

INDIVIDUAL RIGHTS VERSUS COLLECTIVE RIGHTS

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ABSTRACT To what extent can the rights granted to minorities or ethnic groups lead those groups to integrate into the society they live in? Or do such rights lead to secession? Academicians alone do not debate such questions; politicians, too, are currently debating how to ensure both the rights of minorities and territorial integrity.

The debate over individual rights versus collective rights has been going on for a long time. Is it better to recognize individual rights alone, or are collective rights also necessary? At the basis of the debate lie national minorities and ethnic groups. A national minority is difficult to define. What is the difference between a national minority and a minority? I once asked Max van der Stoel, the former High Commissioner of National Minorities at the Organization for Security and Co-operation in Europe (OSCE), that question, and even he had trouble providing a solid definition. Perhaps this difficulty in definition lies in Europe's past experience. As a result of wars borders in Europe used to change often and those who remained at the other side of the border were termed national

minorities. In short, if a minority community in one country constitutes the majority community in a neighboring country then that minority community can be termed a national minority. Thus when Hungary adopted the first law on minority rights in 1849 that law was also applicable to Hungarians in some territories outside of Hungary.

The definition of minority more generally is also complicated. For some academicians anyone who considers himself a minority should be recognized as such. Some others have claimed that if a hundred people come together they may consider themselves a minority. However, these are somewhat radical definitions that belie the complexity of the issue. For example, when the Free City of Gdansk became part of Poland,



Germans in Gdansk became a minority within Poland; yet Poles in the city were a minority and their minority rights were ensured through the 1920 Gdansk-Poland Convention. The minority concept and the experience of Europe stems from such border changes.

Another point of contention is the difference between minorities and ethnic groups. Generally minority rights are covered by bilateral or multilateral conventions and documents. The Treaty of Lausanne is one example on this matter. The question of minority rights initially had nothing to do with democracy or human rights. It stemmed from the interventions of outside powers to protect the rights of their "kin" living in other countries. The foreign interventions that took place against the Ottoman Empire had nothing to do with the development of democracy; they aimed to reform the rights of non-Muslims in the Empire. The Reform Edict of the Sublime Porte came 18 days after the Crimean War cease-fire on February 18, 1856. This reform widened the reforms of the 1839 Tanzimat Act. Its aim was to remove the "nation-system" and grant equal citizenship rights to all religious communities thus ensuring full equality among the Ottoman citizens irrespective of religious belief. Thus it opened the doors to all to become civil servants (with the exception of the Greek community.) Proselytizing was made legal and the death penalty against Muslims who converted to another religion was terminated. Non-Muslims could now go to military schools. Tax equality was

established. In this way, the concept articulated in Article 15, "equal rights bring equal obligations," was instituted.

Due to the Reforms, non-Muslims were required to do their military service and for those who chose not to do so they could exempt themselves by paying a tax. Non-Muslims were allowed to establish their own affairs councils (primarily administrative and religious) and make legally-binding statutes. Thus the Statute of the Greek Patriarchate of 1862, the Armenian Patriarchate Statute of 1863 and the Rabbinate Statute of 1865 were created. These statutes were considered by the western powers as constitutions.

Articles 37-45 of the Lausanne Treaty, which established the Republic of Turkey, deal with minority rights of non-Muslims in Turkey and establish reciprocal rights for Greek citizens of Turkish extraction living in the Western Thrace region of Greece. Article 44 states that violations of these rights can be brought before the League of Nations thus making them a subject of international relations. Minority rights included in such treaties fall under the spectrum of collective rights.

After World War II and in particular the fall of the Soviet Union, minority and ethnic rights have become the focus of international relations. Article 27 of the International Covenant of Civil and Political Rights, which entered into force in 1976, covers minority rights. The article deals with minority and



ethnic rights using the following language: "such rights can be exercised and enjoyed individually as well as in community with other members of their group." This has opened the door to collective rights. The Council of Europe's "Framework Convention for the Protection of National Minorities" adopted the wording above and thus these rights attained the status of collective rights. OSCE's 1990 Copenhagen Document contains the same wording.

The International Permanent Court of Justice in its advisory opinion on minority schools in Albania in 1935 stated that nationals belonging to racial, religious or linguistic minorities shall be placed on equal footing with the majority and that minority elements will have suitable means for the preservation of their peculiarities, their traditions and their national characteristics. In this carefully worded opinion, there seems no mention of collective or individual rights.

On the question of ethnic and minority rights the Council of Europe, the OSCE, and the UN (United Nations) Conventions have made important contributions. The European Union (EU) also has dealt with the issue in particular in relation to Central and Eastern European countries' membership negotiations. Some academicians have strongly argued in favor of collective rights while others have claimed that such rights prevent internal integration. The experiences of Western Europe differ from those of candidate countries. On the other hand, though current EU

member countries have signed international conventions on minority rights, it is unclear to what degree they have taken note and applied the articles of the conventions to themselves. At the present time, France in particular has taken a negative attitude towards the Roman community and non-citizens. Hence, there is no EU model on minority rights to be exported to future members. Wherever full democracy exists minority issues do not generally pose a problem. The EU pressure on candidate countries on minority issues aims at preventing possible internal strifes in future members. It is precisely in light of this concern that OSCE's former High Commissioner for National Minorities exerted pressure on Macedonia and as a result the Albanian minority in that country attained a high degree of collective rights. In Macedonia, there are schools, high schools and even a university which instruct in Albanian. Under Van der Stoep's leadership, the LUND Recommendations on minority rights generally aim at creating different groups through minority rights. The EU, silent on Romans in the beginning of membership negotiations with Central and East European countries, later became vocal on the rights of Romans when troubles loomed and the EU even made membership almost conditional on Roman rights. The aim was to prevent possible internal troubles.

It is clear that to what extent rights should be granted and their possible consequences continue to be debated. States, to various



degrees, show sensitivity on those rights; including most advanced democracies. In 1999 at Bergen, Norway, I attended a cultural dialogue conference where a Sami person intervened during the then Norwegian Foreign Minister Knut Vollabeck's speech, saying that Norway prevented Sami people from using their mother tongue. States' concern is clearly whether the rights granted could eventually lead to secessionist movements.

It is generally recognized that if states grant minority rights and if the national wealth is high, secessionist movements do not take place. Yet, there are notable exceptions to this widely-accepted rule. For example, Belgium and Spain both provide vast rights for their minority communities and have highly-developed economies, yet each country is host to separatist movements (among the Walloon and Flemish groups in Belgium and the Catalans in Spain). It is equally clear that non-recognition of minority rights would probably lead to internal strifes.

The former High Commissioner for National Minorities somewhat moved away from his strong defense of collective rights in "Integrating Diversity" seminar focused on integrating and reconciling diversities/differences with the main forces of the society in 1998 at Locarno, Switzerland.

The rights of national minorities have a historical background and are usually adopted by bilateral or multilateral agreements and are of a collective-rights nature. The

situation differs somewhat regarding ethnic rights. Many states have not shown the capacity to apply equal citizenship and full democracy. In other words, states have not been able to remain equidistant to all religions, sects and ethnicity in their societies. If the modern state is able to be "blind" to sects and ethnicity and can practice democracy and equal citizenship, individual ethnic and cultural rights will suffice for internal harmony and satisfy its citizens. Unfortunately, states do not show this capability most of the time. Whenever an ethnic group or sect becomes predominant at the state level, the other groups feel "left out" and asks for collective rights and guarantees. Consequently, collective rights result in making those groups "the other." The United States has gradually become ethnically and religiously blind and has thus prevented the question of rights from becoming an issue. Another subject of interest is the situation of Jewish communities in various countries. In many countries, including Turkey, Jews have refused to be considered as minority, but have been able to maintain their identity, language and traditions while being integrated to the mainstream of the country they live in.

The Turkish state has not been able to remain equidistant to different ethnic groups and sects. It has instead been late in recognizing cultural rights and thus faces problems today. The request of the Kurdish Peace and Democracy Party (BDP) for constitutional guarantees of Kurdish identity and



collective rights should be seen against this background. The best solution for Turkey is to apply full individual rights and for the state to remain equidistant to all ethnicities, religions and sects. This requires political acumen and consensus. Other solutions would lead to separatism over time.

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