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torian in Bucharest, has written the following about the Autonomous Hungarian Province: "the forming of the regions confirmed the concern of the governments of Romania about the exaggerated application of administrative decentralisation in the form of the Autonomous Hungarian Province (AHP). Indeed, the creation of AHP brought forth hostility on behalf of the Hungarian minority towards the unity of the Romanian state by rejecting authority and openly expressing loyalty to Hungary as well as by the rejection of the Romanian language as state language. Therefore it was abolished."

I repeat: we are in the year 2003 and the journal which has published professor Cernea's "thoughts" is the specialist journal of researches in Romanian public law with a good reputation and long traditions. The editor in chief of the journal, Nicolae Popa, was the president of the Romanian Constitutional Court at that time. Professor Cernea has not taken into consideration that the emergence of AHP had nothing to do with decentralisation; it was the "product" of centralised socialist dictatorship on a Soviet model. As for its operation and organisation AHP did not differ from the other provinces (which were created in 1950 and finally abolished in 1968) and the adjective "autonomous" had no meaning at all for the centralised state-socialist administration excluded any kind of autonomy.⁵ Furthermore I cannot imagine what are the facts Professor Cernea refers to as "hostile manifestations" (there are hardly any anti-system manifestations - if they occur, they are insignificant, let alone the existence any kind of activity against the unity of the Romanian state); statements about the

60. in *Europai Jog*, vol. III No. 6., pp. 33–38; concerning problems and administrative relations of self-governmental economic planning; Veress, E. (2002): A prefektusi tisztseg az önkormányzati rendszerben és az alkotmánybírósági gyakorlatban, in *Magyar Kisebbség*, 4, 286. I have called attention repeatedly to the fact how much, fundamental researches and publications, which examine regional development from an economic and specialistic political view, are missing. Major measures have been taken into this direction (the role of the economist PhD school of PTE and MTA-RKK has got an outstanding role) and there is a young, able, well-prepared team of economists and geographers taking shape whose research focus is regional development. Of course a lot more is ought to be done while legal aspects of the issue can be overview by two or three people quiet easily the economic approach would need the work of several research teams. The aim of specialistic political researches is to prepare decisions.

⁵ E. Cernea (2003) *Trădăria ale administrației regionale românești*, *Revista de Drept Public*, 1, p. 3.

⁶ *Revista de drept public*.

⁷ Provincial administration was introduced by the Law 5 of 1950. Csikszereda, Székelyudvarhely, Kezdvasárhely, and Sepsiszentgyörgy districts are parts of the Sialin province. AHP was created by the constitution of 1952. Reorganisation of administration was executed by the 331 Law of 1952. Csik, Erdőszentgyörgy, Gyergyószentmiklos, Maróshévíz, Marosvásárhely, Szászrégen, Sepsiszentgyörgy, Kézdivasárhely and Székelyudvarhely districts belonged to AHP with the chief-town Marosvásárhely. Maros-Hungarian Autonomous Province was created with an other regional administrative reorganisation in 1960. The recent system of counties was introduced by the administrative reform of 1968 (Law 2 of 1968).

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rejection of authority or openly declared loyalty toward the "brotherly", "socialist" Hungary are simply untrue. Might Cernea think of the Transylvanian, Romanian reflections of the 1956 Revolution and Freedom Fight of Hungary? Reasons of abolishment had nothing to do with Cernea's arguments although the increasingly emphatic "surging" nationalist discourse recurrent in the Romanian Communist Party (Romanian Labour Party before 1965) did have a role in it.

Professor Cernea (together with the Roman lawyer Professor Molcuș) is the author of the most used textbook on Romanian state and legal history in the Romanian legal education.⁶ The critical breeze and the request for supervision, which had occurred among historians although not to the desirable extent, had not left any visible trace among the Romanian legal historians.⁷

Professor Cernea can be charged with nationalistic narrow-mindedness, misinterpretation of facts and forging. But this is not the present issue. Professor Cernea is a "victim", he is a prisoner of nationalistic ideals since in spite of being a university lecturer he was unable to pass beyond the idea what I call "the doctrine of the unitary state". If his action was done on purpose (which is not rare at this level), Professor Cernea is a determined user of the doctrine of the unitary state. The application of this doctrine in politics has long traditions. But the determined application of this doctrine has been linked to the (at least partial) belief in it. As part of nationalism this is a belief and a religion in one. One can doubt it but it is difficult to deny it.

2. The Doctrine of The Unitary State

The Doctrine of the unitary State has little to do with the 1st article of the Constitution which declares the unitary character of the Romanian state (this doctrine appears as the ideological background to the Constitutional decree). If we leave off the ideology, unity of the state means no more than the state is not federally structured, its internal units have no sovereignty and there is exclusively one organising group of power at the level of the central state.

The doctrine of the unitary state has a lot more to do with the Romanian national movement, to the "unifying nationalism", to the Constitutional description of Romania as a nation-state. Is it related to Romanian regional policy?

⁶ E. Cernea, E. Molcuș (1996): *Istoria statului și dreptului românesc*. Casa de editură „presă „ansa” - S.R.L., Bucharest.

⁷ All Romanian schoolbooks of legal history can be coupled to the „nationalist” line. Besides the Bucharest example in Kolozsvár the name of Dumitru V. Firoiu (1998) has to be mentioned as a (negative) example: *Istoria statului și dreptului românesc*, Argonaul, Kolozsvár.

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Indeed it is in many ways: the doctrine of the unitary state provides the ideological-cultural background in which the framework of a European type of regional development has to be created at a minimum. There are perfectionist or even "more perfectionist" concepts too, which go far beyond the framework of European expectations.

The perfectionist concepts cannot be camouflaged by European cover.⁹ European Union did not invent regional politics to provide self-government of ethnic character. It also did not invent it to facilitate the more emphatic development and progress of economically more developed regions: the basic idea behind cohesion policies is to decrease differences between regions. This means withdrawal of resources from wealthy regions and redistribution of them towards poorer regions (all the 8 development regions of Romania are considered to be poor). Of course ethnic self-government and to a great extent regional economic-financial autonomy can be taken as a political aim. It has to be stressed: it has nothing to do with integration in itself. This has to be executed in the contemporary cultural-political setting in Romania and a decision of this kind – within the framework of the constitution or with the modification of the basic law - can be made exclusively by state organisations of Romania.

The question of regional policy is not at all suitable for what it is recently used in Transylvania: the instrument, sphere and aim of struggle and fight between Hungarian and Hungarian for power.

The doctrine of the unitary state is founded on the myth of a unitary nation, which had a significant role in the birth of Great-Romania. The national unity is a myth since it brought together social groups with very diverse traditions in order to establish a nation-state. After the formation of Great-Romania the doctrine of the unitary state appeared parallelly with the unity of nation. The different visions of the country's population about the future and the revisionist movements of the defeated countries (primarily Hungary) of World War I increased this unitary state myth that had the role to provide ideological power and internal coherence for the new state. The overt or hidden fear from falling apart generated this myth; the danger of splitting up of the state (than a realer, now an imaginary fear) generated the need of demonstration from

⁹ I mean the proposals of the Transylvanian and Szekler National Councils. Aspirations for autonomy should not have been attached to the problem of regional development; and it should have been understood that autonomy cannot be interpreted outside that particular political, cultural, ideological framework into which they attempt to settle it. Therefore it is an extreme case of political gambling if autonomy of Szeklerland is indicated as a precondition of Romania's EU integration. Autonomy for Szeklerland can be a political aim but it is basically a decision of internal policy, no autonomy can be possibly created without convincing the Romanian Constitutional and Legislative powers. In situations like this the previously mentioned propaganda is finally counter-productive.

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which the ideal of Burebista's unitary and centralised Great Dacian Kingdom derived. It might have been the filling up with national contents and idealisation into unification of the country during the brief personal union period marked by Mihály Vitéz. The doctrine of the unitary state became part of Romanian nationalism and became the determining mainstream of it. Following the peace after World War II this idea did not disappear and it reoccurred ("was made to occur") with extreme intensity in the Ceausescu-era. Only in the past few years has it become weaker to some extent. This has some direct consequences in the sphere of administration: this ideology considered decentralisation suspicious since the ideal was a centralised state. It is unacceptable to delegate competences to the local administrations by reducing the rights of the state and restricting the power of the central state by decentralisation. This vastly determines decentralisation even today when major measures are taken but the central state cannot give up its control over everything and neither its rights of intervention. It must have a say in everything. This is why the legal terminology of the Romanian language the notion of self-government is unknown. There is talk about local administration, although after the change of regime (somewhat tardily, by 1998-1999) the local administration in Romania has achieved the expected minimum (international) level which would allow it to be called self-government. But the word "self-government" contradicts traditions because it is carrying a meaning that is contrary to the doctrine of the unitary state. This is why the Romanian language uses the word local administration instead of self-government (although in this case the two are synonyms).

In such an ideological setting it is very difficult to accommodate the issue of regional improvement.

Therefore the doctrine of the unitary state does not indicate a real state unit in terms of constitutional law but a unit ideologically experienced and intensified. This is different from unity in constitutional law; it has direct legal impacts (conceptually defines the legal system) from which over centralisation and extensive intervention of the central state will be underlined. This kind of distorted intellectual structure is typical not only of the Romanian people, but it's a general Eastern-Middle-European phenomenon: Hungarians also have unabsorbed historical facts.⁹

⁹ It is enough to mention Trianon. Most excepts that Trianon is final and irreversible in a rational approach. But approach is often and deliberately not rational: numerous frustrations derive from that

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3. Abolishment of the Counties of Hargita and Kovászna

One of the extremist manifestations of the doctrine of the unitary state was the Bill of Great-Romania Party which aimed at the abolishment of Counties Hargita and Kovászna.¹⁰ According to the plan of the representatives of the Great-Romania Party: County Kovászna would be attached to County Brassó (which would create a new County Brassó with 700.000 inhabitants three quarters of which would be Romanians). County Hargita would be divided in two: one would be County Görgény-Csík with Maroshévíz as its county town (with villages originally belonging to County Maros annexed here), Udvarhelyszék (together with certain parts of County Szeben) would be attached to the proposed County Küküllő with Segesvár as its county town. The result would be that except for County Görgény-Csík Romanian speakers would dominate in the population of every county (even in County Görgény-Csík nationality rates would almost be balanced). In the argument for the bill it was claimed that this administrative reorganisation was necessary because the Romanian state lost its authority in the Counties Hargita and Kovászna. On 25th November 2003 the House of Representatives rejected the bill.

The bill discussed above is an extreme example; but the doctrine of the unitary state is part of the political culture in Romania and to some extent is present in the ideology of all Romanian political parties.

II. Legal Regulation, Legal Problems

1. Is it a Legal Problem or is it Not?

The central topic of vol. 1/2003 of Magyar Kisebbség (Hungarian Minority) was the Romanian regional policy and improvement. Our opening study¹¹, written together with Réka Horváth was criticised by Barna Bodó that we see legal and administrative issues where the problem is "primarily" not of legal and administrative character.¹²

Barna Bodó is right and he is wrong. He is right because we cannot discuss the issue without exploring the economic and ideological background. But the framework for regional policy is still the law. And the law will be such what the ideological background and the contradicting European Union influence will make possible. From this aspect law is determined and a

¹⁰ 425. Law proposal in the House Representatives in 2003.

¹¹ Horváth, R.-Veress, E. (2003) op. cit.

¹² Bodó, B. (2003) Régió és politika, in Magyar Kisebbség, 1, p. 37.

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determinant at the same time: the framework of regional policy is provided by the law, regional improvement takes place in the institutional framework which is created by the rules and procedures prescribed by law. That is actually more than law: it is the summary of specialist policies, which in many cases is in immediate interaction with legal regulations. The question of regional improvement can really be examined from the interdisciplinary point of ideology and politics, law and economy. The one sided approach is necessarily distorting. Instead of our one sided approach, which we published in Magyar Kisebbség, Barna Bodó recommended an other, similarly one sided approach. The chief characteristics of the scientific examination of regional development is its being interdisciplinary. We cannot talk about regional improvement without the exploration of the economic background. What I felt as lack of balance in our opening study published in Magyar Kisebbség, was that beside neglecting an evident (at least for us) ideological background we also omitted the exploration of the economic background and we concentrated our attention rather on institutional solutions. The question of economic background occurs and reoccurs in the replies given to the opening study.¹³ Regional development conceptions emphasise clichés and they are practically unusable like most county or local improvement conceptions. Romania seems to be in a human resource crisis, "innovation potential" is unacceptably low especially in areas of key importance. The improvement of infrastructure can only be possible through the cooperation of the Romanian governmental and private sector and international partners. Lack of a well-founded specialist policy, the most important factor of regional development, questions the very existence of regional improvement. These are just a few topics for future studies approaching from an economic point of view. Question of regional improvement can be analysed in its full and real complexity in correlation with the interaction of ideological institutional and economic factors. No hierarchy of importance of the three approaches can be set.

¹³ I hope that my economist colleague Réka Horváth will concentrate on economic background when reacting to the discussion of Magyar Kisebbség.

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Regional improvement is not exclusively a legal issue but still is a legal issue and the points listed below will demonstrate the role the legal framework has.

It is easy to interpret the present situation on the basis of the doctrine of the unitary state:¹⁴

- why the development regions have not get regional administrative unit status;

- why are not the regional development councils legal entities¹⁵;

- why does the law define the Regional Development Agency as a non-governmental organisation (pushing it out from the group of state organisations and the system of administration);

- that the 8 NUTS-2 developmental regions are formally the consortium of local administrations while informally they have been created under full governmental control on government initiation (that counted as great result in 1998).

Regional development was first regulated by the 151 Law of 1998 while at present the 315 Law of 2004 is in effect.

The progress towards European integration is indicated by the 2003 modification of the Romanian constitution where assurance of regional improvement policies occurred among the economic obligations of the country complying with the aims of the EU.¹⁶

2. State of Affairs: "Euro-conform"?

It is an important fact that it is part of the Hungarian public thinking in Romania that regional development is executable in the present legal framework in a EU-conform way. Of course the minimum policy concerning regional development is meant. In fact it is the low level of institutional efficiency and the instability of the system of organisations (for example ministries) that does not meet the EU requirements, since it merely concentrates on the utilisation of structural and cohesion bases.

The country report also highlights these concerns alongside regional statistics, supervision and inspection of programmes, financial management and control, transparency of public procurement and the importance of the National

¹⁴ See: 151 Law of 1998. concerning regional improvement (România Hivatalos Közlönye, 1998/256) Modifications: 268 emergency government decree of 2000., 2 emergency government decree of 2001., 226 Law of 2001., 27 government decree of 2003., 256 Law of 2003

¹⁵ Organisation of regional development councils is regulated by the government. It is the 1956 government decision of 2004 at present.

¹⁶ Description of the aims of EU is included in the contract concerning the creation of European constitution which was signed in Rome on 29th October 2004.

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Development Plan. The fact that Romania closed the chapter of regional development in September 2004 and the country report assessed the progress positively and its main points indicate EU-conform character of the institutional system and regional division in 2004.

Regional developments are not the framework of settling the minority issue as expressed by the majority of public opinion. The EU requested the modification of the government decision 1555/2002 (this was published in the Official Bulletin of Romania and named the institutions which were responsible for the structural coordination and execution of financing the communities).¹⁷ Of those institutions of authority, the Ministry of Development and Prognosis has ceased to exist (its predecessor the National Agency of Regional Development has also been also discontinued), and it is this instability what the EU does not welcome. The duties of the Ministry of Development and Prognosis concerning regional development was taken over by the Ministry of European Integration on the basis of the emergency government decree 64 of 2003.¹⁸ The new regional development law defined the Ministry of European Integration as a competent central authority. The government decree 1555. had been abrogated and competent central authorities dealing with European funds were clearly defined, and the 2004 country report acknowledged the new system.¹⁹ Among other things one of the results was that the chapter of joining negotiations could be closed in 2004.

It is a another issue that the recent frameworks of regional development are also problematic. One of these on the agenda is the modification of the division of developmental regions.

3. Territorial Description of the Developmental Regions

During the period when 151 Law of 1998 was in effect it frequently declared that the legal frame provides good opportunity to the alteration of the present 8 developmental regions since the law was founded on the principle of free partnership: it is up to the county councils to decide whether to belong to a given developmental region with the consent of the involved local councils.²⁰ The problematic issue is the legal value of the local councils' consent (in Romanian: "acord"): will the whole process be in danger if just one of the local councils disagrees with joining the region? Or does it just project the

¹⁷ Románia Hivatalos Közlönye, 2003/70.

¹⁸ Románia Hivatalos Közlönye, 2003/464.

¹⁹ 2004/497 Government decree, modified by: 2004/1179. Government decree

²⁰ Article 4 Law 151 of 1998.

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possibility that the opposing local council will be excluded from the financial support arriving via programmes of regional development?²¹ Consent is treated as a compulsory category by administrative law. The question is unclarified which can cause problems in the possible redistribution of developmental regions.

The legal value of governmental report²² (in Romanian: "aviz"), which was necessary for the functioning of the region, was unclarified too: expressing opinion can have three different meanings in administrative law: a/ it is not obligatory to ask for it, b/ it is obligatory to ask for it, but its content is just a recommendation which can be ignored; c/ it is obligatory to ask for it and its content must be taken into consideration. Changing the regions brought up legal problems beside the general political ones. The unclear legal background exposed the issue of the modifications of regions to political will and it is not as simple as sometimes it was claimed.

Under the effect of Act 315. of 2004 the problem has completely changed. Following a minor incident the new law lists the recent developmental regions with the counties belonging to them in its own text. The incident refers to the case that this list was missing from the version published in the Official Bulletin of Romania and it was published in a later issue of the bulletin²³ as a correction. The outcome remains the same: the law lists the regions, thus increases the rigidity of the system. The territorial definition of the developmental regions cannot be modified any more by movements coming from below, only by the vote of the Parliament if a (political) majority can be obtained in support of the modification.

Similarly to numerous economic issues, fundamental legal and political problems of regional developments in Romania are still to be clarified. Political decisions, which sooner or later are accepted, can result in a variety of outcomes, e.g. the maintenance of the recent system, the altering of the borders of the developmental regions, the reorganisation of the developmental regions into territorial-administrative units (the latter supposes modification of the constitution) etc.

Decentralisation is a very important and painful decision: which competences of the central government will be delegated to regional level to make real regional economic developments? Because this means decisions over devel-

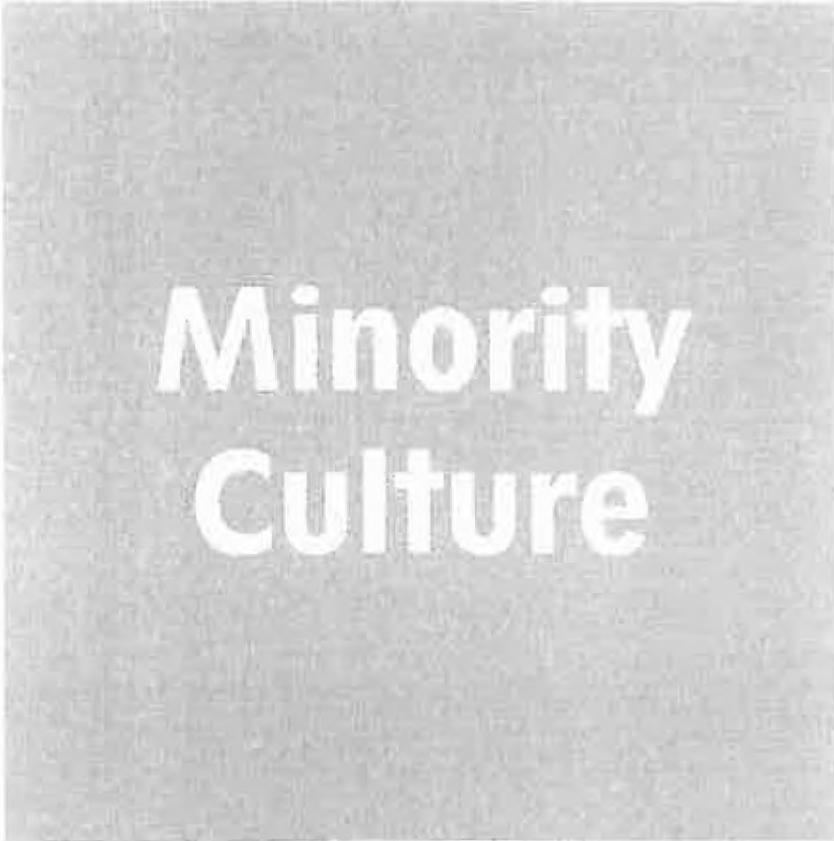
²¹ Government decree 634 of 1998 România Hivatalos Közlönye, paragraph (3) article 3 1998/379.

²² Article 5 Law 151 of 1998.

²³ The Law was published in the 2004/577 volume of Official Bulletin of Romania on 29th June 2004, the correction was issued in vol. 615 on 7th July.

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opment at regional level and this only makes sense to talk about regional development. This is even more difficult than the decentralisation of local self-governments, because this necessitates to overcome and abandon the doctrine of the the unitary state. If this decision has to be made in the case of the developmental region of Szeklerland the problem will get even more complex. The situation is bad but not hopeless.



**Minority
Culture**

