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THE BASIC PRINCIPLES OF THE EUROPEAN RIGHTS OF ETHNIC GROUPS AND THE EUROPEAN NATIONALITIES CONGRESS IN GENEVA 1985

I. THE DEVELOPMENT OF „BASIC PRINCIPLES“

The roots of the Basic Principles of the European Rights of Ethnic Groups go back to documents of three international non-governmental organizations, namely the Federal Union of European Nationalities (FUEN), and its Basic Principles of a Right of Nationalities, adopted at Abenrade (Denmark) on 22nd May 1967; the International Association for the Defence of Menaced Languages and Cultures (AIDLCM), with its Charter of Rights for Minority Ethnic Communities and for Linguistic Minorities, adopted at Chatillon (Val d'Aosta, Italy) on 25th July 1976; and the last the International Institute for Ethnic Group Rights and Regionalism (INTEREG), with its seat in Munich, which has prepared the Draft of an International Convention on the Protection of National or Ethnic Groups or Minorities, and furthermore the Draft Protocol to the International Convention on the Protection of National or Ethnic Minorities or Groups, applicable to the States Members of the Council of Europe. The most extensive paper and the last too is the Draft of an International Convention prepared by INTEREG. It comprises 39 articles and the Draft Protocol, belonging to it, 33 articles more.

What is the real influence of FUEN, AIDLCM and INTEREG? The FUEN consists of about 30 member organizations from Belgium, Denmark, the Federal Republic of Germany, France, Italy (the Slovenska Skupnost, for example, with its seat in Gorizia/Gorica), the Netherlands, Sweden, Finland, Austria (the Narodni Svet Koroških Slovencev, for example), the United Kingdom and the USA. The number of ethnic group organizations joined in the AIDLCM might be smaller, its member organizations represent ethnic groups for example in Spain, France, Italy, Austria (so the Zveza Slovenskih Organizacij na Koroškem) and so on. INTEREG does *not* consist of ethnic groups organizations, it is rather an association of individuals, natural persons, mostly scientists and politicians.

Attempting to unificate the three documents mentioned above, the organizations have met and at last they have agreed upon the present Basic Principles of the European Rights of Ethnic Groups in spring 1985 in Munich. At that time the three organizations already had convoked the 15th Congress of European Nationalities in Geneva, and now the Basic Principles were submitted to the Congress. It has to be

stressed that the Congress was *not* convoked to amend the Basic Principles already adopted by the three organizations; its task was *only* – *inter alia* – to take notice of the Basic Principles and to discuss them. One should know that when reading in „Europa Ethnica“ 1985, the official organ of the FUEN and INTEREG, that the Basic Principles have been „adopted by the European Nationalities' Congress in Geneva“ (p. 154), and in the same number of „Europa Ethnica“ one can find Prof. Veiter's opinion that „the most important outcome of the congress was the adoption of the „Basic Principles““ (p. 70). In this context I should mention that the wording „Basic Principles adapted by the . . . Congress“, one can also find in „Europa Ethnica“, is not correct. Once more: in regard of the Basic Principles the nature of all resolutions and other utterances of the Congress could be a mere *declarative* one. Only the Preamble of the Basic Principles has been amended in Geneva.

As a means of historical interpretation of the Basic Principles we are therefore bound to the formation of the text up to the agreement of Munich. Yet the proposals and discussions of Munich have not yet been published. It is necessary, therefore, to trace the influence of each of the documents on the Basic Principles. At this time I will give a general survey.

There the influence of the FUEN-document, which was adopted at Abenrade in 1967, is evident regarding the *title* („Basic Principles“), the *preamble* and – contrasting to the documents of AIDLCM and INTEREG mentioned above – the *vagueness* of the regulations; so, for example, *neither* the term „ethnic group“ or „national minority“ or „national group“, as introduced in Art. 1 of the Basic Principles, is exactly defined *nor* it is said anywhere in the Basic Principles what, for example, the „right to education“ which is mentioned in Art. 12 rather incidentally, comprises. A characteristic of the FUEN-document, the *former* „Basic Principles“, was the prominent position given to the principle of freely declaring one's membership of an ethnic group. The *first* sentence of Art. 1 of the FUEN-document of 1967 stated that „everybody has the right freely to join a national minority resp. nationality.“ Contrasting to this, in the *new* „Basic Principles“ the rights of group are at top (Art. 1 and following articles), whereas the principle of free declaration is postponed to the position of Art. 11 now. It seems to me that this shift is not accidental.

The AIDLCM-paper of 1976 and both INTEREG-documents cited at the beginning have similar tendency, yet the INTEREG-documents are much more detailed. So it is difficult to decide whether, in this instance, the insertion of personal autonomy into the Basic Principles (Art. 10) should be derived from AIDLCM – or INTEREG-papers; one can only presume – due to the curtailed form of Art. 10 – that the idea of personal autonomy was not inserted at the request of the *FUEN*. Of course even some theoretical positions of INTEREG could not assert themselves; a remarkable example is the express *right to assimilation* laid down in Art. 10 of the INTEREG Draft of an International Convention on the Protection of National or Ethnic Groups or Minorities.

So the Basic Principles are a compromise, and it might be that a broad discussion on the European Nationalities' Congress, combined with the chance of amending the principles, would have hindered even *this* text. In Geneva about 35 ethnic groups, mainly from Western Europe, were represented, also some other international non-governmental organizations, for example the „European Bureau for lesser used languages“ (with its seat in Dublin), the „Minority Rights Group“ (London) and so on. As

the statements of those participants addressing to the Congress show, much criticism was expressed. So, for example, Art. 10 (personal autonomy) was declared impracticable, another representative found that the Basic Principles should condemn any incitement was that of the South Tyrolean Alexander Langer who said that also the position of the majority ethnic groups should be taken into account and that the cultural cooperation between majority and minority ethnic group should be promoted. This suggestion was the only one which led to an amendment, not of the text of the Basic Principles but of their preamble: The preamble at present states, *inter alia*, that the groups of a region, both majority and minority, must become acquainted with and have to respect history and the various languages and cultures of a state or a region, with the intention that all the various ethnic communities should live together peacefully.

II. THE TEXT OF THE BASIC PRINCIPLES

Turning to the text of the Basic Principles, one might sometimes find versions (German, English, etc.) differing from each other. As no language had been declared as the authentic one, yet *German* was — as Prof. Veiter reports — the language of discussion at Munich, in cases of doubt the *German* version should decide.

In Art. 1 of the Basic Principles a definition of „ethnic group“ respectively „national minority“ or „national group“ is attempted. Yet this attempt has miscarried because the criteria characterizing a „group“ are not completely enumerated, and it is a mere truism that such a group is „characterized by some criteria“. So Art. 1 is important only because of the right of the group to be recognized as an entity. Art. 2 states the right to the protection, maintenance, development and promotion of the group's characteristics respectively its identity; it raises the question whether this right can be „regardless of the number of its members“. Art. 4 concerns the protection of the group's territory (its „native region“) and the preservation and promotion of the group's language. Art. 5 grants — *inter alia* — cultural autonomy and an appropriate part of public resources, Art. 6 concerns the group's own radio- and TV-programmes, Art. 7 territorial self-government. That the members of a group should have a chance to work in their native region, is stated by Art. 8 and 9. Art. 10 (personal autonomy) has been already mentioned, also Art. 11 (principle of free declaration of one's membership of a group). Questions of the group's language are treated in Art. 12 and 13. A remarkable position is laid down in Art. 17 which states that „the rights of the groups must not be narrowed by decisions of the majority.“ Questions of the representation of a group are treated in Art. 18 till Art. 20.

III. MAIN PROBLEMS OF THE BASIC PRINCIPLES

After this first survey I want to analyze some of the main problems of the Basic Principles.

First problem: to whom shall the Basic Principles apply? Art. 1 of the Basic Principles speaks of „every ethnic group“ and — in brackets — of the „national minority“; it could be doubtful whether only ethnic *minority* groups should be protected and promoted and whether „minority“ means „numerical minority“.

I think that ethnic rights must be granted to everyone and to every ethnic group, as well as to ethnic *majority* groups. It could be that a state tries to displace even the language of the ethnic majority group when creating, for instance, a „koine“ or an artificial language. Yet, of course, ethnic *minority* groups must be *especially* protected

and promoted; the smaller they are the stronger the support of the state must be (it is, by the way, an omission of the Basic Principles that they do not express this distinctly). When is an ethnic group in a minority position? I think, it does not – or not in every case – depend on the *numerical* size; rather the term „non-dominant position“ would fit to characterize a minority.

Second problem: Which criteria characterize an ethnic group? There are, of course, *objective* criteria, such as *mother tongue* (not simply „language“, as said in Art. 1 of the Basic Principles) or *constancy* (which can be concluded from tradition, descent or – *for example* – from the existence of an ancestral soil). One might say that also a *subjective* criterion might exist, at least the will to preserve the group's identity. Yet Art. 2 (and also Art. 1 and Art. 4) of the Basic Principles declare the essential group's rights as „inalienable“, this means that the group – as entity – is *not* entitled to give up, to renounce its rights. This is an astonishing result and I admit that it is hard to explain why as well as all other legal entities but an ethnic group are entitled to dissolve. Consequently the *actual* will to preserve the group's identity could not be seen as a criterion of an ethnic group.

Third problem: Who are the members of an ethnic group? Art. 11 of the Basic Principles is formulated in a way which makes totally divergent results possible: On the one hand the free declaration of membership is granted, on the other hand the states are obliged to create the legal, political and *social* conditions for this free declaration. *Who* should decide in a certain case – and according to which criteria – whether, for example, the *social* conditions exist? One could say that it is almost impossible to create the conditions for a human decision influenced *only* by free will. So I fear Art. 11 does not solve the questions of membership. It might be a solution not to overstrain the conditions of free will. When people are entitled to contract with powerful legal persons, for example, in spite of the fact that in these cases their free will is *reduced* as a result of „structural power“, I could *not* explain why *solely* in respect of ethnic declarations of membership the *ideal* of free will should be demanded by law.

In this connection it should be added that free declaration should *not* be the only criterion of membership. I think that also a criterion with an aspect of constancy, for example commanding the language of the group, should be demanded, thus avoiding or at least rendering more difficult the shifting from one membership to another.

As long as the question of membership is not resolved, all questions concerning the representation of ethnic groups, the organization of an ethnic group as a legal entity, and so on, cannot be decided. Stating that the Basic Principles have not resolved these basic questions, not even in the contours, is a reproach.

There remain, of course, still some other questions unresolved by the Basic Principles. I have already mentioned the questions of personal autonomy (Art. 10); other problems are the protection of the native region of a group (Art. 4), the representation in parliaments (Art. 18) or the corresponding of the number of civil servants (in certain offices) to the real (numerical) proportion of the ethnic groups. These questions cannot be treated within the given scope.

At last it ought to be stressed that the Basic Principles have the function of a list of *wishes* of some important international non-governmental organizations, and they are to be submitted to the politicians, the parliaments and so on. The Basic Principles are a compromise, in some essential points indistinct and too general. They could be a

base for a government's work but they should be completed by *national papers*, or, at least, by special papers of each ethnic group's organization concerned.

BASIC PRINCIPLES OF THE EUROPEAN RIGHTS OF ETHNIC GROUPS (adopted by the European Nationalities' Congress in Geneva, 18th May 1985)

Art. 1: Every ethnic group (national minority) or national group – called „group“ in the following – characterized by criterions such as its own language, culture, or traditions, has an inalienable and inviolable right, on an international as well as national level, to be recognized as a national, ethnic, and cultural (linguistic) entity.

Art. 2: Every group has an inviolable and inalienable right to the protection, maintenance, and promotion of its characteristics/identity in its innate region of settlement regardless of the number of its members.

Art. 3: The right to development and promotion exceeds the individual protection against discrimination and also includes the promotion of the group as such.

Art. 4: It is an inalienable right of the national groups that their native region, the region of their indigenous ancestry, shall be protected and preserved for them. Their native region must neither be alienated nor split up administratively, nor lose its own ethnic or linguistic character by infiltration.

In schools and in public life of the native region priority must be given to the preservation and promotion of the group's language. The group's history and literature must constitute an indispensable part of instruction.

Art. 5: Every group has the right to organize itself—including legal organization. It is entitled to cultural autonomy. An appropriate part of public resources must be granted to the groups.

Art. 6: Every group must be accorded the real potential of producing its own radio and television programmes, and of issuing its own publications.

Art. 7: The population of a part of a State, mainly occupied by a group, shall be granted territorial self-government and regional legislative responsibility, including levying of taxes and/or an adequate part of the public resources of the State.

Art. 8: All members of a group have the right to freedom of movement and remaining in their native region. Public employees belonging to a group must not be transferred from their native region against their will. As far as possible, members of a group must be able to perform their military service within their native region.

Art. 9: The States should organize their economic life in a way that ensures that members of the groups can find employment in their native region. Economic development and industrialization must not be used to endanger the identity of a group.

Art. 10: In the case of a scattered minority the States should grant it personal autonomy.

Art. 11: Every person should have the right freely to declare him- or herself, without pressure of any kind, a member of a national minority or ethnic group. This declaration must neither be challenged nor investigated. The States should create the legal, political, and social conditions for this free declaration.

Art. 12: All members of a group have the right freely to use and cultivate their spoken and written language or dialect in public and private life. This includes the right to education and religious care including scripture in their own language. Every State should recognize and guarantee this right of the group.

Art. 13: In their native region all members of a group have the right to communicate directly in writing and by word of mouth in their own language with public service, courts, and all authorities competent for that region. Conditions must be created to render possible such communication.

Art. 14: The members of a group and its public and private organisations may maintain relations with populations of the same language and culture in other States.

Art. 15: In their cooperation with other States in the cultural, economic, or other fields, the State shall have appropriate regard to the needs of the groups.

Art. 16: The equivalence of diplomas obtained abroad in the language of the group shall be recognized to its full extent.

Art. 17: The rights of the groups must not be narrowed by decisions of the majority. They

shall only be subject to ruling by law courts in matters concerning their constitutional validity, without regard to their expedience.

Art. 18: Every group has the right to appropriate representation in parliaments as well as in all legislative and administrative bodies, municipal councils, etc. Threshold clauses, or rules requiring a mandat secured by direct, personal election for proportional distribution of seats, or any similar restrictions shall not be applied against the groups. Constituencies must be arranged in a way which is not of electoral disadvantage to the groups, and which does not split up the region of a group.

Art. 19: Groups living in a member state of an organisation with supra-national authorities, shall have the right to appropriate representation in all competent bodies, and to communicate directly with the supra-national bodies.

Art. 20: The organisations of the groups have the right to represent the interests of the groups, their organisations and their individual members at courts, authorities and official bodies. A group whose rights are being violated by the state may obtain help and protection from national and international courts.

SUMMARY

THE BASIC PRINCIPLES OF THE EUROPEAN RIGHTS OF ETHNIC GROUPS AND THE EUROPEAN NATIONALITIES' CONGRESS IN GENEVA 1985

The author has divided his text into three sections, dealing with the origin, description and critical survey respectively of The basic Principles . . . text, as the document was adopted in Geneva 1985. The author first considers the influence of some of the earlier documents of this sort, as were passed by FUEN, AIDCLM, INTEREG, and Council of Europe. He finds the Basic Principles text a compromise to the preceding acts. Due criticisms were expressed even at the Congress of 1985, but failed to produce amendments.

The second section of the paper brings statements of contents, of the topics treated in the document, and of formulations and terminology used. The author establishes an important fact that Basic Principles failed to sufficiently determine some basic categories, such as ethnic group, membership in it, numerical size of a group as a relative criterion, detailed characterization of membership.

In author's view, three major problems arise from these inadequacies. First, it is not clear to whom should Basic Principles refer, since the text failed to confront minority rights against majority rights, whereby the author rejects the term „minority position“, arguing that it unduly suggests numerical evaluations, and prefers „non-dominant position“ as a more adequate term. Second, it is not clear what are the characteristics of an ethnic group, whereby the author disagrees with the exclusive „inaliability“ of the rights of minorities, arguing that a counter-right to dissolve as a group should be established; it is for this absolute standpoint that the actual aspirations of an ethnic group are obscured. And third, it is not clear who can members of an ethnic group be, when there exist both the principle of personal autonomy in decisions of membership and, simultaneously, a request is made that the state should create social conditions for such membership. The author expresses his doubts as to the free will of an individual in such circumstances, but he also doubts that free decisions of membership can represent an ideal way of solving the problem. Basic Principles are therefore a list of „wishes“, of orientation marks, that require much further political consideration, concludes the author, and stresses the role of minority organizations and individuals.

POVZETEK

HEINZ TICHY: TEMELJNA NAČELA PRAVIC ETNIČNIH SKUPIN V EVROPI IN EVROPSKI MANJŠINSKI KONGRES V ŽENEVI 1985

Avtor se v treh razdelkih svojega teksta ukvarja zaporedoma z izvorom, opisom in kritično analizo teksta Osnovnih principov pravic evropskih etničnih skupin (Ženeva 1985). Tekst uvodoma primerja z zgodnjimi dokumenti te vrste, s konvencijami organizacij FUEN, AIDCLM in INTEREG ter z zadevnimi prizadevanji Evropskega sveta, z njihovo sestavo in cilji. Avtor obravnavani tekst Osnovnih principov označuje za kompromis med težnjami, izraženimi v listinah-predhodnicah. Kritične pripombe na račun osnovnih principov so udeleženci kongresa že izražali na mestu samem, kritike navaja avtor po členih. V drugem razdelku članka se avtor podrobneje ukvarja z vsebino, uvedeno tematiko in formulacijami ter terminologijo Osnovnih principov. Pomembna je njegova ugotovitev, da dokument ni zmožal ustanoviti niti takih določnic, kot so etnična skupina, pripadnost etnični skupini, številčnost etnične skupine kot relativni kriterij, podrobna karakterizacija pripadnosti etnični skupini. Na podlagi teh ugotovitev avtor v tretjem delu članka obravnava tri temeljne probleme Osnovnih principov, kakor jih je izluščil: prvič, na koga naj se konvencija nanaša, in ugotavlja, da je tekst izločil nujno soočanje pravic manjšine s pravicami večine, pri čemer zavrača termin „manjšinski položaj“, ker se mu zdi vrednoten, in predlaga nadomestitev z izrazom „nedominanten položaj“; drugič, sprašuje se, kakšne so karakteristike etnične skupine, pri čemer v celoti zavrača pozicijo dokumenta, ki pravice manjšine označuje za „neodtujljive“, ne ustanavlja pa nasprotne pravice do ne-pripadanja manjšini; zaradi česar dejanska volja pripadnikov manjšine ni razvidna ali je zabrisana z absolutnim stališčem; in slednjič se sprašuje, kdo so pripadniki etnične skupine ob dejstvu, da je hkrati možna svobodna individualna odločitev za tako pripadnost in postavljena obveza državi, da kreira socialne pogoje za tako pripadnost. Avtor dvomi, da se v tako postavljenih objektivnih okoliščinah more v celoti izraziti svobodna volja posameznika, prav tako pa misli, da ideal izražanja svobodne volje posameznika glede etnične pripadnosti ne more biti realen cilj pri urejanju problema. Avtorjeva končna pozicija je, da so Osnovni principi seznam „želja“, vodil tedaj, ki zahtevajo temeljitega političnega pretehtavanja in nadaljnega prečiščevanja, pri čemer poudarja predvsem pobudo subjektov in organizacij manjšin.