

ARTICLES

RIGHTS AND STATUS OF PERSONS BELONGING TO ETHNIC MINORITIES AND THEIR IMPLEMENTATION. AN ATTEMPT AT A COMPARATIVE STUDY

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The issue of the rights and the status of persons belonging to ethnic minorities together with the upholding of fundamental human rights and freedoms has become a measure for evaluating the level of democracy within countries, particularly those undergoing post-communist transformation. Many countries feel that in this question there is a different approach to the countries of Central and Eastern Europe and to the countries of Western Europe. They call for a comparison of the existing ethnic minority rights in individual countries in order to obtain a real image of their status in all European countries. Our attempt at a comparative study of the rights and the status of persons belonging to ethnic minorities was stimulated by the Ministry of Culture of the Slovak Republic. The study was called an attempt because, although with a broader view, it does not offer an exhaustive answer to the basic question: what is the status of the rights and the position of ethnic minorities in European countries like.

Issues concerning the rights and the status of persons belonging to ethnic minorities have played a very important part within international politics in recent years. This, together with the upholding of basic human rights and freedoms, has become a measure for evaluating the level of democracy within some countries, particularly those undergoing post-communist transformation. Many countries, including the Slovak Republic, feel that the approach concerning this issue to the countries of Central and Eastern Europe is different than that to Western European countries. They see the way out of the situation not only in accepting the European standard of minority rights but also in its consistent application in all European countries. They also call for a comparison of the existing ethnic minority rights in individual countries in order to obtain a real image of their status in all European countries.

The first attempt concerning this issue has already been made by the Council of Europe's Commission for "Democracy through Law". The project was adopted at

its first meeting on February 5–6, 1993 in Venice. The Questionnaire on Minority Rights containing fifteen questions and several sub-questions was distributed during April. Twenty-three countries answered the questions posed in the Questionnaire (Albania, Austria, Belgium, Canada, Croatia, Denmark, Finland, Germany, Greece, Hungary, Italy, Kyrgyzstan, Liechtenstein, Luxembourg, Norway, Poland, Portugal, Rumania, Slovakia, Slovenia, Sweden, Switzerland, Turkey). The responses of various standards were included into a study published in January 1994 by Emmanuel Colla and Sylvia Marique from the University in Liège, Belgium, under the title *Analysis of Replies to the Questionnaire on Minority Rights*. The Questionnaire and the study were published by the Council of Europe in 1994 as the 9th volume of the edition *The Science and Techniques of Democracy*.

Our attempt at a comparative study of the rights and the status of persons belonging to ethnic minorities was stimulated by the Ministry of Culture of the SR with the aim of fostering the idea of the Slovak Prime Minister and the Chairman of the National Council of the SR expressed on several occasions at international forums, which however, has not met with any broader support so far. We entitled the study an attempt because, although drafted with a broader view, it does not provide an exhaustive answer to the basic question: what is the status of the rights and the position of persons belonging to ethnic minorities in European countries.

Its compilation was based on the data published in various sources, inclusive of replies to the Questionnaire of the Ministry for Foreign Affairs of the SR concerning minority education and the Questionnaire of the Ministry of Culture of the SR on the rights and status of the Slovak minority abroad. The implementation of a real joint comparative study would require the good will and cooperation of all European countries to provide all necessary data and to show interest in getting to know the result, which, as can be declared even today, would not be favourable for a number of Western European countries.

Earlier experiences with looking for the way of coexistence between minorities and the majority ethnic communities show that there is no universal model which might be applied in all cases, when ethnic tension and ethnic conflicts are bred. The situation is different in each country and within each minority group. The search for a common solution requires time and structured dialogue and not fighting in trenches or building of new barriers on any part.

The key indicator of the status of persons belonging to ethnic minorities is their acceptance within particular provisions of national legislation. The absolute majority of European countries accepts their existence in their territories despite differences in the approach towards members of ethnic minorities which are reflected both in their naming and in the extent of the rights granted to them.

Most countries approach this group of their citizens on the ethnic principle, i.e. they recognize the language and culture of the nation different from the majority nation within the state whose citizens they are. These are mainly the countries of Central, Northern, Southern and Eastern Europe. In Western Europe, the civic ap-

proach prevails, i.e. the members of ethnic minorities are perceived as members of the political, civil nation, which constitutes the particular state. The clearest situation is in France, Great Britain, Norway, and Switzerland: you are either French, British/English, Norwegian, Swiss or a foreigner. In these countries, it is exclusively civil law that guarantees all basic human rights and freedoms. The legal order in the Netherlands is very close to such a way of understanding the members of ethnic minorities and their rights. The rigid approach to members of ethnic minorities has been moderated in Switzerland, where the existence of linguistic minorities is admitted on its territory; linguistic minorities are also recognized in Belgium, Italy, and Portugal, where they are also spoken of as cultural minorities.

Some specific features concerning the protection of the persons belonging to ethnic minorities are found in the legal systems of Albania, Croatia, Greece, and Hungary, which contain provisions on the protection of the members of their state-forming nations, i.e. Albanians, Croats, Greeks, and Hungarians living in other states and being their citizens. These provisions are at variance with international law because they enable intervention in the internal affairs of other countries.

All European countries recognize the right of each individual to declare any national, linguistic or cultural affiliation. However, they treat them as persons belonging to ethnic minorities only if they are their citizens. The individual who is not a citizen of European state cannot claim ethnic minority rights within a particular country. An exception is Finland, where the Lapps are awarded ethnic minority rights without any condition and the Gypsies are granted rights only according to the place where they live.

Even if a person is a subject of a particular state and belongs to a ethnic minority, the recognition of his/her minority rights is conditioned one way or another. In Hungary it is the minimum 10 years' existence of citizenship. In Austria, state organs recognize the members of a minority as a community only after they have been granted a so-called Beirat, the advisory statute in negotiating and approving government regulations and orders related to the life and interests of persons belonging to minorities. Another prerequisite for institutionalizing a minority is the establishment of common bodies acting in the interest of the minority. This condition, although not anchored in the legal order, more or less functions not only in Austria but in other states as well. I shall return to the issue of common bodies representing minority interests in the section devoted to minority participation in public affairs.

The legal orders of all European countries contain a provision on the protection against any ethnic or racial discrimination. Manifestations of discrimination are outlawed and prosecuted according to law. Such an unequivocal approach does not exist, however, in the issues concerning assimilation. For instance, in France, Great Britain or Switzerland, assimilation is almost desirable and their legal orders do not contain any prohibition of assimilation.

There are different approaches of individual European states towards understanding minority rights. In Belgium, Czechia, Denmark, Great Britain, Poland, Romania, Slovakia, and Switzerland, minority rights are understood consistently as individual, their common application being also admitted.

In Albania, Austria, Croatia, Finland, Germany, Greece, Hungary, Italy, the Netherlands, Portugal, Slovenia, Spain, and Sweden minority rights are perceived as both individual and collective. It should be noted, however, that in the majority of countries mentioned, collective rights are understood as the implementation of individual rights together with other persons of the same status. Virtually we can speak about collective rights, although of different standards, only in the case of Croatia, Finland, Germany, Hungary, Italy, Sweden and to a certain extent also Spain. It mostly concerns the groups of autochthonous population of these states, e.g. the Lapps in Finland and Sweden, Frisians and Lusatian Sorbs in Germany, Muslims in Greece, Catalans and Basques in Spain. Collective rights concern mainly the questions of self-administration of national minorities or the autonomous position of nations without their own statehood, e.g. nations in the Russian Federation where there are nations with their own statehood but their sovereignty is considerably limited.

The rights of persons belonging to ethnic minorities are organized in several ways in individual countries. Most frequently and in most European countries they are regulated directly in the Constitution of the particular state. The articles of the Constitution are connected with the provisions of individual acts regulating primarily language rights, the right to education and the right to own cultural activities. The provisions actually work out basic rights given in the Constitution. Another solution is a separate law on ethnic minorities. Such a law exists for example in Austria and in Hungary. Separate laws concerning only the autochthonous population, not persons belonging to ethnic minorities, exist in Finland, Norway, and Denmark. In the first two cases the Lapps are involved, in Denmark it concerns the inhabitants of Faeroe Islands and Greenland. Bilateral international treaties are another way of protecting minority, as for example in Poland. The last form means the acceptance of international documents which become part of national legislation.

The only European country where the legal order contains the duties as well as the rights of minorities is Italy. Article 54 of the Italian Constitution imposes on all citizens, including persons belonging to ethnic minorities, an obligation to be loyal to the state.

The most widely spread right of persons belonging to ethnic minorities, following the right to declare their nationality affiliation and protection against discrimination on this account, is the right to use their own language. This right is anchored in the legal orders of Albania, Austria, Belgium, Croatia, Denmark, Finland, Germany, Hungary, Italy, the Netherlands, the Russian Federation, Slovakia, Slovenia, and Spain. Each country has its specific solutions, particularly in relation to the official language of the country. Some recognize the use of the minority language in

public administration, particularly in the courts of law, or its use is limited on a territorial principle, e.g. to Faeroe Islands and Greenland in Denmark, Lusatian Sorbs in the federal state of Brandenburg, Frisians in the Netherlands, the local dialect "mirandós" in Portugal, in particular self-administrative regions of Spain.

However, there are countries without any legal protection of minority languages guaranteed by separate acts, e.g. Great Britain, Hungary, Norway, Poland, Portugal, and Sweden. In spite of this, these countries enable the use of minority languages, the teaching of minority languages or instruction in minority languages under specific conditions and by various instruments, state and state-supported non-governmental activities.

Apart from religious and cultural activities in their mother tongue, one of the most significant methods preserving the national identity of persons belonging to ethnic minorities is minority education and teaching of their mother tongue. Minority education, i.e. instruction in some or in a greater part of subjects is provided in the minority language, exists only in some European countries, for example Albania, Austria, Croatia, Czechia, Finland, Germany, Italy, the Netherlands, Poland, Rumania, the Russian Federation, Slovakia, Slovenia, Ukraine, and Yugoslavia. The extent of the education in minority languages in each of the mentioned countries depends on their own situation, recognized minorities and particularly on the number of persons belonging to ethnic minorities or to small nations without their own statehood living on their territories.

There is a special phenomenon which is noteworthy in this connection – the loss of national language. It happened to the Cornish in the 18th century. It happened to small nations, like the Manx, Izhors, Vepses, and Livonians in the last decades. The languages of other nations are also threatened, for example the language of the Basques and Bretons in Western Europe, but also the language of Mordvins or Tatars in Eastern Europe. Some persons who declare themselves to belong to their nations speak only the majority language of the country where they live. There are also some larger nations which have not avoided the loss of their national language, for example the Irish or Belarusians. Irish is spoken in Ireland by about 10% of population and only about 15% of Belarusian population speak Belarusian.

Another form of the preservation of minority identity through the use of the mother tongue is the optional instruction or the teaching of it as a foreign language. This form of instruction is applied in France, Great Britain, Hungary, and Sweden. Minority education as such does not exist in Belgium, Iceland, Norway, and Switzerland. It should be kept in mind, however, that in Belgium there are schools with French, Dutch, and German languages and in Switzerland with German, French, Italian, and Romansh, but these are not schools with minority languages but with the official language(s) of the particular countries.

Conditions for cultural activities of persons belonging to ethnic minorities in some European countries, including Albania, Austria, Denmark, Finland, Great Britain, Hungary, the Netherlands, Norway, Poland, Rumania, Spain, Sweden, and

Switzerland are not regulated directly by the Constitution; in spite of this, in most of them there are various cultural groups, societies, and other interest organizations which were set up on the ethnic principle. Their activities are promoted and regulated either by generally valid laws on assembly and association or special laws on press, radio and TV broadcasting, or on theatre. Only the state Constitutions or the constitutions of the territorial parts of Belgium, Croatia, Germany, Italy, Portugal, the Russian Federation, Slovakia, and Slovenia contain provisions promoting minority cultural activities; moreover, these countries also have separate laws valid for all their citizens.

Just as there are differences in the legislative promotion of the cultural activities of persons belonging to ethnic minorities, there are also differences in the form of financial assistance. Generally speaking, in almost every country there is state financial assistance for these activities, the difference being in the amount: it is smaller, even very small in the countries of Western, Northern, and Southern Europe and almost all burden is on persons belonging to minorities. For instance, there is no state support for the activities of ethnic minorities in France. Similarly, ethnic minorities are not supported in Great Britain, they are rather endured. The proportion of the state's financial assistance to minority cultural activities is much higher in the countries of Central and Eastern Europe. Persons belonging to ethnic minorities also participate in the financial support, but their share is much lower.

Thanks to the higher state financial support of the cultural activities of ethnic minorities in the countries of Central and Eastern Europe, it is predominantly in those countries that the forms of the existence, preservation and development of minority cultures are institutionalized. Only here is the number of folklore ensembles greater than in Western Europe, only here are there minority theatres, publishing houses for minority literature, dailies and periodical press in both minority languages and the official language. A little different is the situation in mass media, i.e. in radio and TV broadcasting. Most countries, both in Western and in Eastern Europe have their minority broadcasting. The difference consists only in the number of broadcasting hours, the periodicity and the language in which they broadcast. All these three factors are conditioned by financial assistance as well as by the expertise of persons belonging to ethnic minorities and their ability to ensure regular broadcasting and highest professional standard. For instance, in Great Britain such broadcasts are financed by private firms, but in Slovakia, Austria, and Hungary they are funded from the state budget.

A separate circle of problems is formed by the question of minority participation in public affairs and in the political power of the state. In countries where legal systems do not recognize minority communities, their participation in public affairs is guaranteed only through civil law and their adaptation to a majority society. This is the situation for example in France, Switzerland, or Austria or Great Britain, although Austria accepts in its legal order the existence of persons belonging to ethnic minorities.

The activities of political parties formed on an ethnic principle and operating among members of ethnic minorities, represent the higher form of participation in public affairs. Such parties exist e.g. in Bulgaria – Bulgarian Muslims, in Czechia – one common party for all minorities and two Romany parties, in Yugoslavia – the Hungarians, Croats, Muslims, Albanians, and Rumanians have their own political parties, in Rumania – only ethnic Hungarians have their own political party, in Slovakia – the Hungarian minority has even four political parties and ethnic Roma-nies have two political parties. Political parties can be established on an ethnic principle in Austria, but there are no such parties there. In some European countries, for example in France, Hungary, and Switzerland, political parties cannot be set up on an ethnic principle.

An important element of the minority participation in public affairs is their representation in the parliament, which can be direct, through the deputies of their own political parties or any legally obtained deputy mandates or indirectly, through the deputies of other political parties who belong to national minorities.

For example direct representation in the parliament occurs in the cases of the Turkish minority in Bulgaria, the Hungarian and Slovak minorities in Rumania, the Hungarian minority in Slovakia, and Hungarian and Italian minorities in Slovenia. Indirect representation of minorities exists in the parliaments of Austria, Czechia, Rumania, and Yugoslavia. Rumania has a special way of representation of ethnic minorities in parliament. During elections, the social organizations of ethnic minorities, which do not have their own political parties, are regarded as political parties. If they do not win the number of votes required to be represented in the parliament, they are entitled to have one deputy who represents one minority, pursuant to the electoral law.

In Hungary, the minority representation in the parliament has not been resolved, although the minority law presumes it, the law on parliamentary election does not enable it. In many countries, e.g. in France, Norway, and Switzerland or Great Britain, persons belonging to ethnic minorities are not represented in parliament at all.

In addition to parliamentary representation of persons belonging to ethnic minorities there is another form of their participation in solving matters relating to them. There are advisory and initiative governmental and ministerial bodies responsible for minority issues, i.e. Ministries of culture, education or ministries of the interior. These bodies are usually constituted by representatives of the minorities living in particular countries, experts and representatives of the ministries, parliament or the President's office. Boards for nationalities work in this form with the governments of Czechia, Rumania, and Slovakia.

Self-administration of ethnic minorities is considered to be the highest form of democracy in relation to persons belonging to ethnic minorities. There are only six examples of self-administration based on an ethnic principle in Europe: in Finland, Hungary, Italy, the Russian Federation, Spain, and Ukraine. The situation concerning the Swedish minority in Finland, German and Rhaetian (Ladin) minorities in

Trentino-Alto Adige – southern Tirol in Italy and lately the minorities in Hungary has been presented most frequently as patterns. The character of each of these solutions becomes most evident when considering the extent of their powers. In Finland, there is the statute of autonomy for the Swedish minority living on the Aland Islands. Swedish is the language of instruction in Aland schools. Only Alandians have the right to own the land on the Aland Islands. Only local citizens are entitled to vote in local elections and the Aland parliamentary election. The Parliament elects a six-member executive committee representing the Aland provincial government. The Finnish Parliament cannot adopt any equivalent laws which are within the powers of the Aland Parliament. In other areas, Finnish laws are valid as all over Finland, for example in the judicial system, the questions of civil law and criminal law. The Aland Islands participate in solving the questions of general public interests through their representative in the Finnish Parliament. Only a personality accepted by Alandians can serve as governmental governor on the Aland Islands.

The new constitution of the Aland autonomy valid from 1993 contains additional extended powers. They mainly concern the mail service which issues its own stamps, radio and TV broadcasting, regulation of the rent of land and fisheries, regulation of alcohol purchase, the use of the Aland flag, which can also be used on Aland ships. The extensive self-administration involves own police, health and medical service, education and culture, administrative regionalization. In all these areas, the Aland Islands operate as an independent state with their own legislation and administration. It should be emphasized as a counter-value that the Swedish minority has always been loyal to the Finnish state, it has always felt to be its part and denied resolutely any possibility of being annexed to Sweden as was offered after World War II.

Another highlighted example of ethnic autonomy is the case of Trentino-Alto Adige – southern Tirol in Italy, which covers the territory of the provinces of Trento and Bolzano and functions as a legal entity with a special statute. The Statute, which has 115 articles, regulates the powers of the region and of both provinces, their bodies, approval, declaration and publication of acts and orders, local corporations, public property, finances, relations between the state, region, and provinces, systematization of state employees in the province of Bolzano, judicial bodies, control through the Constitutional Court, the use of the German and Rhaetian (Ladin) languages.

The region is competent in conformity with the Constitution and the principles of the legal order within the state, respecting international commitments and national interests, which include protection for local linguistic minorities as well as basic provisions of economic-social reforms of the republic to issue legal provisions in the following areas: the order of regional offices and their personnel, the order of semi-regional corporations, delimiting of village borders, expropriation for public use, establishment of land registers, fire service, regulations of health and hospital corporations, trade chambers, development of cooperatives and control over cooperatives and con-

tributions in connection with public works. In the domain of social care and social security the region can issue legal provisions to complete the state laws and set up its own autonomous constitutions or support their establishment.

The independent articles of the Statute regulate relations between the state, region, and provinces. One governmental commissioner is appointed for each province, whose task is to coordinate the performance of state's responsibilities in the province in conformity with the government directives and to control the activities of particular offices, with the exception of the judicial system, defence, and railways, to supervise the performance of the responsibilities delegated by the state to the provinces and other local public corporations and to inform about various objections the chief executive, to perform legal acts previously belonging to the prefect unless they had been delegated by the statute or through other laws to regional or provincial bodies and other state organs. The governmental commissioner is answerable to the Minister of the Interior for public order.

The autonomous regions of Spain and the Russian Federation represent the combination of the ethnic and territorial principles applied in the state arrangement and state control. The Spanish territory is divided into 19 communities. Four of them are inhabited by non-Castilian nations: the Basques in the north, Galicians in the north-west, and Catalans in the north-east of the country. Each province and thus also each nation living there has wide economic and cultural powers within the common state.

The Russian Federation represents the most complicated picture of state arrangement in Europe. According to the last 1989 population census, 128 nations and nationalities live in the territory of the Russian Federation, 89 of which can be regarded as indigenous. These 89 indigenous nations belong to different racial and ethnic groups – Indo-European, North Caucasian, Uralic, Altaic, Chukchi-Kamchatkan, Eskimo-Aleutian and some other, smaller groups. From the linguistic point of view the indigenous nations of the Russian Federation belong to several families of languages – Indo-European, Uralic, Altaic, Caucasian, and Paleo-Asian. In view of the religion and cultural traditions the inhabitants of the Russian Federation profess Christianity, Islam, Tibetan Buddhism, and a number of local shamanistic cults.

Ethnic, linguistic, cultural and religious variety is also more or less reflected in the political status of individual indigenous nations. The Russian Federation consists of 89 subjects – administrative units which are organized into a six-member hierarchical typology: autonomous republic, autonomous region, autonomous circle, national region, national circle, and city of federal significance. The extent of economic and cultural rights corresponds to the hierarchy and typology of administrative units. Twenty-one autonomous republics have a significantly limited international legal sovereignty and in practice cannot secede from the Federation. The Russian Federation functions as a unitary state in international relationships.

With the population of about 300,000 Tatars, 700,000 Ukrainians, and more than one million Russians, the Crimea has an autonomous status within the

Ukraine. The Crimea has wide autonomous rights and with its Constitution, parliament and government it has the right to independent international-political relationships.

Local and nation-wide minority self-administrations in Hungary have been reported as the latest examples of minority self-administration. They are established according to the act No. 77 adopted in 1993 on national and ethnic minority rights. Both forms of self-administration function as legal entities. Each minority can be represented by only one self-administration at both levels.

The local minority self-administration determines according to the local government order within its own responsibilities: its organization and working order, its budget, final statement, use of resources provided by local government, use of the property assigned to it, the name, symbols and honours of the minority self-administration, local minority festivities, circle and local rules for the protection of monuments. According to the funds the local government has at its disposal, it can establish and run institutions, particularly in the sector of local schools, the local press and electronic media, nurturing of traditions, and the general development of education. It can set up and run a business or an economic organization, declare competitions and award grants.

The nation-wide self-administration decides independently, as by law enacted, on its headquarters, organization and the order of business, budget, final statement and the inventory of its property, on the extent of the basic property, its name and symbols, state holidays of its minority, honours, the principles and the way of use of radio and TV channels, which is at its disposal, the principles of the use of the broadcasting time of the state radio and TV, about press releases, establishment of its institutions, their organization and the order of business, their maintenance and conduct, the conduct of the theatre, establishment of museums, libraries, publishing houses, the management of secondary school and university institutions nationwide, the establishment and conduct of legal advice, and about other tasks delegated to it by law. The nation-wide self-administration also gives comments on proposals of legal regulations at all levels concerning the minority which it represents.

In addition to the above listed powers, the act mentioned also regulates the powers of a local minority spokesman, local educational and school self-administration, the use of the mother tongue, promotion of minorities, questions concerning the property of minorities and transactions involving it. The results obtained so far from the application of minority self-administrations show that they have only minimal impact on the administration of minority matters.

In spite of the fact that a separate law on the protection of minority rights and a clearer conception of minority policy are lacking in the legal order of the Slovak Republic, the provisions of international documents and the norms of international law in the area of the protection of persons belonging to ethnic minorities have already been brought into operation. The comparison of the minority rights guaran-

teed in the Slovak Republic with the contents of the articles of the Council of Europe Convention on the Protection of Ethnic Minorities, which we currently consider to be the European standard achieved, can serve as primary evidence despite the fact that it has not come into effect as yet.

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