

CONSTITUTIONAL STATUS AND CRIMINAL LAW PROTECTION OF THE RIGHTS OF NATIONAL MINORITIES AND ETHNIC GROUPS IN THE SLOVAK REPUBLIC

ÚSTAVNÉ POSTAVENIE A TRESTNOPRÁVNÁ OCHRANA PRÁV NÁRODNOSTNÝCH MENŠÍN A ETNICKÝCH SKUPÍN V SLOVENSKEJ REPUBLIKE

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Abstract

The matter and significance of the issue of the rights of national minorities belongs not only to the traditional subject matter of legal and socio-political sciences, but due to its legislative anchoring and actual implementation, it is included among topics that are often problematic, or have a controversial interpretation, which is manifested in plurality, or rather in the difference of opinion on their essence and meaning. However, lawyers, political scientists, sociologists, and also politicians agree on one thing – the rights of national minorities and ethnic groups are subject to constitutional regulation in the domestic environment, they are part of the constitution as the basic law of a democratic state. In this indicated sense, the concept of their constitutional adjustment can be understood in two directions. In general sense – when the status of national minorities and ethnic groups can be characterized as part of the constitutional principles of fundamental rights and freedoms; and in the specific sense – when constitutions grant national minorities and ethnic groups certain specific rights linked to their nationality, or ethnicity (Fridrich, 2013).

Keywords

national minority, ethnic group, constitutional status, protection of rights

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Introduction

While human rights belong to every person on the basis of being a human being (that is, not on the basis of other characteristics), the rights of national minorities and ethnic groups explicitly concern the preservation of special characteristics, whether linguistic, cultural, religious or ethnic. This contrast, or a fact, some authors present as an antagonism between the particular and the general. (Pollmann and Lohman, 2017). We believe that in a democratic society, the basis of which is the democratic constitution, it is not a relationship of antagonisms, but a relationship of mutual conditionality and cooperation, if the relationship between the majority and national minorities (ethnic groups) is legislatively set and applied in practice for the benefit of the development of both – the majority and minorities.

Civil society requires respect and protection of the rights of national minorities and ethnic groups, while their rights must be more than the right of tolerance, discrimination must be prevented and opportunities must be balanced. On the other hand, even minorities must not impose their different ideas (linguistic, cultural, self-governing) on the majority, and stand on the platform where everything that speaks for the majority (or is beneficial for it) is the discrimination against minorities. The protection of national minorities based on human rights gives minorities the chance to independently determine their way of life and resist the assimilation pressure of the environment. However, the development and protection of the rights of national minorities and ethnic groups can only be realized within the framework of the development of the majority society, of which minorities are a part. It is important to connect the elements of individual and group perception of minority rights in such a way as to enable social self-determination within the framework of a human rights-oriented democracy, while at the same time the individual would have the opportunity to freely present his identity and decide for such a way of life (naturally within the existing legal order).

In accordance with the indicated findings, the authors of the article aim to present a brief analysis of the constitutional concept of the rights of national minorities and ethnic groups contained in the Constitution of the Slovak Republic, with a focus on guarantees aimed at the protection of minority rights. The authors pay special attention to the criminal protection of minority rights, noting "hate crimes" that are directed against national minorities and ethnic groups. The authors do not stop at the description of the existing constitutional and legal situation, they try to draw attention to problem areas and look for ways to solve them.

Constitutional status of national minorities and ethnic groups in the Slovak Republic

The Constitution of the Slovak Republic (hereinafter the Constitution of the Slovak Republic or the Constitution) enshrines the rights of national minorities and ethnic groups in the second chapter called Fundamental Rights and Freedoms, in the separate 4th section, in Art. 33 and 34. However, the content of these provisions must be understood in conjunction with the content of Art. 12 of the Constitution, both from the point of view

of the natural law concept of the rights of national minorities (Article 12, paragraphs 1 and 3), as well as from the point of view of the guarantees provided to national minorities and ethnic groups in the exercise of their rights resulting from the Constitution of the Slovak Republic (Article 12, paragraph 2 and 4).

The Slovak Republic, unlike the other V4 states, does not have a separate law on national minorities and ethnic groups (minority law), which is from time to time the subject of criticism by political representatives of minorities living in Slovakia, especially the Hungarian minority. The non-existence of a minority law creates topic related problems, e.g. problems with a conceptual definition of a national minority and an ethnic group, or an application concretization of some rights granted to minorities by the constitution and laws, especially from the point of view of the Roma minority.

In relation to the rights of minorities, the Constitution uses a universal approach, i.e. it recognizes and guarantees them to national minorities and ethnic groups, but does not define both terms in terms of content (and neither does any other legal regulation forming part of the Slovak legal order), but indicates a fundamental formal-legal difference between them resulting from the content of Art. 12 par. 3 first sentence and Article 33 of the Constitution.

We have already indicated that the natural-legal concept of the rights of national minorities is strongly reflected in the content of Art. 12 par. 3 of the Constitution, according to which every natural person has the right to freely decide on his nationality, while any influence on this decision and all methods of coercion leading to denationalization are prohibited. It is an absolute right (not tied to state citizenship), which does not need any implementing law from the point of view of its implementation, because it represents a direct form of implementation of the constitution. It is a personal decision of an individual, which is not subject to approval by public authorities or judicial review. In other words, nationality is a subjective category that can be repeatedly changed in the life of a citizen of the Slovak Republic. It follows from the logic of the matter (better said from the method of common sense) that a citizen can choose his belonging to a national minority and live (be located) on the territory of the Slovak Republic at the same time (even if the constitution does not state this explicitly).

That being said, the diction of Art. 12 par. 3 of the Constitution implies that citizens can choose nationality, but not affiliation to an ethnic group. The Slovak founder (similarly to the Czech Republic) perceives ethnicity as an objective category based on such characteristics, which the individual cannot decide on through his free speech (Pavlicek et. al., 2004). Accordingly, the Constitution does not distinguish between a choice (nationality, national minority) and an objectively given state (ethnicity, ethnic group), which is confirmed by the content of Article 33 of the Constitution, which states that "belonging to any national minority or ethnic group must not be to no one's detriment".

This seems to be a clear constitutional construction but it appears to be problematic when we want to gather insights about minorities, for instance about the Roma minority. At the last population census in Slovakia in 2011, 107,000 citizens registered as a Roma national minority (Statistical Yearbook of the Slovak Republic, 2012), which, however, represented perhaps one third of the total number of Roma living in the territory of the Slovak Republic at that time. This happened because many members of the Roma minority chose

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Slovak nationality or declared themselves to be a Hungarian national minority, especially in the south of Slovakia.

However, when we talk about the problems related to the Roma community today (and there are really quite a few of them), we do not mean only the part that has registered as a Roma national minority, but all the Roma living on the territory of Slovak republic. Likewise, if the state adopts various measures, e.g. of a nature of social policy directed towards this community, meaning all Roma people, and not only members of the Roma national minority. In this context, it seems correct to us to perceive the Roma as an ethnicity (ethnic group), whose members, as citizens of the Slovak Republic, may, in accordance with Art. 12 par. 3 of the Constitution, freely choose their nationality. The fact is that Slovak legislation does not perceive things in this way, and legal science, and not only legal science, does not pay appropriate attention to them either. If the Slovak Republic had a separate law on the rights of national minorities and ethnic groups, it would have to take a position on this issue, or bring clarity to it.

According to serious statistical estimates based on data from local governments and Roma associations, around 460,000 to 500,000 Roma live in Slovakia today (some sources claim that it is more). If the state, its state bodies and institutions want to help this minority (ethnicity), it is necessary to speak openly and, above all, truthfully about all the problems related to it (including theoretical-legislative problems).

Let us return to the universal principle that characterizes the constitutional enshrining of the rights of national minorities and ethnic groups in the conditions of the Slovak Republic. It is also manifested in the fact that the constitution, in a broader sense the legal order of our state, does not count minorities, but the state recognizes them as national minorities and ethnic groups. It does not even state minorities whose members are granted specific rights. An exception is represented by the Education Act in the indicated sense, when it states in which languages of national minorities the right to education is guaranteed, thus indirectly identifying specific national minorities.

Universal access is also related to the openness of the system, i.e. the circle of national minorities and ethnic groups can expand. This is also supported by the fact that the current legislation does not require the state to recognize any minority (something similar to, for example, the principle of registration in association law). It depends on the minority itself, its members, whether they feel the element of belonging and the need to realize the rights offered to them by the constitution and other legal regulations. However, such a liberal regime could cause problems in the future with national minorities settling anew on the territory of Slovakia.

The constitution binds the granting of rights to members of minorities to state citizenship, i.e. grants them to citizens of the Slovak Republic belonging to a national minority or ethnic group, or otherwise, to citizens of the Slovak Republic who have a nationality other than Slovak. The constitutional enshrining and implementation of minority rights is based on respect for the principle of equality of all subjects of fundamental rights and freedoms (Article 12, paragraph 2 of the Constitution) and the principle of granting specific rights to citizens belonging to national minorities and ethnic groups. It is not only a personal specification (citizen member of a minority), but also a substantive or content one (e.g. the right to education of a minority is a specification of the right to education otherwise

granted to everyone in accordance with Article 42 of the Constitution) (Čič et. al., 2012). Naturally, it is up to each member of the minority whether he will use the specific rights emerging from the constitution.

The founder forms the rights of national minorities and ethnic groups on an individual basis, granting them to an individual, a member of a minority. They protect the members of the minority as individuals and not the minority as a whole, which in itself does not preclude the joint exercise of individually granted rights. Such joint performance of the Constitution in Art. 34 par. 1 directly foresees when it stipulates: "Citizens forming national minorities or ethnic groups in the Slovak Republic are guaranteed all-round development, in particular the right to develop their own culture together with other members of the minority or group, the right to spread and receive information in their mother tongue, to associate in national associations, establish and maintain educational and cultural institutions".

It is possible to debate whether the absence of an explicit provision on the protection of individual minority rights represents a lack of legal certainty in the protection of fundamental rights and freedoms by the Constitution of the Slovak Republic. We believe that it is not, because the absence of explicit legislation is not proof of the existence of collective rights. Collective rights do not belong to the standard of constitutional law in Slovakia in the current legislation, nor in its previous development, when Slovakia was part of the former joint Czechoslovak Republic (Palúš et. al., 2016).

The rights granted by the Constitution of the Slovak Republic to national minorities and ethnic groups are concentrated in Art. 34 of the Constitution. About the range of rights that includes par. 1 of the said provisions we have already discussed above. Pursuant to Art. 34 par. 2, in addition to the right to learn the state language, citizens belonging to national minorities or ethnic groups are guaranteed under the conditions established by law:

- a) the right to education in their language,
- b) the right to use their language in official communication,
- c) the right to participate in the resolution of matters concerning national minorities and ethnic groups.

If we take into account the scope of rights addressed to minorities contained in the laws of ordinary legislation, we can conclude that the scope of minority rights in the Slovak Republic corresponds to international standards on human rights and is comparable to the content of rights of this type with the V4 countries. Loosely speaking, national minorities living today in the territory of the Slovak Republic can be divided into two groups:

- traditional minorities living in Slovakia for a long time (Bulgarian, Czech, Croatian, Hungarian, German, Polish, Romany, Ruthenian, Ukrainian);
- minorities newly settling (we mean the last but also the following years) in Slovakia (e.g. Russian, Vietnamese, Chinese, Albanian, Chechen, but also asylum seekers from Asia or Africa).

If we take into account the quantitative range of the mentioned national minorities and the relatively broadly conceived range of rights granted to national minorities and ethnic groups by the constitution and by ordinary legislation, we might consider the words of J. Drgonec: "In order for the entire spectrum of minorities living in the territory of Slovakia to be timely and insightful, it is necessary to approach the definition of the rights included in Art. 34 of the Constitution very sensitively and judiciously, because excessive and imprudent

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atism could easily lead to formally recognized, but materially unavailable rights, which the Slovak Republic would not be able to provide organizationally or financially". (Drgonec, 2019: p. 781).

It should be noted that in Art. 34 of the Constitution, the expression "is guaranteed" means that the rights granted to national minorities and ethnic groups are guaranteed by the state. At the same time, the state guarantee means that the state is obliged not only not to prevent citizens from enjoying their rights and freedoms, but also to do everything to ensure that the relevant rights are possible to be implemented and realized, or to establish and apply sanctions in case of violation of rights or freedoms (Palúš et. al., 2016). The actual status of national minorities and ethnic groups should be comparable in terms of using the rights guaranteed to them by the constitution, that is, at least those minorities that are comparable in number.

The rights of minorities resulting from the constitution presuppose their loyalty to the state and respect for the democratic principle of equality, which includes the prohibition of discrimination, both towards the majority population, but also in relation to different minorities in a comparable position. The indicated requirement is contained in the content of Art. 34 par. 3 of the Constitution, which completes the constitutional concept of the status and rights of national minorities and ethnic groups in the Slovak Republic. Pursuant to the aforementioned provision of the constitution, "the exercise of rights belonging to national minorities and ethnic groups guaranteed in the constitution must not lead to a threat to the sovereignty and territorial integrity of the Slovak Republic and to discrimination against the rest of its population". This is a condition that requires further clarification by the state, because it sometimes raises discussions (concerns) about whether and to what extent it is legally justified, among other things, because a similar provision is not contained in any of the constitutions of the V4 states.

Above all, it should be remembered that the constitutional rights granted to national minorities and ethnic groups are included in the system of fundamental rights and freedoms as full-fledged and equal fundamental rights, which, in accordance with such a statement, are potentially subject to possible restrictions that are part of the constitutional concept in each, even in the most democratic states. The Constitution of the Slovak Republic recognizes two forms of possible restriction of basic rights and freedoms – imposition of obligations (Article 13, paragraph 1) and determination of limits (Article 13, paragraphs 2, 3, 4). Limitation of the rights of national minorities and ethnic groups can be implemented by determining limits for the reasons stated in the constitution.

There are three reasons: the protection of sovereignty, which must be perceived with the content of Art. 1 of the Constitution (the Slovak Republic is a sovereign state), the protection of territorial integrity, which must be linked to Art. 3 par. 1 of the Constitution (the territory of the Slovak Republic is unified and indivisible). The third reason is the protection of the rest of the population of the Slovak Republic against discrimination. The term "other population" includes the Slovak national majority with all national minorities and ethnic groups different from the national minority or ethnic group exercising their rights according to Art. 34 par. 1 and 2 of the Constitution. The mentioned provision must be interpreted in connection with Art. 33 of the Constitution, which guarantees the principle of protection of national minorities and ethnic groups, while Art. 34 par. 3 determines the constitutional principle for protection against national minorities and ethnic groups.

Under the mentioned circumstances, the content of Art. 34 par. 3 acceptable, from the point of view of its implementation, it is possible to argue about a legislative-formal deficiency consisting in the fact that according to Art. 13 par. 2 of the Constitution between fundamental rights and freedoms can only be modified by law under the conditions established by the Constitution. In this case, however, the limits would be determined directly from the constitution, since Slovakia does not have a separate law on the rights of national minorities of ethnic groups, which the content of Art. 34 par. 3 specified. The provision itself does not have a punitive, but preventive-protective character, and it should be perceived as such.

The inclusion of the analyzed provision in the Constitution of the Slovak Republic undoubtedly has its historical context and experiences that Slovakia went through as part of the pre-Munich Czechoslovak Republic, but also as part of socialist Czechoslovakia in the individual stages of its development from 1948 to 1989. However, it is certainly also a reaction to social political events and developments in Slovak conditions after 1989.

Each constitutional scheme is ultimately confirmed or refuted by socio-political practice determined by the complex of guarantees that the constitution and the legal order offer in relation to a certain constitutional institute from the point of view of its implementation and protection. This postulate also applies in relation to the constitutional enshrining of the rights of national minorities and ethnic groups.

The first basic level of legal guarantees and protection is established by the constitution itself as the basic law of the state. In our case, in the first place, it is necessary to state Art. 12 par. 2 of the Constitution, which determines that basic rights and freedoms are guaranteed on the territory of the Slovak Republic to everyone, regardless of the circumstances specified in this provision (gender, race, skin color, religion, etc.), including belonging to a national minority and ethnic group. It is from the point of view of this fact (reason) that we want to make a few remarks about the said constitutional provision, which are important from the point of view of the content of our contribution.

Art. 12 par. 2 of the Constitution is primarily a general provision of equality, but its purpose is also protection against discrimination due to belonging to a national minority and ethnic group. For the aforementioned reason, the second sentence of the Constitution of Art. 12 par. 2 enjoins everyone to be protected from harm, advantage or disadvantage. The Constitution prohibits discrimination in any form – positive (unjustified favoring of minorities) and negative (to damage or disadvantage minorities). In other words, no one can be harmed, favored or disadvantaged in terms of rights and freedoms granted by the Constitution of the Slovak Republic due to belonging to a national minority or ethnic group.

The constitutional principle of equality contained in Art. 12 par. 2 finds expression in the process of its implementation in legislation and in the application of law, while its implementation in both indicated levels is connected with the viewpoint of the differences of individual legal entities (majority population, minorities), but also of individuals, and with the acceptability of these viewpoints from the point of view of the Constitution of the Slovak Republic as a whole and its individual provisions, as well as from the point of view of the principles of a democratic society. In the sense indicated in Art. 12 par. 2 of the Constitution, it is addressed to the public power in general – that means not only

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legislative, executive and judicial power, but also territorial self-government. In other words, all state bodies and local self-government bodies ensuring the exercise of public authority must approach individuals, members of a national minority or ethnic group in such a way that they can enjoy their rights under the Constitution and laws of the Slovak Republic without interference.

Another important provision of the Constitution of the Slovak Republic providing protection to members of national minorities and ethnic groups is the content of the already mentioned Art. 33 of the Constitution, from which it follows that "belonging to any national minority or ethnic group must not harm anyone". The Constitution does not even indicate what harm should be involved in connection with belonging to a national or ethnic minority. It is obvious, however, that the term "harm" used by the Constitution cannot be equated with the meaning that this term has in civil or commercial law. The concept of "harm" contained in Article 33 of the Constitution should be interpreted extensively, beyond the scope of its private property concept, as a synonym for the expression, so to speak, of everything that will have a negative impact on the person who exercised his fundamental right or freedom, if the negative impact is in causal connection with the exercise of a fundamental right or freedom. Simply put, if someone wanted to claim a violation of the right due to injury in connection with his national or ethnic minority, he would have to specify what he sees it as the injury and subsequently prove a causal connection between the injury and belonging to a national minority or ethnic group. Despite the relatively complex legal structure, the guarantee contained in Art. 33 of the Constitution to be considered an important and irreplaceable means of constitutional protection of national minorities and ethnic groups in the conditions of the Slovak Republic.

The rights of national minorities and ethnic groups, which are conceptually enshrined in the constitution, find their concrete expression in ordinary legislation, especially in legal norms of civil, administrative and criminal law. From the point of view of the protection of the analyzed rights (as the title of the paper suggests), we will be interested in their protection under criminal law, since it is criminal law that most significantly protects the principles and values expressed in the constitution. It is not by any chance that in the professional literature one can come across opinions according to which criminal law is constitutional law in a negative sense (Imre Szabo) (Filip, 1999). This connection is not accidental, it has its own internal logic and meaning. The Constitution of the Slovak Republic enshrines the principles of a democratic and legal state, defines the relationship between the state and the individual (citizen) through the Institute of Fundamental Rights and Freedoms, and in this sense formulates the principles of criminal law.

Criminal law protection of national minorities and ethnic groups

The constitutional guarantee of the protection of national minorities and ethnic groups is expressed in several laws², which protect their rights to varying extents and intensity.

² As the most important laws, the following can be considered: Act No. 365/2004 Coll., as amended (so-called anti-discrimination law), Act No. 184/1999 Coll. on the use of languages of national minorities, as amended, Act No. 372/1990 Coll. on misdemeanors, as amended, and Act No. 300/2005 Coll. of the Criminal Code, as amended.

In addition, these laws reflect the obligations of the Slovak Republic that result from international conventions and documents of the European Union³. For the next part of the post, we have chosen the law that protects the rights of national minorities and ethnic groups the most intensively: Criminal Law (Act No. 300/2005 Coll. as amended, hereinafter also TZ).

Criminal acts directed against national minorities and ethnic groups and their members can be labeled under the common name "hate crimes", even though the Criminal Code does not designate them as such, nor do they appear in the law in one place. While in our Criminal Code they are also included in the category of extremist crimes, the legal systems of other countries do not label them as such⁴. We consider hate crimes to be a broader concept than extremist crimes, but these concepts are intertwined in our legislation.

We understand the term "hatred" as a strong, hard-to-overcome emotional opposition to a group of people or an individual because of their belonging to a national minority or ethnic group. Emotional resistance can only remain at the level of personal experience, but it can manifest itself in severe physical or verbal attacks directed by the hating person against the hated. It is therefore not just ordinary verbal derogatory statements during an argument, swearing, etc.. he attacks must demonstrate considerable intensity and demonstrably stem from hatred of a national minority or ethnic group (Burda, Čentés, Kolesár, Záhora, et. al., 2010).

Crimes committed out of hatred, including towards national minorities and ethnic groups, can be divided into several groups on the basis of legislation:

a) The first group consists of criminal acts that are regulated in the Criminal Code under the common name "Support and promotion of groups aimed at suppressing fundamental rights and freedoms". This subheading is out of the system in the law, it does not accurately describe the nature of all the crimes listed there, and it is difficult to reveal the reason for this subheading, which belongs as a whole to the twelfth chapter of the special part of the Criminal Code⁵. Criminal offenses include:

- *Establishment, support and promotion of a movement aimed at suppressing fundamental rights and freedoms (§421)*
- *Expression of sympathy for the movement aimed at suppressing basic rights and freedom (§422)*
- *Production of extremist materials (§422a)*
- *Dissemination of extremist materials (§422b)*
- *Storage of extremist materials (§422c)*
- *Denial and approval of the Holocaust, crimes of political regimes and crimes against humanity (§422d)*
- *Defamation of nation, race and belief (§423)*

3 We have in mind, in particular, the Framework Convention for the Protection of National Minorities (no. MZV No. 160/1998 Coll., European Charter of Regional or Minority Languages (no. MZ SR No. 588/2001 Coll.), Council Framework Decision 2008/913/SVV of 28 .November 2008 on the fight against certain forms and manifestations of racism and xenophobia through criminal law (OJ L 308, 6.2.2008).

4 These are, for example, the states of Central Europe with which the Slovak Republic neighbors: the Republic of Poland, the Czech Republic, Hungary.

5 Twelfth chapter: Crimes against peace, crimes against humanity, crimes of terrorism, extremism and war crimes. First part: crimes against peace and humanity, crimes of terrorism and extremism.

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- Incitement to national, racial and ethnic hatred (§424)
- Apartheid and discrimination of a group of persons (§424a)

b) The second group consists of crimes committed with a special motive according to §140 letter e); that motive is the commission of a crime of hatred against a group of persons or an individual because of their real or supposed belonging to a certain race, nation, nationality, ethnic group, because of their real or supposed origin, skin color, gender, sexual orientation, political belief or religious belief. If the crime is committed for the stated motive and has such a motive as a particularly aggravating circumstance, it is considered an extremist (hate) crime in the same way as the crimes listed under §421-424a TZ (§140a TZ).

c) Genocide (§418) and Inhumanity (§425). We included these two crimes in a special group because, although they belong to the same part of the Criminal Code as the previous crimes, they are not mentioned in the provisions of § 140a. Both crimes are more serious from the point of view of the object of the crime and the method of committing the crime than the attacks of crimes listed in group a).

Ad a)

This subgroup includes criminal acts that state the basic rights and freedoms of persons as an object of protection, regardless of their racial, ethnic, national or religious affiliation. In the provisions of § 421 par. 1 TZ forms an objective page:

- establishing, supporting or promoting a group, movement or ideology that tends to suppress the fundamental rights and freedoms of persons, or that preaches racial, ethnic, national or religious hatred,
- or promotion of a group, movement or ideology that in the past aimed at suppressing fundamental rights and freedoms.

While the establishment of a group should be understood as an activity leading to the actual creation (emergence) of a group, support should be understood as the provision of financial donations, spaces for activities and promotion, e.g. positive evaluation in a narrower or wider circle of people. In the Criminal Code, a group must be understood as at least three persons, although in this case it is assumed that there are probably more (Burda, Čentěš, Kolesár, Záhora, et. al., 2010).

The mentioned criminal act is a misdemeanor in paragraph 1, but if the perpetrator of the said act commits the act in public or in a place accessible to the public, in a more serious manner or in a crisis situation, the act is a crime (§421 paragraph 2).

Another crime from this subgroup is the crime of expressing sympathy for a movement aimed at suppressing fundamental rights and freedoms, either in public or in a place accessible to the public (§ 422). According to Section 122, paragraph 2 of the Criminal Code, a crime is committed in public if it is committed:

- by the content of printed material or by expanding the file, by film, radio, television, using a computer network or another similarly effective method, or
- in front of more than two persons present at the same time (except the offender).

A place accessible to the public is a place to which a large number of people have free access.

As an expression of sympathy, the legislator mentions the optional use of flags, badges, uniforms or slogans for a group, movement or ideology that aims or has had in the past aimed at suppressing fundamental rights and freedoms, or that preaches racial, ethnic, national, religious hatred. This criminal offense also has a second basic factual element: even if the offender uses modified banners, badges, uniforms or slogans in the act, which give the appearance of genuine movements, he is a criminal under the same penalty as if he had used identical objects.

The provisions of §422a, 422b and §423c of the Criminal Code qualify as a criminal offense the production of extremist material, its dissemination and storage. From the point of view of the issue examined by us, it is a written, graphic, visual, audio or visual-audio version of texts and statements, flags, badges, slogans or symbols advocating, supporting or inciting hatred, violence or unjustified different treatment towards a group or an individual because of their belonging to a certain nationality or ethnic group.

The criminal acts of production, distribution and storage of such material represent the physical activity of the offender who produces or participates in the production, reproduces this material, transports, supplies, makes available, puts into circulation, imports, exports, offers, sells, sends or distributes. The basic facts of all the mentioned crimes are intentional crimes. If the criminal act of producing or spreading extremist material is committed in a more serious manner, if the perpetrator is a member of an extremist group, or if the perpetrator spreads hateful material publicly, the act becomes a crime with a maximum sentence of eight years in prison.

The criminal act of denying and approving the Holocaust, crimes of political regimes and crimes against humanity (§422d) is a verbal offense and the so-called denial crime. Even if its inclusion in the Criminal Code is not without debate, the sanction of the said procedure requires the Framework Decision of the Council of the European Union on the fight against certain forms and manifestations of racism and xenophobia (Article 1 point 1 letter c).

Both basic facts of this criminal offense affect the perpetrator who publicly denies, questions, approves or tries to justify the Holocaust, the crimes of regimes or movements that aim to suppress the fundamental rights and freedoms of persons (first fact). In the second essence, public denial, approval, questioning, gross belittling or justification of genocide, crimes against peace, crimes against humanity or war crimes is considered a criminal offence. The method must be of such intensity that it may incite violence or hatred against a group of persons or a member thereof. Even if this crime does not explicitly state that the attack is directed against national minorities and ethnic groups, it follows from the glorified or denied criminal activity.

Defamation of the nation, race and belief (§423) can be committed verbally and non-verbally, and in the basic and qualified nature of the act by an intentional crime. A criminal offense is committed by the person who:

- publicly defames any nation, its language, any race or ethnic group, or
- a group of persons or an individual because of their real or perceived belonging to a race, nation, nationality, ethnic group, because of their real or perceived origin, skin color, religious belief or because they have no religion.

Even a qualified fact is a crime; a particularly aggravating circumstance will be if the perpetrator commits the act as a member of an extremist group, as a public official, or for a special motive.

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It is possible to incite national, racial and ethnic hatred both verbally and non-verbally, and by doing so fulfill the elements of the criminal offense (§424).

The difference between the criminal offense of defamation of the nation, race and belief (§423) and the criminal offense of inciting national, racial and ethnic hatred is mainly in the procedure. Defamation can be characterized as "gross, insulting and subjective disparagement by offensive statements or other offensive actions. Offensiveness of speech results either from the content or from the manner of this speech, or from the circumstances under which it was made. It will not be defamation if only an objectively existing fact is established. Public incitement is an intensified action on another person or persons to violence or hatred towards a group of persons or an individual, or public incitement to limit their rights and freedoms. The intention is aimed at a group of persons for similar reasons as in the provision of Section 423 of the Civil Code. (Čenteš et. al., 2013: p. 836)

The criminal act of inciting national, racial and ethnic hatred (§424) has two basic facts and one qualified one. We have already mentioned the first, the second basic fact affects the action when the perpetrator conspires or gathers to commit incitement. Particularly aggravating circumstances are listed in paragraph 3: the perpetrator commits a crime for a special motive, as a member of an extremist group, as a public official, or in a crisis situation.

The crime of "apartheid and discrimination against a group of persons" according to Section 424a of the Criminal Code, is a crime unlike previous crimes, especially because of the intensity of interference with basic human rights and freedoms. The said crime is committed by a person who practices apartheid or racial, ethnic, national or religious segregation, or other widespread or systematic discrimination against a group of persons. In qualified facts, they are particularly aggravating circumstances if the perpetrator commits the act as a member of an extremist group, as a public official, with a special motive, and thereby exposes such a group of persons to inhuman or degrading treatment, and thereby places such a person in danger of serious injury to health or death or in a crisis situation.

According to Art. 7 par. h) of the Rome Statute of the International Criminal Court of July 17, 1998, apartheid is considered to be the inhumane treatment referred to in par. 1 (crimes against humanity), characterized by the predominance of one racial group over another. The purpose of the proceedings is to preserve the institutionalized regime of systematic oppression (333/2002 Coll. notification of the Ministry of Foreign Affairs of the Slovak Republic).

The seriousness of this crime is also underlined by the fact that the criminal offense is not subject to the statute of limitations (§ 88 and § 91 of the Criminal Code).

Ad b)

Provision §140a of the Criminal Code lists as a crime of extremism (hate crime) also an act committed for a special motive § 140 letter e) TZ, which is a special qualifying term. Thus, it follows on from the exhaustive calculation of cases of circumstances conditioning the use of a higher penalty rate, or particularly aggravating circumstances. The Criminal Code lists two groups of particularly aggravating circumstances: the first group – for individual criminal acts, there is a reference to the provisions of §§ 138-140, where particularly aggravating circumstances are exhaustively listed and, depending on the nature of the case, the law

enforcement authority and the court add any of them in as part of the qualification to the offender; the second group – in the case of a criminal offense, a particularly aggravating circumstance is stated in the qualified factual basis directly, without reference to another provision of the Criminal Code in the general part (e.g. § 422b paragraph 2, letter b) of the Criminal Code "if he commits the act as a member of an extremist group"). Provision § 140a for further defining the crime of extremism chose the first method, which means that if there is an intentional crime in a special part of the Criminal Code, which has the reference "special motive" as a particularly aggravating circumstance in the qualified facts, it is the task of the authorities in criminal proceedings and the court to look for which motive would come into consideration given the deed and possible intentional culpability. According to § 140 letter e) of the Criminal Code is a special motive (and therefore a circumstance that conditions the use of a higher penalty) if the act is committed out of hatred towards a group of persons or an individual because of their real or perceived belonging to a certain race, nation, nationality, ethnic group, because of their real or presumed origin, skin color, gender, sexual orientation, political opinion or religious belief. Criminal acts that could therefore be characterized as crimes of extremism (hate crimes) could be, for example: the crime of premeditated murder (§ 144 par. 2 letter e), murder (§ 145 par. 2 letter d), killings (147 paragraph 2 letter b), 148 paragraph 2 letter b), bodily harm (§ 156 paragraph 2 letter b) and others.

Ad c)

We included two crimes in this group, in which attacks motivated by hatred, o.i. towards some nationalities or ethnic groups, they are against their existence.

The crime of genocide (§418) is committed by anyone who, with the intention of completely or partially destroying a nation or a national, ethnic or other group: causes serious harm to health or death to a member of such a group, takes measures aimed at ensuring that in such a group prevented the birth of children, forcibly transfers children from one group to another, or introduces members of such a group to living conditions intended to bring about its complete or partial physical destruction. The seriousness of this crime is underlined by the fact that it is a criminal offense with no statute of limitations (§88 and §91 TZ).

The crime of inhumanity (§425) is committed by anyone who, within the framework of a large-scale or systematic attack against the civilian population, commits o.i. persecution of the population on a national or ethnic basis, apartheid or other similar segregation or discrimination. Even in this case, it is a non-statutory crime. The factual nature of this crime follows the definition of the crime of inhumanity according to Article 7 of the Rome Statute. (Announcement of the Ministry of Foreign Affairs of the Slovak Republic No. 333/2002 Coll.).

Conclusion

On the basis of what we stated in this contribution, it can be concluded that the constitutional concept and criminal law protection of the rights of national minorities and ethnic groups in the Slovak Republic is rational, based on the current knowledge of legal science, especially the science of constitutional and criminal law, is European compatible, corresponding to the existing standards that are determined by international documents on human rights

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in general and the rights of national minorities and ethnic groups in particular. It is also acceptable in practice because it enables the all-round development of minorities, and it also protects them from the illegal actions of other subjects, which can be motivated by nationality or ethnicity, thus threatening the position of national minorities and ethnic groups defined by the constitution and laws.

The correctness and justification of each constitutional-legal scheme is confirmed or questioned by practice, which also uncovers problem areas requiring refinement of the existing legislation or the adoption of measures aimed at fulfilling the content of the legislation. In the space defined in this way, it is necessary to keep perceiving the issue we are investigating. Even if we evaluate its constitutional and legal form positively, there is no doubt that it can be improved or specified on a formal-legal level (e.g. by adopting a separate law on national minorities and ethnic groups), but also on a content level (e.g. by harmonizing the legislative status and real conditions, especially with regard to the Roma minority, by unifying the conceptual definition of hate and extremist crimes).

The state and its state bodies are obliged to create the conditions for the constitutional concept of the rights of national minorities and ethnic groups that are feasible, and it is also the state that, through its state bodies, is supposed to specify the existing legal status and take other necessary measures in order to improve the constitutional and legal status of minorities, including their protection.

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