

GERMAN AUTHORS ON ESTONIAN MINORITY RIGHTS

Selbstbestimmungsrecht und Minderheitenschutz in Estland, by Carmen Thiele. Berlin: Springer, 1999.

Das Recht der nationalen Minderheiten in Osteuropa, edited by Georg Brunner and Boris Messner. Berlin: Berlin Verlag Arno Spitz, 1999.

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The two books under review, published this year, contribute to the discussion on the status and rights of national minorities in Estonia, and Central and Eastern Europe generally. The first, by Carmen Thiele, is a monograph of legal character, the other a collection of overview articles from all Central and Eastern European countries, introduced by two articles by Rainer Hofmann (“Das nationale Minderheitenrecht in Osteuropa. Gegenwärtiger Stand und aktuelle Perspektiven”, 9-37) and Georg Brunner (“Minderheitenrechtliche Regelungskonzepte in Osteuropa, 39-73”). The Estonian overview is given by Carmen Schmidt (“Die Rechtsstellung der Minderheiten in Estland”, 327-350). For this review, which focuses primarily on Estonia, these three articles are of main interest.

The aims of the two books are rather different. The editors of the collection hope that it would provide “a better understanding of present legal situation of national minorities in Eastern Europe, so that one can know more exactly where the situation is satisfactory and where further improvements could be made” (6; all translations from German are my own). Thiele has higher aspirations – besides presenting, she also aims at analyzing the situation compared with the norms of international law (3). In fact, the book is a legal recommendation, very much like a “*Gutachten*” written by a German lawyer, involving the presentation of the international law provisions, the facts in Estonia and a subsumption. The analysis is meant not only for the international audience interested in the situation in Estonia, but also seems to be directed towards Estonian decision-makers. The main conclusions of the paper have also been published in English, after a presentation in a seminar including many Estonian officials. (Thiele 1999)

Both goals require one common condition in order to be fulfilled – updatedness. One cannot give an overview of the present situation if the data date

back several years; one cannot analyse the present situation and make recommendations if the situation is already different or the recommendations have long been adopted. This is especially true in the field of minority protection in Eastern Europe, where changes in the legal situation have been and are being made continuously. From this viewpoint, in spite of a certain delay in the publication of scholarly books being both customary and unavoidable, the collection could easily be better – the most recent sources used by Carmen Schmidt date back to May 1997, which for an overview book of 1999 is certainly not good.

In that sense, Thiele is more successful. The work was completed in December 1998, according to the introduction (V), the legislation is incorporated even up to February 1999. This does not mean, however, that some points are not already outdated for the present reader. Two examples suffice. According to p. 126, the translations of Estonian legal texts are published according to the State Gazette Act of 1993, but a new Act was adopted in early 1999, and besides, the 1993 Act had been amended several times after the 1994 version which was used by the author – also on the topic of the translation of the acts. Most importantly, the version of Aliens' Act used by the author, a crucial tool for analysis, has been amended several times in 1999.

As to the literature, Thiele's sources are far from excellent. The viewpoint of the Estonian authorities is not handled thoroughly and many easily available sources in English about the problems discussed are not used at all (e.g. Heidmets 1998; Lauristin et al. 1997; Realo 1998). Many current data have been obtained from Russian newspapers - hardly a source beyond reasonable doubt in accuracy, since they often, if not usually, have their own axe to grind. Schmidt is rather different in that respect, using sources mostly from Estonian-language newspapers. That the conclusions are finally different is not a surprise considering this fact only. However, the negative side of this is that the international reader is unlikely to get an objective view of the situation.

Thiele starts, quite rightly, with a historical overview of the Estonian situation. The argument most often heard in Estonia is that the historical situation justifies the present policies. This is also the basis of the Government official programme "Integration of Non-Estonians into Estonian Society" (printed in English in Järve and Wellmann 1999:39–42). The starting point, therefore, is good. One would then expect an analysis to the questions, if, why and how the historical situation plays such an important role in the minority policies. This is one of the questions where also Estonian positions are rather unclear. It has been rightly pointed out that the Estonian language has been suppressed for centuries, yet it has survived without any state protection and might not need state protection through suppressing other languages today. (Järve and Wellmann 1999:34) Unfortunately, Thiele hardly refers back to the introductory part later in her analysis.

All authors neglect the question of discontinuation of the Estonian state during the Soviet occupation. Thiele states expressly that this question bears no

importance to the legal requirements of attaining a minority status (2). This simplification is very doubtful. Even if the acquisition of the minority status does not depend on this international law question, the treatment of people living in a country must depend on the time of the creation of the state. As for the Estonian situation, this has been discussed by Drechsler (1999).

The main topics covered in Thiele and Schmidt include citizenship, minority rights and the treatment of aliens.

As to citizenship, all reviewed authors start from the assumption that it is up to every country to whom this status is to be awarded. Both Schmidt and Thiele admit that the requirements to the applicants in Estonia are not very easy. Schmidt sees no big problems and supported by an opinion poll, concludes that “the citizenship regulations have been generally accepted today” (332). Thiele analyses the matter further in order to show that the Estonian rules are too strict and leave many people stateless or force them to take another (mostly Russian) citizenship.

The section on the Estonian situation starts with a comparison of the three Baltic states. Thiele says without any further explanation that Lithuania, after the collapse of the Soviet Union, granted citizenship to all Lithuanian residents (63), thus she points out the ease by which citizenship could be granted. This fact has been often demonstrated elsewhere with the unavoidable addition that in Lithuania, the non-Lithuanian population amounted to only around 10 per cent, compared with over 35 in Estonia, which makes the situation wholly different.

Another problematic conclusion is connected with the principle of genuine link (or close connection), which she describes as the necessary criterion to which the person to whom citizenship is given must correspond. She later uses the genuine link argument for supporting one of her main conclusions, viz. – that the granting of citizenship should be made much easier, with lesser requirements as to the language skills and the knowledge of the constitutional system. (181) According to her, a genuine link can be established with less. This is surprising, as the purpose of this connection is to prevent the states from granting citizenship to too many people.

Her strongest argument concerning citizenship rights is that integration should be taken as a priority ahead of exclusion and this would require easier naturalization. (181) That integration is important has been well recognized by the Estonian government. The discussion in Estonia is, however, whether citizenship laws are the best laws to achieve integration or whether integration should happen before granting citizenship rights – not an unfamiliar discussion in most European countries, including Germany, where this was one of the most hotly debated public policy issues of the past year.

Surprisingly, the possible accession of Estonia into the EU and the requirements concerning the naturalization do not receive attention from Thiele. In fact, the European Union has been neglected for all issues. Of the reviewed authors, only Hofmann (19) restates these requirements. As it is recommended that Estonia

would speed up the naturalization process, it is crucial that the EU dimension is not simply forgotten in this context.

The minority rights discussion starts off with a definition of minorities. Schmidt takes it as a traditional view of international law and practice, that the minority status is granted only to the citizens. Thiele accepts this as the traditional view, but argues that minority protection (e.g. cultural autonomy) in Estonia should also include non-citizens, as minority rights should be human rights. (176) This recommendation, not followed in most European countries, is highly problematic. One cannot demand of the countries of Eastern Europe what one oneself does not, is not willing, to have. As Hofmann says (17), "Nothing would be more fatal to minority protection on the European level [...] than accepting double standards for a longer time period." The double standards argument, often present in the official Estonian argumentation cannot be neglected also concerning the definition of minorities. (Järve and Wellmann 1999:30)

These different arguments in two books have a deeper background. Hofmann (12) says that it is certain from the point of view of both the international and comparative law that membership of a minority depends in the first place on the will of the respective person. Thiele does not think that this would be crucial. This is not surprising considering her attitude towards minority rights as group rights. The individual rights approach is based on subjective willingness to identify oneself as minority and to act accordingly; the group rights approach has inevitable problems with that, as Brunner (48) rightly points out. (see also Hillgruber and Jestaedt 1994: 89–93)

This has a close connection with the opportunity of establishing a cultural autonomy granted by the Estonian constitution. Brunner goes quite far in this respect, stating that the fact that the non-Estonian population has not used the right to form a cultural self-government means in a democratic society that they are satisfied with their destiny and that no further steps are necessary. (68) This obviously corresponds to the overall attitude of the collection defining minority rights as individual rights dependent on individual action. Thiele whose preference is group rights approach naturally contradicts that – according to her, the cultural self-government has not been used because the non-citizens have been left without the minority protection because of no citizenship. Had the non-citizens of ethnically different origin than Estonian the right to form cultural self-government, this would have certainly already been used. (181)

Surprisingly, an analysis of the Estonian constitution shows that the definition of minorities in Estonia is not clear at all. It is only certain that minorities mentioned in Paragraph 51 include also non-citizens. In other places of the constitution, the definition is left open to concretization by the legislation. None of the authors mentions this question.

Of great interest is the handling of minority languages in connection with political rights. Probably the most controversial case in the practice of the Constitutional Review Chamber of the Estonian National Court involved the

question of the constitutionality of an Act which requires Estonian language skills from candidates to the parliament and local councils. The quick and firm conclusion of Thiele (144), without a single hint as to the argumentation of the Court (the decision itself has been referred to in another context), who validated the Act, is that the Constitution has been violated. The saying that “constitution means what the supreme court says it means” might not be absolutely correct, but a dissent needs far more support. The relevant literature on similar provisions of the European Convention of Human Rights could be elaborated further; there is also case law which discusses the problems concerned with restrictions to stand for elections. Thus, the book will certainly not convince Estonian officials or lawyers that the decision of the Court validating the Act was wrong, but might lead into misunderstanding that the issues were not debated in detail, as they actually were.

As to the legal status of aliens, the conclusions are more on the positive side from the Estonian viewpoint. The right to vote in local elections is quite far-reaching compared with other European states. Thiele also admits that the human rights and freedoms are guaranteed in Estonia – the minor problems she sees have not been of practical importance.

As has been stated earlier, Thiele and Schmidt conclude differently. Schmidt states (349), “The practice and rules certainly do not violate the rules of international law.” The more reserved attitude of Thiele has been shown before. At one point, she even sees “a serious danger of assimilation”, (118) which is demonstrated by the fact that several hundred applications a year are submitted to change Russian names to Estonian ones. She finally concludes that human rights should acquire more importance compared with national sovereignty, that minority rights should be defined as human rights and that the position of long-term residents should be strengthened to match those of the citizens. By this, the international law viewpoint is mostly lost, in order to better argue the minorities’ case. “It would contribute to the integration of different national groups in the Estonian society in a new Europe”. (182)

With these conclusions, Thiele leaves the realm of international law and starts advising policy issues. She weighs the Estonian policy, based on national identity and culture preservation (described in Smith et al 1998:105-107), against the need to preserve internal stability and peace, but does not bring out the arguments in their entirety. Remarkably, the Estonian situation is rather stable and conflicts based on ethnic nature are almost non-existent, which has been pointed out by western authors as a comparison to other former Soviet republics (Smith et al 1998:95), but are noteworthy also in countries with much less ethnic diversity.

Thiele unfortunately fails to produce an additional convincing argument to change the Estonian policies. That changes in policy are necessary, has been admitted by many, including the government itself when it adopted the official policy paper on integration. The recommendations would never be considered by Estonian authorities unless they were convinced that the one who makes the

recommendation understands the historical, political and cultural situation in Estonia, especially if the recommendations are not based on certain and universally accepted international law principles. Even then, the arguments used at the moment in Estonia need to be considered. The mutual misunderstanding can be overcome only if the language (and I do not mean that literally) is the same.

The goals of the books, namely presentation and analysis with recommendations, are not fully achieved. The presentation of both Thiele and Schmidt bear a certain bias by not presenting the cases of both sides fully. The recommendations may fail acceptance for this very reason. At the moment, the Estonian decision-makers, representatives of minorities, and also the international community need a balanced and objective argumentation which takes into consideration all arguments. Only this would further the scholarly discussion and help the situation of all people living in Estonia.

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