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Position of national minorities in Europe

Report[1]
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Henri ROLIN, Belgium, Socialist Group

1. 1957 - 9th Session - Second part

A. Draft Resolution presented by the Legal Committee

The Assembly,

Recognising that in various Member States of the Council of Europe there are population groups conscious of belonging to a national minority in which another Member State is interested ;

Noting that Article 14 of the Convention on Human Rights already satisfactorily protects individuals belonging to these minorities against discrimination on these grounds, at least in countries where the right of individual application is recognised, but that it is desirable, both from the human standpoint and for the promotion of good relations between the States, to ensure satisfaction of the collective interests of the national minorities themselves, to the fullest extent compatible with safeguarding the essential interests of the States to which they belong ;

Considering that a comparative study of the laws and regulations in force, and of existing situations in this regard, might show whether, and to what extent, improvements could be effected,

Invites Governments of the Council of Europe concerned in these matters to transmit all desirable information to the Secretary-General; and

Instructs its Legal Committee to submit a fresh report on the subject in the light of the information thus obtained.

B. Explanatory Memorandum by M. ROLIN, Rapporteur

1. 1. On 28th September 1956, the Committee on Legal and Administrative Questions instructed Sub-committee No. 8, which had been specially appointed for this purpose, to report on the advisability of the action advocated in the Motion presented to the Assembly by the Swedish Representative, M. Dickson, and others (Doc. 508). This proposal had been referred, for opinion, to the Committee on Legal and Administrative Questions by the Standing Committee, acting on behalf of the Assembly.

2. 2. The Motion, which was presented to the Assembly on 20th April 1956 (Doc. 508), read as follows :

3. " The Assembly,

4. Recognising the fact that national minorities and nationalities, not constituting States in Europe are historical and cultural entities existing in European territory which cannot be ignored;

5. Considering that unsatisfactory solutions of minority problems are a source of difficulties between the countries concerned;

6. Recognising, thus, the necessity of taking the minority and nationality problems into consideration when efforts are made for creating a United Europe;

7. Considering it necessary that these problems be specially examined and taken into consideration,

8. Resolves that a sub-committee on minority questions be set up under the Committee on Legal and Administrative Questions.

9. This subcommittee shall be charged with the following tasks :

Study of minority and nationality legislations;

Study of the implications of the European Convention on Human Rights for the status of minorities and nationalities:

Presentation of annual reports to the Assembly on the situation of European minorities and nationalities."

10. 3. It was not the first time that the question of minorities had been raised, both by the Committee on Legal and Administrative Questions and by the Assembly.

11. 4. The report presented by M. Teitgen to the Assembly on 5th September 1949, on behalf of the Committee on Legal and Administrative Questions, concerning the projected European Convention on Human Rights (Doc. 77 of 1949), contained the following paragraphs :

12. " The Resolution adopted by the Committee specifies that the regime of guaranteed freedoms should prevent any discrimination based on member-ship of a national minority.

13. After having heard a Report by M. Lan-nung on the problem of the wider protection of the rights of national minorities, the Committee unanimously recognised the importance of this problem.

14. It decided that, since its task was to draw up a list, not of fundamental rights, which must be defined in a general declaration, but only of those which appeared suitable for inclusion in an immediate international guarantee, it should adhere to the fundamental rights set out in Article 2 of the draft Resolution.

15. The Committee, however, decided that the present Report should contain a mention of its approval in principle of M. Lannung's declarations, and should draw the attention of the Committee of Ministers to the need for a subsequent examination of the problem, with a view to defining more exactly the rights of national minorities. "

16. 5. On 24th June 1950, the then Chairman of the Committee on Legal and Administrative Questions, Sir David Maxwell Fyfe, wrote to the Chairman of the Committee of Ministers, setting forth his Committee's views on the reports of the Committee of Senior Officials and the Committee of Legal Experts, which had been jointly entrusted by the Committee of Ministers with preparing a draft Convention on Human Rights. His letter ended with the following paragraph :

17. " Finally, the Committee takes this opportunity of reminding the Committee of Ministers that in its Report submitted to the Consultative Assembly (Doc. 77, para. 11) the Committee on Legal and Administrative Questions drew the attention of the Committee of Ministers to the need for an examination of the problem of the wider protection of the rights of national minorities, with a view to a more precise definition of the rights of these minorities. "

18. This letter is reproduced as Appendix 5 of the Report by the Committee on Legal and Administrative Questions, presented to the Assembly by M. Teitgen on 7th August 1950 (Doc. 6 of 1950).

19. 6. The Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4th November 1950, contains the following clause :

20. " Article 14. — The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. "

21. 7. The Assembly, on 24th September 1954, considered the chapter on legal and administrative questions in the Programme of Work transmitted to it, for opinion, by the Committee of Ministers (Doc. 238), and decided, on a proposal by the Committee on Legal and Administrative Questions, to include the following paragraph in its reply :

22. " 42. National Minorities. — The Assembly recalls moreover, that, in Document 77 of 1949 and in Document 6 of 1950, the attention of the Committee of Ministers was twice drawn to the need for a more precise definition of the rights of national minorities, the principle of which was later included in Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms. If the Committee of Ministers were of the opinion that it is desirable to guarantee to national minorities other rights than the nondiscrimination stipulated in this Convention, it would seem appropriate for this matter to be referred to and studied by the Commission of Human Rights. "

23. (See Opinion No. 12, 1954, subsequently included in Opinion No. 13/14).

24. 8. On 6th July 1956, M. Hermod Lan-nung, in a Written Question, asked the Committee of Ministers " what action they have taken on the proposal. of the Assembly (see paragraph 42 of Qpinion No. 12, adopted by the Assembly on 24th September 1954) that they should consider the problem of national minorities, in view of the fact that the attention of the Committee of Ministers has already been drawn on two previous occasions, in Document 77 of 1949 and in Document 6 of 1950, to the need for a more precise definition of the rights of national minorities " (Doc. 522).

25. The Committee of Ministers made the following reply on 27th September 1956 :

26. " The Committee of Ministers has not lost sight of the proposals in paragraph 42 of Opinion No. 12 adopted by the Assembly on 24th September 1954, to which it has given careful consideration.

27. In the first place, the Committee of Ministers feels it should recall that when the Convention on Human Rights was in preparation, the views of the Assembly as set forth in Doc. 77 of 1949 and Doc. 6 of 1950 were duly borne in mind, and Article 14 of the Convention did in fact ensure that, within the limits of the rights defined in that Convention, there should be no discrimination against national minorities.

28. The Committee of Ministers feels that no action on its part is called for at the moment, since the question is now under examination by the Assembly Committee on Legal and Administrative Questions. "

29. 9. These considerations were borne in mind by the Legal Committee in examining M. Dickson's proposal. The Committee agrees that individuals belonging to national minorities are already adequately protected against discrimination on that ground by Article 14 of the Convention.

30. 10. The Committee nevertheless feels that the national minorities should themselves be guaranteed the satisfaction of their collective interests, not only for humanitarian reasons, but also for the promotion of good relations which should exist between Member States, on the understanding that no regulation in this field should tend to undermine the authority of the States in which such minorities reside.

31. 11. In view considers that, before any definite proposals are made, full and precise information on the existing situation in the various countries should be obtained. A comparative study of the systems in force might yield useful results.

32. 12. The object of this draft Resolution therefore is to obtain this information from the Governments concerned, in order to permit the Legal Committee to examine this problem more thoroughly and submit a further report to the Assembly, in the light of the information thus obtained.

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