JENŐ KALTENBACH

Rights of Minorities in the Third Republic of Hungary (1990–2006)

Introduction, comments on methodology

There are two different approaches to discussing the rights of minorities.[1] One may key in the word 'minority' in his mental search programme, and then he will probably arrive at the legal regulations – first of all, an Act providing comprehensive regulation of the rights of minorities, if there is such an Act in the system – that have direct effects on minorities, or one may review the legal system as a whole, taking a thematic approach to the issue on hand.

Needless to say, the latter is a much more painstaking approach, but – as it is usually the case – it takes one much closer to the target, while the first approach confirms the well-known and quite wrong concept that minorities only have to do with so-called 'minority issues'.

By taking the more painstaking approach, first one has to find an answer to the question of what themes and areas of law are relevant from the aspect of minorities. At this place, the following points of discussion seem to be relevant for our purposes:

1. Right to association in relation to minorities
2. Minorities and the state (participation, autonomy, self-governance)
3. The institution system of preserving identity
    - 3.1. Education, culture, language use
    - 3.2. Media and minorities
4. Equality, equal treatment
5. Protection of the rights of minorities

[1] This study is discussing exclusively the rights of autochton and national (ethnic) minorities in the sense as defined by Act LXXVII of 1993 on the rights of minorities [Article 1 (1) of the Minorities Act].

1. Right to association in relation to minorities

A much more interesting issue in this area is that of a 'special association', that is the political party. As a matter of course, there are no legal obstacles in this field either and during the past fifteen years a number of ethnic – primarily: Roma – party formations came into being most of which participated in general elections and even more so in local governmental elections.

2. The minorities and the state (participation, autonomy, self-governance)

2.1 Participation

Minorities can be integrated only by institutional involvement in the generation of joint will. This is achieved in two ways: one is creating institutions that guarantee adequate participation of minorities in making decisions on public matters. This is referred to as participation. The other way is definition by the body of law of the range of public matters in respect of which minority communities can make their own decisions through public institutions established by themselves. This is referred to as autonomy.

The Hungarian law may – in view of the relevant provisions of the Constitution – seem to be providing for both of the above requirements, as follows.

> Article 68 (1) The national and ethnic minorities living in the Republic of Hungary participate in the sovereign power of the people: they represent a constituent part of the State.
>
> (2) The Republic of Hungary shall provide for the protection of national and ethnic minorities and ensure their collective participation in public affairs, the fostering of their cultures, the use of their native languages, education in their native languages and the use of names in their native languages.
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> (3) The laws of the Republic of Hungary shall ensure representation for the national and ethnic minorities living within the country.
>
> (4) National and ethnic minorities shall have the right to form local and national bodies for self-government.

Interpreting the first paragraph is not an easy task. In addition to the fact that this is obviously not about a fundamental right, different readers have different opinions about the actual content and especially the practical importance of the first sentence.

Those who prefer to form a minority-friendly and normative interpretation, this provision does not mean anything short of the fact that the Republic of Hungary has cast aside the monolithic nation-state doctrine and has, to some extent, shifted towards a certain ethnic pluralism.

Those holding an opinion contrary to the above, regard the above provision of the Constitution to be a declarative constitutional norm, which – for this very reason – has no concrete consequence in terms of the constitutional law, i.e. no constitutional model follows from it either. (According to a 'sub-variety' of this opinion, the addresses of this sentence are – instead of the minorities living in Hungary – are the neighbouring states where Hungarians outside the borders are living in large numbers.)

It is difficult to actually decide which of these alternatives may be closer to the truth because of a number of arguments supporting each of them.

2.2 Autonomy

After two and a half years of preparations[2] the Parliament adopted Act LXXVII of 1993 on the rights of national and ethnic minorities in the summer of 1993, which however, in terms of the rules on autonomy, was transformed almost beyond recognition in the course of the debates in Parliament, in comparison to the version 'accepted' in the course of its preparation.[3]

Since there are no minorities living in compact territorial communities in Hungary[4], the only forms of autonomy that can be realistically considered in Hungary are cultural and local (governmental) autonomy. Both of these were introduced by Act on the Rights of National and Ethnic Minorities (Minority Rights Act) in 1993, since it regulated three types of local and one nationwide minority government forms. The various forms of local minority governments were created in view of the fact that in certain municipalities one or another minority group formed a local majority. In such cases a *municipal minority government* may be set up, by which the entire municipality is turned into a local minority autonomy. In other municipalities where the minority community accounts for a substantial percentage of the local residents, a so-called indirect local minority government may be established, if the local governmental representatives elected as minority representatives in at least 30 %, so decide. And finally, the third form is the so-called direct local minority government, which may be set up in the interest of dispersed communities, where the size of the community reaches the statutory minimum. Thereafter, the local minority governments can create their 'umbrella

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[2] For details, see *among others* KÁLLAI ERNŐ: *Helyi cigány kisebbségi önkormányzatok Magyarországon.* [Local Roma minority governments in Hungary]. Gondolat Kiadó, Budapest, p. 2005. and JENŐ KALTENBACH: 10 éves a kisebbségi törvény. [The minorities act in effect for 10 years now]. In *Tíz éves a kisebbségi törvény.* NEKH. Budapest, 2003, pp. 15–21.

[3] The most important goal of minorities was to bolster the autonomy of their self-governments by guarantees as much as possible, thereby avoiding the largest foreseeable threat, that is subordination to municipal governments. This, however, is the aspect in which the model so accepted fails to provide guarantees, indeed, it confirms subordination.

[4] Quite remarkably, this is consistently referred to by technical literature on minority issues as a fact, without checking the historical reasons for why it is so.

organisation' the national minority government representing the entire minority community, which is the institution of cultural autonomy.

Putting it in a somewhat simpler form, we may talk about local governance in the public law when the body concerned has at least *organisational, functional and economic autonomy*.

The nature of minority governments as organisations under the public law is confirmed both by the way of their election and the legal regulation 'based on references'.[5] This gives rise to an impression that minority governments are organisations of a legal status similar to that of municipal (perhaps the so-called public body) governments.

From among the above mentioned autonomy powers the minority governments (unlike municipal governments) only have the first one, the other two are entirely or partly missing. While within the limits set by law it decides on its own organisation itself, the rules on so-called minority government affairs are missing, i.e. the domain of functional autonomy, is vacant. Accordingly, the body of law on minorities does not specify the range of public affairs in which a minority government can make its own – autonomous – decisions. Instead, municipal governments make decisions concerning minority affairs, in which the minority body may be only one participant. This is not self-governing, but a participation right.[6]

A direct consequence of the above is that it is difficult or even impossible to separate a range of public funds at the disposal of minority governments, because this depends on the public tasks performed.

Consequently, it is not surprising that the legislator has still not adopted the legal framework ensuring the creation of the minorities' own cultural and educational institution system, an indispensable pre-requisite for the cultural autonomy of minorities, since these institutions are institutions of the municipal governments.

The amendment adopted in 2005[7] constitutes some progress primarily for the national self-governments.

Thus far the minority government was the only constitutional organisation without a proper statutory definition or a precisely defined set of tasks. The law defines the term (concept of) minority government and thereby it designates its position in the institution system as governed by public law.

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[5] Article 102 of the Local Government Act, Article 24. of the Minority Rights Act.

[6] The symbiosis with the municipal government is a 'genetic' flaw of the minority government system, this is the key obstacle to autonomy, which is also confirmed by the Local Government Act by imposing a statutory prohibition on minority functional autonomy. [Article 102 (2) of the Local Government Act].

[7] Act CXIV of 2005 was promulgated on 26 October 2005.

3. The institution system of preserving identity

3.1. Education, culture, language use[8]

From the aspect of minorities the two key questions of the education system are the *sponsoring (keeping in operation) of institutions* and the *contents of education.*[9]

Quite understandably, the minority schooling system is based on the autonomy models. In the case of territorial autonomy, the community itself – that is, its bodies – is the institution sponsor. In this case the public administration system is comprised of sub-systems. In the case of dispersed minorities the personal autonomy,[10] may be the solution, which, ultimately, leads to a similar end-result. The third possibility – which is not a real autonomy model – is when the minority education requirements are satisfied by the state-operated s public administration system and minority governments play a simple co-administrative role. This latter model has been adopted by Hungary.

The amended Minority Rights Act, adopted the definition of the minority education institution, as applied by the Act on public education.[11] The definition indicates that the minority schooling system – though this possibility is mentioned by law – remains part of the public education system, i.e. minority schools are not transferred from the local government to the minority government. This cannot be expected, on any larger scale, even of the power of the national minority self-governments relating to taking schools over, as described above.[12]

It follows from the above, that minority governments can only participate in the exercising of the so-called sponsors' rights, which is regulated by the act on minorities and the act on public education, as follows. On the one hand, the minority government may propose (or comment on) relevant regulations of the local government, and in respect of strategic decisions concerning education institutions it has a right to agree (veto). Such strategic decisions include designating the head of the institution and accepting its annual budget. In order to resolve any resulting conflicts or stalemates the Act on public education has introduced an (arbitrator) committee comprising experts delegated by the two parties and the National Committee for Minorities.

[8] This chapter is devoted primarily to rules concerning national minorities, which includes - from a cultural aspect - the Roma minority as well. It should be noted at this point that the problems of the Roma community differ from those of the other minorities in a number of aspects, including, particularly, education. The negative attitudes originating from the prejudices relating to them and the negative discrimination stemming from those attitudes (in education, among other fields) will be discussed by the following chapter.

[9] For more on this see THILO MARAUHN: *Der Status von Minderheiten im Erziehungswesen und im Mediemrecht.* In J. A.Frohwein – R.Hoffmann – S.Oeter: idem , pp. 410–432.

[10] Such as for instance the Danish nationality school association system in the German Schleswig-Holstein federal province.

[11] Article 6/A (1) 3 of the Minority Rights Act.

[12] Since the establishment of the minority government system (in 1994) not more than about 30 education institutions have been taken over by minority governments across Hungary.

Disputes originating from the shared competence may be resolved – in principle – in one of two ways. Either by the County Public Administration Offices – the organisations exercising legality supervision over the local governments – and ultimately by the courts, or through the special institution of the protection of the rights of minorities, that is the Parliamentary Commissioner for the National and Ethnic Minorities Rights (ombudsman). From a certain aspect it may be understandable that this latter path is much more often taken by minority governments, than the former one.[13] In his practices the ombudsman applies an extended interpretation of the co-administration rights of the minority governments. For example, the ombudsman considers the joint decision making right concerning the appointment of the head of the education institution to apply to the entire appointment procedure, not only to the act of appointment itself. This interpretation is based on the consideration that the cultural autonomy of the minorities that is 'promised' by the Minorities Act is significantly reduced by the detailed rules anyway, therefore, any further restrictive interpretation of the same is contrary to the purpose of the institution.

Whatever happens in the course of education is just as important from the aspect of minorities. The right to education includes the right to education in and of one's mother tongue, which must be provided for by the school sponsor on the basis of a request made by at least eight parents. In practice, this may take one of two forms of education: bilingual education or the teaching of the mother tongue as a subject.[14] As for matters of content, in addition to language, the history, culture and customs of the community are also parts of education. This is intended to be guaranteed by the National Basic Curriculum which was introduced in 1995, which is accompanied by education guidelines for each minority community, developed with the involvement of the National Minority Self-Governments. According to the provisions of the Minority Rights Act the local minority governments may directly participate in the administration of minority education institutions in cooperation with the municipal governments concerned.[15]

According to the Minorities Act and the Act on Public Education the requisites for the operation of the system must be made available by the state and by the local governments in charge of providing for the operation of the education institutions (sponsors).[16] The state makes supplementary transfers specified in the central budget to provide for the financial requisites. These funds are however, utilised

[13] The public administration office very rarely turns to the court in respect of such issues, but a minority government going to court with a case of education administration is even less frequent.

[14] The share of schools where minority languages are being taught is larger than 80 % of all minority schools. For more details see FORRAY R. KATALIN: *Nemzetiségek, kisebbségek.* [Nationalities, minorities]. Educatio, 1998, first edition, pp. 50–66.

[15] Article 46 (1). Ibid.

[15] Article 46 (147 (1) of the Minority Rights Act.

[16] Article 44 of the Minority Rights Act.

without proper control, at least the anomalies experienced in the course of utilisation and their sanctions are not coordinated properly.[17]

On a nationwide level the largest number of problems are related to the training and extension training of minority teachers, as well as to the supply of school books. Since in Hungary the concept of education of minorities is practically restricted to public education and it involves higher education only to a very limited extent, and there is practically no minority teacher training. For this very reason the relevant legal regulations facilitate intensive cooperation with the 'mother countries' in this field as well.[18]

Provisions concerning the maintenance of cultural institutions supporting the preservation of minority identity (theatres, museums, culture halls, libraries etc.), are also included in the Minority Rights Act, though they are not elaborated in as much detail as those governing education. The above apply to this category of regulations, with the relevant differences.

Technical literature in Hungary has not been paying much attention to the area of language use to date,[19] which may perhaps be partly a consequence of the sketchy nature of regulation. Quite unusually, the Hungarian law does not 'know' the concept of 'state language' or 'official language' and consequently Hungary – unlike some neighbouring countries – has no Language Act.[20] Article 68 of the Constitution – that has been quoted above – provides for the use of minority languages in a general form, including the right to the use of one's name in one's own mother tongue. The Minority Rights Act devotes a whole chapter to language use, which begins with the following (frivolous?) provision:

> 'Anybody is free to use his mother tongue anywhere and anytime in the Republic of Hungary. The state shall provide for the requisites and conditions for the use of the languages of minorities, in the cases specified by law.'[21]

The first sentence may hardly mean anything else but that using a minority language is not against the law. The second makes it up to the legislator to decide when minority language use is part of the scope of state obligations. Such rules are included among the provisions of the Minorities Act concerning what is referred to as 'language use in public life',[22] along with language related provisions of the

[17] Reports of ombudsman investigations of debates relating to the utilisation of the so-called minority education 'normative per capita support' are regularly included in the ombudsman's annual reports. The reports are available at www.obh.hu

[18] Article 46 of Minority Rights Act.

[19] KÁNTÁS – TÓTH: ibid, p. 229.

[20] This is probably explained by the fact that the Hungarian national elite has never considered it to be necessary to guarantee its language dominance by legal means as well.

[21] Article 51 (1) of the Minority Rights Act.

[22] Language use of local governmental and local governmental representatives, promulgation of decrees, names of municipalities, streets and public offices etc. (Articles 52–53 of the Minority Rights

various procedural laws. Mention should be made here of Act CXL of 2004 on the general rules of the administrative official procedures and services (Administrative Procedures Act), which was the first attempt at regulating (minority) language issues in line with today's requirements.

Accordingly, the language to be used in public administration procedures is the Hungarian language and that of the minority concerned, if the latter is asked for by a minority organisation or by a person covered by the Minority Rights Act. It may be asked – together with the authors[23] – what such rules are worth without a language use infrastructure. Moreover, while the Administrative Procedures Act extended the range of the subjects of the provisions concerning the language use rights to EU citizens in addition to the members of autochton minorities in Hungary, it is well known that the language skills of the Hungarian civil servants are not quite up to the EU standards and there is no proper network of translators and interpreters either, indeed even legal regulations concerning this are missing at present. The reason for this may be so without causing difficulties in the day-to-day application of the law, is that the language identity of the domestic minorities is so weak, that no large numbers of people are expected to come forth with demands for using their own minority languages.

3.2. Media and minorities[24]

According to Article 18 of the Minority Rights Act the public service radio and television provides – pursuant to specific other legislation – for the regular production and broadcasting of programmes of national and ethnic minorities. Article 18 (2) of the same act imposes a task on the state to 'facilitate' the reception of radio and television broadcasts in areas with minority populations.

Article 2 (1) of Act II of 1986 on the press (Press Act) also provides for a specific citizens' right, when it declares that 'in the Republic of Hungary everybody has a right to be informed about issues relating to his immediate environment, home country and the world in general'. According to the Press Act it is the duty of the press to provide authentic, correct and timely information, in concert with other instruments of communication.

The Act I of 1996 on radio and television (Media Act) also declares that the public service broadcaster is obliged to facilitate the cultivation of the cultures and mother tongues of the national and ethnic minorities and the provision of detailed information in their mother tongues. This task has to be fulfilled by nationwide and/or – in view of the geographical distribution of the minority communities –

Act), and the rules on keeping the master register of births, marriages and deaths (Article 12 of the Minority Rights Act)

[23] KÁNTÁS–TÓTH: ibid, p. 250.

[24] In writing this chapter I relied heavily on the report I produced as minority commissioner on the minority media. KALTENBACH JENŐ: *A Nemzeti és Etnikai Kisebbségi Jogok Országgyűlési Biztosának 2004. évi Beszámolója.* [Year 2004 Report of the Parliamentary Commissioner for the National and Ethnic Minorities Rights]. pp. 168–175.

district or local broadcasting of programmes meeting the requirements of the minorities. It is also prescribed by the Media Act that the length of minority programmes must not be shorter than the length of the programmes available before the entry into force of the Act, in national and in district aggregates, for each of the minorities concerned.[25]

Article 2 (1) g) of Act CXXVII of 1996 on the national news agency lists, among the duties of the national news agency, the regular provision of objective information on the day-to-day life of the national and ethnic minorities living in Hungary.

According to the above statutory provisions, the media tasks of the Republic of Hungary relating to national and ethnic minorities fall in three basic groups. Accordingly,

- Access to and distribution of data and information of public interest must be made possible for all, and exercising this constitutional right cannot depend on the individual's command of the Hungarian language. (This applies in particular to the minority communities listed in the Minority Rights Act – i.e. those recognised by the law – and the individuals belonging to those communities.) This specific duty of the media may be referred to – in summary – as *information function.*
- In the Constitution and in the Minority Rights Act that has been introduced to ensure the enforcement of the provisions of the Constitution, the state undertakes a definite obligation to prevent the assimilation of national and ethnic minorities or at least to make available the requisites and conditions impeding assimilation (loss of language and identity etc.). In this area – in addition to education in/of the mother tongue – special mention must be made of measures enabling of the cultivation of culture and traditions, the use of the mother tongue i.e. an unconditional support to the efforts aiming at protecting and preserving minority identity.
- In concert with the provision of the Press Act prescribing the provision of authentic, accurate and timely information, the Media Act provides for the tasks of 'free and independent radio and television programme production and broadcasting ... independence, balanced nature and objectiveness of the information provided ..., supporting of the universal and the natural culture and the promotion of the diversity of opinions and culture', as fundamental requirements. The state must exercise supervision over the legality of the operation of the opinion shaping function of the media partly by other – economic – instruments, therefore the system of means available for the state to influence trends must be assessed in a complex way.

[25] The Media Act entered into force on 1 February 1996.

4. *Equality, equal treatment*[26]

Hungarian law provided for the regulation of the principle of equality in the usual way before the turn of the millennium. The Constitution prohibited negative discrimination – indeed it ordered sanctions to be applied – and imposed an obligation on the state to help equalise opportunities (Article 70/A). The procedural laws declared equality before the law and the various sectoral laws practically repeated the constitutional prohibition (e.g. Labour Code, Act on Public Education).[27] From the aspect of our topic, special mention should, of course, be made of the minority Rights Act, which prohibited 'any kind of negative discrimination against minorities'.[28]

In the years around the turn of the millennium was focused on the question whether there was a need for continued development of the anti-discriminatory aspects of the Hungarian law?[29]

At the same time, the conditions for non-judicial application of the law in relation to the human rights were created in Hungary by the Parliament electing Parliamentary Commissioners (ombudspersons) on 30 June 1995, one of whom was dedicated to the protection of the rights laid out in the Minorities Act. The latitude originating form the nature of the institution and the regulation in the form of Act LIX of 1993 on the Parliamentary Commissioner (Parliamentary Commissioner Act) for a 'constructive application of the law' thereby loosening and modernising the conservative and excessively positivist Hungarian traditions of the application of the law. For the concept of the so-called 'constitutional anomaly', that is the legal institution on the basis of which the ombudsmen could take actions, was not defined by the Parliamentary Commissioner Act, permitting thereby the practices of the Commissioners to develop the outlines of the institution.

As had been expected, in relation to minorities most of the tasks came from discrimination against and exclusion of the Roma minority. Some two thirds of all complaints submitted to the Parliamentary Commissioner have been falling in this category.[30] The most crucial area has been discrimination and segregation at school, therefore this was treated by the Commissioner for Minorities as a 'strategic issue' and, based on his authorisation granted in the Parliamentary Commissioner Act, he carried out numerous general scrutinies concerning the

[26] There are various dimensions and relationships of equality and equal treatment (age, gender, colour, race etc.). In this paper we are discussing of course only the ethnic dimension.

[27] KISS BARNABÁS: ibid, pp. 134–186.

[28] Article 3 (5) of the Minority Rights Act. After the amendment introduced in 2005, the effective wording: 'Any violation of the requirement of equal treatment with respect to minorities, shall be prohibited'.

[29] BICSKEY BOTOND – GYULAVÁRI TAMÁS: *Kell-e anti-diszkriminációs törvény*? [Is there a need for an anti-discrimination law?] Jogtudományi Közlöny, 2003. 1st edition.

[30] The statistics comprised in the ombudsman's annual report are available at: www.obh.hu

education system.[31] A report was first produced on the operation of the minority education system in 1997, then one year later one covered the anomalies in the so-called special schools, and then in 2001 a general scrutiny took place in the higher education system. Although these investigations and the resulting recommendations and initiatives contributed to the improvement of the laws on education,[32] yet at the same time it became increasingly clear that the entire system of instruments against discrimination contained in the whole of the legal system should be improved to a level where those means actually become suitable for application.

These processes, together with the obligation to implement the EU racial directive,[33] lead to the adoption of *Act CXXV of 2003 on equal treatment and the promotion of equality of opportunities.* The act is comprehensive also from the aspect that in addition to the ethnic dimension it also extends to all possible relations. This act adopts practically all of the new legal institutions of the EU directives, so especially the sharing of burden proof and the setting up of an Equal Treatment Authority.

This is where we need to mention the professional (and political) debates about criminal sanctions against the most serious verbal manifestations of racial discrimination and exclusion. The subject here is what is often called 'hate speech'. The two extreme positions are that that hate speech should be sanctioned by means of the criminal law, the other is complete rejection of the same, based on the constitutional freedom of speech. The debate concerning the provisions (Article 269) of the effective Criminal Code about instigation against a community and its applicability may be summed up as follows.

The definition of the crime of instigation against a community in violation of Article 269 of the Criminal Code has a long history – written partly by the legislator and partly by the Constitution Court – which cannot be described in detail here. With reference to the constitutional right to expression and to the exercising of the freedom of the press the Constitution Court's decisions No. 30/1992. (V. 26.) and 12/1999. (V. 21.) AB terminated the possibility of sanctioning a certain range of negative opinions – the so-called 'verbal abuse' – by means of the criminal law.

The Constitution Court held that the constitutional fundamental right of the freedom of expression may be constitutionally restricted by means of the Criminal Code if the person carrying out the act of inciting hatred is aware of the fact that his behaviour is suitable for arousing hatred and his act actually endangers public

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[31] For details on segregation in education see HAVAS GÁBOR – KEMÉNY ISTVÁN – LISKÓ ILONA: *Cigány gyerekek az általános iskolában.* [Roma children in primary school]. Oktatáskutató Intézetm Új Mandátum könyvkiadó, Budapest, 2002, and Year 2004 Report of the Ombudsman for Minorities, pp. 292–322.

[32] For more details on this, see the 2004 Report of the Commissioner for Minorities, p. 313.

[33] 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

peace: '*passion aroused against a group endangers the respect and dignity of those belonging to the group concerned (or their lives, in extreme cases), restricting their exercising of other rights by intimidation...* '.

5. Protection of the rights of minorities

The institution of the Hungarian Commissioner for Minorities is a parliamentary ombudsman institution, which is independent both of the executive and the judiciary power. The ombudsman is appointed by the Parliament of the Republic of Hungary and he reports to Parliament. His independence of the executive power is clear from each of the three aspects specified in the No. 2 general policy recommendation of the European Commission against Racism and Intolerance: it is independent in terms of its budget; it can perform its tasks without state intervention, i.e. it is independent in appointing its employees, in the management of its resources and in forming opinions; and finally it has a personal independence, since the act on the Parliamentary Commissioners contains guarantees concerning the appointment and replacement of the ombudsman.

The institution plays an important role in setting anti-discriminatory objectives in Hungary. He plays an active role in the assessment of the enforcement and application of the anti-discriminatory actions and in the continued improvement and transformation of the legal framework. All of the official reviews of the ombudsman have been closed by recommendations to various ministries and by proposals for the modernisation of the legal framework. Most of the recommendations relating to the continued development of the legal framework were based on investigations of concrete complaints.

Finally, the Commissioner for Minorities is an active participant of legislation and the political decision making processes. His comments are sought for with respect to all new pieces of legislation and amendments that affect his institution and in respect of all issues his institution has to deal with, including in regulations and legislation against discrimination. Moreover, the fact that the minority ombudsman made a proposal concerning the draft of an anti-discriminatory law in 2000 to the Ministry of Justice and the Parliament's Committee for Human Rights, Minorities and Religious Affairs, is an indication of his even broader interpretation of the independence of the institution and its participation in the performance of the obligations of the executive power. Not only does the Commissioner consider making recommendations concerning amendments to legal regulations to be part of his scope of tasks, but he is also willing to participate in the work of legislation.

KALTENBACH JENŐ

A KISEBBSÉGI JOG MAGYARORSZÁGON A HARMADIK KÖZTÁRSASÁGBAN (1990–2006)

(Összefoglalás)

Egy jogrend kisebbségvédelmi intézményrendszerének megítélése érdekében a következő fő jogterületek vizsgálandók: az egyesülési jog, a kisebbségek önkormányzatára és participációs jogaikra vonatkozó jogintézmények, az autonómia tartalmát képező jogterületek, mindenekelőtt az oktatás, a média és a nyelvhasználat, végül az egyenlőség, egyenlő bánásmód jogi szabályozása és mindezek érvényesülésének jogi garanciarendszere. A magyar joganyag garantálja az egyesüléshez való jogot kisebbségi relációban, de adós marad e jog alanyainak precíz meghatározásával, ami természetesen kihat az autonómia-rendszerre is. Az autonómia és annak tartalmát adó jogterületek alapvető hiányossága, hogy az ott szabályozott jogok tulajdonképpen nem az autonómiát, hanem csak a részvétel (participáció) jogát garantálják.

Az egyenlő bánásmód szabályozás megfelel ugyan az európai normáknak, de érvényesítésük – a hiányzó, vagy nem kellően differenciált – szankciórendszer miatt nehézkes, elégtelen. Az ezzel kapcsolatos ítélkezési gyakorlat kezdeti stádiumban van. A bíróságon kívüli jogvédő-jogérvényesítő mechanizmus (ombudsman, Egyenlő Bánásmód Hatóság) működésének hatékonysága a rájuk vonatkozó jogszabályok korszerűsítésével növelhető.