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PROTECTION OF LOCAL INDIGENOUS COMMUNITIES IN THE SCOPE OF GOVERNANCE

Balázs Szabolcs Gerencsér
associate professor (PPKE JÁK)

1. Central and Local location of an indigenous community

Since the 1980s and '90s the economic and social functions of the states have increased in Europe,[1] even now, the sustainability of the over-active government has become an issue. A dualism can be observed in the states' internal and external economic, and social problems.

On the one side, since the entry into force of the Council of Europe's European Charter of Local Self-Government (ETS nr. 122), appreciation of local communities has emerged. It can be seen by the rise of the Congress of Local and Regional Authorities of Europe[2] that has become one of the pillars of the Council of Europe. Since its establishment in 1994 its role is to promote local and regional democracy, improve local and regional governance and strengthen authorities' self-government. That is the characteristic representation of the Political decentralization in units within body. In the same time the European Union developed its own concept of region and local self-governance. While the CoE stresses out the political role and self-decision-making ability of local communities, the EU, adding to the previous one, understands "planning, statistical" units as an economic-based interpretation. One model displays the "down-top" concept of the democratic representation, while the other is a "top-down" approach of governance.[3] I do not consider these two as

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1 Varga, Zs. András (ed): *Általános Közigazgatási jogi – az Alaptörvény rendszerében*. [General administrative law – in the system of the Basic Law] Budapest–Pécs, Dialog Campus, 2012. 144–152.

2 „The Congress of Local and Regional Authorities of the Council of Europe is a pan-European political assembly, the 636 members of which hold elective office (they may be regional or municipal councillors, mayors or presidents of regional authorities) representing over 200,000 authorities in 47 European states." See: http://www.coe.int/t/congress/presentation/default_en.asp (2012. 12. 12.)

3 Győri Szabó Róbert: *Kisebbség, Autonómia, Regionalizmus.* [Minority, Autonomy, Regionalizm]

opposing worlds, because different purpose needs different instruments, see the difference between the scope of regional inequalities or political representation.

On the other hand, parallel in time, theories on governance have evolved significantly. Whether the New Public Management or the Neoweberian State model is to be considered, each of them is starting from the central government.[4] Although, at the new millennium the public policy trends and their communications drove the opposite direction, as neither "hollow" nor the "strong" state meant decentralization of decision-making.[5] Both theories of public policy are different in their philosophy and toolbar, however, these trends are the similarly not emphasize local communities and local decision-making, but the functioning of the central government.

This duality can be observed in the European states' minority law as well.[6] Hereafter under term "indigenous community" as "minority" I understand the definition of Fancesco Capotorti. In this regard minority is *„a group numerically inferior to the rest of the population of a state, in a non dominant position, whose members – being nationals of the state – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population, and show, if only implicitly, a sense of solidalrity, directed towards preserving their culture, traditions, religion or language."*[7] Though many of definitions have been created since then, this one is still recognized as generally valid. Heintze, furthermore, mentions objective and subjective elements of the concept of minority.[8] *Objective* criteria is (1) the numerical superiority of the majority, (2) the minority's non-dominant position, (3) the citizenship of the State which they reside, and (3) bearing ethnic, religious or linguistic characteristics, which differentiates

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Osiris, Budapest, 2006. 476–477.

4 See in detail: Randma-Liiv: *New Public Management versus Neo-Weberian State in Central and Eastern Europe*. Tallin, 2008. http://www.cuni.cz/ISS-50-version1-080227_TED1_RandmaLiiv_NPMvsNWS.pdf and Fodor, G. Gábor– Stumpf, István: Neoweberi állam és jó kormányzás. [Neoweberian State and Good Governance] *Nemzeti Érdek* II., 2008./3. (Századvég Kiadó) 2008. 5–26.

5 It is often called as „redimension of direct control", furthermore, accountibility and decreasing costs are both leading to „effective centralized state". See for example in the field of education one of an exhaustive research organized by Law and Education, published by Wolf Legal Publishing in: Genc Alimehmeti: *Decentralization and Accountability*. In: C.L. Glenn – J. De Groof: *Balancing freedom, autonomy and accountability in education*. Vol.1. Wolf Legal Publishing, the Netherlands, 2012. 131.

6 See how *regionalism* is in very close relation to minority law, for example in the term "ethno-regionalism ". Győri Szabó op. cit. 477–479.

7 Francesco Capotorti: *Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities*. New York, UN, 1991. 7.

8 Hans-Joachim Heintze: Autonomy and Protection of Minorities under International Law. In: Günther Bachter (ed.): *Federalism agains Ethnicity?* Zürich, Verlag Rüegger, 1997. 81. Similar results can be found in the researches of Kristin Henrard and Péter Kovács. See Kristin Henrard: *The definition of minorities and the rights of minorities regarding education in international law.* In: J. De Groof – J. Fiers (eds.): The Legal Status of Minorities in Education. Acco, 1996. 46–65. and Péter Kovács: *International Law and Minority Protection - Rights of Minorities or Law of Minorities?* Budapest, Akadémiai Kiadó, 2000. 73.

them from the majority population. *Subjective* aspects: sense of belonging and solidarity in the common culture, traditions, religion or language. Furthermore, Heintze mentions that the fundamental role of the subjective factor, is that it allows international law to distinguish between minority and other integrating groups of society (e.g. immigrants).

Minorities as indigenous communities are characterized by both objective and subjective elements, of which we cannot measure the importance, neither the benefit of one nor the other. In any case, people belonging to a minority shall be nationalities (objective element), because if they are not a citizens, then they must be subjects of the entirely different legal conditions of foreigners or stateless persons.[9] Besides the legal relationship, however, they have emotional connection with the area and the country they live in (subjective element). Minorities are not only voters in the country, but also part of the people, in cultural, political and economic sense too. [10] As minorities are a part of the people, so by extension, they are constituent of the state's sovereignty too.

This also means that the minorities have the same political nature like the other inhabitants of the country, the majority. Indeed, not their political characteristics distinguish them from the majority, but the character, which is the essence of the Capotorti definition. From the viewpoint of the State the *minority is a special distinct group of the society, or the citizens*. However, different characters help describe them compared to other specific social groups, such as children, young people, elder people, mothers, unemployed people, disables, etc., for which the state provides separate (individual) protection. The common sense of identity of the minorities and the sense of belonging will be the character for which a state, in many cases, may establish collective protection for them.

If we accept that a minority is a separate and in the meantime cohesive element of the political nation, enriches the country's cultural, linguistic, religious, political, etc.. diversity, it can be inferred that the state has a duty to support, or at least not hinder the survival of this specific group the society. According to my preliminary conception the state mainly fulfils its duty by *regulation* and *implementation* in this regard. This may be either *central*, where the central decision-making body creates (specifies) the minority rights by legislation, that can be enforced by or practice before the same majority state agencies. Or, the regulation and implementation may be given to the minority as self-determination issues, ie. to *decentralize* decision-making and/or implementation.

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9 Steven C. Roach: *Cultural autonomy, Minority Rights and Globalization*. Hampshire–Burlington, Ashgate, 2005. 144.

10 See eg. the Hungarian Basic Law, where Article XXIX para (1) states that the minorities are „constituent parts of the State".

2. Seven steps of protection

Since the topic of protection of minorities is very wide-spread, it is necessary to narrow it in this article. My approach is based on the scenes of minority-protection that are tailored to specific forums of minority interests.[11] Minority protection is a complex task for both minorities and the majority, since the states and minorities represent their interests at multiple forums. Since the beginning of the 20th century, era of the League of Nations, minorities can (a) represent their interests at *international organizations*, and international law applies to them; (b) the relevance of the relationship between *minority and kin-state* seems to increase, and (c) minorities represent their interests *in their own country* within parliamentarian frames. While these scenes of minority protection are carrying out their activities in parallel, the question of our research, the centralization-decentralization appears only indirectly at international or kin-state relation, as internal organization of the states is affected by bilateral and multilateral international relations, and even political, economic and cultural trends, as extrajudicial areas. Our study, however, shall not extend the management of government of the internal scene.

The minority protection state mechanisms can be grouped in different ways. First, the *level of regulation* may vary considerably in some countries, as relevant regulation can be found in either (a) constitutional provisions, (b) quasi-constitutional provisions, (c) statutory regulations, (d) lower-level regulations, (e) local codes, or (f) legally recognized but not regulated practices.

In this study, however, the minority protection provisions are not to be collected along the hierarchy of legislation, but the scale drawn from the centralized regulation to local self-determination. This is now not a formal frame, but a *criteria of the content*, that is, how competent is the minority to make decisions of its own. The study examines the situation of *linguistic minorities*, who perhaps the most common minority communities of Europe.[12]

The scale of protection of language takes form the protection of the state language to the protection of the minority languages according to the *content* of the regulation, and as to the *form* it takes from the central regulation to the decentralized authority. At the "central" end of the scale the central institutional system can be found established by the central decision maker, while on the other end, decentralized decision-making is set for guaranteeing rights for minorities by being authorized to self-determination. Between the two ends of the scale the following seven steps are located:

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[11] Gerencsér, Balázs Sz.: "*Nyelvében él...*" ["*Live in its language...*"] Budapest, Szent István Társulat, 2009. 17–26.

[12] We shall note that the situation of linguistic minorities is not the same as the protection of language of immigrant communities. In this study minorities are considered as indigenous people, for whom the language protection is equal to the preservation of identity. Although, the language rights of immigrants are fund a similar place because they are a special group of the society too, but the way and means of protection will lead to a different outcome.

(i) The *"a-contrario" regulation* is at the end of the scale, when the majority language is protected (not for linguistic reason but for official use) by law instead of minority languages.[13] Here, the legislature is thinking backwards and the framework for the minority language rights are set by delimitation of majority language.[14]

(ii) A more general form is a *direct legislation*, which explicitly guarantees the rights of linguistic minorities. This type is characterized by a central orientation; includes the permissions granted by majority ethnic group. In terms of content it may be (a) either *specific language-related*[15] or *general law on minorities*,[16] which has also linguistic stipulations. However, we can even group these laws as guaranteeing (b) *individual rights and/or collective rights*. Laws protecting minority languages are the oldest and most widely used regulative tools. Practically, in the 19th century at the emergence of minority rights such laws having a clear language character had already been adopted.[17] However, general use of this instrument is dated after World War I., when on the one hand the peace agreements ordered each State to protect minorities, and on the other hand, the international forum for minority rights protection was provided by the League of Nations.[18] The regulations created after 1918 wore international marks across Europe. Even if the minority protection rules were not directly established by international law, international obligation could be found in the background.[19] In the second half of the 20th century, however, several examples were created where the

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13 Example for such legislation is the State Language Act adopted on 15 November 1995 by the Slovak Parliament. Prior to this Act, in 1990 the first State Language Act, was adopted, of which provisions outdated in just five years, and the implementation and interpretation was entirely subjective according to literature. The second State Language Act came into force in January of 1996, which makes the Slovak language as official language before state agencies and organizations, local authorities and public institutions [Article 3 para (1), first sentence]. See more Gyönyör, József: Törvény a hivatalos nyelvről Szlovákiában. [Act on official language in Slovakia] In: *Magyarok Szlovákiában. Évkönyv.* Pozsony, NDC, 1993. 174–186.

14 As the CoE Initial Periodical Report of 2003 finds „Act No. 270/1995 Coll. on the state language of the Slovak Republic, which regulates the use of the state language in the fields of education (Section 4), the judiciary (Section 7), state and public administration (Section 3), the media and culture (Section 5), economic services and health (Section 8) and Act No. 184/1999 Coll. on the use of the languages of national minorities, which regulates the use of minority languages, notably in the official communication." MIN-LANG/PR (2003) 8. http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/SlovakiaPR1_en.pdf. 14.

15 Continuing the previous example, such kind is the 1998 Minority Language Act of Slovakia.

16 The latter is typical of the countries of Europe. Such law on minorities is in force for example in Croatia, Hungary, Slovenia, and in most countries of Central and Eastern Europe.

17 See for example in Hungary Act 68 of 1868

18 Roach op. cit. 14–18.

19 See for example the legislation that followed the treaty in Saint-Germain-en-Laye (1919), or Paris Treaty on minority rights (1919). See text in: *Protection des minorités de langue, de race ét de religion par Société des Nations. Recueil des stipulations.* Geneve, 1927.

origin of language protection is not a rule of international law, but created as a result of an internal development. Such case was the Belgian constitutional amendment in the 1960s, and the Central and Eastern European states' legislation in 1989 to 1993 during the regime change.[20]

However, it is fair to say that whatever is the cause of the regulation, the minority language protection laws are not self-regulating actions, but actions of the political and ethnic majority. The democratic value of these kind of law is determined only by the level of participation of the linguistic community in drafting the norm. Here, we might say, the procedure of codification indirectly guarantees minority protection in some way. It appears especially if the communities are involved in decision making process (e.g. because of parliamentary representation), or at least to control the preparation (e.g. through their associations or by Ombudsman). In my opinion, the mechanism of the Language Charter assisted the democratic legitimacy of the Europeans regulations in a broad sense.

(iii) The next grade is the *cultural rights granted by central government*. In that context, the state is not only providing linguistic rights for minorities, but also more widely allows to exercise cultural rights also having direct effect on linguistic rights. Such, I consider, the right to education, the right to cultural activities, use of media, and freedom of religion.

(iv) It is the first step of self-determination if the local community is *free to decide how to implement* rights within a central regulation framework. Such a case occurs when the state creates a legal and institutional framework in which the factual implementation belongs to the minority. Unlike step (ii), a minority decides for example how to allocate budget for minority language teaching institutions or what type of institution to create, decide in personnel matters, etc. This is an important step when the level of self-determination is examined.[21] With regard to minorities the first level of subsidiarity is when self-determination appears in implementation. This, however, does not mean self-government, because of the lack of local normative decision-making.

(v) The institutionalized form of self-governance is where the local community has *freedom in the decision-making and implementation*.[22] This level of self-government is the concept of *"cultural autonomy"*.[23] The minority

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[20] I note that just after the entering into force of the Minority Language Charter and the Framework Convention each Member States' legislation took off, which again shows the influence of international law.

[21] International relations on this type of self-determination are referred in Roach op. cit. 25. and Hannum op. cit. 49.

[22] This level may be close to the concept of "National cultural Autonomy" that professor Ephraim Nimni refers. It goes back to the Austro-Hungarian (multiethnic) Monarchy's non-territorial, but wide cultural minority protection. See Ephraim Nimni: Introduction. In: Ephraim Nimni (ed.): *National cultural autonomy and its contemporary critics*. London–New York, Routledge, 2005. 1–14. He refers to Karl Renner's State and Nation (reprinted in the same book 21–45.).

[23] See for example the cultural autonomy of the Friesland, or in Slovenia, Croatia, or Hungary. Hereby I

may exercise local (territorial) or locally not characteristic (personal) self-determination, where the answer to local legal linguistic and cultural issues is given by the members of the community. Their right to self-determination is exercised by their own elected bodies, representatives.[24] In general, even this form of self-determination cannot be found without a central regulation. The direct regulation [step (ii)], is therefore necessary, since decentralized decision-making is technically difficult to conceive without constitutional or at least legal authorization.

(vi) Even higher level of the self- determination is the community's material and complete freedom of decision, ie the *"political autonomy"*.[25] These communities have autonomous parliament, executive power, in many cases (eg, Faroe, Åland, Catalonia) economic autonomy, and are fully self-governing communities within the constitutional framework of the majority state. According to the linguistic and cultural rights, I consider the Saami communities' autonomy the same kind.

(vii) Finally, the other end of the scale, the *co-national status* is placed, which typically appears in the linguistic communities of Belgium, or the Swedish people of Finland.

3. Is there any relevance in decentralisation or subsidiarity today?

3.1. Regionlism as a magic wand

Since the 80's, the European Community "has sought to embrace local diversity and decentralization of power."[26] The regional aspirations can be seen clearly through the text of the treaties (legal approach), and evolution of the Committee of the Regions (institutional approach).[27] As Nicola finds about the establishing of the Committee "[i]t was a landmark event because it represented Brussels' commitment to and recognition of, subnational interests."[28] The role of the EU regional policy in the

use this term in the meaning like Peter Kovács does, see Kovács op. cit. 51.

[24] As Roach stresses out „vis-a-vis the plans for multi level governance, European authorities have turned increasingly to a first and second-level right autonomy to promote the [...] goals of solidarity and social cohesion." Roach: op. cit. 32. This idea goes back to the point of the first chapter of this paper (relation between state and minority).

[25] The relation between linguistic rights and autonomy is clearly drawn in Hurst Hannum's evergreen monograph (*Autonomy, Sovereignty, and Self-Determination – The Accommodation of Conflicting Rights*. Philadelphia University Press (PA), 1996.) where the professor specifically highlights language as a content of autonomy. Hannum op. cit. 458.

[26] Fernanda G. Nicola: 'Creature of the state': regulatory federalism, local immunities and EU waste regulation in comparative perspective. In: Susan Rose-Ackerman – Peter L. Lindseth (eds.): *Comparative Administrative Law.* Chentenham–Northampton, Edward Elgar, 2011. 162.

[27] On EU development see Győri Szabó op. cit. 512. and Ash Amin – John Tomaney: The regional dilemma in a Neo-Liberal Europe. *European Urban and Regional Studies*, 1995/2. 179–185.

[28] Nicola op. cit. 164.

viewpoint of the minorities is important even if Roach notes „one of the problems with the Committee of Regions is that it cannot effectively address the demands of national minorities [of] the state."[29] Besides the EU, the strengthening of the above mentioned Congress of Local and Regional Authorities of Europe shows that in the past more than thirty years, the European international organizations recognized the regional self-expressing formations as basic democratic values. We may cite and even develop the evergreen findings of the literature saying: Europe was *realized to be* „a continent of regional identities".[30]

The evolution of regionalism in Europe laid, on the one hand, on democratic and political principles,[31] on the other hand, economic roots.[32] Thirdly, it should be noted, however, that the preservation of cultural identity has become a key element of regional efforts.[33] All three (*political, economic, and cultural*) character of regionalism has been preserved, although we could say that this definition has as many interpretations as many institutions are dealing with it. According to Hueglin, the same phenomenon gains territorial, ethnic and socioeconomic interpretation, ie, „[t]he concept focuses on the objective existence of regional differences within and across boundaries of nation-states and on the subjective perceptions of these differences."[34]

One of the keys of the political magic of regionalism (which is not affected by the economic and cultural characteristics), however, was the strengthening of local powers, which are competing nation-states, in international level.

New Public Management (NPM), starting to develop also in the 80s, based on neo-liberal roots, aimed towards "emptying" the state, creating the "hollow state". In opposition to the strong nation-state, it also had a weakening effect by the outsourced public powers, and strengthened market dominance.[35]

The two (nation-state weakening) trends had, however, *opposite effect*. Regionalism strengthened the local communities within the state, and draw attention to the duty of the State to protect local communities. While, parallel in time, the NPM aimed emptying the central government, so the weakening state became (economically and in identity) harmful to the local communities as well. In my opinion, this is the reason why the international relations and cross-border economic co-operation became

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29 Roach op. cit. 68.

30 Celia Appelgate: A Europe of Regions: Reglections on the Histography of Sub-National Places in Modern Times. *American Historical Review*, 1999/10. 1157.

31 See Amin-Tomaney op. cit. 182. and Thomas O. Hueglin: Regionalism in Western Europe – Conceptual Problems of a New Political Perspective. *Comparative Politics*, 1986/7. 439.

32 Hueglin op. cit. 441.

33 S. Roach op. cit. 68–69., Hueglin op. cit. 439–440.

34 Hueglin op. cit. 439.

35 Frivaldszky, János: A jó kormányzás és a helyes közpolitika formálásának aktuális összefüggéseiről [On contemporary correlation of good governance and forming good policy]. In: Frivaldszky, János – Szigeti, Szabolcs (szerk.): *A jó kormányzásról: Elmélet és kihívások*. [On good governance: theory and challenges]. Budapest, L'Harmattan, 2012. 57.

more pronounced in the mid-90s in some regions. The local/regional administration has compensated this way for the weakening of interest and responsibility for local governments.

3.2. Regional, Territorial Cooperation

The concept of cross-border (transfrontier) cooperation was introduced by the Council of Europe within the framework of the Madrid Convention and completed by inter-territorial alliances in the First Additional Protocol. Parallel, the European Community has introduced a territorial concept of cooperation, which covers the cross-border, transnational and inter-regional cooperation. That means the EC legislation created the concepts that are covered by INTERREG III programs.[36]

The Regulation creating the European Grouping of Territorial Cooperation (EGTC)[37], aimed at an economic and social cohesion. It is a special and innovative cooperation, as we observe the development of the trans-national local interests without any sense of political self-determination.

Nowadays, the economic role of the EGTCs is indisputable, however, these formations won a *special cultural role* as well.[38] This cultural character has an impact on the minority protection too if minorities live in an EGTC. So, the primarily economic-based institutions can develop new, minority protection function in addition. This is possible especially in areas where, for example, border-shifting took place at the first or second World War period and as a result indigenous populations became citizens of another State - and thus became a minority.[39] In this case, the

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[36] Johannes Maier: European Grouping of Territorial Cooperation (EGTC) – Regions' new instrument for 'Co-operation beyond borders' a new approach to organize multi-level-governance facing old and new obstacles, Master of European Integration and Regionalism, Bolzano/Luxembourg/Graz/Barcelona, 2008.

[37] 1082/2006/EP-EC Regulation. OJ 31.7.2006. L 210/19-24. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:210:0019:0024:EN:PDF

[38] The aims of an EGTC can be varied. It may be aimed at making the region a prime tourist destination, transport, infrastructure improvements, to deepen cultural ties, health improvement. See Article 7 para 3 of the Regulation: "Specifically, the tasks of an EGTC shall be limited primarily to the implementation of territorial cooperation programmes or projects co-financed by the Community through the European Regional Development Fund, the European Social Fund and/or the Cohesion Fund. An EGTC may carry out other specific actions of territorial cooperation between its members in pursuit of the objective referred to in Article 1(2), with or without a financial contribution from the Community."

[39] The modifications of state borders are concerned to almost all European states, such as France–Germany, Denmark–Germany, Austria–Italy; as well as all the Central European states without exception. According to the information of the European Commission, cross-border projects can be found in most minority-related areas. http://ec.europa.eu/regional_policy/index_en.cfm. See for example: Syddanmark – Schleswig – K.E.R.N. or Italia – Österreich, or Central Baltic Cross-border co-operation programme, etc.

development of economic and cultural relations with kin-state's same speaking population on the other side of the border is logical and obvious.[40]

4. Conclusion

Above, we approached the protection of local indigenous communities through a special subsystem of linguistic minorities. We chose the most important type of minority in Europe, which bears the all the main features of the minorities, and can be used as a good indicator in the analysis of the current situation of the protection of minorities.

The linguistic rights have a variety of traits. They have different meanings among the nation-states, immigrants or the minorities. Linguistic rights appear as a kind of *fundamental (minority) rights,* as they have *human rights* implications[41], and furthermore, beyond human rights, characteristics similar to *citizens rights*. Such basic human rights are closely related to the linguistic character of minorities like human dignity or the right to fair trial. However, such additional rights are characterized by minorities, which are primarily not basic rights in legal nature. Such is for example preference of employment of native speaking official or doctor, or the possibility to establish special language educational infrastructure.

After WW I. international law established such bi- and multilateral agreements that specifies language rights. Later in the end of the 20th century, the Language Charter encourages the fundamental character of linguistic rights, by which international law unequivocally recognizes the relevance of protection of linguistic rights. By being easy to interpret by the EU law and the international law, these rights became the most important in the field of protection of minorities.

Because of the fundamental character of linguistic rights, that these rights carry not only a subjective element (which may be a collective type with regard to the minority community as well), but also an obligation to the state. In this case the state has an obligation to guarantee to exercise linguistic rights, to protect it by law, provide guarantees - just like every other fundamental rights.

As it was analyzed above, the state protect minority languages especially by regulation and, secondly, through the implementation of law. The real difference

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[40] Edit Pintér states that "the EGTC is a legal tool that would not stand in the way of enhanced cross-border co-operations. The cross-border grouping is not intended to substitute for cooperation of Euro-region, but rather an additional opportunity for local and regional actors to build and deepen of the relationship with the Hungarian–Hungarian relations in the surrounding areas." Edit Pintér: *A kisebbségek együttműködésének átértékelődése – avagy jogi lehetőségek a határon átnyúló kooperációk megerősítésére.* [Revaluation of minorities' cooperation – legal ways to strengthen cross-border co-operations] [Flachbarth-füzetek] 2006. 165–174.

[41] Professor Fernand de Varennes considers the international human rights standards still to be fulfilled in the field of language-protection. Fernand de Varennes: Language as a Rights in International Law: Limits and Potentials. In: D. Richter – I. Richter – R. Toivanen – I. Ulasiuk (eds.): *Language Rights Revisited – The Challenge of global Migration and Communication*. Wolf Legal Publishers, the Netherlands, 2012. 43–52.

is *not in the formal* framework (ie, level of sources of law), but *in the content*. The State, therefore, can choose legal regimes from the fully centralized to the decentralized regulation. Decentralization in protection of minorities, or more precisely, the linguistic minorities means whether the state provides an opportunity for *autonomous decision-making*, or to be able to *implement the legal framework on their own*. Decentralization leads to the real content of the self-determination of the local indigenous minorities, that is mainly their common identity (and the common desire to preserve it), which is closely consistent with the classic definition of the minorities.

If we accept the statement of Roach and 20th century is indeed the "century of international land rights", [42] then what was the 21st century? The trend shown by the Charter of Local Self-government, the development of the CLRAE, the EU language-protection aims[43], or the role of the EU Committee of the Regions, suggests that we are living the age of *subsidiary land rights*. In this sense local minority communities can have their real constituent role primarily through decentralized self-determination, that is "even over the exclusivity of regionalism".[44]

The evolving international role of local interests, however, is a *double edged sword*. On the one hand it leads to weaken the role of the nation-states in international interest enforcement, as the regions seem to be virtually independent subjects of international law, which benefits are only enjoyed by globalizing efforts.[45] Furthermore, the vary of the meaning of "regions" hinders the common development, even in minority law.[46] On the other side of the coin, however, we see that the local cultural values, such as the preservation of minority languages, have even more opportunities at the local level.[47] This means that the protection of languages used by local communities shall be complete only when the community gets an opportunity to protect the language and culture by local decision-making and implementation.

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42 Roach op. cit. 138.

43 See as former actions: Arfé report (1981), EBLUL (1982), statement of the Parliament (1983), Resolution on the languages and cultures of regional and ethnic minorities in the European Community (Doc. A2-150/87. Official Journal of the European Communities, No C 318, 30.11.1987, pp.160–164.) or the Report of Michl Ebner (A5-0271/2003)

44 Frivaldszky, János: Szubszidiaritás és az európai identitás a közösségek Európájáért. [Subsidiarity and European identity in Europe of communities] In: Frivaldszky, J. (ed): *Szubszidiaritás és szolidaritás az Európai Unióban.* [Subsidiarity and Solidarity in the European Union] OCIPE Magyarország – Faludi Ferenc Akadémia, 2006. 56.

45 In my opinion, overstated globalization results in the strengthening of regional identities, which of course affects the identities of national minorities too, in particular the cultural identities. This phenomenon is primarily useful for globalization, as it is easier to find way among more particularistic interests, instead of conflicting with large state interests. The languages are affected by globalization in increasing assimilation.

46 As Celia Applegate cites Tom Nairn: „'Europe of Regions' remains an astonishingly fluid notion." C. Applegate: A Europe of Regions: Reflections on the Historiography of Sub-National Places in Modern Times. *The American Historical Review* ,Vol. 104, 1999/4. 1158.

47 This is very close to Steven Roach when he highlights the „cultural production" of globalisation, that is *ipso facto* relates to local level. Roach op. cit. 139.

The evergreen challenge of decentralization is *to find the right balance*. First, balance between the central and the local division of powers, and secondly, between the aims and means of minority rights and linguistic rights.[48] Protection of languages and the protection of minorities, however, are largely mutually intersecting sets, though language protection is a broader scope, since it contains minority languages, immigrant languages, furthermore, dialects protection, and linguistic protection of majority language.[49] All these are practically built from the same fund, but end up in different solutions.

The answer to the question asked in the third section is *yes*, *there is relevance of decentralization and subsidiarity today in the protection of minorities*, and in particular in field of linguistic rights as:

- these rights has a *common content*, both at international and national level;
- it has a *close relation to fundamental rights* where the duties of the state appears besides subjective rights;
- linguistic rights have even a broader sense then fundamental rights as *administrative elements* are taking part;
- linguistic rights are always relating to a community where the given language is spoken, therefore the *local self-determination is adequate* in decision-making.

Roach says the protection of minorities needs a decentralized institutional framework.[50] This phenomenon seems to strengthen the relation between the minority rights and local self-determination. This is in line with professor Kovács' findings, that – interpreted to this research – the more subsidiary a rule is, the more able to protect local community interests.[51] We may add that always the "local best practice" is adequate to the local (minority) community, even if it is not regulated by positive norms. This relevance is proved by both the existing autonomies, the evolving self-governments, existing regionalism, regional cross-border co-operations and other special (international) protection of local communities.

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48 Hurst Hannum underlines another important balancing aspect between linguistic uniformity and practical or symbolic recognition of minority languages. He points out that the aim should be the *"intra-state harmony"*. Hannum op. cit. 460.

49 See for example the protection of state language in advertising and commerce in Hungary: Act XCVI of 2001. on the publication of the economic and business advertising signs, and some public service announcements in Hungarian.

50 Roach op. cit. 33.

51 P. Kovács applied this to the relation between the global and regional international legal instruments. See Kovács op. cit. 94–96.