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Ulrich Scheuner, Remarks on the Legal Status of “Displaced Persons” in Germany
(December 14-15, 1948)

In his capacity as an expert advisor to the *Länderrat* [Council of States], the conservative state law theorist Ulrich Scheuner argued against granting national minority status to foreign refugees on German soil. He wanted to see an end to the refugees’ special legal status, and he wanted them to be subject, without restriction, to the German authorities. Given the burden of the war’s aftereffects, Germany had no interest in taking in large numbers of foreigners, especially since many of them had only come to Germany after the war’s end. But if, according to Scheuner, they were to stay, then they had to be given complete equality with the Germans.

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I.

It can be readily assumed that the current situation – in which the DPs hold a kind of extraterritorial status in Germany and thus, when it comes to special rights, enjoy a status exceeding that formerly enjoyed by foreigners in China – is not satisfactory in the long run and must lead to frictions. Rather, the right idea is to give these foreigners a status that guarantees their legitimate interests and wishes, on the one hand, but places them under the jurisdiction of the German authorities, on the other. In addition, I agree with the opinion of the expert Buchardt that the attitude of the German public on this question leaves a lot to be desired. He rightly emphasizes that one prerequisite for a sustainable solution is public education by the German press, which opposes the often primitive xenophobia in Germany and creates greater understanding of the current situation of temporary coexistence, which is unwanted by both sides but unavoidable.

It is commendable when expert opinion proposes that the German side should develop plans for a future solution that will lead to a better coexistence between the DPs and the German population. However, the ideas it lays out – that DPs should be given the status of a national minority with cultural autonomy – do not do justice to this special problem.

II.

The following points argue against the proposed solution:

1. It is part of the nature of a national minority to form a permanent population on the soil of the given country whose citizenship it also possesses. For, in terms of state law, one can only speak of the full enjoyment of equality and the granting of basic individual rights, if we are dealing with a long-established population; politically and morally, too, the demand that one's cultural and possibly religious peculiarities be recognized is only justified under those circumstances. That a foreigner has a different status when it comes to these questions goes without saying. B.'s expert opinion mentions both of these points – permanent settlement and citizenship (page 8), but it does not derive any conclusions from them. The reference to the treaties on the protection of minorities after 1919 must fail all the more, since, in these treaties, the states in question were explicitly obligated to grant citizenship without distinction to the entire population they took in, including minorities. The minority statute is thus essentially connected to the full incorporation of the group in question into the state.

2. In view of the fact that it is overpopulated, Germany also has no occasion to take in larger population groups of foreign nationality. Thus, it is interested in their future emigration. In light of this, it is reasonable to clearly uphold the DPs' foreign status. There is reason to fear, in any case, that even after the completion of the current emigration wave of able-bodied DPs, a mass of older, less useful individuals will remain in Germany. They pose an entirely different question: should they be given the status of permanent residents of Germany, that is, should they be given the status of foreigners entitled first to a long stay and then later, possibly, to citizenship? Even if one envisages such a solution – which may indeed turn out to be necessary for a permanent, non-deportable segment of the DPs – we are talking about the naturalization of foreigners, and therefore we are currently talking about a special status for foreigners. This is what we have to aim for.

3. The expectation of demonstrating German good will through [the granting of] minority status may apply. The further hope of thereby taking steps in the development of a new law on minorities that would also benefit German minorities [in other countries] is misplaced. The old minorities law rested on the firm foundation of the protection of individual, basic human rights, liberty, equality, protection of property, and freedom of conscience. There is no reason why these rights cannot also be guaranteed to the DPs as foreigners. An international minority law is not served by the protection of foreigners, because that is a different problem from that of resident national minorities. Moreover, in Eastern Europe, in particular, with Allied participation (Potsdam), the law on minorities was replaced with the solution of expelling the minorities. The reaction to this in Germany, which had to take in 11 million German refugees, cannot simply be to set an example through extensive minority rights. Unless the path of forced expulsions that was embarked upon in Potsdam is clearly relinquished, any thought of reestablishing a minorities law in Eastern Europe is utopian. Instead, today we see the expulsion of another 500,000 Magyars from Slovakia, and we witness the same phenomena of intolerance and exaggerated nationalism in Palestine and India. Since Germany has become the primary victim

of this development, it naturally has every interest in bringing about more humane principles. But one can hardly expect it to do so by granting minority status to foreigners on its soil.

In addition to this, B.'s expert opinion on cultural autonomy and the international right of appeal is based on notions that were developed in Germany after 1920. These notions of a protected and internationally guaranteed minority have proven to be dangerous and illusory. They invariably widen the gulf between the minority and the majority nation, and they eventually lead to the exclusion of the minority from the life of the state. The right path – taken in exemplary fashion in Belgium and Switzerland – can only be that of full, civic-public law equality of the various national groups without any kind of corporative organizations or foreign intervention. Only this proven path helps. This means that if these DPs wish to remain in Germany as permanent residents, the path to this is equality in all legal respects without special status.

Finally, it also should be noted that, practically speaking, the DPs in Germany are long-term guests or – if they stay – a type of immigrant. But every state demands that immigrants assimilate.

To sum it up, the following can be said about the idea of a minority statute: such a statute, which is what B.'s expert opinion envisages, no longer does justice to the international situation today. What should be sought for groups of foreign nationals today is the protection of elementary human rights and cultural-religious freedom of conscience, but not corporative organization as a minority.

4. It is entirely unthinkable that the DPs could, for example, be given the same status as foreign groups living in Germany. According to the Potsdam Agreement, the right of Slovene groups to live in Germany can be recognized [at all] only with reservations. If the expulsion of the Germans is upheld, the least one should do here is consider the idea of a population exchange and, in any case, the emigration of irridentist groups. The Danish group in southern Schleswig, which could also be described as irridentist, is in an entirely different category. To put them into the same category with the DPs does not seem justified.

However, such a policy in Germany surely cannot help the Germans abroad. To pursue a special status for them, given all states' current anxiety about fifth columns and so on, especially German ones, would be tantamount to making life impossible for them. For German workers abroad there are only two options: either guest status as a foreigner, or assimilation as an immigrant with the final goal of naturalization. Everything else, ideas about preserving German cohesion, are entirely impossible given today's utter rejection of this sort of German "work abroad." Mentioning the Saar Germans in this context is erroneous. Formally, they are not yet French, and will never be a minority, since the territory is purely German.

A rebuilding of the law on minorities must proceed from entirely new ideas that will not be presented in detail here. The DPs, however, have nothing to do with them.

5. The permanent assimilation of the DPs in Germany is predicated upon the desire of the DPs for such a situation. This concerns their incorporation into the labor force in particular. To the extent that they reject labor force participation, which happens with a portion of the DPs, little progress is likely. Permanent assimilation is likewise predicated upon their being made subject to German authorities, and upon their political activity assuming a neutral character. Now, when the DPs depend exclusively on the occupation, it can be of no concern if they engage in anti-Russian propaganda. After their incorporation into German structures, that is no longer possible.

6. The solution for the DPs seems to lie in the following direction: to rely on the general occupation, as long as it continues. In the process, to expand German authority over them by way of gradual adjustment: police and judicial authority. If the occupation ends, the conclusion of a treaty of guarantee with the occupying powers, in which the involvement of the IRO in supervising the adherence to the agreed-upon protective provisions seems appropriate. Apart from these guarantees, however, the DPs would have to be made fully subordinate to German jurisdiction and administrative sovereignty. Giving foreigners in Germany extraterritorial status or exempting them from German sovereignty does not seem compatible with German statehood in the long run. The unimpeded activity of the IRO in Germany would provide a sufficient guarantee of the rights of the DPs. There is no additional need for an appeal to international bodies, since the guaranteeing powers with whom that agreement would have to be concluded can intervene diplomatically at any time or, given Germany's status, would even have other possibilities to intervene on behalf of the DPs at any time.

7. Alongside this fundamental comment, the following details on which the expert opinion seems to be entirely accurate should be highlighted:

a) The number of DPs in Germany today is given as 775,000. But I do not know whether this number reflects DPs and other foreigners, or only recognized DPs.

b) Only some of the DPs present in Germany today must be seen as displaced by the war. The Jewish DPs came in 1946 (around 100,000 individuals), after the resurgence of anti-Semitic sentiment in Eastern Europe, the number of Czech refugees is currently around 30-40,000. Moreover, there are other political refugees in Germany (Hungarians, Yugoslavs, members of the USSR). On the whole, however, the segment of DPs who came to Germany earlier should also be seen, for all practical purposes, as political émigrés because of their rejection of the current regimes in their homelands. It would be high time to emphasize more forcefully that Germany cannot be held responsible for the migrations that occurred after the war and that the responsibility lies with the protagonists of Teheran, Yalta, and Potsdam.

c) It is wrong to say that the DPs, even if they do not wish to return, have given up their citizenship. There is no unilateral renunciation of citizenship, only a release from the state. Rather, the USSR precisely emphasizes that these persons must be forcibly returned; therefore, it has no intention of releasing them. The DPs are therefore not stateless, but remain Romanians, Poles, etc.

d) It is not correct (p. 4) that the DPs are not leaving. On the contrary, a large resettlement program by the IRO is under way; it is operating via the Bremerhaven emigration camp and is already removing large numbers of DPs. A substantial decline in their numbers is expected over the next two years. The IRO's lack of financial strength is not much of an impediment, since other sources are helping, for example the Jewish Agency (Joint Distribution Committee) for the Jews.

e) The reference to Estonian cultural autonomy is correct. But it is wrong to say that the same situation prevailed in Latvia. The situation of the Germans there rested only on actual measures or decrees by the ministry, which could be revoked; it was therefore not secure, and even if the situation was satisfactory after much struggle, it cannot be described as a model regulation in Latvia. Moreover, it became less favorable after 1934, when a semi-dictatorial regime established itself in Latvia.

The submission by Prof. Scheuner of Assenheim served as the basis for the deliberations of the Council of States' [*Länderrat*] Committee for Questions of State and Constitutional Law on December 14-15, 1948.

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