

The Rights of Minorities in International Law

*Antonija Petričušić**

Original paper
UDC 342.7-054.57
Received in April 2005

There are 8,000 languages spoken accompanied by similar number of distinct ethnic groups worldwide, while at the same time the Organization of United Nations comprises approximately 200 states. A discrepancy between a number of ethnic communities and sovereign political agents in the international arena implies that many ethnic, language or religious minority groups seek recognition and protection within states they inhabit. As a part of human rights agenda minority rights are guaranteed at the international level. Although the current international system presents a large set of provisions relevant to the protection of minorities, its main weakness is the fact that majority of them are not legally binding. This paper provides an introductory review on the minority protection regimes which have developed in the main international institutions (i.e. the United Nations, Council of Europe, Organization for Security and Cooperation in Europe and the European Union) in response to the demands of minority groups.

Key words: antidiscrimination, ethnic conflict, human rights, identity, international organizations, minority rights, stability.

1. Introduction

Inadequately solved issue of minority protection may disrupt peace and stability of states. This hypothesis has been promoted in works of numerous scholars and also in documents of international organizations since the beginning of 1990s and the occurrence of violent ethnic conflicts that took place in that decade.¹ Indeed, after the fall of communism at the end of 1980s and the occurrence of ethnic conflicts in early 1990s which took place in multiethnic federations of socialist states but also in Rwanda, East Timor and Sri Lanka, minority issues have become much more discussed topic in the international agenda.

The first part of this analysis on minority rights in international law will offer a theoretical framework for defining the concept of 'minority'. This part of the present article will offer a brief overview of the historical development of the minority protection. The second part of the article will define several concepts relating to minority protection: definition of minority, a notion of non-discrimination, importance of recognition by majority and significance of preserving minority's identity. This part of the article will introduce the issues such as affirmative action and divergence in individual and collective rights. In the third part the article will describe existing, globally and regionally accepted international documents regarding minority protection passed by the United Nations and the main European international organizations.

* Research Fellow at the Institute for International Relations, Zagreb, Croatia.

2. Rights Pertaining to Minority Rights

2.1. Definition of minority

There is no common consent upon a definition of minority in international instruments. Furthermore, the word is interpreted differently in different societies. A number of contemporary scholars are reluctant to use the term 'minority' claiming this term was closely connected with the League of Nations system and therefore is obsolete. Others, on the contrary, argue that since minority implicates the group of people that is numerically smaller than the dominant group, this leaves out non-dominant groups that are majorities in their countries. Therefore, the following changes of the term were suggested: 'communities', 'communalities', 'social groups', and recently even the term 'peoples'.² National minorities are "neither the authentic reproduction of their 'mother people', although they are tied to their people particularly by language and culture, nor a reflection of the sociological and ideological satisfaction of the dominant people, to whom they are linked by their geographical situation and economic, cultural, historical and political features."³ Therefore, they deserve an exceptional accomplishment of their preserving and fostering in the state they inhabit, though the kin-states as well shape minority policies.⁴

General agreement has not been achieved even in some international documents dealing with the issue of minority protection. Despite the fact that the title of the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (hereinafter: UN Declaration) should imply the definition of the national minority, the UN has failed to agree upon a definition of what constitutes a minority. Some explain that attempting to find a precise statement would deny certain rights to certain groups of people in some countries. Furthermore, efforts to define the concept of minority have been unsuccessfully undertaken within the Council of Europe. The Council of Europe's (hereinafter: CoE) Framework Convention for the Protection of National Minorities (hereinafter: FCNM), the only existing legally binding international instrument for minority protection,

contains no definition of the notion "national minority". Pragmatic approach has been adopted since member countries of CoE were not capable of mustering general support to a common definition. However, the Proposal for an Additional Protocol on the Rights of National Minorities to the European Convention on Human Rights and Fundamental Freedoms (hereinafter: ECHR) contained definition of a "national minority group." According to the proposal the expression "national minority" refers to a "*group of persons in a state who reside on the territory of the state and are citizens thereof; mainly longstanding, firm and long-lasting ties with a state; display distinctive ethnic, cultural, religious or linguistic characteristics; are sufficiently representative, although smaller in number than the rest of the population of the state or of a region of the state.*"⁵

The other legal definitions differ from Capotorti's in minor respects, and follow his "general line of demarcation"⁶ keeping the following elements of a definition: citizenship or a residence in the territory of a state that is granting minority status, numerical inferiority, non-dominant position, sense of solidarity among minority members who, in the same time have will to survive and preserve their distinguishing characteristics (language, religion, ethnicity). Therefore, in the absence of the precise definition of minority in international law, we can conclude that the existence of a minority is a question of fact and not of definition. However, the absence of the exact definition of minority in international law can be substituted by the saying that belonging to a national minority is a matter of a person's individual choice.⁷

2.2. Recognition and Identity

In the absence of the precise definition of the concept of minority in the international level, it is up to each state to recognize a certain group of their citizens as minority and provide for their protection, since the state of majority population, not a national 'mother state' bears the responsibility of minority rights realization.⁸ Recognition of minorities within states is the precondition for their rights. Correspondingly, the numerical size of the group, its economical strength, its homogeneity, territorial location and density, as well as its claims based

mostly on its historical past and sometimes on the changed contemporary conditions" are relevant factors for the maintenance and recognition of the minority identity.⁹

Minority is a group with linguistic, ethnic or cultural characteristics, which distinguish it from the majority. Minority group usually does not only seek to preserve its identity but also tries to give stronger expression to that identity. While for the dominant group in a society (majority), their particular identity is transparent and not perceived by them as a specific identity, for non-dominant groups (minorities); their identity is always experienced as particular and as specific to them as members of a group. The basic claim of the identity argument is that race, ethnicity, and culture are central to decent identity of a human being. Own culture is important element of the life, thus minority cultures must be given special protection so that all members of the society will have equal opportunities and if they continue to exist. Preservation of the culture and identity of minority groups, together with manifestation of religion should include measures to preserve the way of life associated with the use of land resources, especially in the case of indigenous peoples.¹⁰ The enjoyment of those rights may require legal measures of protection and measures to ensure the effective participation of members of minority communities in political and societal decisions which affect them.

2.3. Prohibition of Discrimination and Positive Measures

Prohibition of discrimination is a fundamental principle of human rights, contained in majority of human rights instruments.¹¹ This fundamental and general principle is a manifestation of the principle of equality and means the equal protection of the law for all. Principle of non-discrimination requires that any right set forth by legislation shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. The International Convention on the Elimination of All Forms of Racial Discrimination, regarding non-discrimination measures, obliges states to "prohibit and bring to an end, by all appropriate

means, including legislation as required by circumstances, racial discrimination by any persons, group or organization."¹² Alexander Morawa, depending on the status of the non-discrimination norm in the framework of a treaty and its language, makes distinction between 'non-discrimination' as an *accessory right*—meaning equality safeguarded merely with respect to the other substantive rights enumerated in the treaty, and as an *independent right* to equality demanding material justice.¹³

Nevertheless, a mere application of the non-discrimination principle may not be sufficient to achieve equality in fact. Therefore, states are required to take positive actions, or special measures to preserve minority existence. A number of newly established states in 1990s re-actualized the question of minority protection because a good portion of them engaged in ethnic conflicts. For that reason it is considered that particularly those states should create, in the course of nation building, more egalitarian societies allowing minorities to have their identity preserved by affirmative measures or positive discrimination, which vary from state to state.¹⁴ Some of those measures foreseen for minority inclusion might include promotion of the employment of minorities in the public administration and institutions, double voting systems in the parliamentary elections, etc.

3. Existing International Mechanisms for Minority Protection

3.1. United Nations

The developed concept of human rights launched by the Organization of United Nations (hereinafter: UN) in 1948 in its Universal Declaration is mainly concerned with individual protection of rights resulting in the blurred approach to the minority rights protection.¹⁵ The list of fundamental rules of the equal enjoyment of rights and non-discrimination incorporated in the UN documents dealing with minority rights *prima facie* looks quite impressive but articles prescribing minority protection usually lack enforcement mechanisms.¹⁶ Minority rights have achieved great affirmation in the Article 27 of the ICCPR that gives a guarantee "in

those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language." Since it was not specified which minorities can enjoy the protection, Article 27 is a kind of compromise "skillfully worded, but ambiguous in content. In its literal wording, the article appears to confer rights only on individuals, but in fact it allows the exercise of collective rights."¹⁷ What is probably most important about this particular article is that "it governs the exercise of all rights, whether protected under the Covenant or not, which the State party confers by law on individuals within its territory or under its jurisdiction, irrespective of whether they belong to the minorities specified in Article 27 or not."¹⁸ This is especially important with regard to the fact that some State parties claim that they have no minorities. Nonetheless, as a result of the Article 27 they are not allowed to discriminate on grounds of ethnicity, language or religion.

The 1992 United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities is generally seen as the consequence of events occurred after the fall of communism. The Declaration contains a list of rights in favour of persons belonging to ethnic, national, religious or linguistic minority, and obliges State parties "to protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and encourage conditions for the promotion of that identity."¹⁹ The weak point of Declaration is lack of precise states' obligations. Nevertheless, although it is not a legally binding document, but simply a political declaration, it represents one of the first international documents that attempted to promote protection of minority rights, and therefore "carries very considerable moral authority."²⁰

3.2. Council of Europe

In addition to global system of the UN, the achievements in the European legislative system make this continent the starting point for a regional instrument on minorities. The minority protection at European level is achieved through joined ef-

forts of the Council of Europe (hereinafter: CoE) and the Organization for Security and Cooperation in Europe (OSCE) and lately by the limited activities of the European Union (hereinafter: EU).

However, the process of setting a legislative framework on minority protection within these organizations is ongoing and has faced many difficulties. In the first part of this section the article discusses relevant provisions of a basic legal instrument of the CoE and later a scope of commitment of two bodies of the Council of Europe in minority protection: the European Court on Human Rights and the European Commission for Democracy through Law. Subsequently, the article discusses effects of existing CoE instruments for minority protection: the European Convention on Human Rights, the Framework Convention for the Protection of National Minorities and the European Charter for Regional and Minority Languages.

3.2.1. Minority Rights Provision in the ECHR

The Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR) represents a catalogue of civil and political rights and freedoms. Since the Convention's entry into force in 1953 twelve Protocols have been adopted.²¹ The Convention set up a mechanism for the enforcement of the obligations entered into by the Contracting States. Three institutions were entrusted with this responsibility: the European Commission of Human Rights (set up in 1954), the European Court of Human Rights (set up in 1959) and the Committee of Ministers of the Council of Europe, the latter one being composed of the Ministers of Foreign Affairs of the member states or their representatives.

For a very long time consensus on the general framework on minority protection has not been reached within CoE. The ECHR does not guarantee rights that are peculiar to minorities: rights and freedoms set out in the Convention are, by virtue of Article 1 of the Convention, secured to "everyone" within the jurisdiction of the High Contracting Parties. The ECHR contains no minority rights provision akin to Article 27 of the ICCPR, but in Article 14, which is the only reference to minori-

ties to be found in ECHR, it prescribes that "the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

In 2000 the Council of Europe promulgated Protocol No.12 to the ECHR which provides right to non-discrimination separate from the other substantive articles. It came into force in 2005 after its ratification by the ten member states. The linkage between the ECHR and the Framework Convention has been further confirmed by a recent proposal discussed at the Parliamentary Assembly of the Council of Europe to draft an additional protocol to the Convention recognizing to the Court the competence to give advisory opinions concerning the interpretation of the Framework Convention.²²

3.2.2. European Court of Human Rights

The European Court of Human Rights (hereinafter: the Court) set up under the ECHR as amended by Protocol No. 11 is composed of a number of judges equal to that of the contracting states. There is no direct way for members of minority groups to claim minority rights in Strasbourg Court. Article 14 of the ECHR is not a freestanding non-discrimination clause like Article 27 of the ICCPR, and can only be invoked in aid with another Convention right. Furthermore, member States are permitted a margin of appreciation that is a degree of discretion to accommodate domestic factors when the Court considers whether Article 14 has been breached. The Court has reviewed a great number of cases concerning minority rights in spite of the absence of the specific provisions for the protection of minorities in the Convention in its Protocols.²³

By referring to the Framework Convention for the Protection of National Minorities, the Court acknowledged in the case *Chapman vs. the United Kingdom*²⁴ emerging international consensus amongst the Contracting States of the CoE recognizing the special needs of minorities and an obligation to protect their security, identity and lifestyle,

not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity of value to the whole community. In their joint opinion, the dissenting judges in the same case stated that "this consensus ... requires not only that Contracting States refrain from policies or practices which discriminate against them (minorities, op.a.) but that also, where necessary, they should take positive steps to improve their situation through, for example, legislation or specific programs."²⁵ In respect to the implementation of the FCNM the Court stated in this judgment that its role was a strictly supervisory one.

European Court of Human Rights has been deciding in a number of cases concerning discriminatory treatments of minorities. Court's judgment in the case *Willis vs. the United Kingdom* stated that "... a difference of treatment is discriminatory if it 'has no objective and reasonable justification', that is, if it does not pursue a 'legitimate aim' or if there is not a 'reasonable relationship of proportionality between the means employed and the aims sought to be realized'."²⁶ The right not to be discriminated, as guaranteed by the ECHR, was examined with respect to minority groups in the case *Thlimmos vs. Greece*. Discrimination exists, the Court ruled, "when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different."²⁷ The Court found that the Article 14 of the ECHR is of relevance to the applicant's complaint and applies in the circumstances of this case in conjunction with Article 9 thereof. The Court considered in its judgment that the State, having enacted the relevant legislation, violated the applicant's right not to be discriminated against in the enjoyment of his right under Article 9 of the Convention which deals with the right to manifest ones religious beliefs.

The case of *Sidiropoulos vs. Greece*²⁸ has been considered as a leading case in the Convention's case-law on minority rights and represents a "new era" of the Court's approach towards minority rights. In reaching its conclusion the Court noted that the aims of the minority association appeared to be legitimate, finding furthermore that Greek "democratic society" had to tolerate such minority associations and even protect and support them ac-

ording to the principles of international law. What is particularly interesting is that the Court has referred in its reasoning in this particular case to the documents of another international organization, namely Conference for Security and Co-operation in Europe (hereinafter: CSCE) Document on Human Dimension.²⁹ Court hesitated to evoke the Framework Convention in this particular ruling because Greece had not yet ratified the Framework Convention but was bound by the OSCE instruments. Besides, the CSCE Documents and the Framework Convention, as specified in the Preamble of the Framework Convention, are closely related.

3.2.3. Venice Commission

The European Commission for Democracy Through Law, an expert body of the CoE, *was established in 1990, and its main activity is constitutional assistance. The Commission co-operates with the countries seeking its advice, and in that way promotes democracy, human rights and the rule of law, the basis of all the Council of Europe's activities. Constitutional assistance to post-communist countries aiming at conforming their constitutional arrangements to the standards of Europe's constitutional heritage also lies within this institution's mission.* The Venice Commission proposed in 1991, the European Convention for the Protection of Minorities.³⁰ However, this insightful document was not accepted by member States of the CoE.

3.2.4. Framework Convention for the Protection of National Minorities

*"Being resolved to protect within their respective territories the existence of national minorities, and considering that the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in European continent"*³¹ member states of the CoE developed the first actual and comprehensive legally binding instrument concerning minority protection: the Framework Convention for the Protection of National Minorities. Ratification by the majority of CoE States indicates willingness of member states to protect and pro-

mote the rights of minorities within their borders.³² The FCNM has introduced the scheme that minority communities shall be encouraged and improved by prescribing legally binding minimum standards that must be met by States. It has also established values which states are obliged to implement through their national institutions such as the right to full and effective equality, education in minority languages and effective participation. The Framework Convention has predominantly flexible legal wording as a result of compromises in its drafting procedure. The Parliamentary Assembly of the CoE requires that states applying for membership of CoE ratify the FCNM and eventually conform their legislation to the requirements set by FCNM.

The monitoring mechanisms which involve country visits and constructive dialogue between CoE governments and minorities are extremely valuable component of the FCNM. The implementation of the FCNM has been assessed by the monitoring bodies: Advisory Committees, which are Committee of independent minority rights experts and the Committee of Ministers of the CoE. This assessment led to a collection of texts, adopted in a country-by-country approach, with a legal and political value. These texts are the fruit not only of an analysis of the national laws and practice concerning minorities, but also of a continuous dialogue with government and non-government actors of the countries concerned.³³

3.2.5. European Charter for Regional and Minority Languages

Another contribution of the CoE to minority protection in its member states was the European Charter for Regional and Minority Languages (hereinafter: ECRML), opened for signature in 1992. The Charter aims at protecting and preserving minority and regional languages as an essential part of the European cultural heritage. It defines regional or minority languages as non-official languages traditionally used in a country by nationals of that country who form a group numerically smaller than the rest of the country's population. The Charter does not establish any individual or collective rights for the speakers of minority languages, but the obligations States take in order to promote and protect minority languages. However, it is to expect that

this kind of protection have effects on the communities using minority languages. The Charter is designed to be used as "*à la carte*" instrument, allowing each party to the Charter to choose certain number of provisions which will be transposed to its domestic legislation and practices. Even non-member states of the CoE are invited by the Committee of Ministers³⁴ to confirm their legislation to the Charter.³⁵ After ratifying the Charter, parties undertake a number of obligations in the fields of education, judiciary, administration and public services, media, culture, economy, social life and in the cross-border exchanges.³⁶

3.3. Organization for Security and Co-operation in Europe

The Organization for Security and Co-operation in Europe's (hereinafter: OSCE) goals include the defending human and minority rights and building of democratic institutions in the member states. OSCE decisions are merely politically, but not legally binding while membership in the CoE requires state parties to implement treaties ratified in their national legislation. The question of minority protection was on the OSCE agenda from the beginning of its existence. For example, the Helsinki Final Act of 1975 prescribed the obligation that the participating states "*on whose territory national minority exist will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere.*"³⁷

The Copenhagen Declaration of the Conference on the Human Dimension of the CSCE states recognized that "respect for the rights of persons belonging to national minorities is an essential factor for peace, justice, stability and democracy".³⁸ This document for the first time stated a "possibility that positive measures, intended to restore real and effective equality with the majority, may be taken with respect to minorities without these measures being considered as discrimination against the majority".³⁹

The Lund Recommendations on the Effective Participation of National Minorities in Public

Life⁴⁰ were adopted by the OSCE in 1999 with the aim to encourage and facilitate the States to adopt specific measures to reduce tensions related to national minorities and thus to serve as a conflict prevention measure. Another two documents made by the OSCE concern minority protection: the Hague Recommendations Regarding the Education Rights of National Minorities and the Oslo Recommendations Regarding the Linguistic Rights of National Minorities whose purpose was to provide "a useful reference for the development of State policies and laws which will contribute to an effective implementation of the language rights of persons belonging to national minorities, especially in the public sphere."⁴¹ The Hague Recommendations comprehensively address the use of languages of national minorities in the field of education. The Oslo Recommendations⁴² attempt to provide a useful reference for the development of state policies and laws which will contribute to an effective implementation of the language rights of minorities, especially in the public sphere. Finally, the High Commissioner commissioned a group of experts to develop Guidelines on the use of Minority Languages in the Broadcast Media in 2003.⁴³ The Guidelines describe the standards that states should meet, based on general principles of freedom of expression, cultural and linguistic diversity, protection of identity, and equality and non-discrimination.

3.3.1. High Commissioner on National Minorities

Responding to emerging ethnic conflicts Helsinki Conference in 1992 of the CSCE of that time, introduced the institution of the High Commissioner on National Minorities (hereinafter: HCNM) with the role to mediate in conflicts involving national minorities at the earliest possible stage. The HCNM might be perceived as an innovative OSCE's instrument put forward to prevent ethno-political disputes.⁴⁴ Although one could be confused by the title of his post having an impression that the High Commissioner is intended to function as a national minorities' ombudsman or as an investigator of individual human rights violations, this is not the case. His mandate has a two-fold mission: first, to try to control and de-escalate tensions in potential ethnic conflicts and, second, to inform the OSCE countries whenever such tensions threaten to develop to

a level at which he cannot contain them with the means at his disposal. Its mandate could be criticized since it is limited to "an interstate dimension of minority problems; and minorities that live entirely within one state do not fall under protection of the early-warning mechanism."⁴⁵ The other limitations of his mandate are inability to involve actively, in a way of the mediator, in already outgoing violent interethnic conflicts or in conflicts that include terrorist components.⁴⁶ The later has been foreseen because certain Western European states (e.g. Spain, the United Kingdom) were unwilling to let the HCNM interfere in their internal issues.

3.4. European Union

Even though protection of human rights, fostering democracy and the rule of law have been core values of the European Union it has been much less engaged in the issue of minority protection, compared with other European international organizations. European integration process has primarily been an economic project and therefore should not be surprising that attempts for the harmonization of legislation of the member states regarding minorities has only lately taken place within the latest enlargement.⁴⁷ The absence of the minority paragraph in the EU Charter of Fundamental Rights,⁴⁸ which defines civil, political, economic and social rights of European citizens and all persons resident in the EU, does not contribute to the homogeneity of the issue. For that reason majority of minority rights scholars argue that the minority question in the EU is "mainly about the political willingness of using legal bases and possibilities which are already today on the disposal."⁴⁹

*Respect for human and minority rights is a prerequisite for countries seeking to join the Union. The EU enlargement process takes into account the protection of minorities because it interprets it as an important issue of political stability of applicant states. The Amsterdam Treaty also provides that the applicant countries must respect the principles set out in Article 6(1) of the EU Treaty (Article 49 of the EU Treaty) referring to *human rights, democracy and the rule of law*. In addition to this, the Copenhagen Criteria for Central and Eastern European countries designed in 1993 for countries wishing to join the Union, stated that "membership*

requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and the respect for and protection of minorities."⁵⁰ The Copenhagen Criteria's demand for a demonstration of the respect for and protection of minority rights resulted in significant adjustments of ten new member countries' legislations and practices regarding minorities and contributed to the consociational power-sharing models in accession countries.⁵¹ Nevertheless, the European Union's role in the insistence on the improvement of minority protection in the accession states reveals double standards since some older EU countries have themselves failed to ratify and implement the FCNM or even claim that there are no minorities within their territories.⁵² The Draft Treaty on European Constitution included protection of minority rights among its fundamental principles, thus introducing minority rights in a possibly primary law instrument of the Union.

4. Conclusion

Undoubtedly, the variety of existing international instruments has established the base for the protection of national minorities. However, the sufficiency of existing normative arrangements in international law is dubious.

Even though international instruments insist on implementation of the general principle of non-discrimination and of the active implementation of equality, the absence of binding rules in the majority of written international law documents concerning minority protection makes the issue inadequately solved at the international level and lays emphasis on the state in the protection and promotion of internationally attained obligations.

While international instruments tend to establish basic rights for minority groups without explicitly recognizing them, national laws legally recognize differences and prescribe measures, often deriving from international law, specifically directed to minority communities. Apart from legislative frameworks at national level, very often positive measures by states are necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and

to practice their religion. In democratic states committed to human rights, the accommodation of existing diversity through the protection of the rights of minorities constitutes an important matter of

policy and law. Failure to achieve the appropriate balance may be the source of inter-ethnic tensions and conflicts.

List of acronyms used in the paper:

CoE	Council of Europe
CROC	UN Convention on the Rights of the Child
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECOSOC	United Nations' Economic and Social Council
ECRML	European Charter for Regional and Minority Languages
EU	European Union
FCNM	Framework Convention for the Protection of National Minorities of the Council of Europe
HCNM	High Commissioner on National Minorities
ICCPR	UN International Covenant on Civil and Political Rights
ICESCR	UN International Covenant on Economic, Social and Cultural Rights
ICERD	UN International Convention on the Elimination of All Forms of Racial Discrimination
OSCE	Organization for Security and Cooperation in Europe
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

NOTES

1 The Framework Convention for the Protection of National Minorities states in its Preamble: "Considering that the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent." Similar attitude has been expressed in the United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities: "Considering that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live." See also Gaetano Pentassuglia. *Minorities in International Law*. Strasbourg: ECMI Handbook Series, 2002 and Max van der Stoep. *Peace and Stability through Human and Minority Rights*. Baden-Baden: Nomos Verlagsgesellschaft, 2001.

2 For specified definitions of the mentioned terms see Nathan Lerner. *Group Rights and Discrimination in International Law*. Dordrecht/Boston/London: Martinus Nijhoff Publishers. 1991. pp. 28-34.

3 Miran Komac. *Nationalities and Minorities in Yugoslavia*. European Minorities. *Contemporary European Affairs*. Volume 4, Issue 4, 1991. pp. 129.

4 See Konrad Huber and Robert W. Mickey. *Defining the Kin-State: An Analysis of its Role and Prescriptions for Moderating its Impact in Arie Bloed and Pieter Van Dijk (Eds.). Protection of Minority Rights Through Bilateral Treaties. The Case of Central and Eastern Europe*. The Hague/London/Boston: Kluwer Law International. 1999. pp.17-51.

5 Recommendation 1201 (1993) on an Additional Protocol on the Rights of National Minorities to the European Convention on Human Rights and Fundamental Freedoms. Cited in Florence Benoit-Rohmer. *op.cit.* pp. 13.

6 Patrick Thornberry. *op.cit.*

7 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, <http://www.osce.org/docs/english/1990-1999/hd/cope90e.htm>

8 Certain states, e.g. France, Greece and Turkey, refuse to recognize existence of national minorities in their territories. By denying their existence, they avoid to apply arrangements and mechanisms provided in international documents.

9 Snezana Trifunovska (Ed.). *Minorities in Europe*. Croatia, Estonia and Slovakia. The Hague: T.M.C. Asser Press. 1999. pp. 21.

10 That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law.

11 Non-discrimination provisions are contained in the United Nations Charter of 1945 (Arts. 1 and 55), the Universal Declaration of Human Rights of 1948 (Art. 2) and the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights of 1966 (Art. 2). Such provisions also appear in a number of specialized international instruments, including: ILO Convention concerning Discrimination in Respect of Employment and Occupation No. 111 of 1958 (Art. 1); International Convention on the Elimination of All Forms of Racial Discrimination of 1965 (Art. 1); UNESCO Convention against Discrimination in Education of 1960 (Art. 1); UNESCO Declaration on Race and Racial Prejudice of 1978 (Arts. 1, 2 and 3); Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief of 1981 (Art. 2); and the Convention on the Rights of the Child of 1989 (Art. 2). European regional human rights documents, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter and the Framework Convention on National Minorities of the CoE the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE also contain non-discrimination clauses.

12 General Assembly Resolution 2106 (XX) of 21 December 1965, Article 2 (1) (d).

13 Alexander Morawa. *The Concept of Non-Discrimination: An Introductory Comment*. JAMIE, European Centre for Minority Issues, Issue 3/2002, http://www.ecmi.de/jemie/download/Focus3-2002_Morawa.pdf

14 *ibid.*

15 Universal Declaration of Human Rights (UDHR), the first international document that set up human rights standards broadly accepted nowadays, did not mention in any of its provisions protection of minorities.

16 The following UN documents contain provisions or regulate minority rights: Article 27 of the ICCPR, Article 13 of the ICESCR, Article 5 of the UNESCO Declaration on Race and Racial Prejudice, Article 5 of the UNESCO Convention against Discrimination in Education, Article 11 of the Convention on the Prevention and Punishment of the Crime of Genocide, Articles 2 and 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 30 of the Convention on the Rights of the Child, the Declaration of the Rights of Persons Belonging

- to National or Ethnic, Religious or Linguistic Minorities.
- 17 Florence Benoit-Rohmer. op. cit. pp. 23.
- 18 Supra note 37.
- 19 Article 1 of the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities.
- 20 Florence Benoit-Rohmer. Op. cit. pp. 24.
- 21 Protocols Nos. 1, 4, 6, 7 and 12 added further rights and liberties to those guaranteed by the Convention, while Protocol No. 2 conferred on the Court the power to give advisory opinions. Protocol No. 9 enabled individual applicants to bring their cases before the Court subject to ratification by the respondent State and acceptance by a screening panel. Protocol No. 11 restructured the enforcement machinery. The remaining Protocols concerned the organization of and procedure before the Convention institutions.
- 22 Council of Europe, Parliamentary Assembly, Debate of 23 January 2001 (3rd Sitting); Rec. 1492(2000) Rights of national minorities. Stated in Roberta Medda-Windischer. Op. cit. pp. 3.
- 23 For comprehensive explanation of ECHR's legislation concerning minority rights see Roberta Medda-Windischer. The European Court of Human Rights and Minority Rights, Journal for European Integration, Volume 5, No. 3, September 2003. pp. 249-272. See also Geoff Gilbert. Jurisprudence of the European Court and Commission of Human Rights in 1999 and Minority Groups. E/CN.4/Sub.2/AC.5/2000/CRP.1, 10 April 2000
- 24 Chapman vs. the United Kingdom, ECHR. Appl. No. 27238/95, judgment of 18 January 2001.
- 25 Ibid., para.94.
- 26 Eur. Ct. H.R., Appl. 36042/97, Willis v. the United Kingdom, judgment of 11 June 2002, para. 39.
- 27 Thlimmimos vs. Greece (2000) 31 EHRR 411, at p 424, para. 44.
- 28 Sidiropoulos vs. Greece, ECHR, judgment of 10 July 1998, D.R. 98.
- 29 Ibid., paragraphs 41 and 44. "The inhabitants of a region in a country are entitled to form associations in order to promote the region's special characteristics, for historical as well as economic reasons. Even supposing that the founders of an association like the one in the instant case assert a minority consciousness, the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Section IV) of 29 June 1990 and the Charter of Paris for a New Europe of 21 November 1990 - which Greece has signed - allow them to form associations to protect their cultural and spiritual heritage."
- 30 See Doc. CDL-MIN(93)6 and also the Explanatory Report on the Proposal for an European Convention for the Protection of Minorities, Doc. CDL-MIN(93)7.
- 31 Preamble of the FCNM, European Treaty Series, No. 157.
- 32 Up to date 37 of the 45 member States of the Council of Europe have ratified the Convention, giving a pan-European dimension to this treaty.
- 33 For more information on the FCNM see Marc Weller (Ed.). The Rights of Minorities in Europe: A Commentary on the European Framework Convention for the Protection of National Minorities, Oxford: Oxford University Press, 2005.
- 34 Treaty parties to the European Charter for Regional and Minority Languages are Austria; Croatia; Denmark; Finland; Germany; Hungary; Liechtenstein; Netherlands; Norway; Slovakia; Slovenia; Spain; Sweden; Switzerland; United Kingdom.
- 35 Ibid. Art. 20
- 36 Ibid. Art. 8-14
- 37 Helsinki Final Act (1975), Principle VII of the "Declaration on Principles Guiding Relations between Participating States". <http://www.osce.org/docs/english/1990-1999/summits/helfa75e.htm#Anchor-29952>
- 38 Copenhagen Declaration of the Conference on the Human Dimension, June 5-29, 1990.
- 39 Ibid.
- 40 The Lund Recommendations on the Effective Participation of National Minorities in Public Life, <http://www.osce.org/hcnm/documents/recommendations/lund/index.php3>
- 41 The Oslo Recommendations Regarding the Linguistic Rights of National Minorities & Explanatory Note, at <http://www.osce.org/hcnm/documents/recommendations/oslo/index.php3>
- 42 <http://www.javier-leon-diaz.com/minorities/the%20Oslo%20recommendations.pdf>
- 43 Guidelines on the use of Minority Languages in the Broadcast Media, at http://www.osce.org/documents/hcnm/2003/10/2242_en.pdf
- 44 Arie Bloed and Pieter Van Dijk (Eds.). op.cit. pp. 17.
- 45 Hans-Joachim Heintze. Minority Issues in Western Europe and the OSCE High Commissioner on National Minorities. International Journal on Minority and Group Rights. Volume 7, Issue 4, 2000. pp. 386.
- 46 Walter A. Kemp (Ed.). Quiet Diplomacy in Action: The OSCE High Commissioner on National Minorities. The Hague: Kluwer Law International, 2001, 416 pp.
- 47 For more information see Gabriel von Toggenburg. A Rough Orientation Through a Delicate Relationship: The European Union's Endeavors for (its) Minorities, European Integration online Papers (EIoP), Vol. 4, 2000, No. 16, at <http://www.wu-wien.ac.at/eiop/pdf/2000-016.pdf>
- 48 The text of the Charter of Fundamental Rights at http://www.europarl.eu.int/charter/pdf/text_en.pdf
- 49 Gabriel von Toggenburg. op. cit. pp. 17.
- 50 The text of the Copenhagen Criteria at <http://europa.eu.int/comm/enlargement/intro/criteria.htm>,
- 51 See Gwendolyn Sasse. EU Conditionality and Minority Rights in Central and Eastern Europe. Conference "Nations, Minorities and European Integration", European University Institute, Florence, May 2004, at <http://www.iue.it/SPS/Workshops%20&%20conferences/PDFfiles/GwendolynSasse.pdf>
- 52 Out of a total of ten CoE States who have not ratified the FCNM, four are existing EU members (Netherlands, Belgium, Luxembourg, France and Greece). These EU member States continue to fail to embrace pluralism and to protect minorities by failing to implement the FCNM, thus encouraging the prospective new member States such as Turkey to do likewise.

BIBLIOGRAPHY

- Gudmundur Alfredsson and Asbjorn Eide. *The Universal Declaration of Human Rights: a common standard of achievement*. The Hague: Kluwer, 1999.
- Florence Benoit-Rohmer. *The Minority Question in Europe*. Strasbourg: Council of Europe Publishing, 1996.
- Thomas Buergenthal. *International Human Rights in a Nutshell*
- Francesco Capotorti. *The Protection of Minorities under Multilateral Agreements on Human Rights*. The Italian Yearbook of International Law, 1976, II, 14.
- Francesco Capotorti. *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*. Geneva UN Center for Human Rights, UN Doc E/CN.4/Sub.2/384/Add.1-7.
- Asbjorn Eide, Katarina Krause and Allan Rosas (Eds.). *Economic, Social and Cultural Rights. A textbook*. Dordrecht/ Boston/ London: Martinus Nijhoff Publishers, 1995.
- Carole Fink. *The League of Nations and the minority question*. World Affairs, Spring 95, Vol. 157 Issue 4, 9p.
- Ernest Gellner. *Nations and Nationalism*. Oxford: Blackwell, 1983.
- John S Gibson. *Dictionary of international human rights law*, Lanham: Scarecrow, 1996.
- Geoff Gilbert. *Jurisprudence of the European Court and Commission of Human Rights in 1999 and Minority Groups*. E/CN.4/ Sub.2/AC.5/2000/CRP.1, 10 April 2000
- Hans-Joachim Heintze. *Minority Issues in Western Europe and the OSCE High Commissioner on National Minorities*. International Journal on Minority and Group Rights. Volume 7 Issue 4. 2000.
- Louis Henkin. *The age of rights*. New York: Columbia University Press, 1990.

- Konrad Huber and Robert W. Mickey. *Defining the Kin-State: An Analysis of its Role and Prescriptions for Moderating its Impact in Arie Bloed and Pieter Van Dijk (Eds.). Protection of Minority Rights Through Bilateral Treaties. The Case of Central and Eastern Europe.* The Hague/London/Boston: Kluwer Law International. 1999.
- Walter A. Kemp (Ed.). *Quiet Diplomacy in Action: The OSCE High Commissioner on National Minorities.* The Hague: Kluwer Law International, 2001.
- Miran Komac. *Nationalities and Minorities in Yugoslavia.* European Minorities. Contemporary European Affairs. Volume 4, Issue 4, 1991.
- Natan Lerner. *Group Rights and Discrimination in International Law.* Dordrecht/Boston/London: Martinus Nijhoff Publishers. 1991.
- Roberta Medda-Windischer. *The European Court of Human Rights and Minority Rights.* Journal for European Integration, Volume 5, No. 3, September 2003. pp. 249-272.
- Alexander Morawa. *The Concept of Non-Discrimination: An Introductory Comment.* JAMIE, European Centre for Minority Issues, Issue 3/2002, http://www.ecmi.de/jemie/download/Focus3-2002_Morawa.pdf
- Francesco Palermo and Jens Woelk. *No Representation Without Recognition. The Right to Political Participation of (National) Minorities.* Journal for European Integration, Volume 5, No. 3, September 2003. pp. 225-248.
- Gaetano Pentassuglia. *Minorities in International Law.* Strasbourg: ECMI Handbook Series, 2002.
- Gwendolyn Sasse. *EU Conditionality and Minority Rights in Central and Eastern Europe.* Conference "Nations, Minorities and European Integration", European University Institute, Florence, May 2004, at <http://www.iue.it/SPS/Workshops%20&%20conferences/PDFfiles/GwendolynSasse.pdf>
- Jay A. Sigler. *Minority Rights. A Comparative Analysis.* Westport, Connecticut/London, England: Greenwood Press. 1983.
- Patrick Thornberry. *An Unfinished Story of Minority Rights.* pp. 47 in Anna-Maria Biro and Petra Kovacs (Eds.) *Diversity in Action: Local Public Management of Multi-Ethnic Communities.*
- Patrick Thornberry. *International Law and the Rights of Minorities.* Oxford: Clarendon Press. 1991.
- Snezana Trifunovska (Ed.). *Minorities in Europe. Croatia, Estonia and Slovakia.* The Hague: T.M.C. Asser Press. 1999.
- Max van der Stoep. *Peace and Stability through Human and Minority Rights.* Baden-Baden: Nomos Verlagsgesellschaft, 2001.
- Gabriel von Toggenburg. *A Rough Orientation Through a Delicate Relationship: The European Union's Endeavors for (its) Minorities.* European Integration online Papers (EIoP), Vol. 4. (2000), No. 16.
- Marc Weller (Ed.). *The Rights of Minorities in Europe: A Commentary on the European Framework Convention for the Protection of National Minorities.* Oxford: Oxford University Press, 2005.