

## AUTONOMY AND INTERNATIONAL LAW<sup>+</sup>

PÉTER KOVÁCS\*

The public opinion views the international law as an integrated entity, although it has a multiple character. Accordingly, the universal international law reflects the interests of the international community as a whole.

The universal and regional international law do not prescribe any obligations for the creation of the autonomy of minorities. Though this fact does not lead to either good or bad consequences. The commentaries of the abovementioned conventions and their committees emphasize that a possible solution for the commitments (first of all the involvement of the minorities into the public affairs) is the autonomy, either in its territorial or its individual form.

*Keywords:* self governance for minorities, collective minority right, international law.

\*

The idea of self governance for minorities is a re-emerging topic in the studies and articles about minorities. The international documents and institutions are often classified whether they contain the forms of ethnic autonomies or at least the possibilities for them: if yes, the Hungarian public opinion sees them positively, if not, they just ignore them. Consequently, where the collective rights are recognized, things go in the right direction (and maybe this cannot be counted as a fault so far!), but where they are not recognized by the national constitutions or international documents those states are viewed as ungenerous.

But this does not correspond to reality and it is theoretically unproven.

What is more, the whole question has another side as well: in countries where the clichés of the 19<sup>th</sup> century nation state are still alive, an atavistic fear from the Trojan horse of autonomy can be detected as the tool for undermining and continuously disintegrating the state.

Accordingly, the philosophy of “Everything but autonomy” means the patriotic behaviour and the claim of autonomy is regarded as inexplicable or – what is more – as a suspicious demand, especially if it is formulated within the country. In such states the claim of the collective minority rights is viewed as a problematic, anti-constitutional or even fascist issue. The public opinion trained as such by the media strengthens the politicians.

The thoughts of István Bibó about the penury of small statehood, about the provoked clichés which finally have become social forces were cited many times in Hungary, and maybe it is not a coincidence, that even from his works translated into foreign languages these are the most well-known ones. Challenging the myths pro and con, the hysteria, the common frustration of the minority and majority are all obstacles of the dialog.

However, the possibility of the dialog always exists, especially if we admit, that the concept of nation state which caused the collapse of the big empires and became dominant in Europe during the 17<sup>th</sup> -19<sup>th</sup> centuries is in a persistent dissolution under the pressure of globalization and integration. The countries themselves which were so often cited as models for the Central and Eastern European countries have also transformed: along with the regionalism, devolution and cross-border cooperation and having forgotten many exclusive wills, they put into effect a totally different policy that they wanted to make others believe. The Western passing of the idea of the nation state can be propagated, constitutionally strengthened or one might stay in silence chastely, but it is not rational to deny it.

However, the recognition is one thing and its reflection in the international law is another question. How do the international law and its science react on these changes and on the need of legal remedy?

The public opinion views the international law as an integrated entity, although it has a multiple character. Accordingly, the universal international law reflects the interests of the international community as a whole, which would suppose the compatibility of the interests of all the 193 Member States of the United Nations. But we have to keep it in mind that the new independent countries of the Third World which make

---

<sup>+</sup> The first edition of this revised study was published in *Európai Utas* (2005):3.

\* Head of Departement of Public International Law, Pazmany Peter Catholic University, Budapest.

up two thirds of the United Nations support even stronger the concept of nation state than our neighbouring countries despite the many bloody conflicts (often provoked artificially) and the attempts of genocide. Therefore this might explain the lack of a comprehensive convention protecting the minority rights, only a few articles were put into a few conventions on human rights regarding the use of language, anti-discrimination and the protection of culture and identity.

Nevertheless, the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* adopted by the UN General Assembly on 18 December 1992 carefully passes over the individual approach when it states: ‘States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.’ (Article 1) However, the actual rights are built on individual bases. Although, the strengthening of the principle of positive discrimination is especially important (Article 8 Paragraph (3)), which encourages the control mechanisms of the organization for an even better understanding,

The codification of the document entitled *United Nations Declaration on the Right of Indigenous Peoples* took a lot of time. Finally it was accepted by Resolution 61/295 on September 13, 2007. This contains so-called collective rights as well, but under the term of ‘indigenous’ people one might understand the so-called ‘native people’ whose natural lifestyle (hunting, fishing, shepherding etc.) is threatened seriously by the modern industry and the large investments which modify the nature (dams, reservoirs etc.) In Europe, the legal effect of the declaration covers the reindeer breeder Lapps from Scandinavia and the small ethnical groups in the northern part of Russia and Siberia, among others the Finno-Ugrian relatives of the Hungarians (Voguls and Ostyaks for instance). The resolution emphasizes not only the importance of maintaining the traditional lifestyle, but also the right for independent decision-making regarding the natural resources and the right for a reasonable share of the incomes arising from them.

However, one should not forget that besides the universal international law the conventions made by regional organizations are international law as well. Such as, the *European Charter for Regional and Minority Languages* and the *Framework Convention for the Protection of National Minorities* adopted within the Council of Europe which have become the most important documents on our continent in the field of protecting the minorities. The same legal commitment arises from the bilateral agreements as well, which were signed partly good-hearted upon the recognized interests, partly upon the expectations of the European Union based on complex compromises.

However the international law is composed not only by the written law, but also by the case law. In this manner a huge amount of explanatory documents were created in the supervisory committees of the abovementioned conventions, in the different bodies of the UN, the Council of Europe and the Organization for Security and Co-operation in Europe which are partly binding but the most of them are only recommendations.

To a certain extent partly as their implementations or independently from them the systems of rules dealing with the minorities were born in the national constitutional law.

How is the autonomy for minorities situated in this complex, multilayer system?

The universal and regional international law do not prescribe any obligations for the creation of the autonomy of minorities. Though this fact does not lead to either good or bad consequences. The commentaries of the abovementioned conventions and their committees emphasize that a possible solution for the commitments (first of all the involvement of the minorities into the public affairs) is the autonomy, either in its territorial or its individual form.

The already mentioned document entitled *United Nations Declaration on the Right of Indigenous Peoples* made an even braver declaration than the previous ones:

‘Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.’ (Article 4)

‘Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.’ (Article 5)

In the new context even the European Court of Human Rights – despite the fact that there is no autonomy clause in the European Convention on Human Rights and the minority questions are attached only to the anti-discrimination rules – disapproved many states in cases where they were breaching the freedom of religion only just here the term religious community overlapped the Central-Eastern European meaning of national minority.

So this way the religious autonomy of the Russians living in Moldova and the Turkish living in Greece and Bulgaria was protected. In the case of these two countries the Macedonians have litigated with success as well. They referred to the freedom of expression and the freedom of association when the two governments willing to preclude the claims of cultural and political autonomies used the (otherwise legitimate) clauses of the public order and national security excessively.

Regarding the effective participation of the minorities in the public affairs the third Commentary of *the Framework Convention for the Protection of National Minorities* adopted in 2008 [ACFC/31DOC (2008)001] in line with the general commentary from 1995 and summarizing the practice of the previous ten years of the framework agreement underlined the autonomy as one of the possible solutions for protecting the minorities. Two elements were emphasized here: the rules for the clarification of the competences and that any creation and modification should be made with the consideration of the will of the given minorities.

Besides, the *European Charter of Local Self-Government*, the *European Outline Convention on Transfrontier Co-operation Between Territorial Communities or Authorities* clearly support regionalism and this is re-enforced by many recommendations of the Committee of Ministers (e.g. Recommendation number (2004)1) and the Parliamentary Assembly (e.g. Recommendation number 1334(2003.) and 1811 (2007)). (The Congress of Local and Regional Authorities, obviously, works as the engine of regionalism.) However, in these cases territorial autonomies are not based on minorities, they are only simple territorial or regional autonomies. This might coincide with the living space of an ethnic minority, but even the citizens who do not belong to the ethnic group are subjects of the autonomy.

Among the abovementioned bilateral agreements a few can be detected which created minority autonomy, such as the Finish – Swedish agreement from 1921 or the Italian – Austrian agreement from 1946. Today, these forms of autonomy went further in practice than the brief wording of the treaties. There is another type of bilateral agreements which refer to some already working autonomy, such as the Hungarian – Slovenian one from 1992, the Hungarian – Croatian agreement from 1995 and the Hungarian – Serbian treaty from 2003.

Furthermore, there are a few forms of autonomy which were created by the states without any international obligation, such as the territorial autonomies in Denmark, the Netherlands, the UK, France and Belgium, the individual autonomy of the Lapps in Scandinavia and some educational autonomy rules for the Breton and Basque communities in France. It is another question and completely independent from this previous issue, how it is constitutionally possible to harmonize the different solutions if by tradition the constitutions of the given countries do not recognize the minorities as legal communities.

There is no single, unified model and almost all of the working legal solutions are based on boring legal statutes in which not the sole existence and the beauty of the keywords, but the detailed technicalities get to the centre of attention. Which body has, what kind of competences and in which field, where are the shared competences, how the litigations are going to be resolved etc.

The autonomy was either created by the international law or it only contributed to the reform of the self-governments, we can see that it is a process where the dialog and the patience are the most important ones. Not only the minority has to be patient but the majority as well and it has to admit that if the concept of nation state was passed on the western part of our continent, then its central-eastern part will surely go in the same direction.

The Western-European experiences show that the principle of the state unity and indivisibility did not get injured but got re-interpreted, the security of the state was not weakened, and what is more, the solution became economically viable thanks to self-motivation, tourism, the channelling of international sources and the increase of tax revenues. The minority and other forms of autonomy work in a good manner at places where the majority of the expenditures are not consumed by their own bureaucracy but are spent efficiently on the local, direct and long-term needs of the minorities.

*Translated by Endre Orbán*

\*

<http://www.southeast-europe.org>  
[dke@southeast-europe.org](mailto:dke@southeast-europe.org)

© DKE 2012

Note: *Respected Researchers*, If you make a reference to this article or quote part of it, please send us an email at [dke@southeast-europe.org](mailto:dke@southeast-europe.org) to let us know that. *Please cite the article as follows:*

Péter Kovács: Autonomy and International Law. (*Translated by Endre Orbán*) *Délkelet Európa – South-East Europe International Relations Quarterly*, Vol. 3. No.2. (Summer 2012) 3 p.

Thank you for your kind collaboration. *Editor-in-Chief*