitor the situation of the ethnic groups in the Transnistrian region.
- It is necessary to introduce specific measures that would encourage the initiation of cooperation projects between associations of national minorities to improve the data collection process, and to enhance the implementation of the Framework Convention for the Protection of National Minorities, etc.
- As a complementary action, it is necessary to enhance inter-agency cooperation, especially the cooperation between the Reintegration Bureau within the State Chancellery and the Bureau for Interethnic Relations to realise measures that refer to the reintegration of the country regarding national minorities and interethnic cooperation.

RECOMMENDATION FOR THE DE FACTO AUTHORITIES OF THE TRANSNISTRIAN REGION:

- This study highlighted the absence of a legal framework that would regulate the area of interethnic relations and protect the status of national minorities. Therefore, it is necessary to develop a legal basis that would assure the protection of national minorities' rights in line with the provisions of the Framework Convention for the Protection of National Minorities and other international documents. It is also necessary to incorporate mechanisms into the legislation to limit the number of cases of discrimination based on different criteria.
- Given the precedent of the unilateral ratification of conventions by the de facto authorities, it is recommended to extend this practice to the ratification of the Framework Convention for the Protection of National Minorities.
- This present study highlighted a range of drawbacks to the implementation of the legislation. Therefore, it is necessary to monitor the process of the implementation of legislation, particularly in the area of languages and how the declared balance in the equality of the three official languages is ensured.
- It is necessary to de-politicise the misunderstanding concerning the schools teaching using the Latin alphabet in the region and to approach this situation from a human rights perspective. It is also necessary to identify solutions in the spirit of human rights to all issues related to the schools' status, educational activities and operation until a final solution to the Transnistrian conflict is found.

- The legislative emphasis on the three ethnic majority groups and the declarative balance between the three official languages in the region overshadow the need to protect the cultural rights of other ethnic groups, especially those that are smaller in size. It is necessary to protect the rights of all ethnic groups and adopt measures aimed at supporting, protecting and developing their cultural heritage.
- This study revealed limited transparency within the decision-making process, the activities of public institutions, the monitoring of the enforcement of legislation, ethnic statistics, and more. Therefore, it is necessary to improve this situation by enhancing transparency and by offering access to the relevant information to the wider public.

RECOMMENDATION FOR CIVIL SOCIETY ORGANISATIONS:

- Civil society organisations on both sides should draft (alternative) reports on the implementation of the Framework Convention for the Protection of National Minorities in the Transnistrian region and on the situation of national minorities in the region in general.
- It is necessary to enhance the contact between associations of national minorities on both sides by organising joint events and inviting organisations from both sides to discuss the implementation of the Framework Convention for the Protection of National Minorities and the implementation of legislation on national minorities.

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