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The enjoyment of human rights guarantee within the framework of territorial autonomy

Regional autonomy as a lever for promoting human rights,

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1. The concept of regional autonomy

What do we mean by regional autonomy?

Regional autonomy refers to political and administrative decentralization under which parts of the territory of a state which enjoy geographical, historic, ethnographic, linguistic, religious or economic unity, are granted some measure of independence vis-à-vis the central government¹. It refers to a territorial area turned into an administrative district with the status of territorial public body that presents typical features that justify this particular regime. For instance, it can be a high mountain area or a coastal area² part of a larger region, or a community or an institution not yet fully independent from the state it is a part of, or it is attached to, that enjoys some degree of internal freedom and can self-govern or self-administer itself.

Regional autonomy also refers to the status of a territorial entity endowed with powers of government and administration and that can be part of a sovereign state. The Permanent Court of International Justice declared along these lines in the case of Lighthouses in Crete and Samos that "Notwithstanding its autonomy, Crete had not ceased to be a part of the Ottoman Empire. Even though the Sultan had been obliged to accept important restrictions on the exercise of his rights of sovereignty in Crete, that sovereignty had not ceased to belong to him, however it might be qualified from a juridical point of view³. These terms can also refer to the status of a territorial entity attached to one or several states without coming under its or their sovereignty, in the meaning of resolution 226 (III) of November 18th 1948.

In a narrower sense, it refers to the capacity of a non-sovereign community under international law, to freely determine the legal rules it intends to subject itself to, within the limits of the competences it exercises on its own behalf. It thus refers to the legal status of a non-sovereign community under international law, whose international relations are assumed by a sovereign state, but which nevertheless remains competent to freely determine the rules that govern the organization and operation of its public authorities as well as its domestic action⁴, which actually reminds us of federalism. We know that there has always been room for autonomous regions in international law and in international relations, and several countries have autonomous regions, the most famous cases being Italy, the Russian Federation (several autonomous regions), or even

¹ Ibid, p.787. See, Regionalism.

² See, French law of July 5th 1972

³ PCIJ, Lighthouse in Crete and Samos, Judgment of October 8th 1937, A/B series, n°71, p.103.

⁴ See Gérard Cornu, Vocabulaire juridique, p.94, Autonomie interne, ed. PUF.

national and regional particularities and various historical, cultural and religious backgrounds” and consequently accepted a differentiated implementation of human rights. An autonomous region can therefore insist upon its specificities to express reservations when drafting the convention or even accelerate, delay or introduce arrangements for the implementation of a human rights convention on its territory to take its specificities into account. The central government can in no way thwart the region’s action aimed at strengthening and protecting human rights. On the other hand, particularities cannot be interpreted in a way that would lead to violations of human rights conventions, empty them of their content or give a convention a meaning that is not in line with the interpretation usually given.

It can thus be said that, on the basis of the principle of universality and its corollary the principle of specificity, an autonomous region could, on its territory and regarding its population, do more than the territory of the State it belongs to in terms of promoting and protecting human rights. Indeed, once the problems that could affect the whole of the country are taken care of in the autonomous region, based on its specificity and building on what has been done abroad, making the most of the symbiosis between the leaders and the population but also of the direct relations that the regional authorities can maintain with the citizens, the autonomous region will find it easier to promote and protect human rights and could become a model to be followed by the rest of the nation.

B. Equality

It is the corollary of universality and it means that the citizens of a State shall be treated in the same way, without any discrimination whatsoever in law, wherever they live, inside or outside the autonomous region, and consequently by the courts they could bring proceedings in. To that effect, courts have to be independent from the political power, base their rulings on clear laws, so as to avoid abusive interpretations that embarrass the judges when they rule as well as the legislator who notices that the law has been misinterpreted, and so that citizens are fully alive to their rights. The legislation actually shapes public opinion and is the basis for the exercise of freedom of expression, a *sine qua non* for the rule of law and democratic societies.

Similarly, judges have to be impartial so that individuals can identify with the judgment and agree with the sentence, which presupposes adequate preparation and high-level training for this difficult profession. To that aim, court proceedings will have to be as clear and accurate as possible to ensure equality of arms, equal rights to defend and to prosecute. To meet all these requirements, the representatives of the nation, assisted by the representatives of the region must see to it that the law is in keeping with the principles of equality and non-discrimination.

However, though the region was created because of its specificity, it doesn’t mean it can condone discrimination between the citizens of the region on the one hand, and those of the country and the autonomous region on the other. The idea is to ensure equality between the citizens of the nation, wherever they live, and to preserve a homogenous national fabric and unwavering solidarity between all the citizens of the country. This doesn’t prevent the autonomous region from enacting, with the consent of the central government and on the basis of its status, regulations imposing certain requirements for nationals wanting to settle there or engage in any kind of employment, in order to preserve the region’s specificity and interests. Equal treatment should indeed not lead to a violation of the rights of the inhabitants of the autonomous region and deprive the autonomy of its *raison d’être*. This doesn’t mean that the autonomous region should be an island in the nation, but only that the measures adopted should prevent the autonomy from declining over time, so as to foster social peace throughout the nation, the region and the State, and to focus on what matters most, i.e. the development of the autonomous region and that of the country itself. Indeed, without development peace remains fragile and so does the protection of

human rights which is the ultimate goal of the existence of the region within the State. The autonomous region can here be a kind of experimental lab and a model to be followed in the area of human rights. A country needs ambition to progress and benchmarks to find out what suits it and identify the obstacles to overcome. Now, if ambition usually depends on urgent needs that have to be attended to, benchmarks are set for cultural and historical reasons. The origin of the region's specificities can give you an idea as to the benchmarks to be taken into account or to be rejected in order to realize regional and national ambitions in a cost-effective manner.

C. Solidarity

It complements the two previous principles. A country cannot maintain social peace among its constituent units and its citizens without a minimum of solidarity. In other words, the strongest have to reach out to the weakest (the handicapped, the poor, women and children), and the riches of the country have to be equally and proportionately shared. It is up to the State, to the autonomous region and to the associations of the civil society to organize solidarity according to the well-known principle of "each according to its ability" to foster solidarity and benefit from it. To that effect, institutions will have to be established to promote and mainstream solidarity in all the areas of national life. The autonomous region will get its share of national solidarity, it will give to the nation and receive from it. No matter how rich or poor, the region can make a contribution by setting an example. Its specificity should not be an empty word in the constitutional jargon. The region can also follow the example of the country without expecting anything in return because that is the basic rule of solidarity.

However, solidarity is not limited to the nation. It can spread to neighbouring countries and even to remote countries since it is the unity of mankind that ultimately matters. To that end, the autonomous region will also have a major part to play as it cannot ring-fence itself from what surrounds it and live on its own without, sooner or later, paying the price. Therefore, the fact that autonomy stems from a given specificity does not mean it is in opposition with solidarity, since the very acceptance of specificities is based on solidarity between the members of a given group who have to be reassured to join the national and international structure and contribute to the promotion of the whole without undermining anyone's rights.

D. Cooperation

This is a major principle of human rights, especially third generation rights. We are living in a world of free communications and relations of all kinds with countries and foreign institutions, and we are discovering that problems as well as common ambitions can draw States and peoples closer to each other. In such conditions, not only does cooperation become advisable and necessary, but it is also unavoidable to solve problems, promote ideas or initiatives, carry out a project or eventually to find a solution to one or all of the parties' concerns so as to promote and protect human rights.

To that effect, cooperation can be technical, it can take the shape of an exchange of experience in the field of human rights, but it can also involve financing common projects launched by the central State. The latter can however delegate the management of the initiative, in full or in part, to other administrative and institutional components of the country. In this context, the autonomous region will be in a privileged position to identify the areas in which cooperation is useful and necessary and to freely offer possible solutions to the other parties, being more familiar with the requirements of the situation. The region can here offer its knowledge and benefit from that of other cooperating regions to bring the project to a successful conclusion. The world we live in is marked by cooperation, which means that national and regional cooperation promotion agencies have to be established, in the interest of all. Such agencies are necessary and even indispensable to promote cooperation, assess its performances and supervise related projects in order to take

remedial action if necessary. That being said, in order to achieve all these principles for the promotion and protection of human rights, democracy, freedom of expression and freedom of movement are necessary.

4. The democratic society

What do we mean by “democratic society”?

It is worth highlighting that article 29(1) of the Universal Declaration of Human Rights adopted on December 10, 1948, states that “Everyone has duties to the community in which alone the free and full development of his personality is possible”, and paragraph 2 establishes that “In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of [...] meeting the just requirements of morality [...] and the general welfare in a democratic society”. It is actually the only article in the Declaration where mention is made of a “democratic society”. At the time of the adoption of the Declaration, the world was coming out of the Second World War which was followed by the establishment of authoritarian regimes (to put it mildly) in Russia and Eastern Europe. To be universal the declaration had to be accepted by these countries thus a considerable but unavoidable concession had to be made. It is however not difficult to know what a democratic society means, one only has to read Homer’s Iliad and Odyssey written several centuries before our time to understand the building blocks of a democratic society. It is first and foremost a society regulated by law to create the rule of law, in other words where everything is decided on the basis of legal as well as moral benchmarks among which freedom of expression and assembly are guaranteed, together with the privileges granted to citizens to adopt these laws directly or through representatives elected by them. In our Islamic culture, I can say that consultations recommended in the Holy Coran actually cover these freedoms. You can indeed only consult free people, i.e. people who can express their opinion and convictions, without fear knowing that their rights are guaranteed by law. However, consulting also means that people who share the same views can get together to weigh more heavily when necessary in the decision-making process. But since the consultation should involve each member of the national community, in keeping with the principle of equality, it turns out to be impossible in a society of several million individuals to consult each and everyone directly which makes recourse to representatives unavoidable. Here again, elections have to be free and controlled by competent and honest people, they must follow specific procedures in order to avoid all kinds of flaws or fraud attached to human activity. The person to be consulted knows his dignity and rights are respected when he notices that his freedom of choice and expression is guaranteed. These rights are part and parcel of human rights that ultimately cover a set of evolving rights such as economic, social and cultural rights, civil and political rights, the prohibition of torture, and other rights enshrined in the Universal Declaration. Due to its specificity, the autonomous region is a melting pot for the free, unfettered exercise of human rights, considering the many links between its inhabitants who can express choices and decide on the direction to be taken by the region. Therefore, by respecting the above mentioned principles and by acting for the promotion and protection of human rights, the autonomous region would be a model for the national community and would be thanked for that.