Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Recommendation 1735 (2006)[1]

The concept of "nation"

Parliamentary Assembly

1. In 2003, the Parliamentary Assembly debated the question of preferential treatment of national minorities by the kin-state in the light of the Hungarian law of 19 June 2001 concerning Hungarians living in neighbouring countries ("Magyars"). In Resolution 1335 (2003), the Assembly noted in connection with the Hungarian law, which defined the concept of "nation" in its preamble, that to date there was "no common European legal definition of the concept of 'nation'".

2. The Assembly, aware of the need to clarify the terminology used in constitutions and legislations in force to cover the phenomenon of ethnic, linguistic and cultural links between groups of citizens living in different states, in particular the use of the word "nation" as well as the correlation with a specific historical or political context, has considered whether, and how, the concept of "nation" – where applicable, a rethought and modernised concept – can help to address the question of national minorities and their rights in 21st-century Europe.

3. The Committee on Legal Affairs and Human Rights, in a study of the concept of "nation" and its use in Europe based on data gathered from questionnaire replies from 35 national parliamentary delegations and on statements by experts in law and political science at a hearing it organised in Berlin on 7 June 2004, concluded that it was difficult, not to say impossible, to arrive at a common definition of the concept of "nation".

4. The term "nation" is deeply rooted in peoples' culture and history and incorporates fundamental elements of their identity. It is also closely linked to political ideologies, which have exploited it and adulterated its original meaning. Furthermore, in view of the diversity of languages spoken in European countries, a concept such as "nation" is quite simply untranslatable in many countries where, at best, only rough translations are to be found in national languages. Conversely, the words used in national languages have no adequate translation in English or French, the two official languages of the Council of Europe.

5. The Assembly has acknowledged that in some Council of Europe member states, the concept of "nation" is used to indicate citizenship, which is a legal link (relation) between a state and an individual, irrespective of the latter's ethno-cultural origin, while in some other member states the same term is used in order to indicate an organic community speaking a certain language and characterised by a set of similar cultural and historic traditions, by similar perceptions of its past, similar aspirations for its present and similar visions of its future. In some member states both understandings are used simultaneously to indicate citizenship and national (ethno-cultural) origin respectively. To this end, the term "nation" is sometimes used with a double meaning, and at other times two different words are used to express each of those meanings.

6. The Assembly also acknowledges that whenever the concept of "nation" means citizenship it designates some kind of a contractual relation between a physical person and a state, while when the concept of "nation" means an ethno-cultural community it designates a cultural reality (a cultural fact or a cultural status) which is based on the free and unilateral association of a physical person to that community and involves only the relations among the members of that community. A nation in its cultural understanding becomes a subject of law (see international law) only if it organises itself as a state which is internationally recognised.

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1. Assembly debate on 26 January 2006 (7th Sitting) (see Doc. 10762, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Frunda). Text adopted by the Assembly on 26 January 2006 (7th Sitting).

7. The Assembly notes that within the very complex process of nation building and of the nation-states' birth, the modern European states founded their legitimacy either on the civic meaning of the concept of "nation" or on the cultural meaning of the concept. However, while the distinction between those two meanings is still to be identified in some of the Council of Europe member states' constitutions, the general trend of the nation-state's evolution is towards its transformation depending on the case, from a purely ethnic or ethnocentric state into a civic state and from a purely civic state into a multicultural state where specific rights are recognised with regard not only to physical persons but also to cultural or national communities.

8. The Assembly also notes that because of the way in which the nation-states were formed during the 19th century and the first part of the 20th century, as well as because of nation-states' border changes at the end of the Second World War and of the Cold War, on the territories of almost all the Council of Europe member states there live various groups of people who are at the same time citizens of the same state or civic nation, but who belong to and are part of different cultural nations. As compared with the biggest group of citizens having the same ethno-cultural background, those groups, who are relatively smaller, constitute, and are called, national minorities.

9. These national minorities or communities – often created as a result of changes in state borders – which represent a constitutive part and a co-founding entity of the nation-state of which their members are subjects as citizens, enjoy their rights in order to preserve, express and foster their national identity, as provided for in Assembly Recommendations 1201 (1993) and 1623 (2003) and the Framework Convention for the Protection of National Minorities (ETS No. 157) and the European Charter for Regional or Minority Languages (ETS No. 148).

10. The Assembly also notes that since national minorities as such do not have legal personality they cannot be legal subjects and therefore they cannot be parties to contracts or covenants. However, they must be the object of collective protection and their members must enjoy the capacity to act, either as individual legal subjects or within the framework of various entities with legal personality, in defence of the respective national minorities' identity and cultural rights. These rights are not territorial or connected to territory and their recognition and protection must be legally organised both at the level of each nation-state concerned and at transnational (international) level.

11. The Assembly acknowledges that the most important role in preserving the identity of national minorities falls to the state of which the members of the national minority are citizens. Consequently, it invites member states to adopt legislation and regulatory acts recognising the traditional national minorities and apply them in good faith. Where representation in political institutions is concerned, it recommends that states apply the principle of positive discrimination to members of national minorities, especially as regards proportional representation in central and decentralised institutions (including executive bodies), in particular in the regions where those minorities live.

12. The Assembly believes it necessary to strengthen recognition of every European citizen's links with his identity, culture, traditions and history, to allow any individual to define himself as a member of a cultural "nation" irrespective of his country of citizenship or the civic nation to which he belongs as a citizen, and, more specifically, to satisfy the growing aspirations of minorities which have a heightened sense of belonging to a certain cultural nation. What is important, from both a political and a legal standpoint, is to encourage a more tolerant approach to the issue of relations between the state and national minorities, culminating in genuine acceptance of the right of all individuals to belong to the nation which they feel they belong to, whether in terms of citizenship or in terms of language, culture and traditions.

13. The Assembly recalls that, in its Resolution 1335 (2003), it stated that "the emergence of new and original forms of minority protection, particularly by their kin-states, constitutes a positive trend …". It considered that the possibility for states to adopt unilateral measures for the protection of the kin-minorities abroad, irrespective of whether they lived in neighbouring or other countries, was conditional upon respect for the following principles: territorial sovereignty, pacta sunt servanda, friendly relations amongst states and respect for human rights and fundamental freedoms – in particular the prohibition of discrimination. While kin-states may legitimately play an important role in upholding national minority rights by taking an interest in what happens to their kinspeople living in other countries, it is imperative that this support respect the legislation of the states where the minorities concerned live, and any regulatory act must be negotiated beforehand with the governments of those states. The same rights and obligations should be recognised for or observed by all states who intend to adopt unilateral measures regarding the protection of the identity of cultural and national minorities living in different states and being formed by the latter states' citizens.

14. The Assembly considers that, where the upholding of national minority rights is concerned, the Congress of Local and Regional Authorities of the Council of Europe has a major role to play, by helping to guarantee application of the relevant European rules. It believes that Recommendation 43 (1998) on territorial autonomy and national minorities and Recommendation 70 (1999) on local law/special status should be re-examined to identify concrete follow-up.

15. Taking note of the Warsaw Declaration and the Action Plan adopted on 16 and 17 May 2005 by the heads of state and government of the member states of the Council of Europe, the Assembly calls on the Committee of Ministers to initiate discussion without delay with a view to swiftly implementing the decisions taken. In particular, the Action Plan points out that "Europe's chequered history has shown that the protection of national minorities is essential for the maintenance of peace and the development of democratic stability. A society that considers itself pluralist must allow the identities of its minorities, which are a source of enrichment for our societies, to be preserved and to flourish …".

16. Consequently, the Assembly recommends that the Committee of Ministers:

16.1. invite member states not yet having done so to sign and ratify the Framework Convention for the Protection of National Minorities, the European Charter for Regional or Minority Languages and the European Charter of Local Self-government (ETS No. 122), which are fundamental instruments for maintaining the national identity of national minorities or communities, and step up its efforts in this respect;

16.2. invite the member states to promote in their national legislation the recognition of the cultural rights of minorities, inter alia, on the basis of Recommendation 43 (1998) on territorial autonomy and national minorities and Recommendation 70 (1999) on local law/special status of the Congress of Local and Regional Authorities of the Council of Europe;

16.3. take the appropriate measures in order to make sure that the member states reject any attempt to promote the ethnic purity of the state or to organise the territory and the administration of the state on an ethnic basis, with the exception of affirmative measures which aim to achieve a fair representation of the national minorities in their country's administration, at central and local level;

16.4. invite the member states to bring into line their constitutions with the contemporary democratic European standards which call on each state to integrate all its citizens, irrespective of their ethno-cultural background, within a civic and multicultural entity and to stop defining and organising themselves as exclusively ethnic or exclusively civic states;

16.5. draw up guidelines on procedures for developing relations between a state and the minorities residing in a different state – mainly in its neighbourhood – bearing in mind the criteria identified by the Venice Commission in its 2001 report, in the light of its analysis of existing legislations, as well as the pertinent Assembly resolutions and recommendations.

17. The Assembly recalls that, in its Recommendation 1623 (2003) on rights of national minorities, it urged the Committee of Ministers to "take the necessary measures to continue co-operation with the European Union, with a view to achieving common policies in the field of the protection of national minorities". It observes that the reply from the Committee of Ministers to this recommendation was terse, to say the least. It therefore requests the Committee of Ministers to ask Mr Jean-Claude Juncker to focus in depth on the question of complementarity of policies on protection of national minorities and recognition of their rights in his forthcoming report on relations between the Council of Europe and the European Union.