Definition of national minorities in international law

Daniel Šmihula

(Government Office of the Slovak Republic, Bratislava 84105, Slovakia)

Abstract: During historic development, that the stress put in international law on protection of national minorities was strengthened or weakened depends upon a momentary interest of states. In (general) international law up to now, the term of “national minority” has not been legally defined. It has been done only for Europe. A group can be classed as a national minority if it is numerically smaller than the rest population of the state. It is not in a dominant position, its culture, language, religion, race, etc. are distinct from that of the rest population, its members have a will to preserve their specificity, its members are citizens of the state where they have the status of a minority and as a specific condition frequently added, and at the same time such a minority should have a long-term presence on the territory where it has lived.

Key words: national minorities; rights of national minorities; Council of Europe; OSCE; human rights; international law

1. National minorities in history

Historically, the problem of national minorities is an “additional product” of the modern nationalism of the 19th-20th centuries. As soon as states started to be identified with some individual ethnic cultures and languages, it became obvious that almost in any state groups could be found which could not be (or just did not want to be) included in such a culture. In some cases such a situation was solved by assimilation or expulsion (French Hugenots, for example), but in most European countries some minorities survived even after the great integrationist effort of nation-building in the 19th century.

The first wave of tolerance to “others” was the tolerance of religious dissident groups in the 17th and 18th centuries (Krugmann, Michael, 2004, p. 25). Probably the first agreement about a peaceful co-existence of two Christian branches was the Agreement of Jihlava (1436) between the Czech and Moravian Hussite estates and the Emperor Sigismund at the eve of the reformation on mutual tolerance of Calixtines and Catholics in one country (Čornej, Peter, 1992, p. 214). In Germany a similar process was undergone in the 16th-17th centuries in the cases of the Peace of Augsburg in 1555 for Catholics and Lutherans, and in the Peace of Westphalia in 1648 for Catholics, Lutherans, Calvinists (Krugmann, Michael, 2004, p. 26). However, the more tolerant attitude to non-recognised religious groups in Central Europe (Germany, Habsburg monarchy) or the recognition of religion as a private matter, beyond the state authority and its coercive methods, is a product of the enlightenment reforms.
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by the end at the 18th century and the constitutional reforms after 1848 (Krugmann, Michael, 2004, p. 27).

During historic development, the stress put in international law on protection of national minorities was strengthened or weakened depending upon a momentary interest of states.

International law is not an expression of any higher justice or a superior power. It is an expression of the collective will of states which is a result of an agreement. Therefore it is so-called “Koordinationsrecht” (Köck, Heribert Franz, 1998, p. 188). States have agreed only on such rules are convenient for them. This applies also to the level of protection of national minorities in international law.

Probably the first document of international law dealing with what was later called a human rights agenda was a declaration of European States against a trade with Negro slaves in 1815, adopted at the Congress of Vienna (Köck, Heribert Franz, 1998, p. 57).

The situation in the 19th century was not favourable for the recognition of national minorities’ rights. They were seen as an internal matter of every state (Lang, Peter, 2001, p. 9). It has changed only after WWI.

In Europe especially after WWII, the regime for dealing with human rights and national minorities was specific than in universal international law.

2. Problem of definition

In (universal) international law up to now, the term of “national minority” has not been legally defined. The reason is obvious: To create a generally acceptable official (and legally binding) definition of national minorities is a demanding task (Krugmann, Michael, 2004, p. 58). Maybe it is impossible because of cultural differences. Even basic terminology has varied over time. Article 27 of the Covenant on Civil and Political Rights refers to “ethnic, religious and linguistic minorities”, modern documents speak more about “national minorities” and interwar-documents had referred to “racial, religious or linguistic minorities”. The General Assembly on 18 December 1992 passed the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The literature in the German language frequently uses terms “Völksgruppe” or “Völksstamm” which is not easy to translate into other languages (Pan, Franz, 1999, p. 12). Probably it could be an “ethnic group” or “people” in English.

The term “ethnic minorities” would probably be the broadest category but in Europe the term “national minorities” seems to be most frequent and therefore it is used in this paper.

The problems with terminology and translation emerged, for example, when a member of the European Parliament, Graf Staufffenberg, in 1988 produced a draft of the Charter of Rights of Ethnic Groups in the Member States of the European Communities. At that time the EC had only 7 official languages, but there were considerable problems having this draft translated into all of them (Pan, Franz, 1999, p. 103). In any language the meaning of words depends on attitudes or policy to national minorities which has a historic and philosophic background.

A more detailed approach would reveal other problems with the definition of “minority” (Matscher, Franz, 2001).

3 Unlike the situation in general international law, where is no legal definition of the term “national minority”, in the European regional system we may find it in the Recommendation 1201 (1993) adopted by the Parliamentary Assembly of the Council of Europe (1st February, 1993). Although an attempt to introduce a similar definition to the Framework Convention on National Minorities (1993) failed.

4 For example: Article 21 of the Charter of fundamental rights of the European Union.

5 See: article 8 and 9 of the treaty of Versailles (1919).

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1997, p. 8): Should one insist on the numerical criterion or rather on the non-dominant position of the group? Does the term “national” mean “objective” distinguishing characteristics of language, culture, race, religion or the “subjective” element of minority consciousness? (Matscher, Franz, 1997, p. 8) Shall we distinguish between “old” or “traditional” minorities and “new”, “non-traditional” minorities? If yes, what period of time is sufficient to qualify a certain minority as traditional? What, in fact, is the reason for such qualification? Why should members of some “traditional” minorities have a higher level of protection than new immigrants? Can we use the term “minority” if a “majority” is not clearly defined in the given society (Krugmann, Michael, 2004, p. 57)?

During the last two decades, there is a problem concerning the beneficiaries of the right of national minorities. Are they individual persons belonging to a certain national minority or the minority as whole (Matscher, Franz, 1997, p. 10)? This is the so-called problem of “collective” or “individual” rights, which has still not been solved. But protection of human and minority rights is based more on the individual approach (Lang, Peter, 2001, p. 237).

Some theorists tried to create a definition of national minorities, but their definition was never generally accepted (Strážnická, Viera & Šebesta, Štefan, 1994, p. 82). During work on the Declaration on Rights of Persons Belonging to national or Ethnic, Religious and Linguistic Minorities, the Austrian delegation suggested such a definition, according to which “… a minority is a group of persons traditionally living in the state in a non-dominating position, members of which, being national of this state, have ethnic, religious or language particularities different from the rest population and who have a will to preserve their culture, tradition, religion or language”. (Strážnická, Viera & Šebesta, Štefan, 1994, p. 85)

This definition was not accepted, but it could serve as a good definition of modern ethnic or national minorities worldwide. It does not cover (and this is very important) recent immigrants to any country although they may be rather numerous. For example the number of Turks or Kurds in Germany is higher than members of “traditional” minorities: Danish, Friesians, Serbs of Luzitz.

Of course, it evokes the question of how long some minority must live in the country to become “a group of persons traditionally living in the state in a non-dominating position”. In the year 2150, will Turks in Germany be treated as “immigrants”?

As a provisional definition of “traditional minority”, we may employ this: A “traditional” minority is a minority whose members lived in significant numbers in a particular state or territory before the population changes and migration caused by the modernization and industrialization of the 19th and 20th centuries. This means that Germans or Slovaks in Vojvodina—a product of agrarian colonization after the wars against the Turks—should be seen as “traditional minorities”, but Polish workers in the Ruhrgebiet who came there about in 1900 and Turks in Germany who came there about in 1960 will be defined as modern immigrants (non-traditional minority). Of course, a practical policy may operate with different approaches. But in Europe most states recognised the “full-standard” of protection only in case of “traditional” minorities.

3. Theoretical definition of national minorities

Maybe, after all, in the theory of international law a group can be classed as a national minority if (Krugmann, Michael, 2004, pp. 57-60; Pan, Franz, 1999, p. 13):

(1) It is numerically smaller than the rest population of the state or a part of the state;
(2) It is not in a dominant position;
(3) Its culture, language, religion, race, etc. are distinct from that of the rest population;
(4) Its members have a will to preserve their specificity;

(5) Its members are citizens of the state where they have the status of a minority.

A specific condition frequently added is that such a minority should have a long-term presence on the territory where it has lived. It must not be a group of fresh immigrants. But in this case only “traditional minorities” could demand the full-rights of minority status.

The condition of a different culture and language seems to be essential (Lang, Peter, 2001, p. 12), although we can discuss whether there are not minorities which do not have a really specific culture and language (Moravians in the Czech Republic?). But for such a group of people we have the category of “regional” or “social” groups.

Foreigners do not enjoy national minority rights and rights of citizens. But of course they should enjoy all human rights including basic rights for cultural development and use of their language (at least in the family or in privacy). But after three or four generations of residence with maintenance of their own culture, when they have proved their “will to preserve their specificity”, it is not easy to designate them as “immigrants” or “foreigners” even if they do not have citizenship of a hosting state (Lang, Peter, 2001, p. 15).7

The problem is not limited to national minorities. We do not have up to now a general accepted and clear definition of such terms as “nation” and “people”. Probably for the needs of international law we should define a “nation” as a group which has its own state where its culture and language prevail (even as a part of a wider federation) (Lang, Peter, 2001, p. 18).

Although we have no clear definition of minority and ethnic minority at all, we know that in democratic conditions the existence of minorities is unavoidable. Multiculturalism and the existence of some people with different behaviour, manners, language, religion, etc. (various types of minorities or “dissidents”) in any country are a matter of course—not a free choice (when we can say “yes” or “no” to multiculturalism). Homogeneity can be reached and secured only by the intentional activity of some strong state regime for which uniformity is a wished goal (for many rational and irrational reasons). And many states—not such a long time ago—did it or tried to do it: France, Germany, Spain, etc.

This understanding became common in the 1990s. Therefore in most democratic states the discussion was shifted from thinking about methods of assimilating minorities or stopping “non-white immigration” to methods of coping with the fact of existing multi-cultural and multi-racial society (Geddes, Andrew, 1999, p. 42). However, the situation after 11th September, 2001 and the “Karikaturenstreit” will change it in favour of anti-immigration political measures in order to secure a “political acculturation”.

On the other hand, any attempt to present multiculturalism or support for different kinds of minorities as a “morally positive goal or idea” which any society must achieve is absurd and only produces reactions rejecting these phenomena. Multiculturalism is a fact which has resulted from social and political development. It should not be built by methods of social engineering. The aim of official policy should not create multi-nationalism but prepare inhabitants for this as an almost unavoidable fact (Geddes, Andrew, 1999).

However, even in such states as Germany, Spain, France and Italy, where in the past the effort at homogenization was high, as soon as they liberalized the social and political situation and started a process of decentralization, old questions re-emerged: The questions of “old” minorities and ethnic and regional groups

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7 Maybe we should change our traditional picture of national minorities, which is a result of the situation after WWI and did not take account of new migrants. (D.S.) In practice some specific situations cause the international community not to persist on the condition of citizenship. Especially in the case when a state has denied its citizenship to members of national minorities (Estonia, Latvia).
supposed to have been assimilated a long time ago (Provencales, Galicians, Bretons, etc.).

Some authors believe that the protection of rights of national minorities is a part of the protection to human rights. Others say that it is an independent branch of international law, although closely related to the human rights agenda (Čepelka, Čestmir & Šturma, Pavel, 2003, p. 422). The question of national minorities’ rights is also inseparable from the question of democratic standards (Pan, Christoph & Pfeil, Beate Sibylle, 2003, p. 186). But it is obvious that protection of human rights is a part of modern international law (Baehr, Peter R, 1996, p. 3).

As regards national minorities, traditionally two basic attitudes can be found. The first one prefers assimilation of minorities and the right of minorities means in this case a non-discriminating opportunity for minorities or immigrants to join a majority. This approach is typical of the states of both Americas (Pan, Franz, 1999, p. 87). But it does not prevail. The second (now prevailing) approach results from the idea that the differences of minorities are specific value which must be preserved. The protection of minorities may be seen also as a compensation for ethnic groups which were not able to get their own state (Neuhold, Hanspeter, Hummer, Waldemar & Schreuer, Christoph, 1991, p. 269).

This international protection of national minorities is composed of two or three elements:

1. The effort to ensure civic and politic equality for members of national minorities with members of the majority population, to ensure their participation in political, social and economic life (non or antidiscrimination measures);

2. Some form of specific rights (Sonderrechte), mostly in the cultural and language areas (Neuhold, Hanspeter, Hummer, Waldemar & Schreuer, Christoph, 1991, p. 269);

3. The states may adopt also measures of “a positive discrimination” to reach a material equality with members of the majority population (level of education and an access to work opportunities, etc.), but this is not generally accepted.

Special attention is given to members of “original populations” (populations living in the pre-industrial way of life, “indigenous people”). In this case even their original way of life is being protected (Neuhold, Hanspeter, Hummer, Waldemar & Schreuer, Christoph, 1991, p. 270). Although in this form of protection one may ask whether this protection does not have negative sides: It prevents some population from utilizing the advantages of modern civilization and keeps them in isolation in some protected areas like animals.

4. European solution

The attempt to adopt a legal definition of the term “national minority” was successful only in Europe.

The first indirect definition we can find the European charter for regional or minority languages adopted on 22 June, 1992 by the Committee of Ministers of the Council of Europe (Shaw Malcolm N., 1997, p. 278). In Article 1 of the European charter for regional or minority languages\(^8\) the minority is indirectly defined as a group of people speaking minority language. This definition is linguistic.

Within the scope of protection of this document only traditional languages are used within territory of the state (different from the official language), and not dialects and languages of migrants.


This recommendation is based on the work of the Committee for Legal Matters (Pan, Franz, 1999, p. 131). Probably it was the first international document defining the notion of “national minority”. It suggests that the notion “national minority” refers to persons who reside on the territory of the state concerned and are citizens of it. (See article 1 of the Rec.1201) They maintain longstanding, firm and lasting ties with that state, but they display distinctive ethnic, cultural, religious or linguistic characteristics and they are sufficiently representative, although smaller in numbers than the rest population of that state or of a region of the state, and they wish to preserve their culture, religion, traditions or language. This definition of the notion “national minority” can be regarded as appropriate and balanced. However, the formulation of “… firm and lasting ties with that state” should be replaced by a request for firm and lasting ties with a region where a certain minority lives. In Europe we now can find a few states which are relatively new and therefore it is not possible to talk of some “… firm and lasting ties with that state”.

But of course, because of the regional character of the Council of Europe, this definition is not accepted worldwide in general international law.

What is more, this definition was not confirmed in the Framework Convention for the Protection of National Minorities adopted by the Committee of Ministers of the Council of Europe on 10th November, 1994. The convention does not define the term “national minority”.9

5. Conclusions

Universal international law does not even provide any universal definition of a “national minority.” Only in Europe is this definition probably provided by the European charter for regional or minority languages and by the Recommendation 1201 (1993) of the Parliamentary Assembly of the Council of Europe.

But national minority we can theoretically define as a group of people within a given national state:
(1) Which is numerically smaller than the rest of population of the state or a part of the state?
(2) Which is not in a dominant position?
(3) Which has culture, language, religion, race etc. distinct from that of the rest of the population?
(4) Whose members have a will to preserve their specificity?
(5) Whose members are citizens of the state where they have the status of a minority?
(6) Which have a long-term presence on the territory where it has lived?

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