

The Experience of Legal Regulation of Interethnic Relations in European Countries: Problems and Perspectives

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Abstract: Recently these issues have become topical and it can be proved by the numerous scientific studies and investigations as well as the latest political trends and developments. Rioting in France which was a due consequence of the serious mistakes by the authorities of the country in the sphere of interethnic relations, the prolonged governmental crisis in Belgium caused by the increased tensions between the largest national communities, etc. point to some serious defects in the sphere of legal conflict management and to a considerable lag in the scientific research into the subject.

Key words: Legal regulation • Interethnic relations • Interethnic conflicts • Legal status • Ethnic minorities

INTRODUCTION

The article is devoted to the problems of the legal settlement of interethnic conflicts and the legal status of ethnic minorities. The crisis in interethnic relations became one of the most serious problems of the last decade of the XX century. However, as the latest developments of the first decade of the new millennium show, it is unlikely that mankind will settle the problem conclusively in the nearest future. The situation demands working out more efficient mechanisms of its legal regulation. They should be formed with the consideration of the universally recognized principles of international law and the expertise of the foreign countries. Moreover, these legal mechanisms can play a decisive role in protecting the unalienable rights and freedoms of man [1-6].

The research described in the article is based on the principles of scientific cognition. The methods used refer to the methodological apparatus of humanities and the principles of dialectics including the systemic and functional approaches, the methods of synthesis and analysis, the methods of theoretical and social modeling, etc.

Nowadays in Europe there are basically two approaches to the legal regulation of interethnic relations. In some countries the legislation acknowledges the

existence of ethnic, or national, minorities and endows them with a special legal status as well as some special rights. In other countries, on the contrary, the legal status of minorities is not specified and their existence is not legally acknowledged.

In a number of countries both the government and the majority of the population are very sensitive about the attempts of some of their fellow-citizens to establish themselves as a separate ethnic group with the view to receive the status of an ethnic minority [7].

For example, on the legislative level France does not recognize the existence of any ethnic, or national, groups. Their legislature deals with social institutions, which contributes to the image of a mono-national society. It is implied that there is no necessity to give any legal protection to separate ethnic groups or communities, as the state must protect the legal rights and freedoms of every individual.

Obviously, France in its policy is aimed at ethnic and cultural unification, which is illustrated by the decision of the Constitutional Council in 1991 concerning the discrepancy between the Constitution of the Republic and the Law on the status of the territorial collectivity of Corsica, where for the first time ever the notion of the 'Corsican people' was used on the legislative level. In its decision the Constitutional Council referred to Article 2 of the French Constitution, which recognizes only the

French people, which consists of French citizens and ensures the equality before the law of every individual citizen, without distinction of origin, race or religion [8].

Thus, it could be inferred that the category of ethnicity is not characteristic for the French legal system and the corresponding term is non-existent in the French political lexicon.

Meanwhile, the ethnic make-up of the French population is anything but homogeneous. The biggest ethnic diaspora comes from Algeria (700-800 thousands), closely followed by Moroccans (600 thousands), Tunisians (300-400 thousands) and Turks (350 thousands) [9].

In the last decades, like many other West-European countries, France has been facing a dramatic growth of nationalism. The trend has led to a stand-off not only between the native French and representatives of Islamic diasporas, but also to the activation of such indigenous ethnic communities as Bretons, Corsicans, Catalans, etc. [8].

It is quite obvious that the policy of 'integration and assimilation' pursued by the French government in the last decades has collapsed. It was proved by the big-scale rioting in 2005-10. "The French had to face the evidence. Their unwillingness to recognize ethnicity as well as their blind faith in assimilation did not make the problem of ethnicity disappear. It exists, it is strong and it threatens the French as they are not used to dealing with it and putting it within reasonable boundaries" [10].

Meanwhile, the ethnic problems of France have their own specificity, as they are being generated by the numerous Muslim diaspora, which mainly consists of immigrants without the French citizenship. Due to this, the adoption of a special law on national minorities seems to be ineffective. All similar laws existing in other European countries are aimed only at their citizens [11].

Evidently, in these conditions the legal regulation should support and preserve the ethnic and cultural unity of the French society. It should be done on the basis of the traditional values upheld by the native population rather than some abstract 'human rights' regarded and perceived through the prism of the European political correctness.

The problem of migrants is acute not only in France but in other developed countries of Europe such as Germany, Spain, Sweden, Norway, Holland, etc. [12-15]. Here are several examples.

By the mid-90s the community of migrants in Spain had reached 400 thousands. Moreover, according to the Spanish Ministry of Labor and Immigration, 250,000 people

were staying in the country illegally [16] and the major part of the migrants came from Africa and the Arab countries, primarily from Morocco.

At the beginning of 2005 the population of Spain reached 44 108 530 people, 8% of which were immigrants. With 92% of the population growth accounted for immigration Spain remains a record-holder in the inflow of migrants [17].

In 1986 a special law on foreigners was passed, according to which a foreigner willing to stay in Spain was obliged to receive a residence permit, issued only to those who have a labor agreement as a proof of a stable financial situation and the legal nature of income. Thus the law did not help migrants to acquire the legal status. The black market became their major source of income and they had to work for a fraction of a wage in the conditions of a tough labor competition. All this led to the marginalization and criminalization of the Moroccan community [16].

The problem could have been effectively solved through administrative measures by revealing the illegal migrants and sending them back to their home countries. It would have been consistent with the law of 1985. However, "what is possible in a totalitarian society is impossible in a democratic one" [16]. The representatives of the migrants' community themselves complain of the ambiguous and inconsistent policy of the authorities, which, on the one hand, allow them to live in the country, but on the other one, forbid them to work and use the benefits of the welfare system.

The Moroccan migrants' community is becoming a conspicuous presence in Spain. In the isolated migrants' settlements a specific way of living is being formed. It copies the norms of the migrants' home country and is very different from the models of social behavior approved by the native population. There has been a considerable growth in social clashes, cases of racism and discrimination, which in time may grow into an open social conflict. "Racism in Spain exists and it will increase in accordance with the increase in the number of migrants with a skin color different from the color of the majority of the local population" [16].

Germany is also facing problems in the sphere of ethnic policy. Recently political leaders of the country made a number of statements which stirred the public opinion.

Thus, the Federal Chancellor, Angela Merkel, courted growing anti-immigrant opinion in Germany by claiming that the country's attempts to create a multicultural society had "utterly failed".

Mrs. Merkel addressed the problem saying: "At the beginning of the 60s our country called the foreign workers to come to Germany and now they live in our country. We kidded ourselves a while, we said: "They won't stay, sometime they will be gone." But this isn't a reality. This [multicultural] approach - saying that we simply live side by side and are happy about each other - this approach has failed, utterly failed," stated Frau Merkel. She also said that those who had come must adapt and learn German "as quickly as possible" in order to become full-fledged participants of the labor market [18].

Earlier, Horst Seehofer, Chairman of the Christian Social Union (CSU), declared that multiculturalism was dead, adding that native Germans and migrants could not live peacefully side by side and called to stop the Arab and Turkish immigration into the country [18].

A number of European countries passed special bills and laws regulating the legal status of ethnic minorities.

Thus, according to the federal law of the Republic of Austria "On the Legal Status of National Minorities" (National Minorities Act) of 7 June 1976, national minorities are made up of citizens of the Republic living in separate parts of the Federation, having these parts as their place of origin, for whom German is not a native language and who form a separate nationality [11].

The law obligates the federal government after listening to the report of a corresponding land to define the national minorities of the land and outline the part of its territory where geographical names should be given in two languages on the condition that the national minority makes up no less than a quarter of the population there. While drawing legal acts affecting the rights of the minorities the opinion of councils of national minorities is to be considered.

In 1991 the Italian parliament ratified the legislation on linguistic minorities, which does not only acknowledge such minorities but also provides for their development [11].

In 1993, the session of the National Assembly of Hungary passed the Act "On the rights of national and ethnic minorities". It defines national minorities as ethnic groups resident in Hungary for at least one century in numerical minority to the population which are distinguished from the rest of the population by their own language, culture and traditions and manifest a sense of cohesion which is aimed at the preservation of these and at the expression and protection of the interests of their

historically established communities [11]. The Act does not provide for the refugees, migrants and people without the citizenship.

According to its § 4, it is forbidden in the Republic of Hungary to pursue a policy which aims or leads to the assimilation of a minority into the national majority, a negative from the view point of a national majority change in the interethnic relations or a forced migration of a national minority.

People belonging to national minorities enjoy a wide spectrum of individual rights, e.g.: to freely use their mother tongue verbally and in writing, to acquaint themselves with, foster and pass on their history, culture and traditions; to learn their mother tongue, to attend public education and cultural heritage events in their mother tongue; to have equal opportunities in education and in cultural services which the State shall promote with effective measures, etc.

The examples of legal acts of a number of European countries show that education in one's mother tongue and the right to use one's language freely are the key elements of the special legal status of national minorities.

Special rights of national minorities in the sphere of language are stipulated in the legislature of the countries, which are generally perceived as mono-national (Austria, Hungary) and where minorities are not small numbered. For multinational countries such as Russia this approach is utterly unacceptable. It does not mean, of course, that the right to learn one's mother tongue or to use it in the sphere of personal communication should be infringed upon, but it is the state language only that should be used in the socio-political sphere or in the state educational programs.

Thus, in Great Britain minority languages are not traditionally used in the official sphere. Nor are they used for teaching general subjects within the general curriculum in schools. Children of people referring themselves to national minorities can learn their native languages as an extracurricular activity organized by their community [19].

However, in some other countries legal restrictions on learning one's native language are used as a political tool. In 2004 Latvia passed amendments to the Law of 1998 "On education". Since then in senior schools which implement educational programs for national minorities teaching should be conducted in the state Latvian language, with the exception of subjects aimed at the preservation of their national and cultural identity, i.e. the

Russian language and Russian literature [19]. Due to such policy the interethnic relations in Latvia have been very tense in the last decade.

Analysis shows that the two models of legal regulation of interethnic relations presented in the article have considerable drawbacks and are equally unacceptable for such multinational countries as the Russian Federation.

The policy which ignores ethnicity as one of the factors influencing the process of social development and aimed at national-cultural assimilation is dangerous and has no future in the modern conditions. In Russia the consequences of such a course would be catastrophic.

On the other hand, endowing ethnic communities of Russia with a special legal status may lead to the discrimination and violation of rights of those not belonging to national minorities. Moreover, this approach reduces the chances of representatives of ethnic minorities to adapt to the social environment.

The results of the research into the issue described in the article could be summarized as follows:

- In the modern conditions a passive role of the state in the sphere of ethnic policy is fraught with risks and dangerous consequences. It can be proved on the example of the current situation in France.
- The problem of migrants demands close attention and their legal status should be regulated. Special legal acts should be adopted to define this social sphere.
- In the countries where such legislation already exists (e.g. Spain), it is necessary that its provisions be implemented irrespective of the humanitarian mode of thinking and the falsely perceived human rights.
- The unifying effect of globalization in the sphere of culture and ethnicity leads to the increase of conservative trends not only in the public mentality, but in the political and legal practice in a number of countries.
- According to the analysis of legislature of numerous countries, education in the mother tongue and the right to use this language are the key elements of the special legal status of national minorities. However, this approach has its defects: people who received their education in the language of a minority and who do not speak well the state language are likely to have less chances for social adaptation.

- The two models of the legal regulation of interethnic relations described in the article do not seem suitable for multinational federative states like Russia. The legal framework of interethnic relations is aimed primarily at the support and development of social homeostasis. It should be implemented on the basis of political and legal principles which would be understood and upheld by all representatives of the multinational people of the Russian Federation irrespective of their ethnicity or creed.

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