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War of Alphabets in Transnistria.
European Court of Human Rights and the “Catan Case”

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Abstract: The main purpose of this paper is to present and analyze the European Court of Human Rights Judgment on the question of violation of human rights regarding language and script use in Transnistrian schools. This research is important in the field of globalization and cultural differences because it studies the intercourse between the legal issues and the political implications of an ECtHR decision towards Transnistria – a hot spot on the international relations map since 1991. This paper wants to bring a deeper approach regarding the question of language and script use in the Republic of Moldova which was the core of the dispute between the left and the right bank of the Nistru river that later turned into the armed conflict in Transnistria. The method used was to put into historical context the Courts’ decision of major importance on the *Catan and Others v. Moldova and Russia* case. Following the presentation and interpretation of the historical background of the language and alphabet issues in Moldova this work underlines the dynamics of the direct connection that exists between international politics, international law and regional crisis. This paper may elicit a more analytical interest for research groups interested in the conflict in Transnistria, the language dispute in Moldova and in international jurisprudence regarding the right to education, but it can also be useful to European or regional political decisional factors engaged in the peaceful conflict resolution. The key contribution of this paper consists of emphasizing the political implications of an ECtHR decision regarding the Republic of Moldova and the conflict in Transnistria.

Keywords: Russian Federation; Republic of Moldova; Transnistrian region; language; schools

1. Introduction

In 2004-2006, three applications (nos. 43370/04, 8252/05 and 18454/06) were lodged (under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms – “The Convention”) and then declared as admissible by the European Court of Human Rights (ECtHR). The applicants, a number of Republic of Moldova nationals who lived in the separatist region of Transnistria and who were at the time of lodging the application pupils at three Romanian/Moldovan schools, complained to the Court under international law about “the closure of their schools and their harassment by the *de facto* separatist Transnistrian authorities” (Judgment ECtHR, 2012).

Once again, the Russian Federation and the Republic of Moldova, contracting states, were brought in front of the European Court, this time to determine whether or not they have jurisdiction over the Transnistrian region in a question of violation of human rights regarding language and script use in schools².

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² For human rights violations in Transnistria see also (Dailey, 1993)

The roots of the school dispute can be traced back to the 1989 reintroduction of the Latin script for the Moldovan/Romanian language and its declaration as the sole State language in the Republic of Moldova that was to be used as the main language in all public spheres.

2. The Language Issue and the Conflict in Transnistria

The *theory of ethno political conflicts*, in the primordialist account, introduces *cultural differences* as a triggering factor for conflict. However, in the past years, scholars tended to explain ethnopolitical conflict using both explanations offered by the primordialist and instrumentalist accounts (Brown, 1997; Cornell, 2000; Gurr & Harff, 1994; Alexianu, 2013).

The “language issue” constitutes one of the most important indicators of the conflict in Transnistria (1992) and was used by the separatist regime (that revoked inside its territory the decisions declaring Moldovan/Romanian as the sole State language and reintroducing the Latin script) as a pretext for demanding and proclaiming secession.

The territory on the eastern bank of the Nistru river (known today as Transnistria) became part of the Moldovan S.S.R. (today the Republic of Moldova) only in 1940, after the transfer of territories inside the Soviet Union, between the newly established Moldovan S.S.R. (incorporated in the Soviet Union as a result of the Moscow’s June *ultimatum* to Romania) and the Ukrainian S.S.R., within which, in 1924, the Moldovan Autonomous Soviet Socialist Republic (A.S.S.R.) was created by the soviet rule. The south of historical Bessarabia and north parts of Romanian territories were ceded to Ukraine instead of a part of the Moldovan A.S.S.R (today Transnistria). No historical or ethnic reasons were taken into consideration, Moscow’s political and geostrategic interests having priority at the time. Starting with the ’20s, soviet propaganda has placed in its own service the soviet authorities and institution in order to create a new identity – the *Moldovan* one. The “Moldovans” were, according to soviet propaganda, a nation *separate* from the Romanians and their language was *different* from Romanian. With Bessarabia lost to mother land Romania in 1918, the “Moldovans” first needed a state-like construction in order to be represented. So, the soviet rule decided the artificial creation of the Moldovan A.S.S.R. which shortly became an outpost of soviet interest towards Bessarabia (Solomon, 2001)¹.

Concerning to the language issue, the Soviet authorities cited the use of different scripts as a significant difference between the “Moldovan” and Romanian languages². In the Moldovan A.S.S.R. and Moldovan S.S.R. a slightly adapted Cyrillic script (“Moldovan Cyrillic script”) was introduced by soviet rule for writing what then became called the “Moldovan language”. Until the mid ‘80s, the Soviet Union constantly promoted in Moldovan S.S.R. a Russification policy regarding both culture and administration (Negru & Negru, 2013).

The policies reforms promoted by Gorbachev, *perestroika* and *glasnost*, allowed for the first time public expression of the national identity in all non-Russian republics and Moldovan S.S.R. wasn’t an exception in this process that led to the collapse of the Soviet Union. Starting with 1987, members of the Moldovan cultural and political elite, organized in different unofficial movements, openly denounced the Soviet nationality policy and demanded the recognition of the identity of the Moldovan and Romanian language. They asked for the reintroduction of the Latin script and the explicit

¹ See also: (Bruhis, 1982; Bruhis, 1997; Cojocaru, 2006; Crowther, 1991; King, 2000).

²The Old Cyrillic script that was originally used for the Romanian language was replaced in Romania in 1862 by the Latin script. In Bessarabia, however, the Old Cyrillic script was maintained by the Russian-rule after 1862 and later partially replaced by the Russian Civil (Cyrillic) script.

declaration of Romanian as the sole State language. In August/September 1989, they finally obtained some of those demands: the Moldovan Supreme Soviet adopted on 1 September the Law on Languages and so declared “Moldovan” as the sole State language and reintroduce the Latin script. Even though the Law continued to explicitly call the State language “Moldovan”, it simultaneously recognized the fact that the Moldovan and Romanian languages were identical. Russian language received the status of a “language of inter-ethnic communication” that was to be used alongside the State language in all spheres (McCauley, 1998; Beissinger, 2002; Smith, 1990).

The language issue became the core of the dispute between the right and the left banks of the Nistru river elites. The Transnistrian *de facto* authorities rejected the introduction of Moldovan as the sole State language and instead made Moldovan, Russian and Ukrainian equal official languages. They rejected the Latin script in favor of the Cyrillic one, arguing that Moldovan written in the Latin script is Romanian, in their opinion, a different, foreign language. Shortly after, the dispute over the language and the script turned into open conflict between the two parties. One can argue that the language issue was used as a pretext by the separatist regime to formulate secessionist demands from newly-independent Republic of Moldova (Cașu, 2011).

Soon after the Republic of Moldova declared its independence (August 27, 1991) and in the same day joined the United Nations, thus receiving international recognition, on March, 2nd, the Transnistrian conflict over territory and jurisdiction erupted into heavy armed confrontation between the Moldovan and Transnistrian forces with the support of the Russian 14th Army (Grecu & Țăranu, 2004). Russian Federation involvement in the conflict (March-July 1992) and its financial and political support of the separatist regime is no longer a question, but a reality, acknowledged in international documents such as the European Court of Human Rights judgment in *Ilașcu* case (*The Ilașcu and others*, 2004). Until today Russia exercises decisive influence over the “MRT” by its continued military presence which represents a latent threat of future military intervention that acts in order to intimidate the Moldovan Government and other opponents to the separatist regime in Transnistria that are totally dependent on the Russian investment, aid and trade (Filip, 2011).

The bilateral *Agreement on Principles of a Peaceful Settlement* signed in Moscow on 21 July 1992 by the Russian and the Moldovan presidents, Boris Yeltsin and Mircea Snegur, led to the cessation of hostilities but didn’t put an end to the present-day conflict situation. Following the signing of the *Agreement*, the Republic of Moldova lost its political and administrative control over Transnistria to the detriment of Igor Smirnov’s *de facto* regime. The Transnistrian *de facto* authorities established a recognized control over most of the left bank territory except for two enclaves with predominantly Moldovan inhabited villages (in the Dubăsari region) and in the right bank of the river – the city of Bender and some neighboring villages. Until today, all public and economic institutions in Transnistria are practically subordinated to the separatist *de facto* authorities, with a few exceptions such as a police *comissariat*, a pre-detention facility, a prison in Bender and the railways (Report OSCE, 2012)¹.

3. The School Dispute and the *Catan and Others v. Moldova and Russia* Case

An important element of resistance to the separatist *de facto* regime and total control (from September 1990, of the self-proclaimed state “Pridnestrovian Moldavian Republic” – “MTR”) was represented by a number of schools in areas under Transnistrian *de facto* authorities control that resisted

¹ See also: (Prisac, 2008; Roper, 2004 in Bahcheli, Bartmann & Srebniak, 2004, pp. 102-118).

subordination. They rejected the introduction of the Cyrillic script for the Moldovan language and continued to use the Moldovan school curriculum that included subjects such as “Romanian language and literature” or “History of Romanians” introduced in 1990 by the Moldovan Ministry of Education (Report OSCE, 2012). In their attempts to deny all forms of Romanian legacy, the separatist regime demanded that all these institutions, including the Moldovan-administered schools, comply with the *de facto* legislation in the left bank of the Nistru river or be closed.

Being part of the settlement process¹, the discussions on the status and activity of the Moldovan administered schools in Transnistria also started in 1993. The OSCE, pending a comprehensive conflict settlement with an agreement on the status of Transnistria and a division of competencies between the sides (Russian Federation, Republic of Moldova, Transnistrian *de facto* authorities), has tried to facilitate “interim solutions to the status and activities of the Moldovan administered schools that would enable them to function until a permanent solution can be agreed on the basis of a broader conflict-settlement agreement” (Report OSCE, 2012).

Despite international efforts in keeping the Moldovan administered schools in function, reports of the OSCE for the periods 1993-2003 (Report OSCE, 2003) and 2003-2012 (Report OSCE, 2012) show a continuous subversive activity of the separatist rule in order to remove all traces of Romanian consciousness. As seen in these reports, the Transnistrian *de facto* authorities resorted to various methods of intimidation: the obligation of the schools to register with Transnistrian *de facto* institutions or to be closed; the obligation to accept the imposed curriculum of the Transnistrian authorities; the dismissal of teachers and excessive rent-charges imputed to the Moldovan government for the schools buildings. The Transnistrian militia was used to intervene: parts of the schools buildings were destroyed, furniture, textbooks and archives were removed and anyone who attempt to block operations of the militia (parents and teachers, alongside with pupils) was also removed or even sentenced to administrative detention (Report OSCE, 2012).

In October 2004, a number of parents, students and teachers from schools in Rîbnița, Bender (the Lyceum) and Grigoriopol (Dorotcaia), some of the schools that were forcefully closed, filed applications with the ECtHR against the Russian Federation and Moldova. These applications, known as *Catan and Others v. Moldova and Russia*, alleged violations of the right of education, private life and freedom from discrimination.

After these forcefully closures of schools outraged public opinion (OSCE HCNM statement, 2004) and after intense shuttle diplomacy from international organizations, the Transnistrian *de facto* authorities first agreed to register the schools as “foreign non-state educational institutions” and later give permanent registration for some of these schools. Even though some aspects of the day-to-day functioning of the schools has improved, the major, longlasting issues facing the schools have not been resolved. The major issue identified by foreign experts is the significant threat to these schools existence given by the precipitous drop in the number of students. Reported school enrolment figures at the schools in question have decrease from 5 619 in the 1998-1999 school year to 1 800 in 2012-2013 (Report OSCE, 2012).

¹After the Agreement was signed, in 1993 the Moldovan and Transnistrian sides opened direct negotiations for peaceful settlement under the mediation of Russian Federation and the OSCE (in 1995, Ukraine joined as a third mediator). A decade after, the European Union and the U.S. were accepted as observers to the negotiation process (since then, the so-called “5+2” format, officially known as “The Permanent Conference on Political Issues in the Framework of the Negotiating Process for Transnistrian Settlement”) (Report OSCE, 2012).

4. European Court of Human Rights (ECtHR) Judgment

The case originated in three applications (nos. 43370/04, 8252/05 and 18454/06) against the Republic of Moldova and the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) in the period 2004-2006.

The applicants, Moldovans who lived in Transnistria (pupils at three Moldovan/Romanian-language schools and their parents) complained “under Article 2 of Protocol No.1 to the Convention and Article 8 of the Convention, taken alone and in conjunction with Article 14” about the forcefully closure and their harassment by the separatist authorities in Transnistria because of their choice to pursue the children’s education at Moldovan/Romanian-language schools¹. In 2010 this three applications were joined and declared partly admissible by a Chamber of the Fourth Section of the Court that also decided to relinquish jurisdiction in favor of the Grand Chamber. As an exception to the general rule, the Chamber to which a case is assigned can relinquish it to the Grand Chamber if the case “raises a serious question affecting the interpretation of the Convention or if there is a risk of inconsistency with a previous judgment of the Court” (The Grand Chamber, http://www.echr.coe.int/Documents/FAQ_GC_ENG.pdf, 2015)

The circumstances of the case identified by the court were: the historical background (the language issue in the Moldovan S.S.R./ Republic of Moldova); the Transnistrian conflict and the *Ilaşcu* judgment of the Court (*Ilaşcu and Others v. Moldova and Russia*); the ceasefire agreement (21 July 1992) and other international agreements; enhanced border and customs control – EUBAM; Russian military equipment and personnel in Transnistria; Russian economic and political support for “MRT” and the schools crisis and the facts concerning the applicants’ cases (Judgment ECtHR, 2012).

Given the fact that the Transnistrian *de facto* authorities do not have international recognition, one of the main challenges that the ECtHR had to face was to determine whether, in respect of the matters complained of, the applicants fell within the jurisdiction of either or both of the respondent States (the Republic of Moldova and the Russian Federation), within the meaning of Article 1 of the Convention: “The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention”. To answer this question, relevant international law materials concerning States responsibility for unlawful acts were taken into consideration. The International Law Commission’s Draft Articles on the Responsibility of States for International Wrongful Acts that states: “the conduct of a person or a group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of that State in carrying out the conduct” (Article 8) and also: “the conduct of an organ placed at the disposal of a State by another State shall be considered an act of the former State under international law if the organ is acting in the exercise of elements of the governmental authority of the States at whose disposal it is placed”. Moreover, case-law of the International Court of Justice (ICJ) relates to this issue in basis of the principle: “Physical control of a

¹“The core of their complaints relate to the actions taken by the “MRT” authorities in 2002 and 2004, to enforce decisions adopted some years previously, forbidding the use of the Latin alphabet in schools and requiring all schools to register and start using an “MRT”-approved curriculum and the Cyrillic script. Thus, on 22 August 2002 “MRT” police forcibly evicted the pupils and teachers from the Stefan cel Mare School in Grigoriopol. The school was not allowed to reopen in the same building and subsequently transferred to premises some 20 kilometres away, in Moldovan-controlled territory. The children and staff were evicted from the Evrica School in Rîbnița in July 2004. Te same month, the Alexandru cel Bun School in Tighina was threatened with closure and disconnected from electricity and water supplies. Both schools were required to move to less convenient and less well equipped premises in their home towns at the start of the following academic year”. (Judgment ECtHR, 2012)

territory, and not its sovereignty or legitimacy of title, is the basis of State liability for acts affecting other States". In order to "eliminate the possibility of a State to escape from international responsibility by choosing to act through persons or entities whose supposed independence would be purely fiction", the ICJ jurisprudence shows that "persons, group of persons or entities may, for purposes of international responsibility, be equated with State organs even if the status does not follow from international law, provided that in fact the person, group of persons or entities act in <<complete dependence>> on the State" (Judgment ECtHR, 2012).

Regarding the right to education, the ECtHR appealed to treaty provision concerning this issue such as: the *Universal Declaration of Human Rights* 1948 (Article 26) and the *Convention against Discrimination in Education* 1960 (Articles 1, 3, 5 28 and 29).

The Republic of Moldova, represented before the Court by V. Grosu (Agent) and L. Apostol (Adviser), submitted that the Moldovan Government "still have no jurisdiction, in the sense of authority and control, over the Transnistrian territory" and that the facts of the *Catan* case "fell within Russia's jurisdiction due to the continuous military presence which has prevented the settlement of the conflict".

The other respondent state, the Russian Federation, did not comment on the jurisdictional position of the Republic of Moldova. Represented by a number of seven advisors and one agent, the position of Russia was to deny its jurisdiction over the Transnistrian territory in this case: "For the Russian Government, jurisdiction could exceptionally be extended extra-territorially where a Contracting state (of the ECtHR) exercised effective control over another territory, equivalent to the degree of control exercised over its own territory in peacetime. [...] It could not be said that Russia exercised jurisdiction in the present case, where the territory was controlled by a *de facto* government which was not an organ or instrument of Russia". The Russian representatives stated that there was "no casual link between the presence of the Russian forces in Transnistria and the treatment of the applicants' schools" (Judgment ECtHR, 2012).

Following international jurisprudence related and also Court's previous judgment (*Ilaşcu* case), the ECtHR decided that Moldova's obligation under Article 1 of the Convention, to "secure to everyone within their jurisdiction the [Convention] rights and freedoms", was "limited in the circumstances to a positive obligation to take the diplomatic, economic and judicial or other measures that were both in its power to take and in accordance with international law". Regarding the jurisdiction of Russia, the Court reiterated that "as part of the chain of responsibility, during the uprising in Transnistria in 1991-1992, the authorities of the Russian Federation contributed military and politically to the establishment of the separatist regime". Taken into consideration the fact that the "MRT" regime "survived by the virtue of Russia's military, economic, financial and political support" and that "it remained under the effective authority, or at least under the decisive influence" of the Russia, the Court concluded that the applicants came within the "jurisdiction" of the Russian Federation for the purposes of Article 1 of the Convention in the same way as in *Ilaşcu* judgment. Russia was also found responsible "under the Convention for the violation of the applicants' rights to education" (Article 2 of Protocol No.1 to the Convention) which means that the Russian Governments' effective control over the "MRT" it is sufficient and the Court doesn't have to determine whether or not Russia exercised detailed control over the policies and the actions of the subordinate local administration (Judgment ECtHR, 2012).

The Court decided with a count of sixteen votes to one that the Russian Federation has to individually pay each applicant EUR 6 000, a total of EUR 1 020 000, in respect of "non-pecuniary damage" and EUR 50 000 in respect of costs and expenses, to all the applicants jointly.

While the Moldovan Government, as expected, welcomed the Court decision, in the Russian Ministry of Foreign Affairs press – release the decision of the Court was attacked in a harsh manner. The juridical document was considered as being “questionable, pronounced unrelated to the given situation”, calling the Courts’ assessment that Russia is directly responsible for human rights violations in Transnistria an “abuse of legal logic” (“Moldopress” Information, Declaration MAE of Russian Federation, 2004).

5. Analysis of Results

The European Court of Human Rights decision in the *Catan and Others v. Moldova and Russia* case represents a valuable document in terms of human rights jurisprudence but also in terms of international relations evolutions. The remarks and analysis of the Court on the evolutions concerning the Transnistrian region show us that the conflict is far from being over and remnants of the violent period 1991-1992 are still active in present times.

The language issue first appeared in the Republic of Moldova during the period of transition from *perestroika* to its independence in 1991. The two sides involved were the national movement, represented by the Moldovan National Front, and the internationalist movement, represented by the separatists in Transnistria (organized in *Edinstvo* and OSTK). Only after the Republic of Moldova gained its independence and after the separatist response that turned into armed conflict in Transnistria (March-July), did the language and script dispute “cross” the Nistru river on its left bank. Here, the *de facto* authorities did not discard the older soviet practices involving the removal of any Romanian linked element.

The main difference from these old practices of human rights violation is that nowadays the public opinion and international organizations are being informed and can act accordingly. This was the case of the three applications that were lodged (under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms – “The Convention”) in the period 2004-2006 and afterwards, in 2010, declared as admissible by the European Court of Human Rights. A number of 170 Republic of Moldova nationals who lived in the separatist region of Transnistria and who were, at the time of the application lodging, pupils at three Romanian/Moldovan schools, complained to the Court under international law about “the closure of their schools and their harassment by the *de facto* separatist Transnistrian authorities”.

The major challenge that the ECtHR had to face was to determine whether, in respect of the matters complained of (the right to education), the applicants fell within the jurisdiction of either or both of the respondent States (the Republic of Moldova and the Russian Federation). The Court decided once again (see *Ilaşcu* case) that Russia is responsible for actions outside its borders in areas that come under its control like Transnistria (the “MRT”). The main difference from the Court’s decision on the *Ilaşcu* case is that even though the Court admitted that there was no evidence of indications given by Russia to the Transnistrian *de facto* authorities related to the forced closure of the Moldovan/Romanian schools, the Russian Government was held responsible through its continuous support (financial and political) given to the separatist regime for the actions undertaken by the self-declared administration of “MRT”.

Nevertheless, one of the most important significances of the Court decision in *the Catan and Others v. Moldova and Russia* case is that it points out the fact that Russia now has to respond in front of the international organizations, as a consequence of globalization, for any kind of violation of human rights that occur in territories outside its borders, but which are unequivocally under its control.

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