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Minority rights in the countries surrounding Hungary

Abstract

In the countries surrounding Hungary minority protection declared in the various constitutions are greatly different. Though most of the constitutions were created in the years following the changes of regimes the political attitudes expressed in them vary from total legal inclusion to anti-minority conception of nationalist nation-states.

Minority rights are important parts of the most modern democratic constitutions. It can be said that even the constitutions of non-democratic regimes deal with the problem – as were included into the constitutions of the pre 1989 party-states. But many other older examples could also be found. The execution of these documents, however, is another matter, it frequently raises serious problems.

If a dictatorship declares the basic minority rights it would not necessary mean that they would be taken seriously. The regulations about minority rights had the same fate as other documents of dictatorial regimes seemingly democratic that served as mere decorations to hide the real power relations. The important decisions were made at various decision making levels of the dictatorship entirely disregarding these documents.

The last important and comprehensive time of constitution making was after the 1989-1990 change of regimes in the region of Eastern and Central Europe.¹ Some of these constitutions were made somewhat later, e.g. in Ukraine in 1996, in Poland in 1997, in Serbian in 2006, the Kosowo-Albanian one in 2009 and finally the new Hungarian constitution called the ‘Fundamental Law’ in April 2011. The first two documents mentioned above are the constitutions

¹ Nemzeti alkotmányok az Európai Unióban. Eds. Badó, Attila – Trócsányi, László. Budapest, 2005.[National constitutions in the European Union];

of the change of regime as these were answers to the same challenges and were construed in the same spirit. Their novelty lay in the fact that there were reactions in them to the deficiencies that could be discovered only after several years of democratic existence.

The situation is different in the case of the 1995 constitution of Bosnia that was pressed on Bosnia and Hercegovina by international union after the severe internal conflicts. The constitution of Kosowo was made because Kosowo won its independence and the legitimacy of the constitutional frame introduced by the special envoy of the UN secretary general was not sufficient any more. That imposed document was influential upon the new constitution in many ways. The new Serbian constitution wanted to end the unfortunate period starting in 1990 when the country was involved in war that could not end victoriously. Figuratively it can be said that Serbia had to go through its own Trianon. The new constitution wanted to break with the era of Milosevich that proved unsuccessful and to prepare for the handling of the Kosowo crisis and wanted to found a system of public law adequate to the actual political balance of powers.

The Hungarian 2011 Fundamental Law² is different in the sense that it has closed a longer period (there were more than twenty years after the change of regime) and its declared aim was the legal and ideological establishment of a new epoch. May be this is why that in contrast to the text accepted in 1989 that was minimalist on ideology while the new Fundamental Law seems to be fairly full of it. It may be due to the aim that the new fundamental Law should serve a kind of new consolidation of the Hungarian statehood. Its success does not depend on the frequent mentioning of historical aspects and ideological detours but it is noteworthy all the same. However, it is now not about the complex interpretation of the Hungarian Fundamental Law.

The constitutions made after the changes of regimes had minority matters of which there have been many studies published since 1990, therefore it is difficult to come up with something novel. Most of these writings, quite correctly, tried to approach the matter in its complexity and concentrate on the text of the constitutions as well as on the lower level legal norms created according to them – first

² in English: www.kormany.hu

of all on the laws on minorities, language usage, elections and state administration.

The aim of this essay is much more modest – it really intends to concentrate on the text of the constitutions in force and draw some conclusions of them. Further it wishes to examine the spiritual-political conditions these constitutions were created in and at least partially set them in a system. As every such publication it will highlight certain characteristics. The author's situation is made easier by the interesting fact that the regulation upon minorities of most of the analysed constitutions proved to be relatively stable and have not changed much since the changes of regimes.

Concerning the area under scrutiny the focus is on the post-transitional countries surrounding Hungary, i.e. the states that shared a similar fate and problems in the previous decades.

During the changing of regimes it was not only the claim for general democracy pronounced in the region but it went hand in hand with a kind of renaissance of nationalism too. The national feelings and grievances suppressed during the Soviet era came immediately to the surface and caused problems for the domestic and international decision makers. It was a natural reaction to the earlier suppression of national feelings. The west, the winner of the cold war, had to face the need to try to channel these motions otherwise they would prove unmanageable and could lead to tragedies the like of the Yugoslav war in 1991. Therefore they began to urge the states of the region to accept the existing borders in exchange every state had to guarantee a minimum of minority rights at least for their own minorities.

This was the cold war victors' external frame concerning the minorities in the post change of regime constitutions. However, everywhere there were national features, a mesh of ideas of local nation states and minority communities, old grievances and relationships. All the constitutions made at the time (between 1989 and 1992) had this dual frame, the marks of the spiritual duality. Of the constitutions of the period the Slovenian constitution³, created in December 1990, was the most considerate about the minorities. As a proof, at the very beginning among the General Provisions Article 5. declares that

³ in English: www.servat.unibe.ch/icl/si00000_html

‘In its own territory, the state shall protect human rights and fundamental freedoms. It shall protect and guarantee the rights of the autochthonous Italian and Hungarian national communities. It shall maintain concern for autochthonous Slovene national minorities in neighbouring countries and for Slovene emigrants and workers abroad and shall foster their contacts with the homeland.’

What the makers of the constitution meant by the protection and guarantee of the rights of minorities is explained in Article 64 on human and civil rights. Here the legal situation of the two autochthonous national communities is described. The Slovenian constitution guarantees the autochthonous Italian and Hungarian national communities ‘the right to use their national symbols freely and, in order to preserve their national identity, the right to establish organisations and develop economic, cultural, scientific and research activities, as well as activities in the field of public media and publishing’. They also ‘have the right to education and schooling in their own languages, as well as the right to establish and develop such education and schooling.’

According to the constitution a separate law defines the areas where bilingual education is mandatory. The declaration of the Slovenian constitution is quite unusual in the region that not only Slovenes living beyond the borders of Slovenia or in Diaspora have the right to ‘foster their contacts with the homeland’ but the autochthonous national communities and their members living in Slovenia to their own nations of origin and their respective countries. The Slovene state supports the realisation of these rights financially and morally. The Article states that these communities have the right to ‘establish their own self-governing communities in the geographic areas where they live’ also they have right to direct representation in the National Assembly and their rights are regulated by law. It is an important guarantee that ‘Laws and regulations and other general acts that concern the exercise of the constitutionally provided rights and the position of national communities exclusively, may not be adopted without the consent of representatives of these national communities.

The only problem with this generous minority regulation is that it concerns only the two indigenous communities pointed out, Italians and Hungarians; none of these exceed 100 000 persons. Other

indigenous communities are not named, Croatian, Serbian or other south Slavic national nor Germans. There is exception made in the case of the Roma living in Slovenia because the constitution declares that a special law regulates the situation and rights of Roma. Thus there are regulations that could be called minority decrees of general character. These rights are summed up in Article 61., 62., and 63. that 'everyone' is eligible to the right to freely express affiliation with nation his or national community, give expression to his culture and use his language and script Further that 'Everyone has the right to use his language and script in a manner provided by law the exercise of his rights and duties and in procedures before state and other bodies performing public function.'

Slovenian constitution contains a general proviso against general anti-discrimination, and declares any incitement to national, racial, religious or other discrimination and the inflaming of national, racial, religious or other hatred or intolerance as anti-constitutional.

The Slovenian regulation at the constitutional level is complex and detailed. There is no other state in the region under scrutiny that would give so much attention to this question. Thus Slovenian regulation is not only outstanding for its liberality and generosity but for its being so detailed, too. Its only shortcoming is that it makes a difference between the two categories of minorities: autochthonous national communities and not- autochthonous minorities. There are no comparable divisions in any of the other constitutions of the region.

What are the reasons of the selective generosity of the makers of the Slovenian constitution? Probably it could be found in the Yugoslav traditions with its openness for minority rights as well as in the local democratic public feeling. It is also to be remembered that the question of the Italian and Hungarian minorities was not a difficult one in Slovenia in the early 1990s.

The Slovakian constitution⁴ accepted in 1992 is an entirely different example. It cannot be said that it is a discriminative one, neither that it is the worst one from this respect in the Eastern and central European region, but there is a characteristic misgiving against minorities in it. The reader of this constitution has the

⁴ in English: www.servat.unibe.ch/icl/si00000_.html

impression that the makers of the constitution were not really pleased to give what they gave; but were giving it because of international expectations and the fact that Slovakia is the country with the largest proportion of inhabitants with strong minority identity, almost 15%.⁵

The Chapter on Basic Rights and Freedoms of the Slovakian constitution accepted in 1992 has a special sub-section on the rights of national minorities and ethnic groups. Mentioning minorities, the text of the Preamble is also important. It does not express directly that they are also considered nation forming element as did the text of the 1949 of the Hungarian constitution accepted in 1989. Article 68. Paragraph 1 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.'⁶ There are no such magnanimous statements in the Slovakian constitution, the preamble, trying to grasp the character of the historical moment of making the constitution, states that the Slovakian nation together with the national minorities and ethnic groups living on the territory of the state adopt the constitution as the citizens of Slovak Republic, through their representatives. This indirectly gives the impression of the minorities also having been considered constituent factors.

The Slovakian constitution mentions the basic rights of the national and ethnic minorities such as the rights to maintain and development of their language and culture, traditions and customs, as well as set up and maintain their institutions.

The right to use the minority language in dealings with the authorities is declared in the constitution, however, only following the regulation on the right to master the state language. All the same the right to the education in the mother tongue is declared in the constitution as well as the right 'to participate in the solution of affairs concerning national minorities and ethnic groups'.

These formulations reveal the historical circumstances of the adoption of the constitution, because in 1992 the Slovakian public was fairly suspicious of the minorities and in general was full of national slogans. The distrust toward minorities is expressed by Article 34.

⁵ Halász Iván: Bevezetés a modern Szlovákia tanulmányozásába. A modern Szlovákia kézikönyve. PPKE, Piliscsaba, 2008. [Introduction to the study of modern Slovakia. Manual of modern Slovakia]

⁶ www.servat.unibe.ch/icl/si00000_html

Paragraph 3. saying ‘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 later consequences of this early distrust e.g. in 2005 the Slovak Constitutional Court declined positive discrimination on national, ethnic or racial basis.

The provisions of the Croatian constitution⁷ adopted during the period of changes of regimes have interesting features. There is a dualism in the document. Its long preamble with historical discourse calls the country a nation state, on the other hand enumerates all the minorities thus elevating them to nation forming factors. The other interesting feature is that the Croatian constitution pays little special attention to minority rights, at a most highlighted position – at the very beginning of the big chapter dealing with human and liberty rights Article 14. declares that every ‘Citizens of the Republic of Croatia shall enjoy all rights and freedoms regardless of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, education, social status or other characteristics. All shall be equal before the law’. Article 15. contains more detailed regulations that declare that ‘Members of all nations and minorities shall have equal rights in the Republic of Croatia.’ Their equality of rights is regulated by a special constitutional law. There is a law to ensure – apart from the general law of suffrage - the election of their own representatives in the parliament – Sabor. Finally the Constitution reassures the minorities that ‘Members of all nations and minorities shall be guaranteed freedom to express their national identity, freedom to use their language and script, and cultural autonomy.’

The Romanian constitution⁸ adopted in 1991⁹ declares Romania a nation state among the General Principles. However, it also names several important minority rights since Romania is not an ethni-

⁷ in English: www.sabor.hr/lgs

⁸ in English: www.cdep.ro/pls/dic/site

⁹ Ioan Stanomir et al: A romániai politikai és alkotmányos rendszert elemző államfői bizottság jelentése. Vitaindító. Magyar Kisebbség. Nemzetpolitikai DSzemle. 2010. 1-2. szám Kolozsvár.[The report of the presidential committee analysing the Romanian political and constitutional system]

cally homogenous state, there lives the largest minority of the whole region, the Hungarian nationality community with more than 1,5 million members. The Romanian constitution in force starts out from the unity of the Romanian nation that is regarded the basis of the state. Article 4. Paragraph 2. says that 'Romania is the common and indivisible homeland of all its citizens, without any discrimination on account of race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin.' Accordingly the unity of Romania does not necessarily means ethnic-cultural unity. Article 6. of the Romanian constitution expressly deals with the right to identity. According to its point (1)' The State recognizes and guarantees the right of persons belonging to national minorities to the preservation, development and expression of their ethnic, cultural, linguistic and religious identity'. And (2) 'The protection measures taken by the Romanian State for the preservation, development and expression of identity of the persons belonging to national minorities shall conform to the principles of equality and non-discrimination in relation to the other Romanian citizens.' Paragraph 2 is a softer version of the clause on 'distrust of nationalities' found in the Slovakian constitution discussed above.

The rights important for the everyday life of the minorities are regulated in random articles of the Romanian constitution. Thus the right of education is found in Article 32. Paragraph 3.: 'The right of persons belonging to national minorities to learn their mother tongue, and their right to be educated in this language are guaranteed; the ways to exercise these rights shall be regulated by law.' Article. 128 on the¹⁰ *Use of mother tongue and interpreter in court* indicates that legal processes will be carried out in Romanian at the courts but members of the national minorities of Romanian citizenship have the right to use their mother tongue at courts too as regulated by the constitution. There is a special Paragraph (4) saying 'that foreign citizens and stateless persons who do not understand or do not speak the Romanian language shall be entitled to take cognizance of all the file papers and proceedings, to speak in court and draw conclusions,

¹⁰ Juhász József: Új alkotmány Szerbiában.[New Constitution in Serbia] www.balkancenter.hu

by means of an interpreter; in criminal law suits, this right is ensured free of charge.'

Finally Article 62. has to be mentioned guaranteeing the representation of national minorities in parliament. According to Paragraph 2. 'Organizations of citizens belonging to national minorities, which fail to obtain the number of votes for representation in Parliament, have the right to one Deputy seat each, under the terms of the electoral law. Citizens of a national minority are entitled to be represented by one organization only'. The paragraph is especially important for minorities with small membership because their participation in legislature is ensured by privileged representation with full powers. Fortunately the Hungarian minority is in no need of it.

Of Hungary's neighbours Serbia has the most recent constitution.¹¹ This new fundamental law¹² was not the result of democratic public feelings during change of the regime neither amid the waves of national neo-renaissance. The Serbian makers of the constitution were led by the wish to regain their standing after several lost wars and the fall of the regime led by Slobodan Milosewits, secondly to make the necessary gestures that would serve them during the process toward EU integration, and thirdly to prepare for the international regulation of Kosowo, or more precisely to do everything to procrastinate, eventually impede, the proclamation of its independence even by offering special minority rights to those wishing to secede. This might be the reason why the Serbian constitution has been considering the greatest attention to the minority problems in the region and also formulates it most magnanimously. Here are the most references to the collective character of the national communities.

Among the general principles the Serbian constitution declares that 1the Republic of Serbia shall protect the rights of national minorities, the state guarantees special protection to national minorities for the purpose of exercising full equality and preserving their identity.' The second part of the constitution holds the title of 'Human and Minority rights and Freedoms'. The constitution regulates the direct implementation of the guaranteed rights in great detail, the

¹¹ in English: www.srbija.gov.rs/...o.../ustav

¹² in English: www.rada.gov/const/conengl.htm

possibilities of the restriction of these rights and the character and aim of the guarantees, etc.

In Article 21. the Serbian makers of the constitution gave careful attention to the prohibition of discrimination. Accordingly 'All are equal before the Constitution and law. Everyone shall have the right to equal legal protection without discrimination. All direct or indirect discrimination based on any grounds, particularly on race, sex, national origin, birth, religion, political or other opinion, property status, culture, language, age, mental or physical disability shall be prohibited. Special measures which the Republic of Serbia may introduce to achieve full equality of individuals or groups of individuals in a substantially unequal position compared to other citizens shall not be deemed discrimination'. The last sentence is an almost perfect textbook formulation of the essence of positive discrimination.

Article 47. of the Serbian constitution contains the right to express national affiliation freely; and that 'No person shall be obliged to declare his national affiliation.' May be this is a reaction to the sad experiences of the war years with the formulation of Article 48. 'The Republic of Serbia shall promote understanding, recognition and respect of diversity arising from specific ethnic, cultural, linguistic or religious identity of its citizens through measures applied in education, culture and public information.' The prohibition of inciting racial, ethnic and religious hatred is a similar measure. Article 49. rules that 'Any inciting of racial, ethnic religious or other inequality or hatred shall be prohibited and punishable.' Article 81. on the impetus given to the spirit of tolerance, has a similar aim 'In the field of education, culture and information Serbia shall give impetus to the spirit of tolerance and intercultural dialogue and undertake efficient measures for enhancement of mutual respect, understanding and cooperation among all people living on its territory, regardless of their ethnic, cultural, linguistic or religious identity.'

The most complex portion of the constitution is the subsection 3. on the rights of the persons belonging to national minorities. It is an important innovation that Article 75. explicitly declares that they 'shall be guaranteed special individual or collective rights' and 'individual rights shall be exercised individually and collective rights in community with others in accordance with the Constitution, law and international treaties.' The Constitution also declares

that they 'shall take part in decision-making or decide independently on certain issues related to their culture, education, information or official use of languages and script through their collective rights in accordance with the law.' This means that the national minorities living in Serbia can elect national self-governances to realise their above rights and this way the cultural and educational autonomy can come into being on individual basis in Serbia.

The measures against discrimination have already been mentioned. The Serbian constitution has specially section on the Prohibition of discrimination against national minorities. According to Article 76. 'Persons belonging to national minorities shall be guaranteed equality before the law and equal legal protection.' Further 'Any discrimination on the grounds of affiliation to a national minority shall be prohibited.' 'Special regulations and provisional measures which the Republic of Serbia ay introduce in economic, social, cultural and political life for the purpose of achieving full equality among members of a national minority and citizens who belong to the majority, shall not be considered discrimination if they are aimed at eliminating extremely unfavourable living conditions which particularly affect them.'

The constitution guarantees equality for the members of minorities 'to participate in administering of public affairs under and assume public positions under the same conditions as other citizens.' 'When taking up employment in state bodies, public services, bodies of autonomous province and local self-government units, the ethnic structure of population and appropriate representation of members of national minorities shall be taken into consideration.' The provision represents a system of proportions in the public sector. What is really important is how these generous measures are realized in practice. Article 78. prohibits forced assimilation: 'Forced assimilation of members of national minorities shall be strictly prohibited.' Also in areas where members of national minorities live traditionally and in large numbers 'Undertaking measures which would cause artificial changes in ethnic structure of population shall be strictly prohibited.'

In Article 79. there are rights enumerated in order to preserve characteristics; basically this is where the majority of minority rights are described: right to expression, preservation, fostering, developing and public expression of national, ethnic, cultural, religious specifi-

city; use of their symbols in public spaces; use of their languages and script;’ in areas where the members of the minorities make a significant majority of population, they have the right to ‘have proceedings also conducted in their languages before state bodies and organisations with delegated public powers, bodies of autonomous provinces and local self-government units. They have the right for ‘education in their languages on public institutions and institutions of autonomous provinces; founding private educational institutions; use of their name and family name in their language;’ in areas where they make a significant majority of population they can use the ‘traditional local names, names of streets, settlements and topographic names also written in their languages; complete, timely and objective information in their languages’. Since Serbia is a country where one of the provinces, Voivodine, has authorization for special jurisdiction, the Constitution declares that ‘Under the Law and in accordance with the constitution, additional rights of members of national minorities may be determined by provincial regulations.’

Similarly to the Slovenian constitution discussed above as the first item, the Serbian constitution, too, in Article 80. declares the right of the members of national minorities to undisturbed relations and cooperation with their compatriots outside the territory of the Republic of Serbia.’ The constitution does not mention the Hungarian mother country but compatriots; this formulation is wider and in its way more correct.

Finally there is the Constitution of Ukraine¹³ adopted in 1996 to be introduced. The Ukrainian fundamental law was created after long and animated debates and was seriously influenced by the conflict between the head of the state and the parliament. In connection of minority questions the more important aspect is the general social and spiritual medium of the early 1990s when the development of the modern Ukrainian statehood was started. Nation building was the great project of the Ukrainian intelligentsia in the 19th and 20th centuries. Ukraine is a large and regionally divided country. Modern Ukrainian national identity in the Central European sense could

¹³ Tóth, Mihály – Csernickó, István: Az ukrán kisebbségi jogalkotás fejlődése és két részterülete: a névhasználat és a politikai képviselet. REGIO 2009. No. 2. pp. 69-107. [The development of Ukrainian minority regulations and its two sub areas].

develop with difficulty and was only the characteristic of western Ukraine for a long time. Galicia was frequently referred to as Ukrainian Piedmont by authors. The events of WWII. threw heavy shadows on the nation building role of the regions as did the local policy of the Soviet power that had no interest in the strengthening of the Ukrainian identity. It seems that at the time of the declaration of independence in 1991 several important eastern and south eastern regions regulated their own relationships to the Ukrainian national ideology. A great proportion of the inhabitants does not only use the Russian language but consider themselves Russian nationals too. All these had to have their influence upon the new democratic Ukrainian constitution.¹⁴

The new Ukrainian constitution of 1996¹⁵ does not contain chapters or subdivisions on minority protection, but the provisions most important for minorities can be found at the very beginning of the text among the general provisions and in the chapters on human rights. As in the case of other states of the region that have gained their independence after the changes of regime, the Ukrainian fundamental law, too, gives special attention to the problems concerning nation and nationalities. The constitution has been accepted by the Ukrainian Highest Council (Verkhovna Rada of Ukraine) on behalf of the Ukrainian people, the citizens of Ukraine of all nationalities. It is true, in the preamble the makers of the constitution mention that the independent Ukraine is 'based on the centuries-old history of Ukrainian state-building' and on the right to self-determination realised by the Ukrainian nation, all the Ukrainian people. 'The people are the bearers of sovereignty and the only source of power in Ukraine. The people exercise power directly and through bodies of state power and bodies of local self-government.' There is ambiguity concerning language use. Article 10. of the Constitution declares Ukrainian the state language. 'In Ukraine, the free development, use and protection of Russian, and other languages of national minorities of Ukraine, is guaranteed.' Article 11. points out an interesting task of the state, namely: The State promotes the consolidation and

¹⁴ Tóth, Mihály: Az 1996. évi ukrán alkotmány megszületése. Pro Publico Bono, 2011.No. 1. pp.85-96. [The birth of the Ukrainian constitution in 1996].

¹⁵ Tóth, Mihály: Az 1996. évi ukrán alkotmány megszületése. Pro Publico Bono, 2011. No. 1. pp.85-96. [The birth of the Ukrainian constitution in 1996].

development of the Ukrainian nation, of its historical consciousness, traditions and culture' and at the same time it has to 'promote the development of the ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities of Ukraine', too. All kinds of discrimination and privileges are prohibited by the constitution. Article 53. rules that 'Citizens who belong to national minorities are guaranteed in accordance with the law the right to receive instruction in their native language, or to study their native language in state and communal educational establishments and through national cultural societies.'

One of the peculiarities of the Ukrainian constitution is that though Article 2. it describes Ukraine as a unitary state, there is a whole chapter on the status of the Autonomous Republic of Crimea. The national minorities are not guaranteed privileged parliamentary representation. The president of Ukraine should be not only a 'citizen of Ukraine who has attained the age of thirty-five, has the right to vote, has resided in Ukraine for the past ten years prior to the day of elections', but also must 'have command of the state language'

From the above it becomes evident that minority protection is very varied in the constitutions of the countries neighbouring Hungary. Most of the constitutions were created in the same period and show the signs of controversial tendencies – there was the general extension of rights on the one hand and the nationalist and nation-building attitudes on the other. The constitutions of the former members of Yugoslavia differ most from the other countries because these were created not so much for changing the regime but trying to prepare for the joining the European Union. This is why the detailed generous Serbian regulation of minority protection resembles more the new post-conflict Bosnian or Kosowo constitutions than the more restricted ones of the Central European states. When analysing the texts of constitutions the tradition of law enforcement should also be considered that is not uniform in all the states of the region. This is also true of the traditions of keeping or evading the laws by the state offices and individuals. The minority situation of a country cannot be established solely by the formulation of its constitution. Lower level regulation is also necessary but most importantly the proper understanding of the elements of operation of the given society.