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SYSTEM OF INTERNATIONAL PROTECTION OF MINORITIES

Abstract. ***Purpose.*** The protection of minorities is part of the protection of human rights, and its specific nature requires a substantial discussion and elaboration. The differences between groups in society make the differences between the majority and the minority obvious. This raises a number of questions, such as which groups have the same rights as a minority. Despite existing treaties at the universal and regional levels, the protection of minorities is not entirely satisfactory and leave a great deal to be desired. Each particular situation and each and every conflict needs special attention and in-depth analysis of the historical, political and social background. Approaching solely the issue of national treatment of minorities, it should be noted that most of the new constitutions of Central and Eastern European countries declare the superiority of international obligations over national laws. This is an important principle when considering the status of national minorities and the system of their protection in different countries of the region. All these constitutions deal with the status of minorities, mostly referring to the fundamental rights of non-discrimination and protection of the identity of minorities living in the country. The basic principles are stipulated in the Constitution, while further special measures are enshrined in law (rights to education, language rights, rights in the field of political participation and freedom of religion). Based on the constitutional framework, national legislation strongly reflects the spirit of the constitution. Therefore, the status of ethnic and national minorities is described. ***Research methods.*** The work is performed on the basis of general scientific and special methods of scientific knowledge. ***Results.*** The major UN legislative instruments in the field of protection of minorities are analyzed. To solve the problems of protection of national minorities, coordinated actions of international organizations are needed to implement the norms of protection of fundamental rights and freedoms of people. ***Conclusions.*** There are two different legal systems that define the rights of minorities. The first deals with the regulation of minority rights by a general law, the second deals with minority issues through specific acts, such as a language law, law on education or a law on local self-government. Laws on national minorities strengthen the universally recognized rights of international minorities, adapting them to the special needs of minorities living in the country at question. In addition, these laws generally establish a special regime for the protection of minorities in the form of a certain type of minority self-government.

Key words: national minorities, protection of rights, international legislation, international organizations, state policy, ethnic conflicts.

1. Introduction

The Constitution has a significant impact on the entire legal system in this area, and even more so it strongly influences the attitude of the administration to the application and implementation of legislation in this regard. Laws on national minorities strengthen the universally recognized rights of international minorities, adapting them to the special needs of minorities living in the country at question. In addition, these laws generally establish a special regime for the protection of minorities in the form of a certain type of minority self-government.

In a nowadays world, following the progress in the sphere of the promotion of human rights and particularly in the field of minority protection, we can assume that European and international community in the era of globalization operate on the basis of shared, common values and essential principles of the protection of human rights. Particularly, in the European legal order, these values are recognized from the Organization for Security and Co-operation in Europe to the legal documents and mechanisms of Council of Europe. As it is stated in 1990 in the Charter of Paris for New Europe (Charter of Paris for

a New Europe, 1990) the rights of persons belonging to national minorities must be fully respected as part of universal human rights. The promotion of tolerance and pluralism is also an important part of these shared values.

The protection of minorities is the part of the protection of human rights and concerning its specific nature this issue has to be discussed and developed deeply. The differences between groups in a society make apparent the differences between majority and minorities. Here arise a number of questions, for instance, which groups possess which rights as a minority. In spite of the existing treaties on the universal and regional level the protection of minorities is not completely satisfactory and leaves much to be desired. Each situation and each conflict needs special attention and in depth analyze of the historical, political and social background.

2. Major sources of international law related to the rights of minorities

A major source of international minority right's law, and international human rights law in general, is international treaties. Unlike customary norms, treaty norms of course apply only to those states, which have consented to be bound by them. As it will be revealed later by the brief overview of standards, several instruments on minority rights are of a non-legally binding nature, although this is not to say that they are legally irrelevant. In addition to their important moral and political force, they indeed help to shape the content of international law standards, as is vividly illustrated, *inter alia*, by the incorporation as legal obligation of major soft law texts in the recent bilateral regimes. In general, they can be used by a variety of state and non-state actors, including national courts and NGO's, as a useful tool for advancing the minority rights discourse in conjunction with norms deriving from traditional sources of international law (as far as they are applicable to a given country), and persuading governments to comply with the relevant standards through appropriate domestic laws and practices.

Actually, for the first time when the matter of the protection of minority rights was addressed as a separate official issue (Roth, 1992, p. 83–117) by the implication of establishing Covenant was the proposal of Gyula Horn, Hungary's Minister of Foreign Affairs. He addressed the 44th General Assembly of the United Nations, stating that: "Our age is still offering numerous regrettable examples by curtailing the rights of national, racial or religious majorities or minorities. In our view the time has come that the UN should live up to its task with the result that the protection of minorities will be guaranteed with new, up-to-date international rules. Such rules could take the place of the treaties for minority protection, which once existed, but due to political circumstances were later abandoned" (Roth, 1992, p. 83).

Previous efforts suffered a failure, as in case, for example, of the draft Covenant Ekstrand, Masani and Meneses-Pallares in 1951. Even more recently, the draft paper submitted by a non-governmental organization – the Minority Rights Group in London – by Dr. Felix Ermacora and colleagues in Vienna in 1979. The work went so far as to make recommendations to elaborate upon the declaration. As the Special Rapporteur of the Sub-Commission Francesco Capotorti expressed (Capotorti, 1979), the declaration can be called upon to throw light on the various implications of article 27 (ICCPR) and to specify the measures needed for the observance of the rights recognized by the article. So there is no need to replace article 27 by a broader and differently conceived rule.

Therefore, Commission adopted articles dealing with non-discrimination of minorities, freedom of the attack upon the existence of their rights, promotion of their cultures and identity, and freedom of expression and communication, domestically and internationally. Thus, Commission avoided the issue of the definition of "minorities", leaving its designation to the merely state's affairs.

Moreover, while talking about the system of international protection of minority rights, we can also consider for the observance of the bilateral regimes via respective legal documents. For instance, Treaty of Osimo between Italy and Yugoslavia of 1975. The Treaty deals with the issue of Yugoslav and Italian ethnic groups living in the region of Trieste. It recognizes the right of equality concerning professional and economic activities, taxation and social insurance, provides for special protective measures as regards primary and secondary education, cultural, social and sports activities. Regarding the linguistic matters every minority is entitled to its own press in native language, the possibility of using the minority language in official relations with administrative and judicial authorities, the translation of official documents. Generally speaking the Treaty is called upon to ensure the free cultural development of both minorities.

The 1976 Austrian State Treaty provides for the members of Slovene and Croatian minorities in Austria specific minority rights, such as the right to elementary instruction in their mother tongue and to a proportional number of their own secondary schools in their own language. Their languages are accepted as the official ones in administrative and judicial

districts inhabited by members of the minorities. Conclusively the language and culture of each ethnic group are to be respected by the State.

The legal status of German and Danish minorities was regulated by two parallel declarations as a result from the negotiations between the Federal Republic of Germany and Denmark. The Declaration provides that every citizen and every member of the respective minority, regardless of the language used, shall enjoy all rights and liberties accorded to all human beings. Furthermore, explicitly recognized were the following rights to use the minority's language, to establish minority schools, the proportional representation of committees of local government and the recognition of special interests of each group in maintaining religious, cultural and professional relations with its neighboring country.

During the following period, rather beneficiary in the direction of international legal protection was the contribution of the World Conference to Combat Racism and Racial Discrimination in 1978. Its final report estimated the action taken by the UN bodies in the field of minorities as appropriate and enhancing with future successful expectations. Besides, even more hopeful and so to say significant was the situation of minorities in Concluding Document of the CSCE Follow-up Meeting in Vienna of 1989. It contained several provisions on this topic and 35 Participating States were to implement by adoption of the domestic legislation. The document (Major CSCE/OSCE Documents 1973–1997) refers to such matters, for example, as culture and language, which should be promoted as less widely used and suffer fair treatment. The participating states will ensure that persons belonging to national minorities or regional cultures on their territories can maintain and develop their own culture in all its aspects, including language, literature and religion; and that they can preserve their cultural and historical monuments and objects. Although it is not a binding treaty, the support of the two super-powers and a large number of the leading States should be valued highly.

Another illustrative example (Catala, 2002, p. 167–168) is the Resolution 40/144 from 13 of December 1985, adopted by the General Assembly of UN regarding the question of human rights of the persons, not citizens of the state where they reside. On the one hand, this document in art. 4 states that "the foreigners must observe the law of the state of residence or they must respect the internal customs and habits". On the other hand, it is recognized in art. 5 that the foreigners preserve their "right to language, culture and traditions of their own". It obviously leads us to the conclusion that the newly formed minorities are recognized as part of minority groups and as a consequence are accorded with the rights of minorities as they are. The newly formed minorities, fact that is important to bear in mind, do not include all types of peoples. For instance, migrant workers cannot be perceived as minorities, despite being in non-dominant position, as to the fact they do not possess any cultural or linguistic connection with each other, that has to be a basis for the recognition of common cultural, linguistic or religious identity.

Since the problem of minorities have become apparent and acute, even to say more threatening, both for the rights of individual members of the minority group and also for the internal harmony within countries and for international peace between them, it became relevant and substantial to take some measures. Especially, with the regard to the developments in 1989 which took place in Central and Eastern Europe as the result of collapse of Communist domination.

In 1989 the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities entrusted special rapporteur Asbjorn Eide with the task of carrying out a study on possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities (Pentassuglia, 2002, p. 304). The final report, submitted in 1993, highlights the need for constructive national arrangements for minorities based on international human rights standards, within the framework of a broad conflict-prevention strategy (an update to this study is being prepared following a request from the sub-commission, now renamed "Sub-Commission on the Promotion and Protection of Human Rights"; UN Sub-Commission on Human Rights Resolution 2001/9: paragraph 9). The 1993 report was particularly influential in leading to the establishment in 1995 of the UN Working Group on Minorities. The working group reviews the implementation of the 1992 UN declaration, promotes dialogue between minorities and governments, and recommends measures, which may serve to defuse minority tensions.

The UN High Commissioner for Human Rights also provides a focus on minority issues in connection with the above purposes, and in the context of multilateral or bilateral programs of technical assistance and advisory services, while other general UN human rights procedures provide further opportunities for bringing up matters affecting minorities. The work of both the UN Working Group and the High Commissioner for Human Rights

is inspired by the experience of the OSCE High Commissioner on National Minorities, acting since 1993 as an institution for "preventive diplomacy".

In 2005 the High Commissioner for Human Rights appointed an Independent Expert on Minority Issues (Hadden, 2007, p. 85), who has identified four broad areas of concern in relation to minorities: protecting the existence of minorities, their rights to enjoy own cultural identities and reject forced assimilation, ensuring effective non-discrimination and equality, effective participation of members of minorities in public life.

3. On the guarantees of the right to religion

The Declaration on Religious Intolerance (UN Declarations on religious intolerance, Resolution Adopted by the General Assembly 36/55) contributed in no lesser manner into the international establishment, recognition and development of the protection of minorities in 1981. It states that everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practices and teaching. However, it imposes some limitations to the execution of these rights, which can be subject to the restrictions, if they are prescribed by the law and breach public order, security, health and moral together with the rights and freedoms of others. The Document also declares that the discrimination between human beings on various grounds, which apparently includes the case of minorities, constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights. The States are called upon adoption necessary measures to combat such kinds of cases.

Following the subject of religious intolerance, we should also refer to other aspects of this issue (Little, 2002, p. 33–50). First of all, it is necessary to make a brief overview of what is called religious minority. There exist two types of it: "belief groups" and "ethno-religious groups". In contemporary society we can refer to the notion of belief groups in cases such as "sects" or "cults". By contrast, ethno religious groups consist of members, bound together by loyalty to common ethnic origins, including religious identity, but interwoven with language, physical (or racial) characteristics. Membership is achieved rather by birth than by consent, as in the first group. For instance, Tibetan Buddihsts and Uighur Muslims in China, or Greek Catholic minority in Poland and Ukraine.

As a consequence, we can define few kinds of guarantees that grant religious human rights:

1. The right to freedom of religion and its manifestation or exercise. (ICCPR, Art. 18, UDHR, Art. 2,18, UN Declaration on the Elimination of all forms of intolerance or discrimination based on religion or belief, Art. 1).

2. The right to equality or freedom from discrimination "based on religion and belief" (UDHR Art. 2, 7, ICCPR Art. 2.1, 26, DEID Art. 2).

3. The right of members of ethnic, religious and linguistic minorities' to profess and practice their religion or belief, to enjoy their culture, and to use their language (ICCPR Art. 27).

4. The right of individuals, including members of minorities, to be free of becoming the target of any "advocacy of <...> religious hatred that constitutes incitement to discrimination, hostility or violence" (ICCPR Art. 20).

Besides the abovementioned documents, the "belief-oriented" rights are mentioned in Copenhagen Document of the OSCE, especially Art. 30–40. One of the burning issues I would like to accentuate on, is the limitations that governments can permissibly impose upon the 'manifestation' or outward expression of a religion or belief. Under art. 18.3 of the ICCPR and art. 1.3 of DEID, governments are entitled to restrict the behavior of the members of religious groups so long as the restrictions are "prescribed by law and are necessary to protect public safety, order, health or morals" as well as "the fundamental rights and freedoms of others". In its official commentary, the Human Rights Commission held a statement that governments may not abridge religious practices for purposes such as national security, that are not enumerated in the text of the documents, nor may they impose restrictions on the basis of principles derived from only one religion or other tradition (General Comment № 22 (ICCPR art. 18) HRC, 1997, p. 462). In this way the Committee makes emphasis on the application of art. 18, which is not limited regarding the traditional religions, but therefore expresses its concern regarding the application and tendency to discrimination towards the newly established religious minorities, being subjects of hostility by a predominant religious community.

Beyond that the Committee has criticized individual governments for the over-broad application of art. 18.3 of ICCPR as to the limitation clause. It held that the government of Egypt had misapplied the limitation provision to the community of Bahai'I, since they "do not present an objective threat to public order".

On regional level (Boerefijn, Goldschmidt, 2007, p. 185), European governments and intellectuals should pay more attention to the interests of minorities, including Islamic immigrants in Europe. As states Ms. Ebadi, the human rights lawyer who was awarded the Nobel Peace Prize in 2003, groups of people who present Islam as synonymous with terrorism create clash of civilizations. Practicing human rights can contribute to ending the disrespect for non-European cultures. People have to step back from the standardized point of religious, as well as any other, minority group seeing as a threat to the predominant society, and put forward the paramount implications of human rights mechanisms and guarantees.

As we can observe from the very historical roots (Uitz, 2007, p. 85–87), for at least two centuries prior to their destruction, German Jews debated, whether they should assimilate into Christian society, just as some Muslims in Europe and North America today are educated in madrasas, so some Jews were educated in Talmudic schools. In the 19th century Karl Marx advised Jews to eschew their religious and community allegiances: "Man, as an adherent of a particular religion, finds himself in conflict with his citizenship and with other men as members with their community <...> Religion <...> is no longer the essence of the community, but the essence of difference <...>. The perfect Christian State is the atheistic democratic state, the state which relegates religion to a place among the other elements of civil society" (Marx, 1997, p. 192–193).

In the 21 century the new religious minority in Europe and North America is Islam. When non-Muslim Europeans and North Americans think of contemporary threats to human security, they usually worry about random attacks by Muslim extremists. One of the results from these new threats against human security is the fear of Muslim immigrants. There arises a question, weather it is possible to integrate them, not to assimilate, in the old-fashioned way, which implies that they must give up their own cultures, religions, customs and beliefs to conform directly to the culture, religion and customs of the older, more dominant segment of citizens.

Rhoda E. Howard-Hassmann examines the issue of human security and multiculturalism in Canada, with a special focus on the extent to which liberal democracies must accommodate practices of minority religions (Howard-Hassmann, 1999, p. 523–537). The prior question is how to integrate new immigrants into Western societies, while allowing them to retain their own identity and culture. She discusses these questions in light of the points, where Muslims, and other, Canadians have asked for accommodation of their religious beliefs.

In case of Canada, it is officially multicultural since 1971 year. The provision about preservation and enhancement of multicultural heritage of Canadians is contained both in Canada's Charter for Rights and Freedoms and Multiculturalism Act. However multiculturalism does not apply to serious ethnic and racial problems in Canada, as for example the alienation of young black males and separatism in Quebec. At the time the policy was first enunciated by then-Prime Minister Pierre Elliott Trudeau, it was also meant to appease various ethnic groups of European origin as a response to Quebec nationalism. Trudeau believed that individual civil and political rights should always take precedence over group or collective rights. Canada is not a multicultural. It is rather a society, in which citizens, as individuals or groups, are encouraged to practice a diverse set of religions or ceremonies, eat such food they prefer, speak their own languages and otherwise retain certain aspects of their culture from their ancestors. The culture they retain is symbolic and fragmented; it is integrated with the larger Canadian culture.

One of the cases concerns the question whether and to what extent the universities should provide for prayer space. Some universities have argued that almost all Canadian universities are public places and are not oblige to provide for any prayer space to any religious group. However, such an approach will make serious obstacles, as to fact that places, where students can worship, marry, hold funerals will be removed. Providing prayer space for Muslims does not violate human rights of others.

She also states, that in Canada there is a "thin" dominant culture, a unicultural secular liberalism, based in part on a social values of respect for diversity, multiculturalism, non-discrimination and equality. R. E. Howard-Hassmann argues that human rights trump custom and that human security may not be undermined by any individual or group that thinks its religion, beliefs or customs are superior than others.

Another case, which Titia Loenen deals with, is the fear of Islam that exists in Dutch society and other European countries. She describes the change in attitude of Dutch people, who were traditionally regarded to be a tolerant nation towards cultural and religious minorities. Nowadays it can be seen the growing hostility towards Islam and Muslim minorities, resulting in a plea for a much more strictly secular public sphere. When in 1960, 1970's the population of Netherlands changed as a result of immigration,

Government policy was aimed at facilitating integration of immigrants while allowing them to preserve their own identities, accommodating cultural and religious pluralism.

Multiculturalist sympathies have declined since the middle of 1990's resulting in more emphasis on assimilation, which raises a number of human rights issues. First of all here should be stressed the importance of the right to freedom of religion, which can be derived from the practice of ECHR – right to equality and non-discrimination on the ground of religion demand maximum accommodation of religious pluralism, also in a public sphere. Besides, religious pluralism cannot be unlimited when it affects the human rights of others. International human rights norms accord priority of equal rights of women over religious freedom. Another limitation was set out by the European Court in judgment in Refah Partisi v. Turkey, which implies that strong forms of religious pluralism, which would create separate legal regimes for religious groups were incompatible with the European Convention.

Other issue which Loenen examines is an issue of head scarfs. She criticizes the European Court's judgment on a case Dahlab and Sahin (Evans, 2006, p. 52), in which it allows the prohibition by the state of wearing a head scarfs in a public school and state university. She argues that the head scarf does not necessarily represent an inferior position of woman and it does not imply that the woman concerned lacks an open and neutral attitude. She declines the presumption of the Court, that wearing a head scarf constitutes a threat to public order. Finally, she concludes, that policies of assimilation of immigrant groups are problematic from a human rights' prospective, and that a policy of accommodation of a generous pluralism is preferable.

4. Conclusions

The main assumption as to the religious minorities and religious freedom is the prior importance of the international character of human rights. In such a sensitive area as this, nations must increasingly interact, share experience and where possible, engage in multilateral efforts.

There are two different legal systems that define the rights of minorities. The first deals with the regulation of minority rights by a general law, the second deals with minority issues through specific acts, such as a language law, law on education or a law on local self-government. Laws on national minorities strengthen the universally recognized rights of international minorities, adapting them to the special needs of minorities living in the country at question. In addition, these laws generally establish a special regime for the protection of minorities in the form of a certain type of minority self-government.

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СИСТЕМА МІЖНАРОДНО-ПРАВОВОГО ЗАХИСТУ МЕНШИН

Анотація. ***Мета.*** Захист меншин є частиною захисту прав людини, тому питання його конкретного характеру має бути глибоко обговорене й розроблене. Різниця між групами суспільства робить очевидними відмінності в житті більшості та меншин. При цьому виникає низка питань, наприклад питання про те, які групи мають такі права, як меншість. Незважаючи на наявні договори на універсальному й регіональному рівнях, захист меншин не є повністю задовільним. Кожна ситуація та кожен конфлікт потребують особливої уваги і глибокого аналізу історичного, політичного й соціального фону. Розглядаючи питання лише національного поводження з меншинами, варто зазначити, що більшість нових конституцій держав Центральної та Східної Європи декларують перевагу міжнародних зобов'язань над національними законами. Це важливий принцип у розгляді статусу національних меншин та системи їх захисту в різних державах регіону. У всіх цих конституціях торкаються питання статусу меншин, здебільшого посилаючись на основні права недискримінації та захисту особистості меншин, які проживають у країні. Основні принципи закріплені в конституціях, тоді як подальші спеціальні заходи делегуються законодавству (зокрема, питання права на освіту, мовних прав, прав у сфері політичної участі, свободи віросповідання). З огляду на конституційні рамки національне законодавство сильно відображає дух конституції. Тому описується статус етнічних і національних меншин. ***Методи дослідження.*** Робота виконана на підставі загальнонаукових та спеціальних методів наукового пізнання. ***Результати.*** Проаналізовано основні законодавчі інструменти ООН у сфері захисту меншин. Для вирішення проблем захисту національних меншин необхідна злагоджена дія міжнародних організацій щодо втілення в життя норм захисту основних прав і свобод народів. ***Висновки.*** Є дві різні правові системи, які визначають права меншин. Перша з них стосується регулювання прав меншин шляхом загального закону, а друга розглядає питання меншин через конкретні акти, наприклад мовний закон, закон про освіту або закон про місцеве самоврядування. Закони про національні меншини підсилюють загальновизнані права міжнародних меншин, пристосовують їх до особливих потреб меншин, які проживають у відповідній країні. Крім того, ці закони здебільшого встановлюють особливий режим захисту меншин у формі певного типу самоврядування меншин.

Ключові слова: національні меншини, захист прав, міжнародне законодавство, міжнародні організації, державна політика, етнічні конфлікти.

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