

Exploring Cultural Diversity as a Justification of Minority Rights in the Context of Slovakia

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Introduction

Treaty of Lisbon, amending the Treaty on European Union and the Treaty Establishing the European Community, in its article 2.3, declares that the EU “shall respect its rich cultural and linguistic diversity, and shall ensure that Europe’s cultural heritage is safeguarded and enhanced”.¹ One of the main purposes of this conference is to explore how this provision can be utilized to promote respect of minority rights and minority cultures during the Hungarian presidency over the EU. Given the non existence of specific minority rights guarantees in the EU law, this statement can be rightly seen as a long awaited positive development. The value of cultural diversity also provides a pragmatic avenue how to defend minority rights.

The purpose of my contribution is to step back and discuss some of the limitation of this approach, which has been in some cases employed by the United Nations² and the Council of Europe.³ While drawing on examples from Slovakia, I will argue that justifying minority rights by reference to cultural diversity offers a politically pragmatic approach as it primarily appeals to the interests of the majority. However, this avenue of justifying minority rights can lead to problematic essentializing of minorities and their cultures. In addition, I believe that for kin states such as Hungary, the cultural diversity argument will not necessarily support autonomous regimes sought for their kin minorities in neighboring states. Finally, it is unlikely that the cultural diversity approach would replace more dominant and more problematic perspective on minority rights viewed through the prism of peace and security. I propose that in minority rights discourse, more generally, the most plausible avenue how to justify minority rights is through the reference to human dignity.

Cultural Diversity and Minority Rights

In the literature on minority rights, relying on the value of cultural diversity, is along with the justification of peace and security and human dignity, an important avenue that is available when advocating for minority rights.⁴ The underlying idea is that minority cultures are worth protecting per se; they have an intrinsic value. Minority rights are necessary because they promote cultural diversity and protect the diversity of the cultural heritage.

A good example of this approach offers the European Charter for Regional or Minority Languages. The purpose of this treaty is the protection of minority languages, not the protection of minority groups nor persons belonging to minorities. The protection of minority languages matters per se, because the drafters believed that language contributes “to the maintenance and

¹ Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Official Journal of the European Union, 2007/C 306 /01.

² See e.g. UNESCO, *Universal Declaration on Cultural Diversity*, 31st Session of the UNESCO General Conference, (2001), *UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (20 October 2005)

³ *European Charter for Regional or Minority Languages*, 5 November 1992, CETS No.:148, entry into force 1 March 1998

⁴ Athanasia Spiliopoloulou Akermark *Justifications of Minority Protection in International Law* (London, the Hague, Boston: Kluwer Law International, 1996)

development of Europe's cultural wealth and traditions".⁵ Similarly, in the context of UNESCO, the Universal Declaration on the Cultural Diversity explains that preservation of cultural diversity promotes "the common heritage of humanity"⁶ and is "necessary for humankind as biodiversity is for nature".⁷

Bkihu Parekh, one of leading theorists of multiculturalism, offers an explanation why cultural diversity matters. Parekh advances his argument through the concept of an "intercultural dialogue" and argues that cultural communities have developed their own vision of a 'good life', ways of understanding the world and the norms of morality.⁸ Yet, cultures not contain "the totality of human existence." "Each [culture] realizes a limited range of human capacities and emotions and grasps only a part of the totality of human existence, it needs others to understand itself better, expand its intellectual and moral horizon, stretch its imagination and guard against the obvious temptation to absolutize itself."⁹ Intercultural dialogue that respects the equal value of minority cultures, Parekh concludes, facilitates the processes of enriching interacting cultures. Hence, minority rights that facilitate protection of distinct minorities' identities should be viewed as something that enriches the whole society thorough intercultural dialogue.

There are at least two salient difficulties in employing the cultural diversity approach. First, as Yael Tamir argues that this line of reasoning can lead to a portrayal of the community's survival in existential terms. Justifying minority protection exclusively in terms of group survival may then ultimately lead to illiberal consequences, including persecution of dissenting members in the name of group interest.¹⁰ In addition, minorities and their cultures may be portrayed in essentialist's terms. Minorities would be permanently challenged to "prove" and "show" their cultural differences to be awarded with minority rights. In Slovakia, this rationalization has been utilized (or perhaps abused) in projects that aim to help marginalized Romani communities by providing training in "traditional Romani" crafts with a very limited demand on labour market.

Will Kymlicka invokes the other serious challenge to the cultural diversity project. Kymlicka, notes that this argument appeals *primarily* to the "*interests* of the majority, and defends rights in terms of self-interest not justice"(italics in the original).¹¹ Although the argument that minority cultures can provide new resources and choices for societal organizations and models of sustainable development is plausible, one should not overstate the value of the diversity argument, Kymlicka claims. Some forms of group differentiated rights, in particular self-government rights and territorial autonomy regimes, in fact reduce diversity within the majority

⁵ Preamble to *the Language Charter*, *supra* note 3.

⁶ Art. 1 of *the UNESCO Declaration*, *supra* note 2; Preamble of *the UNESCO Convention*, *supra* note 2.

⁷ These documents also assert the linkage between peaceful and secure coexistence of distinct cultures with the respect of cultural diversity. See Preamble to *the UNESCO Convention*, *ibid.*, as well as *the UNESCO Declaration*, *ibid.*

⁸ Bhikhu Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory* (Hampshire and New York: Palgrave Publishers Ltd., 2000) at 120-123.

⁹ *Ibid.* at 336-337.

¹⁰ Yael Tamir, *Liberal Nationalism* 3rd printing (New Jersey, Princeton: Princeton University Press, 1995) at xi-xii.

¹¹ Will Kymlicka, *Multicultural Citizenship* (Oxford: Clarendon Press, 1995) p.121.

of cultures.¹² Political claims of the Hungarian minority in Slovakia are indeed aimed to increase autonomy and secure parallel minority institutions at least in the cultural sphere. For example, cultural diversity argument may well support the existence of Slovak-Hungarian bilingual schools to provide a space for intercultural dialogue and interaction of cultures. However, I believe that the Hungarians in Slovakia would probably do not welcome such a development. The political representatives of the Hungarian minority instead seek more autonomous powers in governance of their cultural affairs.

Peace and Security

Yet, one shall admit that the cultural diversity argument that portrays minority cultures in positive terms is a certainly a more attractive option than the current dominant approach in Slovakia and other Central and Eastern European countries¹³ through the reference to peace and security. This understanding is based on the notion that minorities and their minority claims pose a threat to the majority nation. Minorities and their claims are constructed as a peril of illiberal national building processes that aim to promote a single Slovak ethnic identity. Minorities are seen as potentially disloyal merely by virtue of their minority group membership. Minority rights are to some degree supported.¹⁴ The underlying idea is to accommodate minorities to prevent escalation of ethnic conflict.¹⁵ To some extent Slovakia sanctions the existence of some parallel institutions such as minority schools. However, the current legislation allows only for individual minority rights. This in practice means that it is the majority that decides on the content of minority rights (e.g. the content of the system of support for minority cultures, decide on the optimal number of minority officials in public administration (and select who they are to be), determine the proportion of finances that is necessary for the development of minority culture and similarly).¹⁶ However, discussion that would truly ensure that the decision-making is in the hands of the minority is ruled out. The Slovak Constitution specifically sets out that the discrimination of the majority population and cannot pose a danger to the territorial integrity of the State.¹⁷ Any considerations of autonomous regimes are being dismissed as a threat to the territorial integrity of the state.

At the same time, Slovakia adopts illiberal policies to curtail the existing minority rights and indirectly assimilates. To name just one recent example, in the area of minority education, the

¹² *Ibid.* at 122.

¹³ Will Kymlicka “Justice and Security in the Accommodation of Minority Nationalism” in Alain Dieckhoff, ed., *The Politics of Belonging: Nationalism, Liberalism, and Pluralism* (Lanham: Lexington Books, 2004) 127.

¹⁴ See e.g. in Jarmila Lajčáková, “Právne postavenie a politika k novo vznikajúcim etnickým, jazykovým a náboženským komunitám na Slovensku” in Elena Kriglerová Gallová, Jana Kadlečíková a Jarmila Lajčáková, *Migranti: Nový pohľad na stare problémy* (Bratislava: CVEK, 2009) at 86 ff.

¹⁵ Will Kymlicka, “Reply and Conclusion” in Will Kymlicka & Magda Opalski, eds., *Can Liberal Pluralism be Exported? Western Political Theory and Ethnic Relations in Eastern Europe* (Oxford: Oxford University Press, 2001) 347 at 379.

¹⁶ Jarmila Lajčáková, *Ethnocultural Justice for the Roma in Slovakia* (SJD Thesis) Faculty of Law, University of Toronto, 2007)[unpublished], at 215 ff

¹⁷ *The Slovak Constitution*, Act No. 460/1992 Coll., in its present amended form. [*The Constitution*]. Art. 34 para 3.

legislation on the state language, for example, sanctions rather strict bilingualism. All the documentation in schools shall be prepared in the state language along with the minority language.¹⁸ It dramatically increases the financial and time costs for the preservation of minority languages and indirectly pressures towards assimilation.

Human Dignity

I believe that the most solid approach is defending through justification of human dignity. The value of human dignity also assumes a positive role for culture, but focuses on the situation of the individual. Minority rights ensure that the individual belonging to a national minority has the necessary resources to pursue life according to his or hers own values and beliefs, and without fear of being discriminated against. In addition, the focus on the individual requires us to employ an intersectional analysis and scrutinize the circumstances of individual members, given their multiple sources of identities. We thus need to examine the impact of policies promoting cultural empowerment in the light of other forms of experienced disadvantage (*e.g.* gender or socio-economic). It allows us to examine alternative minority rights mechanism, including autonomous regimes that would be responsible for organization of education in the instances of some minorities, with a view on the impact on the individual.¹⁹

Importantly, it does allow us to develop a contextual policy. One category of national minority does not offer solutions for all minorities given differences in numbers, histories, socio-economic exclusions. This move towards justice criterion is contingent on the transformation of the foundational myth. It would be based on the idea that Slovakia is the home of all its permanent members and it is based on the values of the rule of law, democracy, human rights and the respect of differences. This would entail a transformation of the majority institutions, including the educational institutions to provide a space for inclusion.

Conclusion

To conclude, the purpose of my presentation **is** to briefly introduce the potential and in particularly, the limitations of the cultural diversity approach in devising minority policy while drawing from the context of Slovakia. The cultural diversity argument appears as a pragmatic argument and would like provide a more fruitful debate on minority rights that the current peace and security perspective. However, it is limited to advance what minorities would view as a just and fair minority policy and may in fact lead to unwelcome essentialisation of minorities and their cultures. I believe that the most solid method in devising minority rights offers the justification of human dignity, that allows for contextual accommodation of inter group as well intra group differences.

¹⁸ Act no. 270/1995 Coll. on the State Language, in its present amended form, art.4.

¹⁹ See in more detail on this approach Lajcakova 2007, *supra* note 16, c. 2.2