The Problematics of Collective Rights
in the Protection of National Minorities

Introduction

Two centuries after the French revolution, we start to contest one of the most important heritages of it, the legitimacy of nation-states. The liberal tradition seems to be very tolerant of the assimilative tendencies of the well-known symmetry based formula: one country – one nation, which, in most cases, is far from reality. We can also see that in the majority of the armed conflicts after the cold war, the reason is the self-government aspiration of an ethnic-minority group, the attempt to reach an equal status with the ethnic majority.

Why are liberalism and nationalism so compatible with each other? Is the nation-state able to rise to the challenge of multicultural society, or we should step forward for a better solution? Can we fulfill the requirement of equality and individual liberty without collective rights? These are the questions that I am seeking the answers to.

This study is trying to find the basic principles of the fair society, which meets the legitimate requirements of both of the minority and majority groups at the same time.

The hypothesis of this study is that if our society is based on the liberal values of freedom and equality, we must have collective rights based on the existence of ethnocultural groups, in the lack of which the protection of national minorities is weak, miss-targeted and with no guaranties.

The issue of minorities is the subject of several disciplines. If we take a closer look on the keywords of this topic: nationalism, liberalism, nation-state, assimilation, acculturation, human rights, minority rights, colonization, emigrants, self-government etc. we can easily recognize the multidisciplinary character of it. Because of this, the mastery of political philosophy, history, sociology, anthropology and jurisprudence is inevitable for the understanding of the issues of minority rights. Consequently, for the demonstration of the above-mentioned hypothesis I will examine the conflict between individual and collective rights, reflecting on the connection to the liberal tradition, historical background and modern minority protection.
In the first chapter I will examine the connection between liberalism and nationalism, contesting the legitimacy of the nation-state. The second chapter presents the terminology of this study, differentiating individual and collective rights. The third chapter will contest the idea that the values of individual freedom and equality are incompatible with the institution of collective rights. Starting off from the premise of cultural citizenship I am led to the conclusion that if we consistently respect the liberal ideology, than we must have collective rights in a multicultural country. In the last chapter I will examine the moral and ethical quality of minority protection after the World War II, reflecting upon the basic principles of the formerly defined fair society.

1. Nationalism and Liberalism

1.1 The Genesis of Nationalism

Since the French revolution humanity has been facing the intensive ground gain of a before unknown idea. First, it has conquered only France, but later, step by step it has become a global phenomenon which connects and separates groups of people.

The formerly unknown idea of modern nationalism has perfectly unified the remains of the feudal, estate-based society and the promising equality and freedom image of liberalism. It became the technical execution of the antic idea of equitable society, which implemented the values of freedom, equality and the ideal society of a kind.

It is good to recall the words of Constant, one of the most insightful eyewitnesses of the French revolution: “The same code of law, the same measures, the same regulations, and if they could contrive it gradually, the same language, this is what is proclaimed to be the perfect form of social organization”\(^1\). Linguistic homogeneity and equality of the individuals have gained importance for the first time in the legitimacy of the state, because contrary to the former period, when it was provided by the estates of the realm, now it was founded on the ‘social contract’\(^2\), on the will of the citizens. For the first time in history they thought that the legitimate existence of the state depends on the general possibility of any individual to take part in governance. Because of this, linguistic variety was seen as unpleasant and linguistic homogeneity became a basic

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necessity of the legitimate state. The culturally diverse society of France, which has wound up the bases of the old, feudal regime, has lost all the local, traditional attachments and became the perfect playground for these new cohesive forces, for nationalism and liberalism. “It is somewhat remarkable – writes Constant – that uniformity should never have encountered greater favor than in a revolution made in the name of the rights and the liberty of men. The spirit of the system was first entranced by symmetry. The love of power soon discovered what immense advantages symmetry could procure for it. While patriotism exists only by a vivid attachment to the interests, the ways of life, the customs of some locality, our so-called patriots have declared war on all of these. They have dried up this natural source of patriotism and have sought to replace it by a factitious passion for an abstract being, a general idea stripped of all that can engage the imagination and speak to the memory. To build their edifice, they began by grinding and reducing to dust the materials that they were to employ. Such was their apparent fear that a moral idea might be attached to their institutions, they came close to using numbers to designate their towns and provinces, as they used to designate the legions and corps in their army. Despotism, which has replaced demagogy and has made itself heir to the fruits of all its labors, has continued adroitly in the path thus traced. The two extremes found themselves in agreement on this point, because at the bottom of both there was the will to tyranny. The interests and memories that arise from local customs contain a germ of resistance that authority is reluctant to tolerate and that it is anxious to eradicate. It can deal more successfully with individuals; it rolls its heavy body effortlessly over them as if they were sand.”

The wry symmetry of equality – uniformity and the intolerance of the authority to otherness adumbrated the future juridical and political dilemmas, the insoluble conflict of the nation-state and national minorities.

1.2 Nation-state and Liberalism

Hereinafter, I will examine the reasons why the individual freedom propagator liberalism and the – to otherness so intolerant – institute of nation-state have been compatible for the last two centuries.

3 Constant: op. cit., p. 73.
Liberalism set great store by individual freedom and because of this it expects the passivity of the state to individual choices. We saw that the abolition of the principal of ‘cuius regio, eius religio’ has separated the church from the state. Will Kymlicka has identified a typical error in the pragmatism of liberal theorists, namely that they believe that the language factor can be detached from the institute of the state just like religion was by the process of secularization.\(^4\) I find the rejection of this ‘post-nationalist’ idea perfectly consequent, because the state can abstain from building churches without any problem, but it is practically impossible not to determine a language that can be used any time in its institutes, which implies the vantage-point of a linguistic community too.

In the course of time, the state has been trying less to assign tasks to its members, it hasn’t undertaken to appoint the correct way of living any more, but the above are true to the modern nation at the same time, which appoints neither a national religion, nor things to live for. Nationalism keeps the members of a nation together with the power of common history, and that is how it fulfills and provides the ground of the liberals’ expectations on the matter of individual freedom.

1.2.1 The Critique of the Nation-state

We can see that the nation-state thinks in terms of a culturally homogenous society which is totally broken from reality. After the World War II nearly 70\% of the states were nation-states, but only 10\% of them could be called nationally homogeneous, but a country composed of more than one national community, is not a nation-state.\(^5\)

The liberals used to ignore the assimilation and uniformist tendencies of the nation-state in their discourses, claiming that any liberal society can be an adequate space for the self-realization of the individual, so the national dimension loses its interest. But they miss to differentiate the ideological and intercultural conflicts which are substantively different by their nature. As Huntington notes: “In the former Soviet Union, communists can become democrats, the rich can become poor and the poor rich, but Russians cannot become Estonians and Azeris

cannot become Armenians. In class and ideological conflicts, the key question was “Which side are you on?” and people could and did choose sides and change side. In conflicts between civilizations, the question is “What are you?” That is a given that cannot be changed.⁶

The above passage illustrates perfectly the individual’s cultural citizenship, according to which, the transition between cultural groups is nearly impossible. Furthermore, we can see that within the confines of a nation-state or any system with a universal jurisdiction “[If] to be equal one must be the same, then to be different is to be unequal or even deviant.”⁷

It is clear now that the symbiosis of liberalism and nation-state doesn’t meet the expectations of the fair society, because the members of a national minority will always be disadvantaged in a system with universal jurisdiction.⁸

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⁸ Furthermore, I will call this special situation of the members of national minorities ‘premise of cultural citizenship’.
2. Keyword Review

Hereafter I am going to work on the problem of identity, group, community, culture, national minority, and individual, respectively collective rights, because I consider the definition of these notions justifiable at the beginning already, and also because I will use them consequently with a non-common meaning.

2. 1. From Individual to Minority

Humans are social beings, so we can easily conclude the spontaneous origin of groups, but there is no doubt that some groups got birth to the calling of an ideology or in a concrete ideal conjuncture. Groups are held together by the cohesion of a common feature that is shared by every single member of the group. This necessarily implies the existence of empathy. As we see, the existence of empathy becomes the condition for the formation of any kind of group cohesion and also the potential of its sustainability. What does ‘empathy’ mean? We call empathy the art of recognizing another person’s feelings, in our case the ability to realize the commons with another person.

But this still does not answer, how the one chooses to be member of a group. As we see, at this point we are talking about individuals who are either not characterized by group embeddedness or are the members of such groups which respect the free will of the individual. The latter mentioned are called liberal groups. I will not examine the problematics of the illiberal groups, because it would expand the subject of this study beyond its objectives. The values represent those gravitation points which attract a potential member to the group. According to this the simple existence of a group legitimates itself, because it means that – just like in the free market of products – it is competitive on the ‘market-place of groups. If the termination process of a group is concerned, I find it acceptable and legitimate only if it is not the side-effect or the direct purpose of a process which violates the values of individual freedom and equality.

Recently, the problems of different marginalized and excluded non-ethnic social groups, such as LGBT groups, women or disabled people, became the part of the so called ‘multicultural issues’. Here the word ‘culture’ refers mostly to the common perspectives or problems of a group
of people and it probably represents the most localized meaning of it. On the other hand ‘culture’ has got a much wider sense like Western culture at the same time, which leads to the other extreme where even Switzerland should be considered culturally homogeneous. As we see, probably any kind of identity policy can be regarded as a separate culture just like ‘transgender culture’. For the purposes of this study I will neither try to examine the issues related to these groups, nor extend the meaning of ‘culture’ and ‘multiculturalism’ to them.

I am associating another sense to the terms of ‘culture’ and ‘multiculturalism’ which arises from the ethnic and national differences. Consequently, I borrow the terminology used by Will Kymlicka who uses ‘culture’ “[...] as synonymous with ‘a nation’ or ‘a people’ – that is, as an intergenerational community, more or less institutionally complete, occupying a given territory or homeland, sharing a distinct language and history. And a state is multicultural if its members either belong to different nations (a multinational state), or have emigrated from different nations (a polyethnic state), and if this fact is an important aspect of personal identity and political life.”

In this concept of ‘culture’ the distinct language, as usual, has a determining importance, but contrary to the typical ethnographic approaches of it the institutional completeness of the culture gains a special importance, and Will Kymlicka defines it as ‘societal culture’ – “[...] a culture which provides its members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres. These cultures tend to be territorially concentrated, and based on a shared language.”

According to Kymlicka’s approach, the ‘societal’ character of culture is a must for the freedom of the individual.

The importance of this terminology for my paper is not the above-mentioned ‘societal’ character of culture, but the differentiation of minority groups according to the origin of cultural diversity. Those previously self-governing, territorially concentrated cultures for which minority status arose from their incorporation into a larger state against their will are the ‘national minorities’, e.g. Turkish people in Bulgaria, or the American Indians in the United States. He appreciates that the ‘national minorities’ “typically wish to maintain themselves as distinct

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9 Kymlicka: op. cit., p. 18.
10 Ibid., p. 76.
societies alongside the majority culture, and demand various forms of autonomy or self-government to ensure their survival as distinct societies.”11

In the second case, the minority status is the result of the voluntarily assumed immigration as in the case of the Turkish minority of Germany, or the Irish community of the United States. These people, most cases, leave their original country individually or together with their family and typically wish to integrate in the larger society. He calls such immigrant groups ‘ethnic groups’ and remarks that “While they often seek greater recognition of their ethnic identity, their aim is not to become a separate and self-governing nation alongside the larger society, but to modify the institutions and laws of the mainstream society to make them more accommodating of cultural differences.”12

Henceforth, when I use ‘cultural minority’ I mean the above-mentioned two groups: ‘national minorities’ and ‘ethnic minorities’.

The jurisprudence seems to mix up the cause and effect when it tries to define ‘minorities’, because it tries to define the right-holders posteriorly to the existing minority rights, but I will talk about this phenomenon later, related to the Capotorti-definition.

The international law is not used to make difference between ‘national minority’, ‘ethnic-group’ or ‘ethnic-minority’. The ‘people’ and ‘national minority’ corresponds to three criteria: common language, common culture and common historical background. After the World War II – as a result of the abuse of the Nazi Germany –, the idea that only those groups can benefit from the legal protection of minority rights which are loyal to the state, has appeared. I do not find it necessary to examine the pro or contra arguments of this short-lived idea.13

The real progress in the matter of defining national minorities was offered in 1977 by Francesco Capotorti: “a minority is: A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions,

11 Ibid., p. 10.
12 Ibid., p. 11.
religion or language.”

As we see, Capotorti’s minority concept includes religious differences also, which otherwise is missing from the former definition, probably because Kymlicka does not consider it a problem in a liberal states any more, as being solved by the universal human rights. I have to underline the idea present in both definitions that only those groups can be the subject of minority protection which try to maintain their separate culture.

2.2 Individual and Collective Rights in the Protection of Minorities

What does ‘collective right’ mean? It can be answered easily, but the pro and contra arguments for the recognition of them represent a much harder debate, which I am to explain in the third chapter.

Collective rights were classified in different ways by jurisprudence and philosophy. Bhikhu Parekh – British-Indian political theorist – divides collective rights by their subjects and the nature of the right-holding group. By the criteria of the group’s nature, a group can be ‘contractual’ – like partnerships and associations – or ‘amorphous’ – like ethno-cultural communities. For the purposes of this study I find this differentiation essential, because I will examine only the collective rights tangential to the problematics of national minorities. By the criteria of the subjects of the collective rights they can be divided into individually and collectively exercisable rights. Henceforth, I will use a more articulated, subject-based classification recommended by Attila M. Demeter.

Demeter uses a three-parted division of collective rights. There are individually exercisable rights, which derive from the group membership, without the need of other members’ participation. Such a right is the option of the members of some religious groups to deny military service invoking conscientious reasons. There are individually exercisable rights, which can be exercised practically only with the participation of the other members of the group – like the right to education in the group’s mother tongue. The third category of collective rights is the so called ‘right of self-determination’, which is exercised by a special representational organ of the

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16 Ibid., p. 90-91.
community and cannot be replaced by any individual right.\textsuperscript{17}

According to the formerly presented division of collective rights, we can conclude that the holder of the collective right is not necessarily a group, the defining feature of the right is rather a derivation of group membership itself. This is the main difference between collective and individual rights. So I consider individual rights to which any human being is entitled independent from any group affiliation.

Will Kymlicka is also paying great attention to the question of collective rights, but his classification – ‘special representation’, ‘polyethnic’ and ‘self-government’ rights – is based on the needs of the minority groups to have a societal culture.

“All three types of group-differenciated citizenship can be used to provide external protections. That is, each type helps protect a minority from the economic or political power of the larger society, although each responds to different external pressures in different ways:

\begin{itemize}
  \item Special group representation rights within the political institutions of the larger society make it less likely that a national or ethnic minority will be ignored on decisions that are made on a countrywide basis.
  \item Self-government rights devolve powers to smaller political units, so that a national minority cannot be outvoted or outbid by the majority on decisions that are of particular importance to their culture, such as issues of education, immigration, resource development, language, and family law.
  \item Polyethnic rights protect specific religious and cultural practices which might not be adequately supported through the market (e.g. funding immigrant language programmes or arts groups), or which are disadvantaged (often unintentionally) by existing legislation (e.g. exemptions from Sunday closing legislation or dress codes that conflict religious beliefs).\textsuperscript{18}
\end{itemize}
3. Collective Rights in the Liberal Tradition

3.1 Formulation of the Problem

As I mentioned already, the equitable society implements the values of freedom, equality and the ideal of society in a system of rights. This means that we have to fulfill the same scheme when we try to define the fair society, which meets the legitimate requirements of both the minority and the majority groups at the same time.

Vernon Van Dyke’s writing from the 1970’s had a big influence on the political philosophy discourses concerning collective rights. In the introduction of one of his most important study: “Individual, the State, and Ethnic Communities in Political Theory” he raised the question “[...] whether ethnic communities that meet certain criteria should be considered units (corporate bodies) with moral rights, and whether legal status and rights should be accorded to them.”

Van Dyke’s approach is based on the parallel of collective-rights and individual rights, and differentiates two types of the rights that belong to a group: ‘derivative’ and ‘intrinsic group-rights’.

His formulation of the question identified an existing tension between the individualistic attitude of liberalism and the aspirations of national minorities, but I still find Van Dyke’s approach miss-targeted. One of the most obvious errors of his argumentation is the existence of collective rights on the bases of individual human rights, since the 1st article of the Universal Declaration of Human Rights affirms that, human rights are founded on human dignity: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” Pierre Manent’s dignity definition makes it clear that dignity is an abstract presumption, in term of which the human being can be affected, motivated by something totally independent from its physical nature, by some ‘spiritual aim’ but this ‘spiritual aim’ can hardly be found in the existence of groups. I find the concept of ‘derivative’ collective right misguiding too, because it can be

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reduced to individual rights exercised by the members of a group, in this way misleadingly becoming a simple mathematical calculation just like the Article 27 of the International Covenant on Civil and Political Rights.\textsuperscript{21}

Even so, in this work of Vernon Van Dyke we face a problem identified very well, according to which we tend to believe that the liberal state based on individual rights is not capable to implement the aspirations of national minorities regarding collective rights.

### 3.2 A Liberal Defense of the Collective Rights

John Rawls in his ‘theory of justice’\textsuperscript{22} has founded a liberal egalitarian theory, which emphasizes the importance of rectifying unchosen inequalities. Will Kymlicka finds it compatible with the liberal principles in the case of national minorities also, but only if every member of the group faces the same disadvantage because of the cultural membership.\textsuperscript{23} If we put together the egalitarian theory and Huntington’s premise of cultural citizenship, we can easily conclude that in every case when a national minority is in an unchosen disadvantageous situation compared to the majority because of its cultural membership, the liberal values of freedom and equality expects the implementation of the ‘group-differentiated rights’.

Equality of the citizens means that every value represented by these people benefits the same level of protection by the ensured rights, not depending on the person’s cultural membership. According to the liberal concept, being free means disposing of rights. In this interpretation freedom and equality have a special relation, because equality means the same measure of freedom.

The international legal sources show that the most intensive debate is over the legitimacy of the right of a nation or people to self-determination. We can meet all the other collective rights in different forms and in different legal circumstances, so the question is whether we need the codification of the right of self-determination to accomplish equality and freedom or the multicultural society’s legitimate requirement for freedom and equality can be fulfilled by the individually exercisable rights?

\textsuperscript{21} See Fábián–Ötvös: op. cit., p. 50–60.
\textsuperscript{23} Kymlicka: op. cit., p. 109–110.
To answer this question first we have to examine why do we have rights? Rights are based on the protection of values. This means that in the course of formulating the problem we have to find out if there is any value that can be protected only by the right of self-determination, protected at the same time by the liberal state being of benefit to the majority culture.

What does the right of self-determination mean? That is the right of an ethno-cultural group to decide the extension and form of its hosting political entity. What kind of consequences does it have to the culture and does the majority dispose of this right? The answer to the latter is obvious, because even if the constitutions used to treat territorial integrity, or the existence of the state unquestionable, as I mentioned before, the liberal state gains its legal bases due to the ‘social contract’, the common will of the citizens, so whenever an ethno-cultural group is present in a given country in the necessary percentage of the constitutional majority, it disposes of the right of self-determination. As we see, the majority disposes of this right ‘de facto’, contrary to the minority culture which can never dispose of the right of self-determination by itself, which is a clear unequal situation between the two groups.

It is still unanswered which values are protected by the right of self-determination and what kind of relevance does it have in the matter of national culture. Kymlicka recommends a distinction of the self-governing, autonomy rights by the criteria of their role. The first category is the ‘internal restrictions’ one which protects the members of the group24, the second one being the ‘external protections’ one, which involves inter-group relations and may try to protect the existence of the group from the impact of the larger society.25 As we see, the right of self-determination makes it possible for the community to freely determine its political status, pursue its economic, social and cultural goals, and to manage and dispose of its own resources — internal dispositions —, but also to sustain these rights — external protection.

In both cases we met the extensions of the value of freedom: namely the right of a community to its own distinct prosperity and the guarantied protection of this right and we can

24 Because of the ‘internal restrictions’, liberal theorists consider the limitation of individual freedom in the existence of groups as a potential danger, but this loses its relevance in the group-state debate, because there is no guarantee that the state would assure a more adequate space to the self-realization than a group. The differentiation of theocratic, illiberal and liberal groups is essential.

conclude that in a multicultural society, with an existing majority-minority relation, determination the value of equal freedom is unreachable without the right of self-determination.
4. Minority Protection After the Second World War

4.1 From targeted minority protection to human rights

The League of Nations failed to safeguard the European stability, so the interwar status quo proved to be unsustainable. Due to the changes of the World War II the United Nations (UN) has taken over the place of the League of Nations as its legal successor and the collective-rights-based minority protection has been replaced by the individualistic, egalitarian and universal human rights. The UN Secretariat’s study from 1950 provided an explanation to the absence of the minority rights’ protection issue from the Charter of the UN, namely that although the Covenant of the League of Nations did not mention the minorities, still it was not indifferent in the matter of minority issues, so nor the UN should be.26 At this time the Universal Declaration of Human Rights was adopted by the General Assembly in 1948, which typically used the universal, individualistic concept of rights as: ‘rights of all members of the human family’, ‘all human beings’ etc.

Why did the post-war regime ignore the collective rights of minorities?27 As the result of the Russian, Ottoman and Habsburg multinational empires of Europe breaking up, the new minorities have found themselves in several newly independent countries like the Germans in Poland. Their problems were treated mostly as the issue of irredentist minorities, and it should have been solved under the aegis of the League of Nations and the bilateral treaties. The deficiency of this system was that only those communities enjoyed the targeted minority protection, which disposed of a kin-state, and this meant also a potential destabilizing danger, that this kin-state can invoke the treaties to justify its intervention into another state’s home affairs. This potential danger became reality with Nazi Germany’s invasion of Poland and Czechoslovakia on the ground that the German minority’s rights were violated by these countries. So, the World War II discredited the pre-war collective-rights-based, targeted minority protection because of its destabilizing effect and its selective character, and the security of the universal human rights seemed to make it unnecessary any more.

On the other hand, the trend-setter Anglo-saxon political theorists were ‘disarmed’ by the

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26 Szalayné: op. cit., p. 160.
liberation process of the colonies and the polyethnic and not multinational character of America – by forgetting the indigenous and Puerto Rican people. At the same time, humanity was affected by an ideological conflict, namely by the Cold War. The Central and Eastern European national minorities’ aspirations for cultural rights were hidden till the dissolution of the Soviet Union, which represents also the beginning of a new era for European minority protection.

I have already presented the conceptual issues concerning the individual, egalitarian and universal nature of the liberal theory which seems to be incompatible with the collective rights, but I also find it necessary to emphasize that exactly those nations were the biggest propagators of the minority rights and the right of self-determination (Romanians, Slovaks etc.) in the 19th century which now deny the legitimacy of these rights. Beniamin Neuberger’s words exemplify this turnaround very well: “In the mid-nineteenth century, the Hungarian nationalist leader Kossuth told a Romanian delegation that their pleas for national self-determination within Hungary were unacceptable: “Shall Hungary not then be a state? Shall each of the nations inhabiting it demand a separate state on its own account? With such principles either Hungary will break up or the sword will decide.””28 In another case, he answered shortly to a Slovak delegation’s similar request that there was no Slovakia on the map. Now the Hungarian minority is facing the same ignorant attitude of the Slovakian and Romanian authorities. George Bernard Shaw also remarks the liberal commitment to some form of the national self-government before the First World War: “A liberal is a man who has three duties: a duty to Ireland, a duty to Finland, and a duty to Macedonia”.29 At that time none of the three nations disposed of a sovereign country.

We will meet this inconsequential attitude in the case of the double standard politics of the international community and the newly independent, former colonies – like India – too, which at the same time support the right of self-determination and deny the right of secession.

4.2 The right to self-determination

In spite of these processes, after the Second World War, the so contested right to self-determination is proclaimed again in 1945 by the Article 1. of the Charter of the UN\(^{30}\), and strengthened in 1966 by the two International Covenants’ 1\(^{st}\) article: “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

Naming ‘people’ as the right-holders of self-determination, there is no doubt about the collective character of it. Contrary to the international recognition, there is an infinite debate over the meaning of this principle. The right ensured by the UN Charter proved to be available only to the colonized territories, so science has stigmatized this arbitrary adaptation of the right with the so called ‘salt-water theory’, stressing its exclusive overseas availability. In 1960, the UN General Assembly voted the Declaration on the Granting of Independence to Colonial Countries and Peoples\(^{31}\), which proclaimed the undeniable right of self-determination of the people living on colonies, and shortly meant the end of the decolonization process.\(^{32}\) The repeated proclamation of the right of self-determination in 1966 by the International Covenants\(^{33}\) made it universal, but still did not clarify the conditioning circumstances of its availability and the exact meaning of ‘people’. For the more precise understanding of the legal implications of the right of self-determination I have to mention the General Assembly’s Resolution 2625 (XXV), which suggests a more adequate sense of the right of secession. Professor Casses, one of the authors who discuss the theory of internal self-determination, tried to take the 1\(^{st}\) article of the two International Covenants as starting point in order to reconcile the right of self-determination with the inviolability of territorial integrity, but in this attempt the connection of minority and the right of self-determination was inevitable. The connection between the ‘people’ and ‘minority’

\(^{30}\) The Charter of the United Nations was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organization, and came into force on 24 October 1945. Article 1: “The Purposes of the United Nations are: […] 2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace; […]”

\(^{31}\) Resolution 1514 (XV).


\(^{33}\) The International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR).
was stressed by the Badinter Arbitration Committee\textsuperscript{34} also: “Article 1 of the two 1966 international covenants on human rights establishes that the principle of the right to self-determination serves to safeguard human rights. By virtue of that right every individual may choose to belong to whatever ethnic, religious or language community he or she wishes.”\textsuperscript{35}

From this Pierre-Caps deduces the applicability of the principal of self-determination for minorities, and his approach is confirmed by the decision of the International Court of Justice on the case of East-Timor (Portugal v. Australia), which considers for the first time the right of self-determination an ‘erga omnes’ right, breaking with the ‘salt-water theory’.\textsuperscript{36}

In the Commentary to the UN Declaration on Minorities by Mr. Asbjørn Eide, Chairperson-Rapporteur of the UN Working Group on Minorities we meet a strict meaning of the collective rights and a clear separation between minority rights and peoples’ right to self determination: “The rights of persons belonging to minorities differ from the rights of peoples’ to self-determination. The rights of persons belonging to minorities are individual rights, even if they in most cases can only be enjoyed in community with others.”\textsuperscript{37}; “[…] minority rights cannot serve as a basis for claims of secession or dismemberment of a State.”\textsuperscript{38}

On the other hand the Commentary\textsuperscript{39} treats the ‘internal self-determination’ as a ‘good practice’ for the minority issues: “While the Declaration does not provide group rights to self-determination, the duties of the State to protect the identity of minorities and to ensure their effective participation might in some cases be best implemented by arrangements for autonomy in regard to religious, linguistic or broader cultural matters. Good practices of that kind can be found in many States. The autonomy can be territorial, cultural and local, and can be more or less extensive. Such autonomy can be organized and managed by associations set up by persons belonging to minorities in accordance with article 2.4. But the Declaration does not make it a

\textsuperscript{34} The Arbitration Comission of the Conference on Yugoslavia.
\textsuperscript{37} E/CN.4/Sub.2/AC.5/2005/2, para. 15.
\textsuperscript{38} E/CN.4/Sub.2/AC.5/2005/2, para. 84.
\textsuperscript{39} Commentary of the Working Group On Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.
requirement for States to establish such autonomy.”

As we see, in the debate over the right to self-determination argumentations and interpretations are various, but it is a fact that the jurisprudence has in some cases recognized the right of a minority to self-determination, even to secession.

4.3 Article 27 of the ICCPR

Article 27 of the International Covenant on Civil and Political Rights can be considered the first universal minority protection law source: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”

The negative expression of the right – ‘shall not be denied’ – made the clarification of the state’s role and duty necessary within the frame of minority protection. The General Comment No. 23 of the Office of the High Commissioner for Human Rights (OHCHR) was supposed to repair the deficiencies, to clarify the interpretable parts of the Covenant, and to actualize its content. So the OHCHR expressively indicated that “[...] a State party is under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation. Positive measures of protection are, therefore, required not only against the acts of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State party.”

Furthermore, it expanded the obligations of the state to execute “positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.” The collective character of these rights is undeniable till they can be ‘enjoyed’ and ‘developed’ ‘in community with the other members of the group’.

Who do we mean by ‘minorities’, represented the topic of further discussions. The states disputing the Capotorti-definition from 1977 have mixed up the cause and effect, and instead of restricting the rights of minorities, they tried to restrict the meaning of ‘minority’. The OHCHR’s

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4² CCPR/C/21/Rev.1/Add.5 (1994), para. 7.
Comment filled the ‘right-holder’ status of this article with new content expanding it to everybody “who belong to a group and who share in common a culture, a religion and/or a language” on the territory and under the jurisdiction of a state.\(^{43}\) It is obvious that this large interpretation means a weak enforcement of rights, because it could lead to the opposite extreme when the European tourists in Hawaii would demand cultural autonomy. It raises the question if these rights are still minority rights or not, because minority rights are ensured by the state on the disposition of its citizens. The General Commentary No. 23 marks at the same time the end of the period of targeted minority protection dating from the beginning of the 1990’s.

### 4.4 Minority protection after the Cold War

As I mentioned it at the beginning of this chapter, the dissolution of the Soviet Union gave green light to the so long repressed minority aspirations. Thus, the post Cold War period represents the relevant evaluation of the success of modern minority protection.

The fall of the Iron Curtain represented a new challenge for the safeguarding of European stability and the integration of the so called ‘powder keg’ region of Europe.

As a solution, at the beginning they tried to promote the ‘good practices’ of internal self-determination, without too much success. The Central and Eastern European political elite was introduced to the federal states system, or to the autonomy of the Germans in South Tyrol\(^{44}\), or Swedes in Finland\(^{45}\) in vain, in the post-communist states the minority issue still remained a security question which made it impossible to win the majority society for the multicultural cause.

The fear of the Eastern European disintegration predicted by the wars in the former Yugoslavia has led the great powers to put targeted minority protection in force. They tried to determine a European standard, which partially satisfies the expectations of the minorities. Thus, the international minority protection has passed through an unseen progress between 1990 and 1995.

\(^{43}\) CCPR/C/21/Rev.1/Add.5 (1994), para. 5.1, 5.2.

\(^{44}\) For the detailed presentation of the South Tyrolean situation see: Gál Gyula: A dél-tiroli kérdés. TLA, Budapest, 1995.

\(^{45}\) For the detailed presentation of it see: Kovács, Péter: Az Áland-szigetek önkormányzata. TLA, Budapest, 1994.
The Organization for Security and Co-operation in Europe (OSCE) – former Conference on Security and Co-operation in Europe (CSCE) – considered that the minority protection is a problem that needs a European-level cooperation in order to be solved, illustrates the seriousness of the danger of the Eastern European disintegration at the beginning of the 1990’s. The Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE considered minority protection “an essential factor for peace, justice, stability and democracy”.\(^46\)

On November 5\(^{th}\) 1992 the European Charter for Regional or Minority Languages (ECRML) was adopted in Strasbourg, under the aegis of the Council of Europe, than in December 18\(^{th}\) 1992 another document was adopted by the General Assembly: the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The Framework Convention for the Protection of National Minorities (FCNM), signed in February 1995 by 22 member States of the Council of Europe meant the end of the rapid development of the minority rights. None of the three documents recognized the clear collective character of minority protection, but the fact that the members of the minorities – for the first time in the universal international minority protection – became not only the beneficiaries of these rights, but the right-holders of it, is meaning an important progress.

In 1993 the Parliamentary Assembly of the Council of Europe has adopted an additional protocol to the European Convention on Human Rights (ECHR), on the rights of national minorities. The ECHR was adopted in 1950 and contains a single article relevant to the minorities, Article 14\(^{th}\) which prohibits generally any kind of discrimination. Because of political pressure this protocol became well-known with the name Recommendation 1201 (XV). This legally non-binding document in its 11\(^{th}\) article declares the institution of autonomy – for the first time in history – not only as ‘good practice’, but as claimable right: “In the regions where they are in a majority the persons belonging to a national minority shall have the right to have at their disposal appropriate local or autonomous authorities or to have a special status, matching the specific historical and territorial situation and in accordance with the domestic legislation of the state.”

As we see the Document of the Copenhagen Meeting from 1990 represented the highest level of political acceptance of minority rights at that time, but the Recommendation 1201 –

\(^{46}\) 30\(^{th}\) paragraph of the Document.
originally a legally binding additional protocol – went beyond the political purposes.

Just like in 1878 at the Congress of Berlin, the adherence to the minority protection standards became the condition of belonging to the European community and also joining condition for future members of the European Union (EU). In 1993 the EU has laid down the membership requirements for the Central and Eastern European countries in the Copenhagen criteria. So the “stability of institutions guaranteeing democracy, the rule of law, human rights, respect for and protection of minorities”\textsuperscript{47} became the basic conditions for the EU membership. The EU was aware of the dangers of importing instability to the European community, so it thought that the Copenhagen criteria can prevent it. The next important step was the signing of the Treaty Of Lisbon in 2007 amending the Treaty on European Union and the Treaty Establishing the European Community. So the consolidated version of the Treaty On European Union in its Article 2 considers that “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.” The importance of this article is maintained by Article 7 which says that in the case of “the existence of a serious and persistent breach by a Member State of the values referred to in Article 2” the Council “may decide to suspend certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council.” These values are considered as the ‘European standard’ by the Article 49: “Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union.”

The EU plays an important role in the equitable treatment of minorities, but still does not provide right-holder status to them, by recognizing collective rights.

Minority rights seem to be begotten on the behalf of the equal freedom, but we are witnessing a double standard, and it becomes very unclear on what ground are they taking decisions about the destiny of particular national minorities. As experience shows, for those minorities which represent a real danger to the integrity of their state, the right to ‘enjoy their own culture’ is not satisfying, not even the right to study in mother tongue in kindergarten or

\textsuperscript{47} Presidency Conclusions, Copenhagen European Council 1993, 7.A.iii.
elementary school is enough. These rights are sufficient only for those communities which are unable – due to their small number or their level of assimilation – to sustain their own the institutes of their own culture. As history has proven, not these communities have made Eastern Europe, or other parts of the world the land of civil wars. Those minorities to whom, the above presented treaties were dedicated, want official language, autonomous territory, or even their own country. Will Kymlicka’s definition of minorities is very consequent at this point because it includes the idea of ‘societal culture’, because exactly those minorities aspire to self-determination which dispose of the capacity to organize their own political and cultural life.

According to Wallenstein’s statement (1988), out of 111 armed conflicts, 99 have ethничal autonomous or separatist aspirations at their ground\(^\text{48}\), and we should not forget that the Soviet Union was still existing at this time. This is a very good example of how miss-targeted international minority protection is.

Contrary to the treaties, the international community discourages peaceful minority aspirations for autonomy (e.g. Hungarians in Slovakia). On the other hand, whenever a minority is regarded as a risk to stability, the same international community makes every effort to negotiate the right to autonomy or even independence (e.g. Bosnia, Cecenia, Kosovo).

**Closing Remarks**

This study was meant to examine the challenges that a multinational country has to face, a country that wants to procure the state of freedom and equality to its citizens. I found that the individual is connected substantively to its national culture – what I called cultural citizenship –, so the equitable system has to deal not only with the individual as such, but also with the nation’s particular aspiration to its own distinct prosperity. The universal, individual human rights provide only a formal equality to the members of the society, and they cannot be expected to deal adequately with the problems of the multicultural society. The illusion of nation-state being a result of the concubinage of nationalism and liberalism, is abolished by the expectation of real equality, because the latter can be satisfied only by group-differentiated rights. We can observe that the assessment of collective rights shows a harmonic symmetry with the European political

\(^{48}\) Kovács, Péter: op. cit., p. 12.
trends, from the widespread recognition to the most severe deny.

Another aim of this paper is the moral and ethical evaluation of minority protection after the World War II, reflecting on the basic principles of the formerly defined fair society. The post Cold War period represents the challenge of minority protection but the double-standard raises the question of what the aim of minority protection is. To satisfy the legitimate aspirations of the members of minorities or to sustain the political stability, or it would be the implementation of the great political powers pursuit? In case law I find lack of consequence and equal treatment, even though both are required by ethics and morality. Similar situations are judged with several different results under the masque of principles. From point of view of political stability, the various processes make sense, but they still remain arbitrary because of the eventuality of the political interests, so they do not fulfill the requirement of principles.

As closing words, I will examine the stake of the recognition of collective rights concerning minority protection. The importance of their implication is undeniable, but the official position of the states shows an interesting scheme.

The granted right of self-determination is reducing the exercisable sovereignty of the state.\textsuperscript{49} The poly-ethnic and special representation rights do not contest the sovereignty of the state, they rather seek for the attention of the state to the existing cultural differences and presume the equal treatment and possibilities of the members of society. These are what I called ‘collective rights’ in this paper, the rights which derive from the special situation of cultural citizenship.

The European Commission for Democracy through Law, better known as the Venice Commission made a comparative constitutional documentation, which stated that despite the widespread stereotypes and propagandist statements, the collective approach of the issue of national minorities is compatible with the European legal trends. Based on the answers to the questionnaire’s 15 questions and several sub-questions we can isolate a position relevant to our topic, according to which the states accept only individual rights but nonetheless there are autonomous regions on its territory.\textsuperscript{50}

The existing autonomous regions in Europe show us that the adequate, suitable conditions for the

\textsuperscript{50} Kovács: op. cit., p. 174–175.
prosperity of a minority can be provided even without the recognition of collective rights, but in these cases – like the Corsican autonomy in France – the autonomy is founded rather on territorial, administrative or historical bases, than on the existence of a cultural community. The problem with this is that the existence of the cultural minority does not guarantee the sustainability of such an autonomy.

As final conclusion, we can affirm that without collective rights based on the existence of national minorities, the protection of them is weak, miss-targeted and with no guaranties, and that leads to the vulnerability of the minority culture, and to the damage of the values of freedom and equality in the multicultural society.

I do not consider that the system I described is the only way to achieve equality and freedom in the multinational state, but I am convinced that – if we accept Huntington’s premise of cultural citizenship – my critique based on equitable society is consistent and accurate.
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