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National and Ethnic Minorities and Minority Laws in Central Europe*

Abstract

National relationships in Central Europe are characterized by the following after 1989: 1. Most countries of the region have experienced a homogenisation process; 2. Legal regulation of national minorities is more or less solved; 3. none of the Central European countries treat immigrant communities welcomingly.

Introduction

Minorities question counts as one of the most neuralgic problems in multi-ethnic Central European countries. Strained ethnic relations were characteristic all through the 19. and 20. centuries. It was the result of the various attempts happening parallelly at building nations in the region since the end of the 18th c. These ‘projects’ developed against one another, crossing the path of one another. The tensions were still considerable at the time of joining the European Union (EU) as indicated by the attempts of various political powers to use them for their own advantage. An impartial glance at the ethnic map of the region makes evident what deep and wide-ranging national homogenisation was at work all through the 20th c. Not only individual cultures but whole communities have disappeared, e.g. the once thriving Jewish way of life has survived only in fragments; the German language and culture has also been eclipsed, its past variety has become one-dimensional. Albeit new colours have appeared on the ethnic palette with the appearance of new ethnic groups in the bigger cities of the region, they cannot make up for the loss of earlier varieties.

Of the four members of the so-called “Visegrád countries” (Czech Republic, Hungary, Poland, Slovakia) only Slovakia has remained a truly multi national country. Already after World War I. (WW1), as a result

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of the Trianon treaty, Hungary became linguistically and culturally a more or less homogeneous country. These tendencies were strengthened by the tragic events and processes of the 1940s. Similarly Czech land (Bohemia) and Moravia as well as the oddly “relocated” Poland¹ were also considerably homogenized after 1945. However, the minority question has not been completely deleted from the political and mental concerns of the above mentioned three communities since all of them still contained smaller autochthonous minorities (cf. Appendix) even if they represent a mere fraction of all those groups which used to be in the region before 1944-45.

When in power, the Communist Parties kept dealing with the minority question in the spirit of ‘proletarian internationalism’, however, the revitalisation of minority communities indeed started after 1989. In the three ethnically more homogeneous countries (Hungary, Czech Republic, Poland) the “rebirth” went without serious conflicts, since the granting of special minority rights to communities which do not represent considerable proportion of the inhabitants does not represent any real “political issue”. Majority-society is capable of magnanimous gestures if it does not feel threatened by political demands of the minorities. The best example is the regulation in Slovenia. Not only self-government but privileged parliamentary representation have been granted the small – about 1000 strong – Hungarian and Italian minorities. The regulation in Hungary approved in 1993 can also be described as belonging to this category, though without the – promised – parliamentary representation. Larger minority communities, representing 35-40% of the whole population of the country, on the other hand are usually strong enough to reach for their rights. They may not always be successful on the public legal level but usually are the more so in their attempts at strengthen their legal status (cf. the German population in Czech Republic before World War II. = WW2). Sometimes such minorities can reach equal national status which then can lead to federation, as is the case of Belgium.

With little exaggeration, middle sized minorities are the worst off. In contrast to small communities, they still instigate fear (without reason in most of the cases) on the one hand, and on the other they do not have enough weight to obtain adequate laws. The majority of Hungarian communities in the Carpathian Basin belong to the latter category. Sometimes communities representing 7-10% of the population can prove to be governmental partners of importance but usually it is not lasting as it

¹ Notwithstanding that geographically the country has been “relocated” from east to west, politically Poland was shoved from west to east.

depends on alternating governments; as is shown by the example of the Party of Hungarian Coalition in Slovakia.

In Central Europe there are two models for minorities in the so-called “Visegrád countries”. One is the example of Czech Republic, Poland and Hungary, which have become fairly homogenous in the past decades and the other that of Slovakia, which still has a considerable proportion of minorities. The latter has about 10% Hungarians and by estimations many Gypsies (Roma). While the three former countries have special minority laws, Slovakia does not, in spite of being a multi-ethnic society where one of the communities – Hungarians – is more or less self-supportive and is defending its own institutions.²

Minority questions in the classical sense³ are mainly political problems in Slovakia, though they are still present in the other countries of the region too. All over Europe the Gypsies are a concern because of their bad social conditions as well as the racist atrocities against them; political anti-Semitism, intolerance against immigrants also belong to the problems.

The Gypsy question

There are separate programs and institutions to deal with the issues of the Gypsies in all the countries in question. The general minority regulations and institutions (where available) also serve them in , since they are counted among the national and ethnic minorities. Thus the Gypsy communities are in double institutional systems, the general ones for all minorities and in the one especially devised for them.

Anti-Semitism

Holocaust has left no sizable Jewish communities in the Central European region. In several countries Jews are not traditionally regarded as a minority but as members of a religion. Even the majority of the local Jewish communities describe themselves in the same terms, especially in Hungary and Czech Republic. The Polish minority law accepted in 2005 described Jews as a national minority. Though there is no such unequivocal regulation, the questionnaire for the 2001 Slovak census listed Jewish

² The support of the ‘mother-country’ must not be overlooked, neither Slovak state support of various content and measure.

³ In the present paper such conflicts are included which are being caused by parallel nation-building endeavours where the majority nation and the minorities try to develop into a nation by their own efforts.

as a possible choice among nationalities.⁴ In the whole area the Jews have deeply integrated both socially and culturally into the society of the given country. All the same there are political groups in most of the countries which are interested in anti-Semitic propaganda. Since the question is more than a simple minority issue, its discussion is not the task of this paper.

Finally those regions and regional groups of Central Europe have to be mentioned, which have special (if not always national) identity, in some cases of political relevance; such are the so-called Moravian question in Czech Republic and the Silesian aspiration in Poland. In the past there were also in Eastern Slovakia attempts at nation building at variance with the dominant developments. At the beginning of the 20th c. some Hungarian-friendly groups in County Sáros tried to recreate the *eastern-Slovak* or *Slovjak* identity, which had been loyal to Hungary before 1918. The foundation of independent Czechoslovakia, the finalization of contemporary Slovak nation building, later the communist experiments with modernization checked this development. Some “eastern” cultural, folkloric, may be mental characteristics have been preserved, however, without any political indication. The 1992 rousing of “easternism” (*východniarstvo*) counted as a political joke and soon was stopped by the organizers themselves.

Hungary is one of the most homogenous countries where regional consciousness is concerned; there are no problems as the Moravian or Silesian or the earlier eastern Slovakian ones. Apart from joking newspaper headlines there is no “Western Pannonia” or “Eastern Hunnia” to be of any political influence. After the change of regime feelings for special local identity became stronger, e.g. in Jászság, Kúnság (eastern Hungary) or that in the Pilis region (Transdanubia) but these were more interested in preserving local traditions and were not founded on regional organizations and political interests. The suggestion to accept Huns as a minority was a political fraud or, at best an unfunny joke raising mixed feelings.

In Central Europe all the existing regulations concerning minorities apply to native minorities with citizenship. The countries of the region have regulations about immigration, asylum and aliens administration but have not reacted to the appearance of migrants arriving from the third world, from far away places; though everywhere there have appeared the first larger migrant communities sometimes with more than 10 000

⁴ Iván Halász: A romák jogi helyzete Szlovákiában és Csehországban. In: Merre visz az út? A romák politikai és emberi jogai a változó világban. Kisebbségkutatás Könyvek. Lucidus Kiadó. Budapest, 2003. 225. o. [The legal situation of Gypsies in Slovakia and the Czech Republic. In Where leads the Way? The Political and Human Rights of the Gypsies in a changing world].

members. It is true, such distinct communities are still rare, which define, even change the outlook of a town as in Karlovy Vary in Czech Republic, by Russian migrants;⁵ albeit the Czech Republic has given work permit to ten-thousands of Ukrainian guest-workers. In Poland, being larger in area and closer to Ukraina their number is even bigger.

Migration within the Central European region is also considerable. It is well known that demographic problems in Hungary are being remedied by immigration of young people from the neighbouring countries. In the 1990s the number of Slovaks staying in Czech Republic and Moravia increased forming the largest, though invisible minority of the Czech Republic. Several thousand Slovak students have been studying at Czech universities and probably many will stay on. It might seem that the Slovak students and guest workers represented a similar demography reserve for the Czech Republic in the 1990s as the Hungarians along the Hungarian borders do.

Minority regulations

Before discussing the legal regulations relating to minorities it is necessary to give a summary of Central European constitutions and examine how these regulate minority rights. The constitutions of Hungary, Poland, Czech Republic and Slovakia, contain provisions; only the Czech Republic one accepted in 1992 has no relevant paragraphs, the chapter on the rights of national and ethnic minorities is contained in the documents “Charter of Basic Rights and Liberties”, which is an integral part of the Czech constitutional order. The Slovak constitution, accepted in 1992 on the other hand has a special sub-chapter within the chapter of “Basic rights and Freedoms” referring to national minorities and ethnic groups. Though neither the valid Hungarian nor the Polish constitution (the latter accepted in 1997) do not stress minorities rights, however, inherently they guarantee it.

In regards the system of power, the Hungarian statute (Article 68, par.1.) declares that national and ethnic minorities are part of the people’s power as nation-forming elements. The formulation resembles to the constitutions of the former federal social countries. The Slovak constitution is less explicit, but in its *Preamble* it states that the Slovak nation, together with members of national minorities and ethnic groups living as citizens on the territory of the Slovak Republic, adopt the new constitution through their representatives. The Polish and Czech constitutions

⁵ In Karlovy Vary real estates are being advertised not only in Czech but also in Russian and English owing to the great number of well-to-do migrants from post-Soviet areas.

also mention who are the “constituents”. In the Czech constitution the citizens of Bohemia, Moravia and Silesia are mentioned; according to the *Preamble* of the Polish constitution it is established in the name of the Polish nation, all citizens of the Republic. It is interesting that the Czech constitution enumerates all the old territories; in the Polish one there is no such unambiguous political nation concept. The Polish constitution contains the least regulations concerning the minorities, may be because Poland is the most homogenous nation in the region.

Each of the constitutions expresses such basic rights of the national and ethnic minorities as preservation and development of their language, culture, traditions and customs, the possibility of founding and maintaining their own institutions. All four constitutions prohibit minority and ethnic discrimination. The Hungarian constitution seems to have got furthest concerning political representation and participation in public affairs, stating that the laws assure minority representation and the forming of local and national self-governments. The Polish one goes only as far in this respect as declaring the right of minorities to participate in the resolution of matters connected with their cultural identity. There is a similar declaration in the Czech and Slovak constitution together with the right of association.

The Hungarian constitution clearly declares the communal and collective character of minority rights, that the state grants their collective participation in public life to national and ethnic minorities. The reference to self-government is also such a gesture towards ‘collectivity’. There is just a reference in the Czech and Slovak constitutions that most of the minority rights can be collectively exercised.

The right to use the mother tongue in the offices is a characteristic feature of the Czech and Slovak regulations based on a similar legal and spiritual tradition; that the right to learn the official language is mentioned first in the Slovak constitution and the right to use the mother tongue second, is the result of the suspicion the Slovak public life still felt against minorities and was more interested in nationalistic views in 1992, the time the constitution was adopted. This mistrust is expressed by Article 34. Paragraph 3.: „The enactment of the rights of citizens belonging to national minorities and ethnic groups that are guaranteed in this Constitution must not be conducive to jeopardizing the sovereignty and territorial integrity of the Slovak Republic or to discrimination against its other inhabitants.” In reference to this paragraph the Slovakian Constitutional Court have denied preference on national, ethnic or racial basis.

Hungarian Minority Law accepted in 1993 was the first such regulation in the region. Apparently Hungarian legislation wished to set an example

to those states with larger Hungarian minority communities; therefore the 1993. LXXVII. Law on the rights of national and ethnic minorities is fairly liberal, which later necessitated considerable changes of the statute at the turn of the millenium. Nevertheless, the law was not merely the cause of the much criticized 'ethnobusiness' but helped revitalize minorities almost completely assimilated. The second was the Czech minority law accepted July 10. 2001.⁶ Minorities question is a much less important issue in the Czech Republic; though the creation of the law raised less disputes, its introduction did not go smoothly. Poland was the last to to accept its law on national and ethnic minorities and regional languages.⁷

It must be pointed out that the above legal regulations of the three countries are not restricted to special minority laws but contain other ones (e.g. on election, language use, administration, etc.) as well. What are, then, the major similarities and differences between the legislations of these countries?

The definition of minorities

In all three constitutions there is a definition of the concept of minorities. In Hungarian 'a national or ethnic minority is any ethnic group with a history of at least one century of living in the Republic of Hungary, which represents a numerical minority among the citizens of the state, the members of which are Hungarian citizens, and are distinguished from the rest of the citizens by their own language, culture and traditions, and at the same time demonstrate a sense of belonging together, which is aimed at the preservation of all these, and the expression and protection of the interests of their communities, which have been formed in the course of history.' According to Czech legislation 'A national minority is a community of citizens of the Czech Republic who live on the territory of the present Czech Republic and as a rule differ from other citizens by their common ethnic origin, language, culture and traditions; they represent a minority of citizens and at the same time they show their will to be considered a national minority for the purpose of common efforts to preserve and develop their own identity, language and culture and at the same time express and preserve interests of their community which has been formed during history.'⁸ The Polish Sejm has made a difference between the cate-

⁶ 273 Zákon o právech příslušníků národnostních menšin a o změně některých zákonů.

⁷ 141 Ustawa z dnia 6 stycznia 2005 r. o mniejszościach narodowych i etnicznych oraz o języku regionalnym

⁸ In Czech and Slovak usage there slight differences for the term 'national minority', used in international documents.

gories of national and ethnic minorities: According to law national minority is a group of Polish citizens who are in numerical minority compared to the number citizens of the Polish Republic, differs from the other inhabitants in language, culture or traditions; strives to preserve their language, culture or traditions; has their own historically developed identity they strive to express and protect; the ancestors lived in the territory of Poland at least for 100 years; and identify themselves with a sovereign nation. The same is valid for ethnic minorities with a difference in the last item as – in agreement with international practice – ethnic minorities do not need to have a sovereign state.

Another important aspect of the Polish law is the treatment of regional languages. These are languages traditionally used by citizens who are numerically in minority compared with other inhabitants; another condition being that they should be differing from the official language of the state and cannot be defined as a dialect of the state-language nor as the language of migrants. The statute names only one such regional language, that of the Pomeranian ethnic group, but treats the Kashubs and their language as part of the Polish nation. The language of Silesia after much political and legal controversy has not been accepted as a regional language.

Belonging to the above definitions there are additional elements scattered all through the above mentioned Acts. The Hungarian Law – as does the Polish one – requires at least one hundred years of residence in the country. Thus the Hungarian and Polish regulations apply only to native minorities. The Czech law guarantees certain rights, e.g. multi-language city signs, the use of language in legal and official communication, free language use in matters referring to elections, the right to education in the mother tongue, only to national minorities traditionally living in the territory of the Czech Republic. Though the meaning is not explicitly defined, the aim seems to be evident. In general the national minorities are guaranteed the right to the choice of minority name, free choice of identity and the protection of their data, etc. as well as the right to their own culture, language and maintenance of their own traditions, but the state supports only the endeavours of those national minorities which have traditionally been living in the country. The above definitions make it clear that each of the countries guarantees special minority rights to their own citizens only, which of course does not affect the ban on discrimination since it applies to everybody. The essence of national minorities has been seen in their own language, culture and/or traditions and in their will in maintaining them. Majority states observe national minorities as historically developed entities.

There also differences in the legal terminology. Czech legislation in only about national minorities; Hungary uses the terms of national and ethnic minorities without defining the difference between them, while Poland has tried to do so. The Czech parliament has not declared which are the communities defined as minorities; on the other hand both the Polish and Hungarian legislation made a extensive list of their national and ethnic minorities.

At the time of the acceptance of the respective laws, in Hungary (in 1993) the following had already received minority status: Bulgarians, Gypsies ('Romani' and 'Beash'), Greeks, Croatians, Poles, Germans, Armenians, Romanians, Ruthenians, Serbs, Slovaks, Slovenians and Ukrainians; in Poland (2005) national minorities are the Germans, Ukrainians, Belorussians, Lithuanians, Slovaks, Russians, Czechs, Jews, ethnic minorities are the Karaim,⁹ Lemkos,¹⁰ Romas, Tatars.¹¹ There is no regulation in the Polish law what are the possibilities to be „admitted” among the accepted national and ethnic minorities, thus the above list is closed; to accept a new minority will necessitate the revision of the law. In Hungary there is a statute for the process. The *Closing Provisions* declare 'If a minority other than those listed in paragraph (1) wish to prove that they meet the requirements specified in this Act, they may submit a petition related to this subject to the Speaker of the National Assembly if supported by at least 1,000 voters who declare themselves members of this minority.' In the course of this procedure the provisions of the Act on Referendums and Petitions shall apply with the provision that the President of the Hungarian Academy of Sciences has to verify the presence of legal conditions. Afterwards the Hungarian Parliament decides on the admission of a new minority. In recent years there were several petitions without success. The most controversial issue was the petition for the admission of the Hun minority, but that of the Russian, Bunyevac minorities and the issue of Jews caused debates. The heads of the Hungarian Jewish religious communities have not supported the initiative because they regard it a religion and not an ethnicity.

There is no list of accepted minorities in the Czech statute itself, but in the attached section of explanations the minorities living in the Czech Republic at present are Bulgarians, Croatians, Hungarians, Germans, Poles, Austrians, Roma, Rusins, Russians, Slovaks, Greeks and Ukrain-

⁹ a group of Turkic origin but of Jewish religion.

¹⁰ A regional folkloric group.

¹¹ Historically Tatar was used as collective name, but the Tatars have had their own – though not sovereign – statehood: Tatarstan as an autonomous republic is a part of the Russian Federation.

ians. The Jews have turned down the proposition of being declared a minority.¹² The option for Austrian and Jewish national identity was deleted from the census questionnaires in 2001.

Slovakia has no comprehensive minority law which could contain a list of the accepted minorities. There is not even an official definition of national minority and ethnic group. The latter was omitted from Act 184. 1999 on Language use of national minorities. Neither is there a formal procedure leading to the acceptance of a new group as a minority. *De facto*, however, there are 12 accepted minorities, as can be judged from census questionnaires and also from statutes dealing indirectly with the protection of minorities. The 2001 census offered the choice of 13 minority-ethnic category: Slovak, Hungarian, Czech, Roma, German, Polish, Croatian, Serbian, Rusin, Russian, Ukrainian, Jewish and „other”.

Minority representation

The institutions and possibilities of national and ethnic minority representation are not only regulated by the comprehensive minority laws but the constitution, regulations of general suffrage, laws on self-government and other statutes also contain relevant references.

The comparison of Czech, Hungarian, Polish and Slovak regulations indicate a lack of a uniform Central European model. Each of the states has its own solution. It is only in Poland that the national minorities were granted concessions on parliamentary level: Article 134 of the general statute¹³ regulating elections into the Sejm and Senate makes exempt from the otherwise bounding 5% limit those electoral committees which were nominated by the members of registered organisations of national minorities to be voted by list and which lists were submitted to the National Election Committee. Representatives of the Sejm, the parliament of Poland, are elected by lists in a proportional system. Thus, if the members of an accepted minority association compile a special list and collect votes sufficient for at least one mandate, they can participate in the legislation; this system has been modelled on the German one. This regulation draws attention to the role of the terminology of regulations as it may seriously influence the chances of individual communities. The Polish law on elections gives the special 5% limit to national minorities only but does not mention ethnic minorities or groups of speakers of regional languages.

¹² Zoltán Kokes: Megszületett a cseh kisebbségvédelmi törvény. [The Czech Act on the protection of Minorities has been born]. Prágai Tükör 2001.2. p.72.

¹³ Ustawa z dnia 12 kwietnia 2001 r. DZU 2001 Nr. 46 poz. 499.

The difference does not seem logical enough unless it has implications in foreign policy.

The Polish regulation on the other hand has no regulations about a system of minority self-government such as the Hungarian one since 1993. According to the original Hungarian plans the civil legal representation would have been ensured through special parliamentary representation and minority self-governments, the local ones directly elected, through electors the national ones. The special parliamentary representation has not yet been realized, albeit Article 68. of the effective constitution declares that 'the national and ethnic minorities living in the Republic of Hungary share the power of the people; they are constituent factors in the State.'

The Hungarian system of minority self-government, which mainly resembles to that of Slovenia, has lately been considerably modified; the legislation accepted in 1993 allows for a rather flexible interpretation of the liberty of identity choice, furthermore there was no exact definition who were entitled to participate in the election of minority self-governments, i.e. there was no register of the eligible electors. The problem caused various theoretical and operational inconvenience, leading to the notorious phenomenon of 'ethnobusiness'.¹⁴

As a remedy an amendment of the Minority Law and connected statutes were issued in 2005,¹⁵ which introduced the electors eligible for minority elections, thus regulating the earlier unrestricted practice. Each person can be entered only in one register and can only be engaged in one minority self-government. At the same time it is voluntary to be registered, the freedom of choice of identity is respected and it is possible to withdraw from the register. It is a change that in addition to local and nation-wide self-government there appeared regional ones as well. The fundamental task of these self-governments is the protection and representation of minorities. The 2005 amendment strengthened the power of self-governments to an extent.

The Czech legislation has not allowed parliamentary representation for the minorities to be obtained by special rights neither a system of specially elected self-government. Paragraph 3. of Article 117 of the Act on Municipalities declares that the municipality on which territory at least 10% of the population reported other than Czech at the last census, has to form a separate committee to represent national minorities.¹⁶ The members

¹⁴ Regisztrálható-e az identitás? Szerk. Halász Iván – Majtényi Balázs. Gondolat Kiadói Kör – MTA Jogtudományi Intézet. Budapest, 2003 [Identity, can it be registered?]

¹⁵ Act CXIV. 2005.

¹⁶ Zákon š. 128/2000 Sb. o obcích (obecní zřízení), ve znění pozdějších předpisů.

of these committees, in addition to the representatives of the self-government, are the members delegated by the associations of national minorities and members of national minorities must always represent at least the half of all members of the committee. Similar national minority committees should be formed in the regions as well¹⁷ by similar regulations, with the difference that regional committees should be formed if the last census recorded at least 5% of the inhabitants belong to nationalities other than Czech; the same rules for the capital, Prague too. In contrast to the Hungarian model, where each of the minorities can form their committee, these committees serve collectively for all the nationalities living in the region. Their tasks and sphere of authority do not differ considerably from the regular local or regional self-governments. Where the size of the minorities set as a limit in the Act on municipalities is concerned, it should be mentioned that the use of multi-language street-names, public areas and offices is possible if the minority in question represents at least 10% of all the inhabitants of the region in question and at least 40% of them petition for it.

In the use of minority place-names there is peculiar restriction in the Polish law which prohibits the use of names given between 1939 and 1945 both by German imperial and Soviet authorities. On the other hand there is a register of places entitled to use non-Polish names.

The issue of the acceptance of the Silesian minority

It is a sensitive issue to define which community belongs to national and which to ethnic minority, especially if extra political rights and possibilities are involved. Unfortunately the borderlines are undefined between the groups and categories. Why are e.g. Austrians a separate national minority in the Czech Republic, why count the Russians and Ukrainians as two different groups in Hungary, why are the Jews a nationality in Poland and members of a religion in Hungary, why is Kashub a regional language and not the language of an ethnic group, etc.? The initial problem is that national identity is highly subjective. Each country has a different history and different political problems at present.

Of the problems arisen in Central Europe only the case of the Silesians had been treated by the highest forum, the Grand Chamber of the European Court of Human Rights. The issue started in 1995, when the Union of People of Silesian Nationality tried to have Silesians accepted as a minority and handed in a petition to the Provincial Court in Kato-

¹⁷ Zákon č. 129/2000 Sb. o krajích (krajské zřízení), ve znění pozdějších předpisů. §78. (2)

wicze for registration. The court did so inspite of the objections of the voivode whose major objection was that the association wished to protect a nationality which does not exist; moreover the statute attached did not define the „person belonging to the Silesian nationality”. The Katowicze appellate court agreed with the opinion of the governor in that the Silesians are only an ethnic minority and not a nationality, which should be accepted as such by the general public without any doubt.¹⁸ The Union appealed to the Supreme Court which approved of the verdict of the appellate court and rejected the case. It argued that the registration of the Silesian minority would violate the law because as a non-existent minority could enjoy national minority rights. The minority law accepted later did not add the Silesians to the list of ethnic minorities. The Union of People of Silesian Nationality turned to the European Court of Human Rights with the complaint that the Polish authorities had violated their right of association. In its verdict of 21. December 2001. the European Court of Human Rights agreed with the view of the Polish Government, namely that the applicants wanted to be granted election privileges; furthermore the limitation of freedom of association of individuals and groups is legally permitted for the sake of stability of the country as an entity, the democratic order of elections of the given country included.¹⁹ However, there was no ruling in Strassbourg whether the Polish courts had the right to examine the existence of the Silesian minority. The Polish legislation has had no procedures for minorities to be newly accepted with the exception of the ones provided by bilateral treaties; for others than those, the registration of their association has been the only possibility. The Polish government has been reprimanded for this gap in its law.

That was, however, not the end of the issue. The Silesians appealed to the Grand Chamber of the European Court of Human Rights arguing that they simply wished to register an association and not an electoral committee; the reference to election fraud was a mere insinuation. The Polish authorities reposted that the registration of the association would have meant the legal acceptance of the Silesians as a nationality. The publication of the results of the 2002. census revealed that over 173.000 individuals declared Silasian nationality, thus it is not a figment.²⁰ The question of nationality was an open one, no categories being offered in

¹⁸ Gdulewicz, Ewa – Poplawska, Ewa: Nemzeti és etnikai kisebbségek Lengyelországban – a definíció jogi problémái. [National and ethnic minorities in Poland – the legal problems of definition] *Pro Minoritate* 2004. Autumn-Winter p.246.

¹⁹ *Ibid.* p.247.

²⁰ *Ibid.* p.249.

the questionnaires to choose from, in contrast to the practice of the 1991 Czech census.

During the second appeal, the data of the census were considered by the European Court of Human Rights, however, the verdict of the Grand Chamber agreed with that of the first-degree claiming that Poland had not restricted the right of association of the Silesians, prevented only the registration of a legal entity which could have obtained special status, eventually benefits due its charter as well as the electoral regulations. The Court decided that the measures taken by the Polish state in the case had been justified by eminent social needs and the principle of proportion were not violated; thus the refusal of the registration of the Union remained within the limits of legal restrictions necessary in a democratic society.²¹

The Silesians have repeatedly applied to Polish law courts; they changed several paragraphs of their statute. The minority law accepted in 2005 has not mentioned Silesian either as a national or an ethnic minority.

The major features of the Slovak minority regulations

Compared with the other Visegrád countries, Slovakia is still a multi-ethnic state, about 15% of its inhabitants belong to national or ethnic minority communities, nevertheless there is no comprehensive minority law. Because of their great number as well as historical causes minority questions can cause considerable tension in Slovakia.

The constitution and the relevant international treaties – similar to the other Visegrád countries – guarantee the rights of national and ethnic minorities. In regards the signed international treaties the region is fairly homogenous, Slovakia is no exception. Though sometimes there have been negative public feelings against granting “above standard” minority rights, fundamental documents and their contents have been willy-nilly accepted.

As pointed out above, there is no minority law in Slovakia although in the 2002-2006 election cycle the Party of the Hungarian Coalition then in governmental position, aimed at the acceptance of the legal norms of minority cultural finances. It goes without saying that there are other ways for the regulation of minority affairs in Slovakia: there are several resolutions of the constitutional court which state important principles of the question.²² In 1998 the court rejected the amendment on ethnic quotas

²¹ Ibid. p.251.

²² Cf. Orosz, Ladislav: *Zákonná úprava postavenia národnostných menšín a etnických skupín v Slovenskej republike – hodnotenie, námety de lege ferenda*. In: *Národ a národnosti na Slovensku v transformujúcej sa spoločnosti – vzťahy a konflikty*. Ed. Štefan Šutaj. UNIVERSUM. Prešov, 2005. 58. o.

in municipalities pressed for by Slovak nationalists who wanted legally secured posts for Slovak or other nationals in the local self-governments in Hungarian dominant places.²³

The provisions of the Slovak constitution concerning minorities are distributed in laws at various levels. There are references in certain legal norms, e.g. on municipalities, the statutes on libraries, theatres, radio and television and other regulations. The most important of these are, however, the laws about language use and against discrimination.

Law 184. 1999 on the Use of Minority Languages allows the use of these languages in official contacts in a municipality if citizens belonging to a national minority represent at least 20% of the inhabitants of the given municipality, according to the latest census. Though the laws correspond to European legal norms and expectations, it does not seem too generous.²⁴ The verdicts passed by public administration bodies in court proceedings in municipalities are issued upon request in the language of a national minority. The meetings of local state administration bodies in municipalities can be conducted in a minority language if all present at the meeting agree, otherwise the representatives have the right to use a minority language with the interpreting provided by the municipality.

As was expected by EU, Law 365 on equal treatment and against discrimination was accepted in May 2004. The law made positive discrimination possible on the grounds of race, nationality and ethnicity. The ruling caused disagreement within the Slovak coalition government of the time, the politicians of the Hungarian Coalition Party supported it, while the christian Democrat foreign minister was against it. The latter contested the law already accepted turning to the Constitutional Court. At the end of 2005 the Court ruled that the law cannot be applied on racial, national and ethnic basis. One of the problems was that because of the regulations of personal data protection it was difficult to define which of the groups should receive positive discrimination; the other is that according to Article 3. paragraph 3 of the constitution 'The enactment of the rights of citizens belonging to national minorities and ethnic groups that are guaranteed in this Constitution must not be conducive to jeopardizing the sovereignty and territorial integrity of the Slovak Republic or to discrimination against its other inhabitants'. The article expresses suspicion against minority aspirations and its last phrases can be interpreted as a ban of positive discrimination for nationalities and ethnics; however, the constitution expressed that women, minors and persons with impaired health

²³ PL ÚS. 19/98.

²⁴ Samson, Ivo: Maďarská menšina ako zahraničnopolitický faktor. DILEMA 2002. 1. p.33.

are indirectly exempted from the ban of positive discrimination. Article 38. para 1. and 2. declare that they are entitled to an enhanced protection of their health at work as well as to special working conditions, and also to assistance in professional training. The ban of positive discrimination is not so much against Hungarian nationals but against Roma living under socially disadvantageous conditions.

Slovak experts are of the opinion that the regulations of the Slovak Republic had provided the minimal protection of minorities well before joining the European Union, at least as much as they are enforced in the other EU countries too.²⁵ It is to be added that most of the above mentioned norms were formulated after the elections of 1998. Earlier policy was much more adverse to minority law.

Before the 2006 elections Hungarian politicians in governmental positions were not successful in making a comprehensive minority law accepted. The drafts aimed at the widening of the possibilities and rights of the minorities in several ways, e.g. to decrease the 20% limit necessary for being allowed to use the mother tongue. They also suggested to extend the right from localities to municipalities; to expand the use of minority languages in oral administration; to allow members of the parliament to speak in their own language as well as authorities to carry out important services (wedding ceremonies, burials) in minority languages on request.

The above concepts do not exceed the usual European standards as has been admitted by certain Slovak legislators, and they have been expressed in the signed and ratified international documents even if they represent somewhat more than the required minimum.²⁶ It is not likely that the changed political situation at present would allow the successful acceptance of the law. Most importantly, the consequences of the lack of the minority law is the absence of a clear-cut definition of the concepts and the lack of the special representative organisations of minorities.

Conclusion

When summing up the minority situation in Central Europe after 1989, the following tendencies can be attested:

1. most of the countries of the region underwent national homogenisation; it is most characteristic of Poland, least of Slovakia. The Hungarian situation is similar to the Polish one; Since 1993 there has been a slight change in the fairly assimilated minority commu-

²⁵ Orosz, Ladislav p.63.

²⁶ Ibid. p.65.

nities in Hungary thanks to the changes of the law. The Czech Republic stands out for two reasons: one is the first appearance of an immigrant community (Vietnamese) to represent a considerable proportion of the inhabitants as has appeared in the statistics; the other is that here is the highest number of citizens claiming regional identity to an old territory (Moravia). The model could serve as an important social basis for non-national but regional/ethnoregional aspirations.

2. The legal regulation of the minority questions has been solved at least compared to the number of those who identify themselves as belonging to nationalities. Where there is no comprehensive regulation but the size of the minorities is large, life seems to make up for the omission, i.e. minorities create their own appropriate institutions or they fight for it by using their weight (Slovakia).
3. None of the countries is too generous to the migrant communities, probably because the experience that Central Europe has become the potential goal for the third world especially after these states' admission to the EU is still too new. Central European legislation has mainly been centred on native and nationality groups with citizenship.

APPENDIX

Central European nationalities in the returns of the 2001 census

Czech Republic	
Czech	9.249.777
Moravian	380.474
Silesian	10.878
Slovak	193.190
Polish	51.968
German	39.106
Roma	11.746
Hungarian	14.672
Ukrainian	22.112
Russian	12.369
Vietnamese	17.462
Bulgarian	4363
Rumanian	1238
Greek	3219
Albanian	690
Kroatian	1585
Serbian	1801
Other	53.479
Unknown	172.827
Total of inhabitants	10.230.060

Hungary²⁷
 Bulgarian 1358
 Roma 190.046
 Greek 2509
 Kroatian 15.620
 Polish 2962
 German 62.233
 Armenian 620
 Rumanian 7995
 Serbian 3816
 Slovak 17.692
 Sloven 3040
 Rusin 1098
 Ukrainian 5070
 Total of inhabitants 10 195 513
 Slovakia
 Slovak 4.614.854
 Hungarian 520.528
 Roma 89.920
 Rusin 24.201
 Ukrainian 10.814
 Czech 44.620
 German 5405
 Polish 2602
 Kroatian 890
 Serbian 434
 Other 10.685
 Unknown 54.502
 Total of inhabitants 5.379.455
Poland
 Polish 96,74%
 Silasian 173.000
 German 153.000
 Belarus 48.700
 Ukrainian 31.000 ukránnak
 Roma 12.000
 Jewish 1100
 Armenian 1100
 Czech 8000
 Tatar 500
 Karaim 50
 Other 1,23
 Unknown 2,03 % ²⁸
 Total of inhabitants 38.300.000

²⁷ There were four questions relating to cultural-nationality identity: Nationality, mother tongue, adherence to cultural-national traditions, customs, and language use in the family and circle of friends.

²⁸ Gdulewicz, Ewa – Poplawska, Ewa p. 251.