

PROTECTION OF MINORITIES		Social Science Keywords: minority, minority, minority rights and their protection, racial, religious, linguistic discrimination, Convention for the Protection of National Minorities.
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Abstract		
<p>Ethnic minority means a group of people with different ethnic backgrounds as opposed to the majority of the population living in a state. There are national minorities in every country of the world, but not in every country they are recognized by their legal status, fundamental rights, representation in institutions, use of language and national symbols, etc. International law obliges states to "respect" the individual rights of minorities to participate effectively in public life, including matters relating to the identity of minorities at the national and local levels in the decision-making process. The Framework Convention for the Protection of National Minorities in the Council of Europe requires states to "create" the necessary conditions for such participation. The International Convention against Ethnic and Racial Discrimination requires that "equal access to public services" not be denied or denied on ethnic or racial grounds. The International Covenant on Civil and Political Rights (ICCPR) grants the right of every citizen to be elected without discrimination, while respecting the free expression of the will of the electorate. Various constitutions provide numerous, sometimes innovative, measures to create channels for the participation of minority groups, but often minorities have to appeal in court to gain or defend their rights. In general, the right to political participation, the right to vote and to be represented in Parliament is considered important indicators in the category of effective participation in the collective sphere, because these are categories where the specific demands of communities are in conflict with the democratic principle of majority governance.</p>		

Introduction

One of the analytical voices on the issue of human rights in general and those "stateless" people in particular, in the era of modernization of European societies and states, is undoubtedly that of Hannah Arendt. In her concept, the tension of human rights is that they became politically important at the very moment when it was no longer possible for these to be justified.¹ Historically, human rights have been linked to national sovereignty so that when there was a conflict between the two as was the case of stateless people and minority Human rights proved incapable of competing with national interests.

After the First World War, where along with the bomb blasts the whole indisocial was shaken as it had existed until then. Europe from a cradle of culture and civilization would see constant cruelty and instability. (This made, for example, the Slovaks hate the Czechs, the Croats the Serbs, the Ukrainians the Poles, etc.). This produced an atmosphere of fear, hatred and suspicion everywhere. The instability of European political life was also due to the existence of human groups, for whom both rights and duties did not apply: minorities and stateless people. Russia and Austria-Hungary deprived individuals of their nationality and citizenship, respectively. Stateless people and minorities were quite different from other oppressed groups, because the loss of nationality would mean the loss of their human rights. When it became clear that these sought protection from oppression, the only means left were minority treaties. These treaties were signed

¹ Hannah Arendt, Human condition, 1958, p. 8

by all (except the Czech government) and became laws.² The central aspect of this situation lies in the fact that it is precisely from these political conditions that the totalitarianism in Europe is feed³.

Minorities are communities or groups united by ethnic origin, religion or common language or many common qualities, which make them different from other populations and who want to preserve their ethnic, religious or linguistic features. To this is sometimes added the numerical ratio to other groups, which means that in terms of minority numbers it is a group in an inferior position to the group or other groups within a state.⁴

According to the most widespread views, the protection of minorities has its origins in the Treaty of Westphalia of 1648, which has provisions dedicated to the protection of religious minorities. In a much more qualitative form, the issue of minorities arises during the nineteenth century, in connection with the protection of Christians in the Ottoman Empire, due to this the great European powers engaged, but also in relation to other minorities. Most of the most important treaties from that time contain rules which claim to ensure the international protection of minorities. The final act of the Vienna Congress of 1815 in Article 1, concerning Poland, provides that Poles divided between Russia, Austria and Prussia be given the right to representation and to national institutions. The Paris Peace Treaty of 1856 in Article 9 obliged the Porte to take all necessary measures to ensure the full freedom of all its citizens, regardless of religious or racial differences. The Congress of Berlin 1878 extended the protection of religious minorities to many other states.

According to Article 62 of the Berlin Treaty, Turkey was obliged to respect religious freedom, while Serbia, Montenegro, Romania and Bulgaria were required to protect religious minorities, i.e., Guarantee religious freedom and prohibit any discrimination on the basis of religion in respect of choice of residence, exercise of political rights and admission to public services.

The protection of minorities also greatly expanded during the war and after the First World War. Then the number of obligated subjects expands and the number of minorities expands, including racial, linguistic minorities, etc. ... and a mechanism is created to examine the violations of minority rights. Thus, in relation to the protection of minority rights, obligations are imposed on Austria, Hungary, Bulgaria, and Turkey (with peace treaties), Czechoslovakia, Poland, Yugoslavia, Romania and Greece (with agreements concluded with the main allied powers: USA, England), France, and Italy) and Finland, Albania, Estonia Latvia, Estonia, Latvia, Lithuania and Iraq (upon accession to the League of Nations) Some other countries (Germany and Italy) and

² Jacques Robert, Henri Oberdorff, *Fundamental and righteous liberties of man. Texts, français et internationaux* 11e édition, f. 88

³ Barile, *Diritti dell Uomo*, 1982, pp.12-33

⁴ Memorandum of the Secretary-General of the United Nations, *Definition and classification of Minorities*, New York 1950

Gdansk take on obligations under bilateral agreements. According to agreements or declarations, racial, religious or linguistic minorities were guaranteed some fairly precisely defined rights and favors. They guaranteed the full protection of life and liberty for the entire population, regardless of nationality, language, religion, the exercise of all civil and political rights and equal treatment with other citizens, equality before the law, the right to use mother tongue in public communication, the right to assimilation in the mother tongue, the right to establish religious institutions and to practice religious rites, and to discriminate on the basis of race, religion or language.

From this it can be seen that some of these provisions offered absolute protection to minorities, because no obligated state could prohibit the exercise of certain rights. Some other provisions obliged states only not to distinguish between a minority and a majority, which provided only relevant protection, because the degree to which certain minority rights were exercised depended on the extent to which the majority exercised those rights.

The realization of minority rights was overseen and guaranteed by the League of Nations, which could be addressed with petitions or complaints by both the state and members of minorities. Obligated states could not be released from obligations without the consent of the majority of the Council of the League of Nations. The UN Charter does not contain provisions that refer directly to minorities. This has been a consequence of a bitter experience from the period of the League of Nations regarding minorities, but also of a new orientation which put the protection of minorities in the general context of recognition and respect for human rights and freedoms. The Charter in some countries explicitly requires respect for human rights and fundamental freedoms for all, regardless of race, language or religion.

Such an attitude was not an obstacle for the forums or bodies of the United Nations to deal with the special consideration of this issue. The United Nations since 1947 has established the Subcommittee on Prevention of Discrimination and the Protection of Minorities, which acts as a specialized body Of the Commission on Human Rights.

The issue of recognition and protection of human rights and fundamental freedoms for all, regardless of race, language and religion, has been the subject of regulation in many international treaties concluded after the Second World War. Some of these contain more provisions. which prohibit direct or indirect discrimination between the basic states of race, language, religion. The peace agreements with Italy (Article 15), Hungary (Article 2), Bulgaria (Article 2), Romania (Article 3), and Finland Article (6) contain an identical provision. It instructs these states to take all necessary measures to ensure that all persons (under their authority) enjoy the enjoyment of fundamental human rights and freedoms, including freedom of speech, of the press and of publication, and of freedom of religion, freedom of political belief and assembly, regardless of race, sex, language or religion.⁵

⁵ Zejnullah Gruda, Public International Law, Book II, Prishtina 1994, page 77

Some other agreements, such as the Special Statute on Minorities of the 1945 Trieste Memorandum and the State Treaty with Austria, contain more detailed provisions regarding the protection of minorities. According to the statute, the Yugoslav ethnic groups in Italy and the Italian ethnic group in Yugoslavia were guaranteed: equality in rights and treatment of the other population, unimpeded cultural development, the use of language in private and official relations, and the ability to change the boundaries of administrative units. in order to endanger the ethnic composition.

The 1955 Treaty on the Restoration of Austria's Independence contains much more detailed obligations concerning minorities. It obliges Austria to take all measures to ensure the fundamental rights and freedoms of every person, regardless of race, language or religion, and to prevent any discrimination on the basis of race, language, religion (Article 6). According to (Article 7) of this Treaty the minority Slovenes and Croats in Austria were guaranteed the same rights, under the same conditions as other Austrian citizens, including the right to form their own organizations and assemblies, the right to press in their language, the right to primary education in the Slovenian and Croatian languages and to a proportionate number of secondary schools, the right to participate in cultural, administrative and judicial institutions and bodies under the same conditions as other Austrian citizens. In addition, it was provided that Slovenian and Croatian are official languages in addition to German, and that topographical names and writings in the administrative and judicial districts of Carinthia, Gradischeska and Ajtayerka, inhabited by Slovenes, Croats or mixed populations, would be in Slovenian or Croatian, as well as German. This provision prohibited the activities of organizations whose purpose was to deprive the Croat or Slovene population of its minority character or minority rights.

The need for minority rights to be included in the most important acts in the field of human rights and the establishment of a special system for the protection of minorities has been actualized during the preparation of the Universal Declaration of Human Rights. Since then, the issue has been frequently discussed in the Commission on Human Rights, in various UN bodies at various international gatherings or in bilateral talks of statesmen.

The issue has remained topical due to the position of minorities in some countries, where as a result of the chauvinist action of the larger nations, serious violations have been committed not only of minority rights, but also of basic human rights. It suffices to mention the example of minorities in Romania and Bulgaria. In view of all this, the United Nations General Assembly, by Resolution 532, dated February 4, 1952, has stated that the elimination of discrimination and the protection of minorities are among the most important tasks undertaken by the United Nations.

However, the work of issuing detailed rules regarding minorities has been followed by various difficulties, which have emerged with the definition of minorities, the definition of numerical ratios between minorities and majorities, as an important element to maintain their characteristics, the need to establish a system for the special protection of minorities or a general system for the protection of human rights and fundamental freedoms. This situation has directly

influenced the introduction of provisions referring to minority rights in many international documents, although we do not mention them explicitly. This includes the provisions stipulating that everyone enjoys all the rights and freedoms of the Universal Declaration of Human Rights without distinction of race, color, religion, origin, etc. (Article 2), that he enjoys equal equality and protection before the law (Article 7), that enjoys freedom of thought, belief and religion (Article 18) etc. It was further considered that many of the rights of minorities are covered by provisions of the Universal Declaration of Human Rights, although some of them have not been included such as. The right to establish cultural or school institutions, the right to use the mother tongue, etc.

Naturally, proceeding from the character of the Declaration, the Subcommittee on Prevention of Discrimination and Protection of Minorities has insisted that the protection of minorities be incorporated in the Covenant on Human Rights and specially to provide for the protection of those rights, which ensure the protection of the features that distinguish minorities from the majority. Article 27 of the International Covenant on Civil and Political Rights expressly provides: In states where there is an ethnic, religious or linguistic minority, persons belonging to those minorities may not be deprived of the right to cohabit with other members of the group. their own, their cultural life, to maintain their own religion and to perform religious duties or to use their own language.

This provision formulated in this way gives room for different interpretations. However, it is a general guarantee that there are some international standards related to the activity of minorities, which states should still take into account in their relations with other states.

The rights of persons belonging to minorities are an integral part of fundamental human rights. The problematic situation in the field of protection of minority rights is also noted by the European Parliament Resolution on Minimum Standards for Minorities in the EU, which was adopted in November 2018. The resolution reveals inconsistencies in the European Union system for the protection of minorities. Discrepancies are numerous in some of the member states, especially when it comes to respecting the rights of minorities and recognizing their status as a minority.

Status of international documents in the domestic legal order of the Republic of Macedonia

The manner of incorporation of international norms contained in international agreements depends on the constitutional order in the state. Constitutional solutions move between two positions - that of the monistic⁶ system in which all provisions or some provisions of international law have direct application because they have supremacy over the provisions of domestic law and the other position - the dualistic⁷ solution, which does not allow implementation direct norms of

⁶ The monistic system means the unity of domestic and international law, respectively, the source of domestic law is found in all norms or in some norms of international law, which have higher legal force in relation to domestic ones.

⁷ The dualist system separates domestic law from international law, ie it means separation - of two legal systems. The provisions of international law are binding only after they have been established in domestic law.

international norms without their introduction in the domestic legislation in the procedure determined by the constitutive act of the state in question. In most states, in fact, combined solutions work, during which dualist systems seldom accept non-negotiable sources of international law. Agreements take the form of an act of domestic law or through the act of ratification or through the procedure of complete transformation into a form of law or legislative act with identical content as that of the concrete international agreement. The Republic of Macedonia implements the monetary system, i.e., international agreements once ratified, become part of the domestic legal order and are not changed by law.⁸

The rights of citizens belonging to non-majority communities, after the adoption of the Constitutional Amendments are: the right to adequate and equal representation of representatives of all communities in government bodies and other public institutions at all levels (Amendment VI); the right to use the symbols of non-majority communities (Amendment VIII); the right to free expression of nationality (Article 8 (2) (2)); freedom of expression of identity (Article 48 (1)); the right to form cultural and artistic institutions and associations (Article 48 (3)); the right to form educational institutions (Amendment VIII); the right to learn in one's own language (Article 49) and the right to use one's own language as an official (Amendment V). How to exercise the right to use community symbols? This right is established by Amendment VIII, and is realized in accordance with the Law on the Use of Flags of Non-Majority Communities in Public and Private Life.

In the public sphere, citizens belonging to non-majority communities can place their flags in: local government units, in which the concrete community⁹ is the majority, money, and in local government buildings, in parallel with the flag of the Republic of Macedonia, (Article 4); 16 in local government units in which the concrete community is a majority, before and in the facilities of state bodies, public services and private persons formed by the state, public services and private persons established in local government units, in streets, squares and other infrastructure objects, next to the flag of the Republic of Macedonia: on public holidays and other days in the Republic of Macedonia determined by law; on community holidays; on municipal and other public holidays determined by a decision of the municipal council; during the reception and escort of the President of the Republic of Macedonia, the Speaker of the Assembly of the Republic of Macedonia and the Prime Minister and members of the Government of the Republic of Macedonia; during official visits of chiefs and prime ministers of foreign and senior state representatives of the international community (Article 5); in the local government units, in which the concrete community is a majority, if the flag of the community is placed, the flag of the Republic of Macedonia is also

⁸ Article 118 of the Republic of Macedonia

⁹ The term "community" in the Republic of Macedonia, officially, was used for the first time in the Framework Agreement of 13.8.2001, respectively, in the amendments to the 1991 Constitution adopted on 16.11.2001 ("Official Gazette of the Republic of Macedonia", no. 91/01). Based on and in accordance with them and all subsequent legal acts, the term "minority" is used to name the term "minority" in the sense of ethnic community as a concept for the transformation of the Republic of Macedonia into an interethnic state.

placed, in front and in the facilities where it is held: international meetings, competitions and other meetings, in which the community of power The local is the organizer, participant or presenter in accordance with the rules and practice of holding those meetings and celebrations, ceremonies and other manifestations of importance to the local government communities. Citizens belonging to the communities can freely place the flags of the communities in any case with a private character as well as in cultural, sports and other events that are not organized by the local government unit, but by the representatives of the non-majority community as such.

Minority Rights

Minority rights, which apply to ethnic, religious or linguistic minorities and indigenous peoples, are an integral part of international human rights law. Like children's rights, women's rights and refugee rights, minority rights are a legal framework designed to ensure that a specific group who is in a vulnerable, disadvantaged or marginalized position in society, is able to achieve equality and protect itself from persecution. The first post-war international treaty to protect minorities, designed to protect them from the greatest threat to their very existence, was the Convention on the Prevention and Punishment of the Crime of Genocide.

Subsequent human rights standards codifying minority rights include the International Covenant on Civil and Political Rights (Article 27), the United Nations Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, both Council of Europe treaties (Convention on the Protection of National Minorities and the European Charter for Regional or Minority Languages) and the Organization for Security and Co-operation in Europe (OSCE) Copenhagen Document 1990.

Minority rights include protection of existence, protection from discrimination and persecution, protection and promotion of identity and participation in political life. For the rights of LGBT people, the Yogyakarta Principles have been endorsed by the United Nations Human Rights Council. On the Rights of Persons with Disabilities, the Convention on the Rights of Persons with Disabilities has been adopted by the United Nations General Assembly. To protect the rights of minorities, many countries have specific laws and/or commissions or ombuds institutions (for example: Hungarian Parliamentary Commissioner for National and Ethnic Minority Rights). While in the beginning, the United Nations treated indigenous peoples as a subcategory of minorities, there is an expanding body of international law specifically dedicated to them, in particular Convention 169 of the International Labor Organization and the UN Declaration of the Rights of Persons. Indigenous Peoples (adopted September 14, 2007). There are many political bodies which also represent the rights of minority groups, which can be seen in affirmative action quotas or in the guaranteed representation of minorities in a concession state. The vague legal definition of a national minority is present in the Copenhagen Document. She says that a person can belong to any minority of consciousness, that is, of their own will. Legal regulation of minorities exists in almost every country in the world. In each of them there is a community of people with their ethnic group, culture, language, etc. All this enriches only the

indigenous population of the territory. In many parts of the world, there are laws that control the development of minorities nationally, culturally and socio-economically. After the UN General Assembly adopted the Declaration on the Rights of Persons Belonging to National or Ethnic Minorities, the issue has become an international level. The Declaration establishes the right of minorities to national identity, to enjoy their culture, to speak their mother tongue and to have freedom of religion. Minorities can form associations to establish contacts with their ethnic group living in another country, as well as to participate in decisions that affect them. The declaration defines the duty of the state to protect and defend national minorities, taking into account their interests in foreign and domestic policy, providing conditions for the development of minority cultures, etc. The creation of the UN Declaration was the fact that legislation that opened up the rights and obligations of national minorities have been established in several countries in Europe, living in a certain territory. It is worth noting that this issue was really serious only after the intervention of the United Nations. Now, the issue of minorities should not be regulated by their government, and in accordance with international practice.

The Convention on National Minorities has shown that the world is not indifferent to the fate of particular ethnic groups. At the same time the CIS countries have decided to adopt a general law on the protection of minorities. The widespread creation of international documents on national minorities suggests that the issue has ceased to be state-owned and became international.

National minorities are groups of people living in a given country, like its citizens. However, they do not belong to the indigenous or settled population of the territory and are considered a separate national community. Minorities may have the same rights and obligations as the general population, but the attitude towards them is often not very good for many reasons.

FRAMEWORK CONVENTION ON THE PROTECTION OF NATIONAL MINORITIES

The Council of Europe has examined the situation of national minorities on a number of occasions over a period of more than 40 years. Almost from the first year of its establishment (1949), the Parliamentary Assembly recognized, in a report of the Committee on Legal and Administrative Affairs, the importance of the "problem of the wider protection of the rights of national minorities". In 1961, the Assembly recommended the inclusion of an article in a second Additional Protocol to guarantee national minorities a range of rights, which are not covered by the European Convention on Human Rights (ECHR). The latter simply refers to "union with a national minority" in the non-discrimination provision provided for in Article 14. Recommendation 285 (1961) proposed the following wording for the draft article on the protection of 8 national minorities: "Persons belonging to a national minority will not be denied the right, in community with other members of their ethnic group, and to the extent that is in accordance with public order, to enjoy their culture, to use the language of to establish their own schools and to study in the language of their choice or to practice and practice their religion. "The Committee of Experts, which was instructed to thus, postponed its activities until a final decision was reached on

language cases in Belgium regarding the language used in education.¹⁰ In 1973 he concluded that from a legal point of view there was no particular need to make the rights of minorities subject to any additional ECHR protocol. However, the experts felt that there were no major legal obstacles to the adoption of such a protocol, if deemed advisable for other reasons.

The Framework Convention is the first multilateral instrument of a legally binding nature, dedicated to the protection of national minorities in general. It aims to set out the legal principles that states are committed to adhering to ensure the protection of national minorities. Through it, the Council of Europe implemented the call for the Vienna Declaration (Annex II) to transform the political commitments adopted by the Conference on Security and Co-operation in Europe (CSCE), to the greatest extent possible, into legal obligations.

According to Article 1, the protection of national minorities and the rights and freedoms of persons belonging to these minorities form an integral part of the international protection of human rights, and as such are included in the framework of international cooperation. The provisions of this Framework Convention shall be implemented in good faith, in a spirit of understanding and tolerance, and in accordance with the principles of good neighborliness, friendly relations and cooperation between States. According to Article 3: Every person belonging to a national minority shall have the right to choose freely whether or not to be treated as such and there shall be no disadvantage from this election or from the exercise of related rights with this choice. Persons belonging to national minorities may exercise the rights and enjoy the freedoms arising from the principles set forth in this framework Convention individually as well as in community with others. The Parties undertake to guarantee to persons belonging to national minorities the right to equality before the law and to equal protection of the law. In this regard, any discrimination on the basis of belonging to a national minority shall be prohibited. The Parties undertake to adopt, whenever necessary, appropriate measures in order to promote, in all spheres of economic, social, political and cultural, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this regard, they shall take due account of the special circumstances of persons belonging to national minorities.

Measures adopted in accordance with paragraph 2 shall not be deemed to be an act of discrimination. The Parties undertake to promote the necessary conditions for persons belonging to national minorities to preserve and develop their culture, and to preserve the fundamental elements of this identity, specifically religious belief, language, traditions and cultural heritage. Without prejudice to the measures taken to carry out their policy of general integration, the Parties shall not undertake policies or practices aimed at the assimilation of persons belonging to national minorities against their will and shall protect those persons from any act aimed at such assimilation.

¹⁰ Eur. Court H.R. Judgment 27 June 1968, Serie A, Nr 6)

The framework convention is open for signature by the member states of the Council of Europe, and at the invitation of the Committee of Ministers, by other states as well. It is understood that "other countries" are those countries that participate in the Conference on Security and Co-operation in Europe. These provisions take into account the Vienna Declaration, according to which the Framework Convention must be open for signature by non-member states as well.

CONCLUSION

The rights of citizens belonging to communities are part of the corpus of universal human rights and freedoms, but also a qualitative concept different from the concept of equality of all and everyone before the Constitution and laws.

Minority rights applicable to ethnic, religious or linguistic minorities and indigenous peoples are an integral part of international human rights law. Like children's rights, women's rights and refugee rights, minority rights are a legal framework designed to ensure that a specific group who is in a vulnerable, disadvantaged or marginalized position in society, is able to achieve equality and protect itself from persecution. In fact, the protection of minority rights is one of the central aspects of the global human rights protection program in the world; and it is a problem that presupposes the awareness of the importance that the protection of identities and diversity assumes for the construction of democratic and pluralistic societies.

Approaching the final conclusions, it should be said that even today, the legal situation of minorities presents a special complexity taking on even greater importance than in the past, because it is related to important topics for the future of humanity as it is of self-determination of peoples, protection of human rights in contemporary societies, new conceptions of statehood, etc.

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