Balázs Majtényi

The Autonomy of Minorities and Registration

The minority question is, in part, being treated as a security question both in the East and the West and this attitude also appears at the international stage[1]. Yet, the way of thinking about what endangers the security of the states has developed differently within Europe. While, according to the conclusion of Will Kimlycka, minority nationalism becomes imminent in the eyes of politicians and the majority population in the West only when it resorts to terrorism, even the most modest requests of the minority leaders can cause great panic in the countries of East Central Europe[2]. (Kimlycka mentions that when a few representatives of the indigenous population in Canada do not consider themselves Canadian, it is merely considered a threat on solidarity in the North American context. As opposed to this, in an East Central European context, similar declarations of the Roma leaders are sometimes considered problems that outright threaten the existence of the states.) It is not surprising, therefore, that there are views according to which it would be beneficial to the managing of minority conflicts in East Central Europe just to convince the states of the region that the aspirations for autonomy they deem dangerous, instead of endangering the sovereignty of the state, may even become appropriate tools for the management of ethnic conflicts in certain cases. This persuasion becomes even more important considering the self-protecting mechanisms of the state, since the greatest of creatures, the huge Leviathan, in the words of András Sajó: "...as opposed to dolphins, whales and people – is not inclined to commit suicide. On the other hand, the most natural feature of a state is that it protects itself: the objective of self-defensive has made the gang of robbers (magna latrocinium) a state[3]." If the state is successfully persuaded, then two further conditions need to be met, transformed properly into the legal system, moreover the bodies created through autonomy need to be endowed with a real sphere of authority in order that the introduced new legal institutions could function effectively. Following the accomplishment of all this, it will become possible to utilise the means of law – although they are undoubtedly limited in themselves – for the protection of minorities.

The autonomy of minorities

The autonomy of minorities established on a territorial or personal basis, has been part of legal and political thought in Europe for long and, similar to the

[1] A proof of this opinion could be that the tasks of the OSCE High Commissioner for National Minorities include the intervention in situations threatening with a future conflict involving national minorities.

[2] Kymlicka, Will. Igazságosság és biztonság [Fairness and Security]. *Fundamentum* 2001/3. 15.

[3] Sajó, András. Önvédő jogállam [Self-protecting Rule of Law]. *Fundamentum* 2002/3–4. 55.

concept of the nation, it has changed "together with the social circumstances and the conceptual structures corresponding to them in the given ages[4]. (What is more, antecedents of legal history can be cited with respect to the autonomy of groups separated from the rest of the population in some religious, linguistic or cultural respect already from times preceding the development of the modern concept of the nation. An example to this can be the royal charter issued by King Sigismund Augustus in 1551, which provided for the personal autonomy transcending religious matters of the Jews in Poland.)

The autonomy of national minorities is regarded as accomplished in the modern ages when the state delegates spheres of authority of the executive power to organisations elected by the members of the minority through a democratic process. This can happen in two different ways: as a territorial autonomy when the national minority lives in a majority in an area; and as a personal autonomy when the minority lives dispersed in the given area. Personal autonomy is often mentioned as cultural autonomy, since the public administration bodies organised on this principle are usually – but not necessarily – granted authority in the fields of education, culture and mass communication[5]. These two types of autonomy can even be applied jointly within a state and the Hungarian legislators made an attempt at this – which, at least in part, turned out futile because of the inadequacies of the text of the law – when they wanted to mix the principles of personal and local autonomy in the 1993 Act on Minorities[6].

A special importance is attributed – besides turning other principles in connection to the protection of minorities into practice – to the realisation of the autonomy of minorities, because it is through this that the elected representatives of the minorities can appear in the sphere of public administration. This is necessary because central state power – no matter what goodwill it demonstrates in the direction of national and ethnic minorities – cannot be called ethnically neutral after all and as a result of this, state officials are often biased in favour of the majority ethnic group. Consequently, persons belonging to a minority can have a legal claim at the establishment of their own institutions – elected by the members of the minority and de facto endowed with spheres of authority of public administration – at certain fields of public life[7]. This, for example, would be even more important in the case of the Roma population because those belonging to this minority are over-represented with respect to the latter player of the "medium – client" system of relations. Accordingly, through the autonomy of the minority, the

[4] Conversation of Andor Németh and Attila József on the change of the nation concept, see Németh, Andor. *"József Attila"*. Akadémiai Kiadó, Budapest, 1991. 134–135.

[5] See the brief summary of the two principles of autonomy in Hungarian professional literature. Ifj. Korhecz, Tamás. *A kisebbségi autonómiáról címszavakban* [In Brief on the Autonomy of Minorities]. *Európai Utas*, 1999/4 (37).

[6] Act no. LXXVII/1993 on the Rights of National and Ethnic Minorities.

[7] In connection to this, see Kymlicka, Will. *Multicultural Citizenship*; Oxford University, Clarendon Press, London, 1995.

Roma minority or, according to the terminology of international law, the "persons belonging to the [Roma] minority" – even if not at all fields of life – could turn to their own public administration bodies with given problems of theirs and could represent their interests by way of them. (In the case of the Roma population, it is the personal principle that could b applied because of the territorial extension of the minority, mixed with the territorial principle on the local level.)

Autonomy and the principle of self-determination

The justification of ethnic autonomy established on a territorial basis is possible through various theoretical argumentations, with its demonstration based on international law being one of these. A suitable starting point for this is provided by the right for self-determination of peoples or nations (international law generally does not define these two entities), a basic principle of international law, which is treated as a fundamental human right in the documents of international law. If the human right character of this basic right is not debated, then why national minorities – as entities not defined by international law but ones possessing minor rights than the nations or peoples for certain – should not be entitled to the right to autonomy, as to a weaker sphere of authority?[8] Namely, territorial autonomy can be conceived as a compromise between the majority nation and the minority. When sees this assured, the minority, in exchange, abandons the execution of its self-determination. Therefore, granting them autonomy or the federalisation of the state does not necessarily imply secession in the future, which we can consider the last, completing phase of the assertion of individual and collective minority rights appropriate for the management of nationality conflicts existing within the state[9].

Following this argumentation, the view appeared in international professional literature that the right to autonomy can be deduced from the principle of self-determination, and the representatives of the theory have established a difference between the right to internal and external self-determination. According to this hypothesis, the right to self-determination is not only the manifestation of the requirement that all peoples and nations have the right to have their own state (right to external self-determination) but also implies the right to autonomy in certain cases (right to internal self-determination). The theory can be deduced from the UN General Assembly Resolution no. 1514 and the first Articles of the two 1966 international covenants[10]. Under these documents, on the basis of the right

[8] For example, the Spanish Constitution of 1978 declares the right of nationalities and regions to autonomy.

[9] Dr. Arday, Lajos. Kisebbségek és biztonság Kelet-Közép-Európában [Minorities and Security in East Central Europe] Budapest, 1994. 29.

[10] See the Declaration on the Granting of Independence to Colonial Countries and Peoples (entry into force with Resolution no. 1514 (XV), 14 December 1960), moreover the International Covenant of Civil and Political Rights (entry into force with Decree-Law no. 8/1976), and the International Covenant of Economic, Social and Cultural Rights (entry into force with Decree-Law no. 9/1976).

to self-determination, all peoples can freely determine their political status and freely pursue their economic, social and cultural development. According to the hypothesis, these and other formulations allude to the fact that those peoples or nations can become independent, which have been denied internal self-determination, that is, the right to autonomy under the principle of ethnicity, and could not freely pursue their economic, social and cultural development.

Several recent events and adopted documents can be cited in support of this argumentation. In Bosnia and Herzegovina, for example, the international community excluded the recognition of the right to external self-determination because the right to internal self-determination has been realised, in spite of the fact that the state – as a result of the bloody conflicts between Bosnians, Croatians and Serbs – had de facto disintegrated into three separate entities along the fissures between the nations[11]. It was following the rejection of the right to external self-determination and under the guardianship or, rather, protectorate of the international community, that a "never-been" state floating above the three entities was formed, which does not even possess such attributes of independence, as an own army, police or judicial system[12]. As an example of the declaration of the right to internal and external self-determination, we can cite the act establishing the autonomous territory called Gagauz-Yeri in the southern part of the Republic of Moldova. (The autonomy regulation of the territory entered into force on January 14, 1995, with the expressed purpose of furnishing a solution model to the ethnic conflicts that had evolved in the territories beyond the Dnestr River as well.)[13] The Republic's act on autonomy, in the case the status of Moldova as an independent state should change, contained the provision stipulating that in this case the Gagauz people would have the right to external self-determination, that is, they could freely decide about the establishment of their own state.

The autonomy of minorities in international legal documents

Up to the present, several international legal documents that can be qualified as soft laws, have mentioned autonomy based on the principle of ethnicity. Among them, the universally adopted "Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities" (adopted by the UN General Assembly resolution 47/135 of 18 December 1992) is of outstanding importance. Article 2, Section 3 of the Declaration mentions the right to autonomy of persons belonging to minorities. Under this section, "Persons belonging to

[11] In connection to this, see Pierré-Caps, Stéphane. *Soknemzetiségű világunk* [Our Multinational World]. Budapest, 1997. 107.

[12] In connection to this, see Masenkó-Mavi, Viktor. *The Dayton Peace Agreement and Human Rights in Bosnia and Herzegovina*; Acta Juridica Hungarica 42 (2001) Nos 1–2. 53–68

[13] In connection to this subject, see Neukirch, Claus. *Autonomy and conflict transformation the case of the Gagauz territorial autonomy in the republic of Moldova*. (lecture); Conference on "Minority Governance Concepts on the Threshold of the 21st Century"; Bolzano, South Tyrol, Italy, 6 to7 October 2000.

minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation." This formulation, however, does not go beyond recognising the right to autonomy of persons belonging to minorities, should practicing this be otherwise rendered possible by national legislation. The intention behind mentioning the right to autonomy can be that the international community encourages its introduction.

Article 11 of Recommendation 1201 (1993) of the Parliamentary Assembly of the Council of Europe that suggests the recognition of territorial autonomy formulates this similarly: "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." (The recommendation concerned an additional protocol on the rights of minorities to the European Convention on Human Rights.)

The third document that can be cited as one referring to autonomy is Article 35 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE adopted in 1990. Under this, "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." It is not even the right of minorities to autonomy that this article mentions. It merely alludes to the fact that it has been revealed to the participating states that autonomies function based on the principle of ethnicity in the various states. Moreover, they find the political aim directed at achieving this legitimate – should this be in accordance with the policies of the state concerned.

It is a common characteristic of all three documents that, with a view to sovereignty, they make autonomy subject to the will of the state and present the following formulations as conditions of its realisation: "in a manner not incompatible with national legislation", "in accordance with the domestic legislation of the state" and "in accordance with the policies of the State concerned". The reason of this reservation originates in the nature of international law and, following from this, comes from the fact that the principle of self-determination runs counter to another principle of international law (which is also regarded as fundamental and has already been mentioned above), namely, the sovereignty of the state[14]. (That is, the principle of sovereignty presents the following requirements: the territorial wholeness and political

[14] The UN General Assembly Resolution no. 1514 (XV), 14 December 1960 defined the essence of this right as follows:

"All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

independence of all states is inviolable and all states can freely determine their political, social and cultural systems.)[15] Secession, however, is possible only from an already existing sovereign state and sovereignty can even raise an impediment to the aspirations of autonomy in function of the will of the state concerned. Yet, if internal self-determination is not opposed to the will of the state, it does not run counter to sovereignty either, since it does not concern the question of the change of the borders. In the light of all this, it still might not be surprising that only those international legal documents contain references to the right to autonomy that are not binding.

Yet, pressure exerted through international law also created autonomies, although both of these models were elaborated during transformation periods of international circumstances: in times after WWI and WWII. The basis of the autonomy of the Aland Islands was laid down through a Swedish-Finnish treaty elaborated in 1921 with the effective contribution of the League of Nations. The territorial autonomy established on the islands survived its patron, the League of Nations. (The new act on local governments of 1993 stipulated the expansion of the institutional system on the islands.)[16] Annex IV of the Italian peace treaty signed following WWII in 1947 included the provisions concerning the German national minority of South Tyrol. (With this, the bilateral Austrian-Italian Gruber-de Gasperi Agreement of 1946 was annexed to the peace treaty.) Later on, it was on this basis that the autonomy of the territory was established with the assistance of the UN[17].

In sum, it might be concluded on international legal regulation that although international law does not consider autonomies based on the principle of ethnicity an erga omnes obligation, it recommends them as legal institutions that have been acknowledged by the practice of certain national legal systems[18].

Territorial autonomies in the legal system of given states

Up to the present, autonomies based on the principle of territory have been established – in function of the will of the state – in several European states even in the lack of international undertaking of obligations. Among these, we can

[15] In connection to the meaning of the principle of sovereignty, see the UN General Assembly Resolution 2625 (XXV) of 24 October 1970.

[16] In connection to this subject, see Kovács, Péter. *Az Aland-szigetek önkormányzata* [The Local Government of the Aland Islands]. Budapest, 1994.

[17] The so-called *South Tyrolean* question emerged with the Italian annexation of 1919. Prior to that, the region in the "heart of the Alps" belonged to Austria for 600 years. However, Italian nationalists formulated the importance of the obtainment of the strategic Brenner Pass already in the 19th century. Three linguistic groups live in the region: Italians, Germans and Ladins.

[18] In connection to this subject, see Kovács, Péter. *Questions and answers on minority related autonomy issues* (lecture); Conference on " Minority Governance Concepts on the Threshold of the 21st Century"; Bolzano, South Tyrol, Italy, 6 to7 October 2000.

mention Spain that has been transformed into a state of autonomies, the autonomy of the Germans in Belgium, the achievements of the break-down of the power in the United Kingdom, the autonomies of the Feroe Islands or Greenland in Dania and so on. Even a territory with special status based on ethnicity came into existence in a way that the use of the concepts of "people" and national minority has been disregarded. (Although the French Constitutional Council, when reformed the status of Corsica in 1991, declared the "the Corsican people, component of the French people" reference contrary to the Constitution on the grounds that it infringed the principle of the 'nation homogene', it upheld the act, using legal ingenuity, with respect to the essence of ethnic autonomy. It declared that the "Constitution (...) hindered not the legislators in establishing a new category of territorial communities, made up of a single unit only, and grant it a special status[19]." Looking at the Western European developments, already many talk about a post–1945 crisis of the centralist state and, parallel to it, refer to the increasing prominence of the federal model and autonomies. (The distinction between a federal member state and an autonomous community is usually made on the basis that the latter is not granted a constituent power and the autonomous territory – as opposed to the federal state – does not have a share in sovereignty.)[20]

Several of the already functioning autonomy models established under the principle of territory prove that the realisation of autonomy does not necessarily lead to the secession of the minorities but, as opposed to this, it can even promote the peaceful co-existence of the majority nation and those belonging to the minority. The above-mentioned Tyrolean case might be a good example of this. The continuous discrimination of the persons of German nationality in the province led to the aggressive events of the 1950s that continued even into the 60s. The autonomy model established subsequently, it seems, settled ethnic conflicts satisfactorily. Other examples can be cited as well: support for the radical minority organisations decreased in Basque Country – although this did not go parallel with the cessation of aggression – after the Basques had been granted autonomy[21]. (The Basque parliament declared the right of the people to self-determination already in 1990 but it refrained from its immediate enforcement.)[22] At the same time, the successful functioning of territorial autonomies infers the acceptance of mutual concessions: that the majority abandons its goal of establishing a homogeneous nation state and that the

[19] Decision no. 91–290 of May 9, 1991 of the Constitutional Council concerning the statute of Corsica territorial community.

[20] In connection to this, see Sípos, Katalin. *A regionalizmus történeti és jogi aspektusai* [Historic and Legal Aspects of Regionalism]. Budapest, 1993.

[21] The Basque separatist organisation of ETA – although the autonomous statute of Basque Country has been in effect since 1979 – aims at the unification of the Spanish and French Basque provinces and the proclamation of independence. According to surveys, the majority of the Basque population does not support the activities of ETA any more.

[22] Sípos op. cit. 98.

minority, giving up its self-determination, accepts the fact that it lives as a minority in the territory of the state concerned[23].

However, it cannot be foreseen what a movement considers its real objective and whether it really contents itself with the achievement of political autonomy. Demanding independent statehood did not originally figure in the programme of certain nationalist movements that managed to win national independence in the end. Irish nationalists insisted on the establishment of Irish self-government for long but their leader, C. S. Parnell stated the following already in 1885: "Nobody has the right to set limits to the aspirations of a nation; nobody has the right to tell the people of a country: you can go thus far and not one step farther[24]." Notwithstanding this, several examples have confirmed up to the present that territorial autonomy could bean appropriate tool for the management of minority conflicts. According to Will Kymlicka, the example of the Western European states has revealed that "multinational federalism made ethno-cultural fairness possible in the West and successfully decreased the probability of separatism as well[25]." Yet, the enumerated arguments have not reassured the politicians of the East Central European countries. Probably, they were concerned about the practice, which gave preference to the sovereignty of the state following the political transformations in the case of certain states, and rejected the secession of national minorities. In the case of other nations, on the other hand, this was quickly upheld (for example, this was the case of the Soviet and Yugoslav successor states).

The case of South Tyrol[26]

The "Proporz" system established by the autonomy statute of the territory takes into account the ratio of the three linguistic groups living in the province in certain fields of the provincial administration[27]. Accordingly, the proportion of the three linguistic groups is to be taken into consideration in local public service and public bodies, at the division of positions, as well as at the division of positions in the judicial administration and the allocation of budget instruments spent on welfare purposes[28]. (The legal regulation in 1997 ensured the flexible enforcement of this

[23] In connection to this, see Várady, Tibor. *"Minorities and Majorities, Law and Ethnicity – Reflections of the Yugoslav Case".* Human rights Quarterly 19/1997.

[24] The Blackwell Encyclopaedia of Political Thought. (Edited by David Miller) In Hungarian: see Politikai filozófiák enciklopédiája. Budapest, 1995. 341–342.

[25] Kymlicka, Will. *Igazságosság és biztonság*. [Fairness and Security] op. cit. 21.

[26] In connection to this subject, see Bonell–Winkler. *Südtirole Autonomie*; Bozen, 2000., and materials at the following homepage: www.provinz.bz.it.

[27] According to figures of the 1991 census, the proportion of the German ethnic group was 67.99%, that of the Italians 27.65%, and that of the Ladins 4.36%.

[28] Thus, for example, it is taken into account at the division of positions in the judicial administration (office managers, secretaries, translators, bailiffs), at the local office of the Italian Red Cross or at pension funds with respect to civil servants.

regulation making it possible that in the case of a want of candidates within one of the linguistic groups for a place reserved for them, members of the other linguistic groups can also apply.) The system is to protect, on the one hand, the minority Germans and Ladins in South Tyrol against 56 million Italians by ensuring them proportional representation in certain fields of public life. On the other hand, it also protects the Italian-speaking group the members of which are in a minority in the territory of the autonomy. In order that such a system could function, two preconditions have to be met. First, reliable data have to available on the exact proportion of the linguistic groups in concern. Second, one can expect that there might be cases when it will have to be known about every person which linguistic group he belongs to. The declarations made during the census in conformity with the principle of freely chosen of identity, serve as a basis when it comes to the determination of these in South Tyrol[29]. Starting from the 1991 census, every South Tyrolean citizen makes two declarations. In one, he makes an anonymous declaration about which linguistic group he belongs to if to any, and this will be a proof of the proportion of the linguistic groups. In the other, on the declaration proving one's belonging to a linguistic group, the name is already displayed together with the date of birth and the signature. The data included in these can be used when someone applies to a job regulated by the system and has to prove his ethnic identity in order to qualify. (If someone makes a declaration about not belonging to any of the recognised linguistic groups, that person makes an additional statement in order that he could fill the positions divided among those belonging to the three minorities.) The declarations, which also contain personal data, are transported to the competent district courts after the census and they are managed there. When necessary, the head of the office issues a document in proof of one's belonging to a given linguistic group. The above-mentioned declarations remain in force for ten years, that is, until the next census. (For that matter, it can be pointed out in connection to this that should law and order accept the principle of freely chosen identity, then it is exactly in the spirit of this that the possibility of a person to modify his declaration on his identity should be maintained.)

Autonomy model based on the personal principle

The origins of the personal principle can be traced back to a principle known from German common law, the fact that rights are connected to the person. Its essence is that should it prevail, it will take into consideration not the geographical borders of a territory but the free choice of the persons concerned, thus separating the territory and its inhabitants. Many are sceptical about the fact that personal autonomy based on the belonging to a national minority can be realised in societies, in which almost everything, including the government, is organised on the basis of territory. (Because of the

[29] Minors can also make statements above the age 14 but the parent can also make a statement instead of them.

inadequacies of legal regulation, the act on minorities in Hungary obviously cannot give an explicit proof of this.) In any case, one advantage personal autonomy clearly has as opposed to territorial autonomy: that it depends on an individual choice and, therefore, does not create further minorities, while territorial autonomy also applies to those who would have rather not fallen under its force[30]. (It is exactly because of this why this form of autonomy does not require a complex regulation framework – which tries to ensure the prevalence of ethnic fairness from every respect – similar to that of the "Proporz" system in South Tyrol.)

In order to prove that personal autonomy cannot only be established but it could function as well, usually the structure of the churches is mentioned. Several kinds of theoretical argumentations can support that personal autonomy that works in the case of churches can also be applied to nationalities. The idea that similar to the free choice of religion, the choice of ethnic identity could also be described as a decision of the individual independent of the power, emerged already at the Hungarian liberal thinkers of the 19th century. (For example, Kossuth suggested the model of the structure of the Lutheran church hierarchy for the structure of national organisations in his draft constitution[31]. He thought the minority question could have been resolved through personal autonomy even in those cases when he did not consider territorial autonomy possible.)

The applicability of the freedom of religion as an analogy is also justified by the fact that the relationship between religion and nation can be so direct that two ethnicities might be divided merely by religion and the history it determines. This was how one of the oldest fissure of Europe divided into two nations – the Croatians and the Serbs – along the schism. If we compare freedom of religion and conscience with the free choice of national identity, then we find with respect to the realisation of these two legal categories that freedom of religion can, in certain cases, be a segment of the right to identity and it can, in other cases, even coincide with it. (For example, Muslims in Bulgaria declare themselves Turkish but official policies are willing to recognise them as a religious minority only. In this case, the right to national identity means the wider category. It can also happen that a minority group defines itself as a religious minority – the Israelites of Hungary, for example – the majority of whom declares himself belonging to a religious and not a national minority.)[32]

[30] In connection to this, see Lapidoth, Ruth. *Autonomy – flexible solution to ethnic conflicts*; US Institute of peace Press, Washington DC. 1997.

[31] The Lutheran church organisation, which, according to Kossuth, is established on a democratic basis at all levels, can and could organise its operation perfectly. "Kossuth Demokráciája" [The Democracy of Kossuth] Publication of the Hungarian Social Democratic Party. 1943. ([addressed] to Count László Teleki, nearby Paris, Kutahia, June 15, 1850.) The Constitution of Hungary. 56.

[32] Miklós Radnóti, for example, when he was asked to contribute a poem to a Jewish anthology together with other writers and poets, he refused this by declaring that he was a Hungarian, a Hungarian poet. He wrote the following about this in his Diary: "My Jewish origin is the problem of my life because circumstances, laws, the world turned it into one. It is a forced problem. Otherwise, I am a Hungarian poet, I have enumerated my relatives and I am not interested in what the opinion of the acting prime minister is about this..." He bitterly adds: "My nation does not shout from the bookshelf saying be off, dirty Jew."

According to the classical liberal view, similar to religion, the free choice of nationality represents social interests, in which the state cannot interfere. Accordingly, the view has evolved that the separate rights of the minorities can be ensured after the model of the freedom of religion. (The personal principle also appeared at the Austromarxists in the times of the Monarchy. Karl Brenner, for example, believed that the minority issue had to be dealt with separately from territory, since those belonging to various nationalities mingle in the territory of the states; moreover nationalities had to be considered an alliance of persons freely choosing their ethnic identity. This way, minorities, as legal personalities, could freely establish their national associations, which could assert the interest of the nationality similar to societies or unions.) If the state guarantees the right to gather, the citizens who can chose their nationality freely have the right to form civic societies with the purpose of representing their national goals[33]. Thus, according to the right to gather, a fundamental right of civic social organisations, the persons belonging to national minorities can establish civic social organisations. The "intervening state", which succeeded the "night-watchman state" in the twentieth century, also granted separate rights to national organisations established in the civic sphere. In this spirit, today certain states – that recognise the existence of national minorities – provide legal and financial help for the establishment of minority organisations considering the fact that as they might not always come to be established as civic social organisations [34]. This way, the minorities can establish, besides their civic organisations, their organisations are granted a legal personality under public law, which offer more effective tools for the protection of their interests than the societies granted only a legal personality under private law. The minority organisations endowed with spheres of authority of public administration, as opposed to the civic social organisations established on the basis of ethnicity, are in a monopolistic situation in a given territory, since only one such organisation can operate in a village or in the whole country. Moreover, it can participate in the making and influencing of public administration decisions concerning the minorities. Direct democratic election – in so far as it is really the members of the minority who elect their representatives – also affirms the legitimacy of these organisations. Through personal autonomy, minorities living dispersed can be present, parallel to civic society, in the sphere of power as well. Thus, persons belonging to minorities will have the opportunity, on the one hand,

[33] Examining Hungarian civil organisations in the age of the Dualism, Gábor Gyáni distinguished two significant groups that were excluded from political power. These two groups were the labourers including the industrial proletariat in the cities and the agrarian proletariat in rural areas and the minorities of non-Hungarian mother tongue. The members of these strata established civic social organisations and societies in great numbers in that age and these functioned as bodies representing their interests and as such, they even acquired political importance. Gyáni, Gábor. "Civil társadalom" kontra liberális állam a XIX. század végén ["Civic society" vs. Liberal State at the End of the 19th Century]. Századvég, 1991/1.

[34] The Hungarian act on minorities, for example, granted resources and real properties to the national minority self-governments at the beginning of their operation.

to influence the decisions of the state power and administration from the outside through their societies formed in civic society and, on the other hand, to integrate into the machinery of the state through their organisation possessing public powers established in the framework of minority autonomy[35].

The autonomy of the Lapp minority in the Scandinavian states[36]

It is personal autonomy that is to protect, for example, the indigenous Lapp population of Northern Scandinavia. (The number of Lapps is estimated to be some 65,000 and this population lives within the borders of four states: Norway, Sweden, Finland and Russia.) Since the Lapps live dispersed and in a minority, the territorial principle could not be applied in their case[37]. Consequently, Lapp parliaments established on the basis of the personal principle and through direct elections represent their interests. The state granted them, besides others, a consultative authority in every matter concerning the minority. (Lapp parliaments started to operate in Finland in 1973, in Norway in 1989, and in Sweden in 1993.)

Besides their cultural spheres of authority, Lapp parliaments have an administrative authority and also have the role of political representation. In order that the requirement about Lapps representing the Lapps could be met, Lapp electoral registers have been established in all three countries, although the regulations on the conditions of how one can be included in these registers are different in the countries concerned. One condition, however, is always specified: the principle of the free choice of identity, namely, that a given person has to declare himself Lapp. Beyond this, objective criteria define the linguistic ties in the three countries. For example, in Norway – this is where the Lapp parliament has the strongest spheres of authority –, a person can be included in the electoral register if he declares himself Lapp and Lapp is his mother tongue or at least one of his parents were recorded in the Lapp electoral register. In Finland, in order to avoid that Lapps be elected by persons belonging to the minority but who have already assimilated, the Lapp Electoral Commission rejected several thousand

[35] For example, the society of Bulgarians in Hungary was established in 1914 and it has been functioning ever since without interruption.

[36] In connection to the subject, see the following studies: Vizi, Balázs Zoltán. *A kisebbségek közéleti jogai és a lapp parlamentek* [Public Rights of Minorities and the Lapp Parliaments]. Fundamentum 21/3. 27–33.; Myntti, Kristian. *'The Nordic Sami Parliaments'* in: Pekka Aikio–Martin Scheinin (eds.), Operationalising the Right of Indigenous Peoples to Self-Determination (Abo Akademi, Turku, 2000) 203–221.; Vizi, Balázs Zoltán. *A skandináv államokban, különös tekintettel a Finnországban élő lapp kisebbségek jogi státuszának összevetése a hazai kisebbségi jogi szabályozással* [A Comparison of the Legal Status of Lapp Minorities in the Scandinavian Countries, with a Special Regard to Those in Finland, and the Regulation of Minority Rights in Hungary] Európai Összehasonlító Kisebbségkutatások Közalapítvány, Budapest, 1998.; Wilhelm, Gábor. *Kultúra és egyebek: a lappok esete Észak-Európában* [Culture and else: the case of the Lapps in Northern Europe]. REGIO Kisebbségi Szemle, 1996/1.

[37] The Lapp minority is not homogeneous linguistically and today only a smaller part of them speaks the Lapp tongue.

votes cast at the election. (Some six hundred appeals were lodged against these decisions but the Supreme Administrative Court rejected most of them. The basis of the judgements was that origin was defined mainly on the basis of mother tongue, which could be traced back to four generations only.)

About registration

Personal autonomy ensures spheres of authority to the persons belonging to the minority and not with respect to the territory. Therefore, many believe that it is necessary to define criteria needed for the realisation of this form of autonomy. On the basis of this, then, it can be circumscribed who belongs to the minority in concern. It is a conceptual precondition of the functioning of personal autonomy that the minorities and not the majority population should elect their representatives, moreover that not the government or the parliament should appoint them[38]. The best way of meeting this requirement can be if "an electoral register of minority voters is created", since its absence might render the legitimacy of the established institutions questionable. (Many believe that it is the unresolved nature of these questions that will lead to the inoperability of Hungarian minority self-governments organised mainly on the basis of the personal principle.)[39] Naturally, requirements can be set up with respect to such a register. The alliance of the persons belonging to a minority have to be formed on a voluntary basis, so membership in it has to be preceded by the personal declaration of the will of the person in conformity with the principle of free choice of identity. Beyond this, membership can also be linked to objective criteria, as in the case of the above-mentioned Lapp example. It can be mentioned in connection to this that under the legal regulation of Slovenia, recording one into the minority register, besides the declaration of the person, is also made conditional upon objective criteria and the decision of the minority community[40]. The reason for this method of regulation can be that communities are usually reluctant to accept new members, while it is also difficult for them to tolerate when someone leaves them. (Another thing to point out about Slovenian legal regulation is that it guarantees special minority rights to the Hungarian and Italian minorities classified as indigenous, while also Roma, Serbs, Croatians and Bosnians live in the territory of the country.)

It is quite probable that no objective system of criteria could be found that could be applied with respect to all minorities. For example, from among the criteria

[38] See the identical opinion of Tamás Korhecz. Ifj. Korhecz, Tamás. *A kisebbségi önkormányzatok megválasztásának szabályai a magyar, a szlovén és a jugoszláv jogban* [Rules of the Election of Minority Self-governments under Hungarian, Slovenian and Yugoslavian Law]. /Manuscript/ 2002.

[39] In connection to this, see Ifj. Korhecz, Tamás. *A kisebbségi autonómiáról címszavakban* [In Brief On the Autonomy of Minorities] op. cit.

[40] Ifj. Korhecz, Tamás. *A kisebbségi önkormányzatok megválasztásának szabályai a magyar, a szlovén és a jugoszláv jogban* [Rules of the Election of Minority Self-governments under Hungarian, Slovenian and Yugoslavian Law]. op. cit.

indicated in connection to the Lapps above, the one on mother tongue could not be applied in the case of the Roma for certain. (In Hungary, for instance, the majority of the Roma population has already assimilated linguistically and the two main Roma languages spoken in the territory of the country, Romani and Beás, are in a diglossal state. In addition to this, not even these two groups are homogeneous from a linguistic point of view. It is to be mentioned that, in cases, even Roma groups can treat each other as strangers and they can even despise each other. In certain cases, the conflict can be harsher than the one between the Roma and the majority population.) In the case of the Roma, the fact that their population does not form a clearly circumscribable group, since common Gypsy culture, lifestyle and identity cannot really be circumscribed, also renders the definition of objective criteria with respect to the creation of a minority electoral register more difficult. (Among others, this is the reason why we have rather differing estimates on the number of the Roma living the various countries.)

In any case, on the basis of the principle of free choice of identity, in theory it is possible to conceive the creation of a minority register, which would form the basis of personal autonomy and into which the persons belonging to the minority would be entered out of their free will in conformity with the principle of self-determination concerning data protection. The definition of the free choice of identity as a requirement is essential, since – as noted by Gyula Fábián – in order to qualify as a minority, every ethnic group has to have an "awareness of survival" as well. Acknowledging the identity also serves to prove this awareness[41]. Beyond this, it can be pointed out that the free choice of identity can be restricted through objective criteria, if its purpose is the guaranteeing of special minority rights. According to the conclusion of Judit Tóth on this, although "everyone is free to declare or conceal his national or ethnic identity, identification cannot be avoided according to the order regulated by domestic law." In the opinion of the author, the requirements originating from constitutionality and the requests of the minority itself have to be taken into account during the elaboration of this regulation[42]. (The regulation set forth by the Constitution of Hungary creates a rather peculiar and contradictory situ-ation: it considers the formation of a self-government the right of the minorities, while suffrage comprises not only them according to the provisions of the Constitution.)[43]

It is to be mentioned that the elaborators of the Hungarian Status Law, upon their decision on the acceptance of the Hungarian certificate, also accepted the position – and thereby abandoned the more than hundred million potential beneficiaries living in neighbouring countries – that the principle of free choice of

[41] Fábián, Gyula. *Az identitáshoz való jog Romániában a lakosság nyilvántartás tükrében* [The Right to Identity in Romania in the Light of Population Registration]. /Manuscript/ 2002. 1.

[42] Tóth, Judit. *Többes mérce a kisebbségi hovatartozás megvallásánál* [Multiple Scale at the Declaration of Belonging to a Minority]. /Manuscript/ 2002. 2.

[43] In connection to this, see Article 68, Section 4 and Article 70, Section 1 of the Constitution.

identity could not be applied in itself, without reserves. It is an indisputable fact that the thus ensuing register differs from the internal registration system within the state in one important respect: namely, that the registered is administered not by the state in which the person is a citizen but by the mother country, with respect to which a Hungarian living beyond the borders does not have much to fear. In connection to this, many question whether this principle can be applied within a state in Easter Europe at all, since minorities have no confidence in registers for historic reasons. It is, therefore, rather dubious, whether the persons belonging to minorities, influenced by negative historic experiences, are willing to have themselves recorded in such a register in the country of their citizenship, which has many times showed a hostile behaviour toward them.

In general, it can be said about every registration based on a voluntary choice of identity that should a register exist, it will always follow that only a part of the persons belonging to the minorities will have themselves registered: those who are the most active "in a public policy sense" in the representation of the minority. For example, according to some, the number of active Hungarians "in a public policy sense" living beyond the borders can be estimated on the basis of the number of those applying for a Hungarian certificate. Their number settled at 40,000 persons in Slovakia in the past months[44]. Here are some data to illustrate this: in Sweden, only 3,803 persons of the 5,990 citizens registered in the Lapp electoral register participated at the election in 1997. As opposed to this, the overall population of the Lapps is estimated to be between 17,000 and 20,000 persons. On the other hand, in Slovenia, practically every citizen belonging to the "indigenous" minorities was registered in the electoral register. The explanation to this is probably that these registers existed even prior to the change of the regime and the independence of the country[45].

* * *

Autonomy is becoming more and more popular in front of international organisations as well, since they increasingly see an instrument in it with the help of which national minorities can be protected in a way that the security of the states also remains intact. Autonomy based on the personal principle, although minorities concentrating in larger areas probably would not be content with it, could be used improve the situation of dispersed minorities, including the Roma minority. It must not be forgotten, however, that there are not many examples to

[44] In connection to this, see Jarábik, Balázs and Vincze, Dávid. *A nemzeti hovatartozás regisztrálásának szlovákiai szabályozása* [Regulation of the Registration of National Belonging in Slovakia]. 2002 (Manuscript) 3.

[45] See the data Ifj. Korhecz, Tamás*: A kisebbségi önkormányzatok megválasztásának szabályai a magyar, a szlovén és a jugoszláv jogban* [Rules of the Election of Minority Self-governments under Hungarian, Slovenian and Yugoslavian Law]. op. cit.

prove that personal autonomy could also be realised and function successfully in the case of minorities with a larger population. In order that the situation of the Roma minority in Hungary could be improved, the actual establishment of other legal institutions – e.g. the settlement of a satisfying parliamentary representation – would also be needed even in the case of an appropriate reform of the legal regulation regarding minority self-governments. If those belonging to a minority were not guaranteed that it would really be them to elect their representatives – not even with the amendment of the legal regulation –, than the existing legal institution would have to be put aside and another way of regulation would have to be found. Hungarian legislators have enough time at their disposal to elaborate this, since the current system received a mandate for four more years after the recent self-government elections and, therefore, will function without modifications for a total of 12 years.