

Resolution of the Council of Europe on the situation and rights of national minorities

Resolution 1985 (2014) “The situation and rights of national minorities in Europe” adopted by the Council of Europe (CoE) Parliamentary Assembly on 8 April provides guidance to be followed for the 47 member states in the field of rights to identity, development of territorial arrangements, education in the mother tongue, establishment of independent educational institutions, continuity of education in the mother-tongue, rights to minority language use and combating against discrimination. The document is also an important reference framework in respect of Hungarian communities abroad.

Ferenc Kalmár, Member of the Hungarian National Assembly (Fidesz-KDNP alliance) was given a mandate by the Parliamentary Assembly of the Council of Europe in 2012 to prepare a report titled *The situation and rights of traditional national minorities in Europe*. Mr. Kalmár surveyed the situation of national minorities living on the continent, the legal regulation applicable to them and made fact-finding visits to Serbia, Finland and Italy. Relying upon these findings, he prepared the report on traditional national minorities, on the basis of which the Parliamentary Assembly of the Council of Europe adopted Resolution 1985 (2014) on national minorities at the beginning of April with 71 votes in favour and 11 votes against, and Recommendation 2040 (2014) with 58 votes for and 16 against.

With respect to the mandate given by the Council of Europe, Ferenc Kalmár laid the emphasis in his report on the situation of traditional national minorities. The draft resolution prepared on the basis of the report defined traditional minorities as “minorities who have been living on the same territory for centuries and have a common identity”. At the same time it recognises that the examination of the situation of so-called “new” minorities, as well as the Roma and religious minorities as equally important issues. Nevertheless, in order to formulate as precise proposals as possible, the draft resolution confines itself to traditional national minorities who can be characterised by specific features. The Committee on Equality and Non-Discrimination and the Parliamentary Assembly of the CoE found the attribute “traditional” restricting, therefore, this word has been deleted from the text of the resolution and that of the recommendation. It should be noted that reference to traditional national minorities would not have been unprecedented on the list of the CoE’s documents: Recommendation 1735 (2006) “The concept of “nation””, for instance, called on member states “to adopt legislation and regulatory acts recognising the traditional national minorities and apply them in good faith”.¹ Considering Hungarian communities abroad, it is important that the Resolution confirms and takes over the definition of national minorities adopted in Recommendation 1201 (1993) which is based on definitions elaborated by international law scholars, an essential element of which is the following

¹ Recommendation 1735 (2006) The concept of „nation”, at 11. ,
<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta06/EREC1735.htm>

statement: “national minority” refers to a group of persons in a state who (...) maintain longstanding, firm and lasting ties with that state.”²

The Resolution is an important step forward in the line of the CoE’s documents since it highlights the collective dimension of the protection of minorities, reference to well-functioning autonomy models, and calls on member states to implement, in a format agreed by all parties concerned, territorial self-government arrangements.

Regarding the collective dimension of the protection of minorities, Romanian MPs have submitted several proposed amendments which have been supported neither by the competent committee nor by the Parliamentary Assembly of the CoE. These proposals aimed to replace the phrase “the rights of national minorities” occurring in the Resolution and the Recommendation with “the rights of persons belonging to national minorities” which would deny the acknowledgement of collective rights and would adopt exclusively individual rights in the field of minority protection. Paragraph 2 of Article 3 of the Framework Convention for the Protection of National Minorities, for instance, states the following: “Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.” In accordance with this, the commentary on the Framework prepared by the Advisory Committee on the Framework Convention, and the three thematic commentaries related to it fully recognize the common dimension of minority rights. Recommendation 1492 (2001) also uses the phrase “the rights of national minorities”.

These statements of the Resolution related to territorial arrangements are extremely important regarding Hungarian communities abroad, especially those living in Transylvania. In this respect the report leaned – to a great extent – on Resolution and Recommendation 1334 (2003) known as the Gross Report, as well as on Resolution 361 (2013) “Regions and territories with special status in Europe” adopted by the Congress of Local and Regional Authorities. The Resolution adopted as a result of Ferenc Kalmár’s work relies on these documents when calls on member states to look into and use as a guideline best practices used by some States such as the experience of Alto Adige/South Tirol or Finland which grant collective or group rights, and to implement, in a format agreed by all parties concerned, territorial self-government arrangements. Knowing the activity of the Szekler National Council and the fact that the Democratic Alliance of Hungarians in Romania (RMDSZ) – while working out their draft for autonomy – used the South Tirol model as a starting point, it is hardly surprising that Romanian MPs have attempted to weaken the reference to the two internationally recognised, best practices as examples to be followed. According to their proposed amendment the best practices would have been used as guidance only in those cases in which they find it appropriate, and they considered that the above-mentioned practices do not necessarily serve as valid models or

² Text of the proposal for an additional protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning persons belonging to national minorities, Article 1. In: Recommendation 1201 (1993) on an additional protocol on the rights of national minorities to the European Convention on Human Rights. <http://assembly.coe.int/documents/adoptedtext/ta93/erec1201.htm>

reference for the member states. The members of the Council of Europe – rejecting the proposed amendments of the Romanian MPs – stood up for autonomy and confirmed that territorial self-government arrangements might contribute to the protection of collective minority rights.

Further important parts of the Resolution call on member states to promote the official use of languages spoken by national minorities at local or regional level, and to take the necessary steps to assure continuity of education in the mother tongue in secondary and higher education.

Although the report debated at the plenary session of the Parliamentary Assembly of the CoE and the resolution and recommendation adopted on the basis of it – which are the results of the past one and a half year – do not have binding legal force, they still have a strong reference value for European governments committed to respect human rights.

The political organisations of Hungarian communities abroad welcomed the CoE's new Resolution and Recommendation on the protection of minorities, and evaluated it as a breakthrough and milestone among the efforts taken for the protection of minorities in Europe. The leaders of Hungarian communities abroad laid the main emphasis on the fact that the Council of Europe recognised that there exist functioning solutions in the protection of minorities in Europe – such as territorial autonomy – which can be considered standard and might help to arrange the majority-minority relations. The other point they highlighted is the reference to the collective rights of minorities, and the promotion of the official use of languages spoken by national minorities on the territories where they live.

It is important that the Resolution further elaborates earlier resolutions and recommendations related to national minorities, and the minimalist approach to the Framework Convention. It is expedient to keep this question on the agenda of the Council of Europe in the future and to develop it into a generally accepted instrument of the CoE and a standard accountable in practice by continuously referring to its statements and accounting the claims incorporated in it.