

ABSTRACT

ESSAYS

Will Kymlicka in his article about justice and security in the accommodation of minority nationalism, compares the practice of East and West when tackling minority problems. In the West, there is a trend towards accepting the legitimacy of minority nationalism, and towards accommodating it through some form of territorial autonomy. In Eastern and Central Europe, by contrast, minority nationalism is often viewed as illegitimate, and the idea of territorial autonomy is strongly resisted. What explains these differing responses to minority nationalism? There are many factors at play here, but Kymlicka focuses on one of them – namely, that the claims of national minorities are judged by different criteria. In the West, they are assessed primarily in terms of *justice*. The goal is to find an accommodation that is more or less fair to both majority and minority, and an increasing number of states accept that justice requires some form of self-government for minorities. In the Eastern and Central European countries, the claims of minorities are primarily assessed in term of *security*. The goal is to ensure that minorities are unable to threaten the existence or territorial integrity of the state, and most Eastern and Central European states believe that self-government for minorities poses such a threat.

An international scientific conference was organised by the Raoul Wallenberg Institute, ELTE University the Collegium Budapest, and the Hungarian Human Rights Information and Documentation Centre (INDOK) in May 2000, dealing with minority rights. In this issue – in columns “Essay” and “Forum” we disclose the compiled versions of several reports and comments made at the conference. It is the Lapp, a European minority in a special position that Balázs Zoltán Vizí’s essay was concerned with; he compared the Parliaments of the above mentioned nationality in several northern countries. He observed that while the international documents of minority rights are very reserved as regards defining political rights, the ILO Convention No. 169. concerning Indigenous Peoples and Tribal Peoples in Independent Countries says in Article 7.1: The people concerned shall have the right to decide their own priorities for the process of development as it effects their lives, beliefs, institutions and spiritual well-being, and the lands they occupy or otherwise use, and to exercise control to the extent possible over their own economic, social and cultural development. Although the Lapp have not been able to reach a reassuring settlement, through their Parliaments they have had an opportunity to take part in public affairs that directly concern them. The author thinks that on the whole in all three of these countries – in Sweden, Finland and Norway – they have succeeded in finding a political solution suitable for the effective protection of the Lappish culture and identity.

Balázs Majtényi was also a lecturer of the conference. He analysed the principles and functioning of the Hungarian minority self-government. In Majtényi’s opinion the Hungarian law currently in force exceeds international regulation, in that it declares the state-creating nature of the minorities of Hungary (What the author refers to is: the Constitution, Article 68 (1): The national and ethnic minorities living in the Republic of Hungary participate in the sovereign power of the people: they represent a constituent factor of the State); the collective right to identity and other collective rights to be derived from it. In spite of this, the new minority administrative system in practice shows many deficiencies, as a result of which the legislature is preparing to amend the law. The author is reminding us, that opinions vary whether the system is in need of smaller changes, or has already ceased to function. He thinks that we would need a broad social consensus for the

change – still, it is doubtful whether such an agreement is possible between two sides with contrasting interests, or not.

INTERVIEW

How do words become actions? – this was the subject of psychiatrist Ferenc Erős' interview with Zsolt Zádori. Zádori, referring to the results of several researches emphasised: prejudice, and the institutionalised and non-institutionalised forms of discrimination are very closely associated. When the prevalent culture is a strongly prejudiced one, the authority, the state and the institutions can act in a discriminative way more easily, than within a more admissible culture, or when the forces opposing the prejudiced culture are more effective. Ferenc Erős also touched upon the issue of the 19th century Romantic ideal of nation having become a segregationist definition of nation. The way some talk about Hungarian identity as a Romantic dream in the Carpathian-Basin makes the evolution of a multicultural society very difficult. As one of the reasons of the revival of racist views Erős mentions the fact that society has still not faced the Jewish and gypsy Holocaust; although the taboos that had made it impossible during socialism have already come down.

FORUM

In this column we basically deal with the compiled versions of some comments made at the already mentioned conference in Budapest, held in May. Gábor Kardos examined the level of using minority languages, and he concluded that it is not really sufficient in Hungary. Among the reasons he mentioned fragmented geographical situation, and advanced linguistic assimilation. Kardos emphasised, that the protection of minority languages demands not only adequate legal regulation, but also a proposition in relation to infrastructure from the majority nation. Without adequate political participation, however, minorities can hardly achieve this. János Hargitai analysed the debates around the parliamentary representation of national and ethnic minorities, and the reasons of not having reached a resolution yet. He demanded, that minority communities should realise: Parliament is unified as regards the drafting of declarations about minority representation, but is weak-willed when it comes to enforcing them. Éva Orsós analysed the role of the government in the participation of minorities in public life. She pointed out, that governments should realise: there is no alternative to the development of autonomy and solidarity, and to a dialogue between society and authority. Antal Örkény examined the role of the media in the participation of minorities in public life, and reckoned it not to be accidental that analyses evaluating the preconditions of joining the European Union state serious deficiencies in these two fields. According to the author, Hungarian society, the political élite and the media can think of the social integration of gypsies only in terms of essentialist national construction; the pluralist approach does not find acceptance. In examining the position of gypsies in Hungary Claude Cahn's conclusion was that some of the problems of gypsy and non-gypsy relationships are the heritage of centuries of pervaded prejudice, and that of a forced assimilation policy. The question remains, whether Hungarian authorities will now try to deal with this heritage, or they will wait until the situation gets even worse. Péter György was also concerned with the position of gypsies in Hungary: on one hand criticising the racist views of a sociobiologist in Pécs; on the other hand stating, that the different forms of contempt and segregation once falling on the barbaric today afflict

the gypsies. He emphasised: it mainly depends on the majority of society, whether gypsies view themselves as Hungarians, as Hungarian gypsies, or as citizens with dual identity.

DOCUMENTS AND COMMENTARIES

An agreement between the mayor of Óbuda and the organisers of the Pepsi Sziget, a happening that attracted thousands of young people, created a great stir at the end of July. The agreement stated, that no gay and lesbian organisations should take part in the programmes. In this column we disclose the order passed by the Courts of District II and III in Budapest, and the writing of Attorney József Kárpáti. He, commenting on the happenings states, that the Tarlós-case – irrespective of its conclusion – gives a wholesome and precise picture of Hungarian constitutionalism, and of society's maturity. Kárpáti is of the opinion, that this has long been more than the cause of gays and lesbians; the consequences concern everybody: the question is, will unpopular but important civil rights movements sink back into illegality, or will a Western type of legal state develop?

PRIOR TO DECISION

The Constitutional Court of Hungary has recently come to a decision concerning complaints about the referendum initiation of the Socialist Party; however with this decision neither the case itself, nor the debate surrounding the constitutional problems of referenda has ended. Before the prospective decision Csaba Tordai surveyed the changes in the practice of the Constitutional Court in relation to referenda, and also the possible consequences. First, his writing presents the principle of the legal institution of referendum, then he goes on to examine the questions to be put to referendum one by one. In his opinion two of the questions proposed by the Hungarian Socialist Party are suitable for a referendum, whereas two others are not.

AFTER DECISION

Readers of this column can again meet some cases with interesting legal conclusions, from the practice of the European Court of Human Rights, and we also present some of the human rights related decisions of the Constitutional Court of Hungary.

PROTECTORS OF RIGHTS

Related to the issue of minorities, in this issue of *Fundamentum* we introduce the legal aid of the Background Friendly Association for Homosexual People, and we sum up some characteristic cases from the Association's practice.