CORVINUS UNIVERSITY of BUDAPEST

International Relations
Multidisciplinary
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COLLECTION OF THE THESES

Dabis Attila

Misbeliefs about autonomy

The Constitutionality of the autonomy of Szeklerland

Supervisor:

Kardosné Dr. Kaponyi Erzsébet
professor

Budapest, 2017

Institute of International Studies

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Contents

I. Background of the research and justification of topic selection

I.1. Background of the research

In order to gain first-hand experience I organized a series of research visits between the winter of 2011 and the spring of 2015, in the framework of which I have visited some of the European regions most relevant for my research topic.

From 2011.09.19. to 2011.12.19 I was a trainee at the Institute for Minority Rights of the European Academy of Bolzano/Bozen (South-Tyrol), (EURAC-IMR). The findings of these three months were blended into my master thesis, which later on was published, and became one of my first publications.

Between 2012.09.29. and 2012.12.21 I conducted a research visit at the University of Glasgow, Scotland. The main field of research revolved around Scottish devolution, and its applicability in East-Central Europe.

Between 2015.04.01 and 2015.07.31, I completed a research visit at the Department of Public Law of Åbo Akademi University in Turku, Finland. Topic of the research was the autonomy of the Åland-islands and that of the Sami community. I can I can consider myself fortunate to have been supervised in Turku one of the most renown researches on the topic of political autonomy Markku Suksi. Through his support I was able to clarify my research hypothesis, find the corresponding methodology, and process the relevant scientific literature with due diligence.

Further shorter field trips were carried out to Basque land, Catalonia, and Wales. The face-to-face interviews with experts and politicians were complemented by online discussions.

I.2. Justification of topic selection

The documents that served as a basis to reconstruct the "nation-state position" of Romania, allude to the presence of a strong tacit consensus within the Romanian political culture, capable of shaping public policy decisions. Most certainly, it is due to the impact of this tacit agreement, that to date no in-depth analyses has been carried out concerning the feasibility of incorporating a territorial autonomy into the current Romanian legal system. The issue pops up every now and then, depending on the political discourse in the country, but extensive scrutiny has so far avoided the topic. In this respect, the novelty of this dissertation is twofold. The constitutional aspects of a Szekler autonomy arrangement in themselves were largely neglected within academia, leaving behind a gap that is very much ripe for scientific review. Furthermore, even if the topic was discussed, it was mostly done within the framework of the "nation-state discourse", and all the natural conceptual restraints thereof. This dissertation attempts to surpass these constraints, along with some of the most widespread, albeit false presuppositions and misconceptions surrounding the issue at hand. Ultimately, we invite the reader to engage in a mind-game, in order to deconstruct the "constitutional myth" regarding autonomy. Hopefully, by the time one reads this dissertation through, he will gave been convinced that there are indeed no constitutional obstacles to establish a territorial autonomy within Romania. There are only political obstacles, which tend to be wrapped and presented as legal ones.

II. Methodology

II.1. Multidisciplinarity

The subject of the dissertation required a multi-level approach to it. The three main scientific fields I immersed in to have a more complex understanding on the subject is: law, political science, and history. Among these law is the most salient given that first and foremost I am analysing laws, international covenants, autonomy statutes, and other sources of law. The juxtaposition of the three fields allowed for a more sophisticated, and overarching approach of the topic.

II.2. Methodology

I analysed my hypothesis through legal doctrinal analysis, and comparative legal analysis based on the relevant legal material: The Constitution and laws of Romania; The two Opinions of the Legislative Council of the Parliament of Romania on the rejection of the Draft Law on the Autonomous Status of Szeklerland; Decision Nr. 80/2014 of the Constitutional Court rejecting the constitutional amendments proposed by the Special Committee of the Parliament; relevant decrees of the Prefect's of Romania; the Statutes of European autonomies, as well as the constitutions and laws of their host countries; international legal material ratified by Romania.

The issue of the constitutionality of territorial autonomy within Romania emerges every now and then, depending on the political discourse in the country, but extensive scientific scrutiny has so far avoided the topic. In this respect, the novelty of my theoretical

approach was twofold: 1.) The constitutional aspects of a Szekler autonomy arrangement in themselves were largely neglected within academia, leaving behind a gap that is very much ripe for scientific review. 2.) Additionally, even if the topic was discussed, it was mostly done within the framework of the "nation-state discourse", and all the natural conceptual restraints thereof. My dissertation surpassed these constraints, along with some of the most widespread, albeit false presuppositions and misconceptions surrounding the issue at hand. Ultimately, I invited the reader to engage in a mind-game, in order to deconstruct the "constitutional myth" regarding autonomy.

The case selection for the study was done bearing in mind the main features of the specific region (Szeklerland) and its host country (Romania) that serve as the basis for comparison. In this respect I will write about territorial autonomies (given the fact that Szekler autonomy aspirations pertain to territorial self-government, as opposed to other forms of autonomy), in regions where a specific minority represents the majority, and which exist in unitary states (as opposed to federal ones). Applying these methodological constraints, the core group of selected cases can be identified as follows: South-Tyrol in Italy, the Basque Country, and Catalonia in Spain, Scotland in the United Kingdom, the Åland Islands in Finland. These main cases, which are relevant in all the questions raised by documents outlined in Chapter 3, were supplemented by examples that are important only in some particular aspects. More specifically, state approaches to autonomy that are similar to that of Romania will be mentioned, like the case of Corsica in France, and the Russian community in Estonia. In particular, French reactions to, and arguments against Corsican autonomy have remarkable similarities with Romanian arguments. [1] The legal entrenchment of the autonomy

[1] Due to the fact that Corsica still hasn`t received law-making powers, hence the Corsican Assembly has only limited authority to adapt regulations in its areas of administrative competences and can propose modifications to

of the Faroe Islands, and Greenland in Denmark will be discussed, as well the experiences of the only minority territorial autonomy of Central and Eastern Europe, Gagauzia. While federal states in general, fall outside the scope of the analysis, some brief references to the special legal entrenchment of autonomies in federal states will be mentioned, only for the purpose of illustrating the manifold ways an autonomy arrangement can be embedded in a given constitutional system.

specific legislation and regulations, most of the scholars do not consider Corsica to be an autonomous entity. See, e.g.: Suksi (2011), pp. 16-17. Nonetheless, this case is relevant from the state-reaction point of view, and will be discussed exclusively from that perspective.

III. Conclusions of the dissertation

- Conclusions of the conducted legal doctrinal analysis, and comparative legal analysis proved that the assumption that autonomy would contradict the constitutional order, and violate the unitary, indivisible, and national character of the Romanian state, arises from the misinterpretation of the connection between state and autonomy.

- Chapters 1, and 152 of the Constitution of Romania (stipulating and protecting the above characteristics), are thus of no legal relevance, and cannot be understood as an effective constitutional legal barrier.

- Territorial autonomy as an institutional solution does not contradict the constitutional order of Romania. There are no provisions in the Romanian legal system whatsoever, which would constitute a legal obstacle to the creation of an autonomous region.

- There are only political obstacles, which tend to be wrapped and presented as legal ones, due to historical resentments towards Hungarians, and the decades-old Romanian endeavour to establish an ethnically homogenous nation state.

- While on the one hand, we see no constitutional barrier to autonomy, on the other hand: the notion of autonomy is not at all alien to the constitution, as it refers to several forms of it (personal, functional, and administrative). Furthermore, if one reads the constitution without an ethnocentric mind-set, and in junction with international treaties on minority protection ratified by Romanian, one could easily adopt a more pluralistic interpretation of the constitution, open to accommodate minority claims on ethnic-power sharing.

- The tacit agreement on full rejection of autonomy produces conceptual restraints, which blinds nation-state enthusiasts to alternative, and possibly more effective ways the state machinery could function. This is how referring to Article 1 of the constitution becomes a mental shortcut to avoid a meaningful discussion on territorial autonomy.

- Particular attention was paid to the different European models of entrenching an autonomy arrangement within the legal system of a given host country. This was particularly important given that it shows that in the presence of political will, minority claims can be accommodated, even if the resolution requires the central state to resort to special means.

- One can draw inspiration from the examples and solutions mentioned in the study and apply them to the Szekler case. The Draft Law on the Autonomy of Szeklerland, could blend into the Romanian legal system as an organic law, based on Article 117 (3) of the Constitution. Besides this semi-general constitutional entrenchment, a regional entrenchment would also be present, as the Draft Law stipulates that any amendment to the statute should be approved in a local referendum, before it can enter into force. While such an arrangement could be flexible enough to follow the changes that inevitable occur in group relations over time, it might also make it doubtful whether such an arrangement would be sufficient enough to protect the local Szekler community in the long run, and to ensure the effective participation of the citizens of the autonomous polity in public decision making. Due to the weakly embedded nature of democratic political culture, a political entrenchment that functions effectively in Denmark or the UK, cannot be achieved within a reasonable time-frame in Romania.

For this reason, an international entrenchment of some kind would be desirable to counterbalance the possible shortcomings of the lack of a general constitutional entrenchment. Such a treaty-based entrenchment would be possible under the auspices of an international organization, or can take a bilateral form as concluded between Hungary and Romania.

- A separate chapter dealt with the policy implications that could have been deducted from the analysis, broken into four parts: actions of the Romanian state, the minority community, the kin-state, and the international community:

    - In terms of Romania, I conclude that the administrative reform that has been on the agenda of the political agenda for years now, is a suitable framework for a dialogue on how to accommodate minority autonomy claims. Desecuritization of perception towards minority aspirations also proved to pivotal for a sustainable autonomy arrangement

    - As far as the minority community was concerned, I found that minority organization, in particular the Democratic Alliance of Hungarians in Romania, should resume and amplify strategies of community-building, international advocacy, as well as domestic-public pressure, and aim to achieve institutional solutions, as opposed to relying on haphazard political pacts to gain access to state resources.

    - Taking into consideration the general reluctance of the international community as a whole to address the yet unresolved issues of traditional

minorities, the kinstate activity of Hungary will continue to be an important factor in helping minority Hungarians to maintain and reproduce their societies, let their voices be heard by the international public opinion, initiate a dialogue with the host countries on their problems and aspirations, and to negotiate beneficial economic deals, and promote cross-border development programs

- Even though there appears to be a sufficiently diminishing readiness from the side of the international community to actively engage in resolving issues of traditional national communities of Europe ever since the migration/refugee crisis has started to unfold as of 2015, the mechanisms of the Council of Europe and the European Union, along with the involvement of foreign states could still play a salient role in fostering to improve autonomy related practices and legislation in Romania. Especially given the fact that Romanian constitutional culture was heavily influenced by foreign models.

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