

3 FEAR OF AUTONOMY FOR MINORITIES

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3.1 AUTONOMY FOR MINORITIES AND THE EUROPEAN NORMATIVE FRAMEWORK

Article 4 paragraph 3 of the European Charter of Local Government, an international treaty signed in 1985 under the auspices of the Council of Europe, stipulating the principles governing such organs, states that ‘public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen.’ The Charter protects the independent jurisdiction, operational freedom and financial independence of local governments and their right of association in order to carry out tasks of common interest. And although it does not mention minority self-governments, where minorities constitute the local majority, its principles may also be considered normative in this aspect, since in their case, minority self-government is carried out through the implementation of general self-government rights.

The document adopted on the Copenhagen meeting on the human dimension of the Conference (as of 1994: Organization) on Security and Cooperation in Europe in 1990 covered autonomy in connection with the participation rights of persons belonging to a minority in a rather subtle and ambiguous way. Chapter IV, Paragraph (35) of the document reads as follows: ‘The participating States will respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities.’

The participating States note the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by establishing, as one of the possible means to achieve these aims, appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned.

The text’s main merit was its birth, i.e., the fact that it recognized autonomy as a means of preserving minority identity. Its adoption is owed to two factors. On the one hand, the

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GÁBOR KARDOS

euphoria ensuing in the wake of the democratic changes in Central and Eastern Europe and, on the other hand, its non-binding character.

In July 1991 a meeting of experts on national minorities was held under the auspices of the CSCE in Geneva. Chapter IV of the report adopted deals with the conditions for persons belonging to national minorities to have equal opportunities for effective participation in public life, economic activities, and the development of their society. The text provides a detailed list of institutional forms recommended for the above purpose, e.g., advisory and decision-making bodies, elected bodies and assemblies, local and autonomous administration, self-administration and decentralized or local forms of government, without specifying what it meant by such categories. A participant wittily called this part of the text the 'Geneva shopping list'.¹ European states did not make much use of this shopping list, and even if they did, they were most certainly not shopping for autonomous administration by national minorities.

The Lund Recommendations on the Effective Participation of National Minorities in Public Life were issued in 1999 upon the request of the OSCE's High Commissioner for National Minorities. Part III of the Recommendations makes a clear distinction between territorial and non-territorial arrangements of self-governance. Regarding territorial arrangements, paragraph 19 recommends the principle of subsidiarity and the devolution of powers to the governments concerned. Paragraph 20 states that appropriate local, regional or autonomous administrations that correspond to the specific historical and territorial circumstances of national minorities may undertake a number of functions in order to respond more effectively to the concerns of such minorities. It lists certain functions over which such administrations have successfully assumed primary or significant authority: education, culture, use of minority language, environment, local planning, natural resources, economic development, local policing functions, as well as housing, health and other social services. It mentions taxation, administration of justice, tourism and transport as functions shared by central and regional authorities. As far as non-territorial arrangements are concerned, paragraph 18 points out that education, culture, the use of minority language, religion and other matters crucial to the identity and way of life of national minorities are the issues most susceptible to regulation through these arrangements. Therefore, the Recommendations draw the governments' attention to the good practices of autonomies provided by certain European states. Part IV, paragraph 20 states that self-governance arrangements should be established by law and generally not be amended in the same manner as ordinary legislation.

Article 11 of Recommendation 1201 (1993) of the Parliamentary Assembly of the Council of Europe (originally drafted as, but never becoming an additional protocol on

1 J. Helgesen, 'Protecting Minorities in the CSCE Process', in A. Rosas and J. Helgesen (Eds.), *The Strength of Diversity: Human Rights and Pluralist Democracy*, Martinus Nijhoff, Dordrecht, 1992, p. 181.

the rights of national minorities to the European Convention on Human Rights) defines the national minorities' right to autonomy.

In the regions where they are in a majority the persons belonging to a national minority shall have the right to have at their disposal appropriate local or autonomous authorities or to have a special status, matching the specific historical and territorial situation and in accordance with the domestic legislation of the state.

In my view, Article 11 may be characterized as follows. Firstly, it gives a relatively exact definition of the right's substance: local or autonomous authorities or a special status – an international norm can hardly be more exact. Secondly, it incorporates a *de facto* community right, naming the persons belonging to a national minority as subjects, into the system of an agreement protecting individual rights. Thirdly, it leaves the regulation of autonomy to the domestic law – an international treaty may hardly define the organizational model of a state. Fourthly, although it fails to clarify some pressing issues (whether and how this concept can be construed in a state that formally doesn't recognizing regions; how the local majority may be determined; how to understand the notion of national minority); clarification of such elements could be done by the European Court of Human Rights in the course of deliberating complaints received. In the absence of autonomy, such complaints would correspond to a unique historical and territorial situation. Even if we assume that the European Court will show due restraint in connection with such complaints, it will have to decide, albeit within certain limits, whether and in what forms autonomy should be provided.

After the Summit of the Heads of State and Government of the Council of Europe had refused to adopt Recommendation 1201 (1993) as an additional protocol, the Parliamentary Assembly expressed its disapproval in Recommendation 1231 (1994). In its Recommendation 1255 (1995) the Assembly further maintained that an additional protocol on minorities would be necessary; however, it did not insist on the right to autonomy anymore. In Recommendation 1609 (2003) it stated that, relying on the experiences of autonomous regions, European states should preserve their territorial integrity, while at the same time they should ensure minority rights. Resolution 1334 (2003), in its entirety, elaborates on this particular statement. Clause 13 states that autonomous status may be applied in both unitary and federal states. Clause 15 points out that autonomy is not a panacea; however, failure should be blamed not on autonomy as such, but on the conditions in which it is applied. According to clause 22, it would be appropriate for the statutes and founding principles underlying autonomous status to be included in the states' constitutions; however, both the central and autonomous authorities should be ready to renegotiate them. The decision-making powers and financial independence of autonomous authorities are also mentioned.

CoE CLRAE Resolution 52 (1997) states that an appropriate form of self-government should be granted to minorities. In its Recommendation 43 (1998) the Council of Europe

GÁBOR KARDOS

urges specific protective measures in territories where the members of a minority constitute a substantial proportion of the population, to create territorial authorities in such a way as to prevent dispersal of the members of a national minority, to guarantee their effective political participation and to avoid changing the geographical boundaries. Recommendation 70 (1999) calls for regulating and managing a substantial share of public affairs in the interest of the local population.

The question is why and how the Committee of Ministers of the Council of Europe and the governments represented therein resist the temptation by ignoring all these recommendations. In my opinion, it may be explained by the *negative consensus* forged between European states guaranteeing minority autonomy and those abhorring even the concept thereof. On the one hand, if a state, dreading the transformation of its organization or curbing its powers, or fearing the secession of a part of its territory, does not want to grant autonomy, it will obviously adopt a negative stance in relation to the international codification of such norms. On the other hand, if a state has already granted autonomy, it may not see the point in addressing this issue in the international context or it may even be afraid of being lectured by international bodies interpreting such norms on what kind of autonomy to grant.

3.2 PERCEIVING A NATIONAL MINORITY AS A THREAT

Why are national minorities considered dangerous, a threat to the very existence of the majority nation, as majority nationalists often perceive them? The answer is manifold.

First and foremost, national minorities are *different*, they differ greatly from the majority, they have a different language, often their religion and financial means are different too – they may be wealthier or poorer. Language and the culture are the most important expressions of collective identity. However, great efforts notwithstanding, preserving collective identity may be jeopardized or even become impossible in case it is limited to the domain of one's private life. If one wishes to assert collective identity in the broader context of public life, including education, the use of language, media, culture, business and social activities, minority rights shall be indispensable.

Even minority rights which are the easiest to grant may be deemed a threat by the radical majority nationalists, reading into the everyday facts of life from their rather peculiar perspective. For instance, the use of place names and other geographic names in a minority language, even in the modest form of the signboard of a settlement, may demonstrate the existence of a given minority, being at home in a given physical space. Elementary education in a minority language is a threat in the eyes of a radical majority nationalist because, while guaranteeing only the transfer of a modest body of knowledge, it gives legitimacy to a means of expression, evidencing the *raison d'être* of a different

culture in the given state. Needless to say, the higher the level of education, the bigger the threat to the dominance of the majority culture. The more sophisticated nationalists would not crudely refer to the cultural dominance of the majority, instead, they assert the unacceptability of separation. They claim that minority schools and cultural institutions facilitate the formation of segregated, competing communities within the state, and the use of minority languages in official matters would push the ethno-cultural character of the state into eclipse – this nationalistic approach does not need further explanation. Even in cases when the use of minority languages is allowed, largely in theory and scarcely in practice, on the local administrative level, it is not permitted to use them when dealing with the bodies of central administration or in the parliament, the symbol of popular sovereignty. It may be formally allowed; however, exercising this right would surely cause a scandal.

Radical nationalism perceives even the linguistic and cultural rights of minorities as a threat. For moderate nationalists, it is the political rights of minorities that constitute the real security risk. And we are referring here not only to autonomy-related rights, but to universal political freedoms, as well, if they are exercised in an organizationally separated way. In connection with the latter, the establishment of ethnic political parties is one of the threats perceived. According to nationalists, national minority parties are dangerous because they endeavour, at least clandestinely, to disrupt the state. Furthermore, under certain political constellations, they may become part of the government, potentially causing even more damage. A more moderate view is that they instigate distrust and even animosity between the majority and the minority as they create an opportunity to engage in politics as adversaries. Furthermore, the appearance of the aforementioned animosity and the infringement of the principle of equality provide subtler arguments to those opposing the special, autonomy-related rights of minorities.

3.3 THE AUTONOMY AND THE ETHNIC-BASED FEDERATION

Municipal rights over minority schools (and other cultural institutions) raise concerns, since they may lead to the situation where in these institutions not citizens loyal to the majority state are educated but citizens of a sort of virtual minority entity, and such institutions may strengthen this awareness. This concern applies principally to regional autonomy.

Regional autonomy is an imminent danger for majority nationalism because if implemented, the ethno-cultural character of public authority is significantly overshadowed by regional autonomy in a given area. In case of regional autonomy, this character does not merely fade away, as it may well be that the formal official bilingualism (equality between the majority language and the minority language) but it may essentially mean that administration is run in the minority language. In addition, certain nationalists claim that

GÁBOR KARDOS

the rights of majority citizens will be infringed. Moreover, they are thrown into a secondary status as the organs of the autonomy may pass decisions independently and if the minority, that is, the local majority, is entitled to decide, the majority citizens may be disadvantaged. Finally, the most frequently invoked argument is that regional autonomy is merely the first step towards secession, as the capability of having your own administration is a prerequisite for independence.

In fact, regional autonomy may reinforce the acceptance of the state for the minority citizens living there. What János Esterházy said about the good minority policy is even more so for the solution accounting for regional autonomy. ‘Righteous national minority policy is a considerably bigger coefficient than a number of written laws, it is more secure than any Maginot line, for nothing makes a state stronger than the fact that not only the majority citizens but also the minority citizens feel completely at home.’²

As far as the marginalization of the ethno-cultural character of the state is concerned, the majority nationalists partly fear what they consider natural when it comes to minority citizens. What they fear is that the public authority will deviate from their mentality. The answer is that the rights of majority citizens, who have become the local minority, shall not be ensured merely through acts but through the maintenance of a proper infrastructure. The fear from the decisions of the local majority means again that their subject is what minority citizens perceive as natural. The fear is that it is not them who constitute that majority. In practice, this fear may be managed by affording veto rights to the political representation of the local minority with respect to certain questions.

As for autonomy as the anteroom of secession, arguing against it is possible, as we have seen, on the grounds that ensuring self-government may be a cure against such aspirations. Besides, it is not so simple, since in technical terms, in addition to independent institutions, the role of e.g. the geographical location of the autonomous area is also crucial, that is, secession requires a location along the national border.

In case of claims for ethnic-based federation, the same fears may arise, however, these are exacerbated by the fact that in this case secession may be a constitutional right further enhancing concerns, since it is up to the member republic to decide when to exercise this right. Much depends, of course, on the wording of the constitutional provision, whether an implementing act was adopted and the underlying political will. As regards, the claim for ethnic federation may face constitutional obstacles even on the Western part of the continent. This is due to the perceived threat of secession, in spite of the several existing and successful examples of ethnic federation in Western Europe.

2 Cited by: G. Jeszenszky, ‘Aktív magyar külpolitikát!’, *Népszabadság*, www.nol.hu/cikk/413815/.

3.4 HOW CAN THESE FEARS BE CURBED?

Overcoming the fears leading to the transformation of minority rights into security issues is a time-consuming process, the success of which depends on a number of domestic and international circumstances. The most important prerequisite for the acceptance of the special rights pertaining to autochthonous minority communities and the preservation of their identity is overcoming the majority's existentialist distress. The majority needs to understand that the identity of a community with a different culture does not pose a threat to their identity, not even to the ethno-cultural character of the state; at most it may give it a special hue on the local level. They also need to understand that if cultural identity is at stake, it will not be the identity of the majority but that of the minority. Namely, minority cultures are jeopardized by assimilation that the majority culture also brings with it, with great impetus, albeit without coercion. Majority culture – which identifies itself as the general political culture, needs to be separated from it, – and to co-exist with minority culture in order to ensure that all citizens may identify themselves with the political culture of their country and that a constitutional patriotism may appear.³

I have already referred to the time-consuming character of the process. Instead of listing lengthy arguments, here is an example for cooperation between states, which – although emerging as a result of a powerful external force, bringing the reinterpretation of democracy with it – may lead to overcoming the fears so very proliferated in Central and Eastern Europe. First of all, the question must be asked: who is afraid of minority conflicts today in the Northern states and with regard to their existing relationship with these states? The answer is presumably: nobody. However, if one tries to answer the question in the context of the state and in terms of the relationship between the immigrant communities and the majority, then the answer may be less optimistic. At a certain point in time, however, the situation was different. After Norway became independent in 1905, but in particular in the thirties of the last century, the Norwegian Kven minority, whose language is essentially identical to the Finnish language, appeared as an important security risk before the Norwegian politicians. Moreover, war with Finland seemed inevitable. Violent Norwegianisation led to the appearance of political forces defining the objective of Greater Finland including the Kven areas as well. Private book deliveries were strictly controlled. Certain Norwegian politicians came to the conclusion that the Finnish are unreliable and Finland is, despite all official denial, ready to attack at any moment.⁴

The function of autonomy is to provide a system of institutions that delegitimizes separatism, to make it unreasonable for the majority of the minority and render unjustified

3 J. Habermas, *The Postnational Constellation: Political Essay*, Polity Press, Cambridge, 2001, p. 74.

4 B. Jávorszky, *Észak – Európa kisebbségei (Minorities in Northern Europe)*, Magvető, Budapest, 1991, pp. 59-64.

GÁBOR KARDOS

for the international public opinion to opt for secession. As Sándor Vogel put it 'Only an ethnicity which feels safe and unthreatened in its existence may be loyal to its state. Consequently, it will not strive for secession. The principle of autonomy can be harmonized with the principle of regional integrity.'⁵ It seems certain that granting autonomy and its effective appearance enhance the sense of uncertainty for the majority and at the same time, autonomy would impose a huge responsibility on the leaders of the central state to dispel these intensified fears. However, this may be replaced by a sort of sense of satisfaction in the majority, meaning that we also provide this possibility. Of course, this sense may not be expected from the radical majority nationalists who consider the street signs written in the minority language or minority primary schools as threats. In order to ensure that the concepts of politicians with such an attitude are not appealing to the majority, it is considered merely a precondition that in exchange for autonomy, the minority should waive their claim for secession in a referendum or the neighbouring countries set it out in an agreement that they will not pose any territorial claims. The real convincing power of autonomy lies in its successful operation.

The process, which could result in minority issues losing their security relevance, requires the cultural character of the majority political identity to fade away. The acceptance of minority identity, ranging from rewriting textbooks with majority attitude to include cultural rights and rights to official language use proving the presence of minorities, is a prerequisite for the acceptance of minorities as part of the political community. Acceptance into the political communities is an important step for minority parties to get into the government, which proves that they are not worse leaders than others. However, inclusion into the political community may culminate in the refusal of the constitutional principle of an ethnic-based nation state. If the majority also provides the possibility for minority autonomy, then it has become clear for them that a region with special administrative rights, where a minority community or its substantial part live in one block, will not undermine the territorial integrity of the state, because autonomy is not equivalent to independence. As Hurst Hannum points out, autonomy assumes that the local community exercises real power in certain questions, but it is not protected from the power and influence of the central government. What autonomy collides with, however, is the instinctive tendency of the state for centralisation and standardization.⁶

The reconstruction of political consciousness, as a result of which the general political culture is not equated with the majority culture, leads to an order of true legitimacy upon the backdrop of the coexistence of minorities and the majority.

5 S. Vogel, 'A kisebbségi jogok kodifikációjának lehetőségei Európában' ('Possibilities for the codification of minority right sin Europe'), 3(4) *Külpolitika* (1996), p. 209.

6 H. Hunnum, *Autonomy, Sovereignty, and Self-Determination. The Accomodation of Conflicting Rights*, University of Philadelphia, Philadelphia, 1990, p. 468.

3 *FEAR OF AUTONOMY FOR MINORITIES*

The role of international law in this process is limited. The autonomy regimes accomplished in the affected states have a much more important role to play.