

МЕЃУНАРОДНИ СТАНДАРДИ ЗА ПРАВАТА НА ПРИПАДНИЦИТЕ НА МАЛЦИНСТВАТА



STANDARDE
NDËRKOMBËTARE
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INTERNACIONALNIKANE
STANDARDIJA
BAŠE HAKOJA E
MINORITETENGERE

МЕЃУНАРОДНИ
СТАНДАРДИ
О ПРАВИМА
ПРИПАДНИКА
МАЊИНА

STANDARDIJI
INTERNACIONALI TI
ANDREPTURLI A
MINORITÄTSLOR

INTERNATIONAL
STANDARDS FOR THE
RIGHTS OF THE
PERSONS
BELONGING TO
MINORITIES

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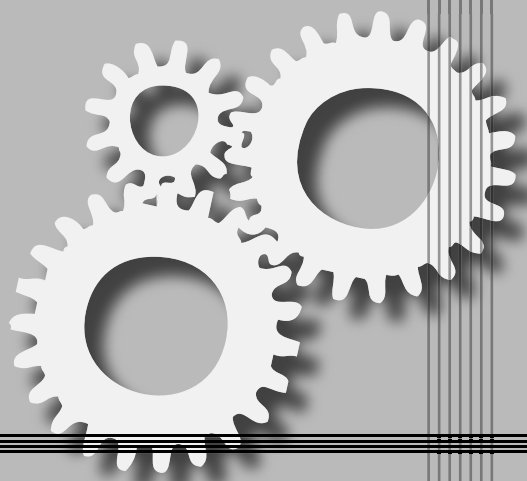


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**INTERNATIONAL
STANDARDS FOR
THE RIGHTS OF
THE PERSONS
BELONGING TO
MINORITIES**

7



International standards for the rights of the persons belonging to minorities

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PREFACE

The aim of the publishing of the guide International standards for the rights of the persons belonging to minorities is to provide with succinct illustration of the most important international acts and instruments, which are of relevance for minorities.

In that regard, the guide should contribute to:

First, the explanation of the need of special rights for minorities;

Second, the promotion of the global and regional international instruments for the protection of the rights of persons belonging to minorities;

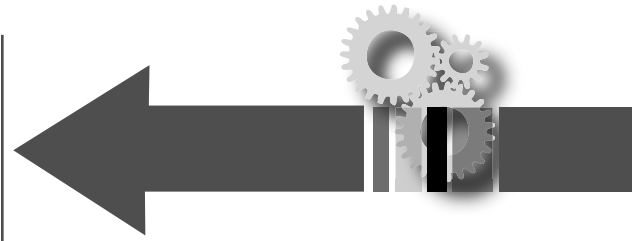
Third, the introduction with the international bodies and procedures to which individuals can apply for the protection of their rights, through concrete examples;

Fourth, giving emphasis to the importance of the national legislation and institutions in the protection of the rights of the minorities .

The guide clearly and concisely presents the international acts, the context in which they have been adopted, as well as the rights guaranteed by those acts.

An important part of the guide is the glossary of frequently used words, which contributes to a better understanding of the international law mechanisms and makes these acts comprehensible to every citizen.

INTRODUCTION



1.1.

Minority rights- why special rights for minorities?

Minorities, especially on the Balkans, have always been a point of interest, due to the complexity of the issues related with them. Yet, there is still no generally accepted definition of what the term minority constitutes. However, the definition given by Professor Francesco Capotorti, has been widely recognized. According to him, minority is a group, numerically inferior to the rest of the population of a State, in a non-dominant position, whose members- being nationals of the State- possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language¹

Thus, in general, the following criteria are taken into consideration:²

- *objective* : the group should have a distinct language, religion, national or ethnic origin, be numerically inferior to the rest of the population of the state, and the persons belonging to it should have a citizenship of the state in which they live
- *subjective*: the group should manifest a will to preserve its identity, while the persons belonging to the group a will to identify themselves with the group

The instruments for the protection of the rights of the minorities use a wording that implies that rights are guaranteed to the **persons belonging to** the national, ethnic, religious and other minorities, and not to the groups as such.

Regardless of the debates in the theory about minorities, there is a general agreement that the belief which prevailed in the past, that the norms for the protection of human rights in general, are adequate for the protection of the rights of the minorities, is wrong. Namely, equality before the law and non-discrimination are not sufficient to guarantee equality in fact. On the contrary, there is a need for special rights and measures for the protection of the rights of the persons belonging to minorities. Special rights are not privileges but they are granted to make it possible for minorities to preserve their particular characteristics.³

1 Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities, UN Document E/CN.4/Sub.2/384/Add.1-7 (1977)

2 Magdalena Syposz, Framework Convention for the Protection of National Minorities, Opportunities for NGOs and minorities, (Minority Rights Group International, March 2006)

3 Fact sheet No.18, Minority Rights, available at the web page of the Office of the United Nations High Commissioner for Human Rights, <http://www.unhchr.ch/html/menu6/2/fs18>

1.2.

Types of international instruments for the protection of minority rights

The international instruments relevant for the protection of the rights of minorities will be considered through the system of the United Nations and on regional level through the mechanisms of the Council of Europe, the OSCE and the European Union.

The organization of the United Nations was established in 1945 with aim to maintain the international peace and security, cooperation between the states and promotion and respect of the human rights. Within the United Nations, the Universal Declaration of Human Rights will be analyzed at the outset. It is the first international document for human rights which has been adopted by this Organization. Although, only a declaratory document, which does not create legal obligations for the states but declares basic principles and standards only, there is an agreement that this act has a status of customary international law.⁴ The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities is the first and only instrument of the United Nations exclusively devoted to the rights of minorities. Although, it only builds on existing rights, the Declaration introduces sensitively created standards which contribute to building confidence between the states and the minority groups, through decreasing the possibilities for negative action on part of the states toward the minorities, and preservation of the territorial integrity of the states, on the other.⁵ The Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief is the next United Nations instrument, which is of relevance for the minorities, the religious in particular. When it comes to legally binding acts in the United Nations system, the International Convention on the Elimination of All Forms of Racial Discrimination is among the key acts in this area and the first international treaty to introduce a mechanism for its implementation (the Committee on the Elimination of Racial Discrimination) However, the Convention does not guarantee particular rights, but only requires respect for and exercise of the rights through protection from racial discrimination.⁶ On the other hand, the International Covenant for Civil and Political Rights, besides obligations for the States, contains an extensive list of rights and freedoms. From the point of view of minorities, Article 27 of the Covenant, is of special importance. Namely, the manner in which this provision is formulated, is such that it represents a recognition of the need for “special” minority rights which go beyond the prohibition of discrimination and the protection of individual rights in general.⁷

The Council of Europe (the difference with the European Council as part of the European Union should be noted) with headquarters in Strasbourg, has been established in 1949 with aim to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress The member States including the Republic of Macedonia, are obliged to accept those principles and to guarantee to all persons in their jurisdiction

4 Ljubomir Danaïlov Frckoski, *International Human Rights Law* (Magor, Skopje, 2001)

5 Patrick Thornberry, *The UN Declaration on the rights of the persons belonging to national, ethnic, religious and linguistic minorities: background analysis and observation*, (Minority Rights Group, London, 1993)

6 See T.C. van Boven, *Survey of International law of Human Rights*, in L. D. Frckoski, *International Human Rights Law* (Magor, Skopje, 2001)

7 Kristine Henrard, *Devising an adequate system of minority protection*, (Nijhoff, Hague, 2000)

the exercise of the human rights and freedoms. The Council of Europe and the European Union are two distinct organizations, although the member States of the Union are members of the Council of Europe as well. The most important legally binding instrument in the field of human rights, the European Convention for Human Rights, although does not specifically deal with minority rights as such, through the practice of the Strasbourg Court, proved to be a relatively efficient instrument for the protection of the rights of persons belonging to various minority groups. The Framework Convention for the Protection of National Minorities which is legally binding for the States which have ratified it, is the most important, though not the first, instrument for the protection of the rights of the persons belonging to minorities in the Council of Europe. Still, this Convention does not contain a definition of the term national minority as well. The European Charter for Regional and Minority Languages is also relevant in the context of minorities. But, it has to be emphasized that its primary objective is the protection and promotion of regional and minority languages and not of the linguistic minorities as such. Also, the Charter **does not establish** individual or collective rights for persons who are using a minority or regional language.

The Organization for Security and Co-operation in Europe (OSCE) was established as an organization for the matter of collective security and promotion of human rights. In reference to human rights, the term *human dimension* is in use and it comprises the norms and activities related to human rights. The OSCE acts are a result of political processes and consequently, the States are politically bound to apply them. The aforementioned, does not even nearly minimize the importance of the acts of the OSCE. On the contrary, those acts, including the Document of the Copenhagen meeting, form an integral part of the international human rights system. Although, it creates only political obligations for the States, it is expected that the States implement those obligations and is a basis for further development of the minority protection within this organization.⁸

Before the international instruments are analyzed, it is important to underline that Article 118 of the Constitution of the Republic of Macedonia stipulates that, the international treaties which have been ratified in accordance with the Constitution form part of domestic legal order and cannot be amended by a law.

UNITED NATIONS



2.1.

Universal Declaration of Human Rights

In accordance with Article 2 of the Universal Declaration of Human Rights,⁹ everyone is entitled to all the rights and freedoms set forth in it, without distinction of any kind, including *inter alia* race, colour, sex, language, religion, political or other opinion, national or social origin. Article 7 is also important from the aspect of minorities,

⁸ Ljubomir Danailov Frckoski, *International Human Rights Law* (Magor, Skopje, 2001)

⁹ Adopted with General Assembly Resolution 217 A (III), 10 December 1948, available in Macedonian, at <http://www.unhchr.ch/udhr/lang/mkj.htm>

according to which all persons are equal before the law all persons with no discrimination, are entitled to equal protection of the law, as well as to equal protection of discrimination. The Declaration guarantees civil and political as well as economic, social and cultural rights. The Universal Declaration does not mention minority rights because the principle of universal human rights on the basis of non-discrimination on racial, ethnic, religious and other grounds was deemed to be sufficient protection for minority groups.¹⁰ But, it is important to note that the principle of non-discrimination is only a first step in the protection of minorities, and is not sufficient in itself to deal with the question.¹¹ The need for a Declaration specifically designated for the rights of the persons belonging to minorities derives from there.

2.2.

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

The Declaration evidently is a mechanism for the *rights of the individuals* which are members of a minority group.¹² In accordance with Article 1 of the Declaration, the States shall protect the existence and identity of the national, ethnic, religious and linguistic minorities and in that regard shall take appropriate legal and other measures. The mandatory character of the obligation to protect the identity and existence is evident from the phrase, “the States shall protect the existence and identity”.¹³

The Declaration contains the following rights:

- the right of the persons belonging to minorities to enjoy their own culture, to profess and practise their own religion and to use their own language in private and in public with no discrimination
- the right to participate in cultural, religious, social, economic and public life
- the right to effectively participate in decisions on the national and where appropriate on the regional levels. This is relevant for decisions which affect the minority to which they belong or the region in which they live, and the participation should not be in contravention with the domestic legislation
- the right to establish and maintain their own associations
- the right to establish and maintain peaceful contacts with members of other minorities, as well as cross border contacts with nationals of other States to which they are related with national or ethnic, religious or linguistic ties

¹⁰ Patrick Thornberry, International and European standards on minority rights, vo Minority rights in Europe, (Hugh Miall ed., 1994).

¹¹ Idem

¹² Adopted with United Nations General Assembly Resolution 47/135, 18 December 1992, available at http://www.unhcr.ch/html/menu3/b/d_minori.htm

¹³ See supra 3

INTERNATIONAL STANDARDS FOR THE RIGHTS OF THE PERSONS BELONGING TO MINORITIES

- right of the persons belonging to minorities to exercise with no discrimination, the guaranteed rights individually or in community with the other members of the group.

The States are obliged to:

- to create conditions that will enable the persons belonging to minorities to express their special characteristic and develop their culture, language, religion, tradition and customs
- to guarantee appropriate options to study their mother tongue
- to enable their participation in the economic progress and development
- to take into account the legitimate interest of the minorities when creating national policies and programs
- the Declaration envisages collaboration of the States in the protection and promotion of the guaranteed rights

The principles contained in the Declaration are applicable to persons belonging to minorities concomitantly with the universal human rights.¹⁴ This instrument should be regarded as "minimum standard" and therefore the states in the protection of the rights of the persons belonging to minorities are expected to undertake measures that go beyond the Declaration.

2.3.**Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief**

The Declaration, as its title suggests regulates in more detail the prohibition of discrimination on grounds of religion and can be of relevance for the religious minorities.¹⁵ In accordance with Article 1 everyone is entitled to freedom of thought, belief, religion which includes the right to have a religion of your own choice and right individually or in community with the others to manifest these rights. On the other hand, the Declaration affirms the principle of non-discrimination on religious grounds including discrimination by the State, institution, person or group of persons and underlines that such discrimination is contrary to human dignity, the Universal Declaration of Human Rights and the International Covenant for Civil and Political Rights.

¹⁴ Fact sheet No.18, Minority Rights

¹⁵ Adopted with United Nations General Assembly Resolution 47/135, 18 December 1992, available at http://www.unhcr.ch/html/menu3/b/d_minori.htm

2.4. Legally binding acts

2.4.1. International Covenant for Civil and Political Rights

In accordance with Article 2 of the International Covenant for Civil and Political Rights¹⁶ the States are obliged to respect and ensure to **all persons** within their jurisdiction the rights recognized in the Covenant. It is important to stress that this obligation extends only to the rights envisaged in the Covenant and not to rights that stem from other international instruments. In this sense, the obligation of the States includes, among other rights the right to life, prohibition of torture and degrading treatment, freedom of thought, conscience and religion, equality before the law, freedom of association and peaceful assembly, right to privacy etc. Article 26 of the Covenant guarantees equality before the law and prohibition of discrimination. This Article 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.¹⁷

However, for the persons belonging to minorities Article 27 is the most significant. On the basis of this provision, 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
- to use their own language

a) Human Rights Committee

The Human Rights Committee has the following competencies:

- to consider communications submitted by individuals in respect of States which have ratified the Optional Protocol
- to consider reports submitted by the States in respect of the measures they have adopted which give effect to the rights recognized in the Covenant (Article 40) When submitting reports information must be provided about minorities in a State, their respective numbers as compared to the majority and the concrete measures adopted by the reporting State to preserve minorities' identity while particular

¹⁶ Adopted with United Nations General Assembly Resolution 2200A (XXI) 16 December 1966, entered into force 23 March 1976, available at http://www.unhcr.ch/html/menu3/b/a_ccpr.htm

¹⁷ General Comment No. 23, Human Rights Committee, available at http://www.minorityrights.org/Legal/linguistic/un/legal_linguistic_UN_Comment23Art27.htm

reference should be made to their representation in central and local government bodies¹⁸

- to make General Comments based on the examination of state reports and individual communications. (Article 40(4))
- to consider state-to-state complaints only in respect of States parties which declared that they recognize such competence of the Committee (Article 41)

Although, there are debates about who is entitled to the rights stipulated in this Article, it is important that the Human Rights Committee in its General Comment No.23, highlighted that although the rights which are protected are individual rights they *depend on the ability of the minority group* to preserve its culture, language or religion and the States accordingly have *positive* obligations to protect the identity of the minority and the rights guaranteed by this Article.¹⁹ This is especially important as on the surface it seems that the States only have a negative obligation to refrain from hindering the realization of the rights of the minority groups. On the other hand, the positive measures adopted by the State must be compatible with the principles of non-discrimination and equal protection. Namely, various minorities, the persons who belong to them and the rest of the population must not be subjected to different treatment, unless it is based on reasonable and objective criteria and has aim to improve the conditions that prevent the realization of the guaranteed rights.²⁰

b) Submitting individual communications to the Human Rights Committee

It is especially important for this Covenant, that the States which ratified the Optional Protocol recognize the right of the individuals to submit communications to the Human Rights Committee.²¹ Thus, the Committee on several occasions considered communications by individuals and in its decisions determined principles relevant for the protection of the persons belonging to minority groups.

- *Sandra Lovelace v. Canada*,²² (referring to a woman from Canada with Indian origins) established the principle that the limitations to the rights protected under Article 27 affecting the right to residence on a reserve may be justified if there is reasonable and objective justification and if they are compatible with the provisions of the Covenant.
- In *Länsman et al. v. Finland*,²³ it was emphasized that though different activities individually may not contravene Article 27, taken together may lead to a violation of the right to enjoy one's culture included in this Article.

¹⁸ Fact Sheet No. 18, Minority Rights

¹⁹ General Comment No. 23, Human Rights Committee, available at http://www.minorityrights.org/Legal/linguistic/un/legal_linguistic_UN_Comment23Art27.htm

²⁰ Idem

²¹ Republic of Macedonia ratified the Optional Protocol on 12 December 1994

²² Sandra Lovelace v. Canada, Communication No. R.6/24, (1981), available at <http://www.unhchr.ch/tbs/doc.nsf>

²³ Länsman et al. v. Finland II, Communication No. 671/1995 (1996)

- In *Ivan Kitok v. Sweden*,²⁴ the Committee underlined that even the economic activities of the persons belonging to an ethnic minority could qualify as an essential element of their culture and thus be protected under Article 27

Individual communications submitted to the United Nations Human Rights Committee go through the same phases as the ones submitted to the Committee on the Elimination of Racial Discrimination: admissibility stage and stage in which the communication is examined on its merits. The admissibility criteria for the two bodies are also basically the same with certain differences:

- The Human Rights Committee allows the same applicant to complain in respect of the same facts before certain United Nations mechanisms, will consider a communication which has been declared inadmissible based on the formal criteria of other international bodies or if the Covenant affords greater protection than the one available by other international instruments.;²⁵
- There is no time limit for submitting a communication before the Human Rights Committee, but in principle the communication should not be submitted after elapse of a long time, unless there is an convincing explanation for that;
- The communication may be submitted by individuals only, and not by groups as the case is with the Committee on the Elimination of Racial Discrimination;
- Similarly, with the Committee on the Elimination of Racial Discrimination, the Human Rights Committee may declare as admissible a communication referring to an event which took place before the Optional Protocol had entered into force with respect to a particular State if that event has an effect of a continuing violation of the rights under the Covenant. Usually, the Committee shall consider a communication if there is a judicial decision or another State act referring to such event.

Submitting communication to the Human Rights Committee is not a continuation of the domestic procedures, i.e. the Committee is not "fourth instance", and its decisions from legal point of view do not bind the State in question. If the State does not conform to such decision, the State cannot be penalized for that, and there is no mechanism that will follow the enforcement of such decision.²⁶ This is one of the key distinctions with the procedure at the European Court for Human Rights.

²⁴ *Ivan Kitok v Sweden*, Communication No. 197/1985, (1988), available at <http://www.unhchr.ch/tbs/doc.nsf>

²⁵ Fact Sheet No. 7, Rev.1, Complaint Procedures available at the web page of the Office of the United Nations High Commissioner for Human Rights <http://www.unhchr.ch/html/menu6/2/fs7.htm#ccpr>

²⁶ Frckoski, *International Human Rights Law*

2.4.2.**International Covenant for Economic, Social and Cultural Rights**

This Covenant is of relevance for minorities in so far as it, similarly to the Covenant for Civil and Political Rights, encompasses obligation for the States to ensure exercise of the rights included in it with no discrimination, but differing from that Covenant in so far as it has a more restrictive use, which is even more emphasized considering that the realization of rights under this Covenant depends on the economic resources of the given State. This international instrument regulates a number of economic, social and cultural rights such as the right to work, to form labor unions, right to just and preferential work conditions, right to social security and social insurance, protection of the family, especially the need for protection of the young people, right to adequate standard of life, right to education, right to the highest attainable standard of mental and physical health etc.²⁷ An important provision of the Covenant, is Article 2, according to which everyone is entitled to the rights set forth in the Covenant with no discrimination on the grounds of *inter alia*, race, color, sex, ethnic origin, religion and language. Yet, the realization of these rights depends on the available resources of the State and they are more complicated in terms of justiciability before the domestic courts.

On the global level, provisions of relevance for minorities are contained in the Convention on Elimination of All Forms of Discrimination against the Woman, the Convention of the Rights of the Child, the UNESCO Convention against Discrimination in the Education, the Convention relating to the Status of Refugees, the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families as well as in the Conventions of the International Labor Organization.

2.4.3.**International Convention on the Elimination of All Forms of Racial Discrimination**

The International Convention on the Elimination of All Forms of Racial Discrimination²⁸ is of relevance for minorities since Article 1 defines racial discrimination as any distinction, exclusion, restriction or preference based on race, colour, descent, national or ethnic origin with the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights in any field of public life, including political, economic, social or cultural life. The States are obliged (Article 2) to implement policies on elimination of racial discrimination through all appropriate means, including legal, judicial and administrative measures, and even in respect of physical and legal persons. Also

Also States parties oblige to undertake measures against (including criminally proscribing), propaganda of racial hatred organizations which promote discrimination. In this sense, states should proscribe participation in such organizations and activities as acts punishable by law. One of the important provisions is Article 5, which guarantees equality in the exercise of number of rights including:

²⁷ Adopted with Resolution 2200A (XXI) on 16 December 1966, entered into force 3 January 1976

²⁸ Adopted and opened for signature and ratification, with Resolution 2106 (XX) of 21 December 1965 entered into force on 4 January 1969, available at http://www.unhcr.ch/html/menu3/b/d_icerd.htm

- right of all groups and individuals, with no distinction as to race, colour, or national or ethnic origin, treatment before the tribunals and all other organs administering justice;
- The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution
- equality in respect of civil rights, in particular, the freedoms of movement, thought, conscience, religion, expression, assembly and association; the right to marriage; the right to own property; and the right to inherit
- equality in respect of economic, social and cultural rights, in particular, the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration, the right to form and join trade unions, the right to public health, medical care, social security, the right to education, the right to equal participation in cultural activities

Article 6 is of special importance, in accordance with which, the States are obliged to ensure to everyone within their jurisdiction, effective protection and remedies against racial discrimination, including satisfaction for any damage suffered as a result of discrimination. Article 7 obliges the States to adopt measures, particularly in the fields education and culture and information, to combat racial prejudice and promote racial understanding, tolerance towards different racial and ethnic groups.

The Convention envisages the Committee on the Elimination of Racial Discrimination which is a body comprised of independent experts and which is responsible for the monitoring of the implementation of the Convention from the States parties. The Committee is competent for:

- elaborating General Recommendations in order to assist the States parties in the implementation of the obligations under the Convention.²⁹
- States parties are obliged to submit an initial report within a term of one year after the Convention had entered into force in respect of them, as well as **periodical reports** on the measures they have adopted to give effect to the provisions of the Convention, including legal, judicial, administrative and other measures (Article 9)
- States parties recognize the competence of the Committee to consider and decide upon **state-to-state complaints** if a State party considers that another state party is not giving effect to the provisions of the Convention (Article 11)
- States which have deposited a declaration in respect of Article 14 accept the competence of the Committee to consider communications from individuals

²⁹ Atsuko Tanaka and Yoshinobu Nagamine, *The International Convention on the Elimination of All Forms of Racial Discrimination: A Guide for NGOs*, (Minority Rights Group and IMADR, 2001)

a) Procedure before the Committee on the Elimination of Racial Discrimination

The Committee considers the communications in two stages. First, it is examined whether the communication satisfies the formal criteria to be examined. In the next stage the Committee checks if there was in fact a violation of an Article of the Convention.

Each communication has to fulfill the following admissibility criteria:

- As a general rule, the communication may not be anonymous, so the identity of both the alleged victim and the one who submitted the communication (if they happen to be different persons) should be known to the Committee, but the applicant may request his identity not to be published; a communication on the same issue may not be submitted several times: the communication should not be abuse of the right to individual communication and should be supported by sufficient evidence in order to be credible.
- Republic of Macedonia, deposited a reservation, in accordance with which, the Committee may not consider communications, unless the Committee has established that the matter to which the communication refers to has not been and is not being considered by another procedure of international investigation (although the Convention itself does not have such a limitation)
- **Ratione personae** (who can apply and against whom): under the Convention, an applicant may be an individual or group of persons. As a general rule, the applicant should be the alleged victim, but if not possible, somebody else may submit the communication on behalf of the victim, e.g. a relative, NGO or other representative.
- The Convention should be signed and ratified by the state against which a communication is submitted.³⁰
- The state in question must have recognized the competence of the Committee by depositing a Declaration in respect of Article 14.³¹
- **Ratione temporis**: as a general rule, the communication should refer to events that have happened after the state has deposited a declaration on Article 14 (Republic of Macedonia made such a declaration on 22 December 1999).
- **Ratione loci** as a rule, the applicant should be under the territorial jurisdiction of the states at the time when the eventual violation took place.
- **Ratione materiae** the violation which the applicant invokes should refer to some of the rights contained in the Convention.
- The domestic remedies have to be exhausted before submitting communication to the Committee.

³⁰ Republic of Macedonia ratified the Convention on 18 January 1994

³¹ Republic of Macedonia Republic of Macedonia made such a declaration on 22 December 1999

- Unless there are exceptional circumstances the communication has to be submitted within a **time limit of six months** after the available domestic remedies have been exhausted.

If all of the aforementioned criteria are satisfied, the Committee proceeds to examine whether the violation alleged by the application in fact took place. Afterwards, the Committee prepares opinion and can ask the state to submit report on the measures taken with respect of the recommendations contained in that opinion. The decisions of the Committee on the Elimination of Racial Discrimination are not legally binding and they only determine that there has been a violation and recommend certain legal remedies, as well as unspecified sum for compensation. This has to be underlined in light of the fact that the judicial decisions are legally binding, while the recommendations of the Committee do not have such legal character. However, they have authority and the states should comply with them.³²

In the case *Durmic v Serbia and Montenegro*,³³ as to the admissibility of the communication, the Committee stressed some important rules and principles:

- referring to the *ratione temporis* - though the incident had happened before the state made a declaration with which it recognized the right of individual to apply to the Committee, the inappropriate investigation by the domestic authorities and the very fact that there has not been possibility for an effective legal remedy, continued after the state made such declaration, and thus this admissibility criteria was fulfilled.
- the *exhaustion of domestic remedies* criteria does not refer to cases when the application of domestic remedies is unnecessary and unreasonably prolonged.

As to the merits of the communication the Committee determined, that since the police did not pursue a thorough investigation of the case, the public prosecutor had not reached any conclusion, and the competent court, six years after the incident, had still not determined even a date for consideration of the case, the applicant was denied the possibility to establish if some of the Convention rights have been violated. Consequently, the state failed to timely, thoroughly and effectively investigate the applicant's allegations, which was in violation with Article 6.

In the *Lacko v Slovak Republic* case,³⁴ the Committee pointed out that objectives pursued through a criminal investigation cannot be achieved by means of civil and administrative remedies of the kind proposed by the State party.

The right of individuals to submit communications to the Committee and the effect of the Committee's decisions can be illustrated on the following example. In the case *L.K. v. The Netherlands*,³⁵ the applicant, a national

³² Atsuko Tanaka and Yoshinobu Nagamine, *The International Convention on the Elimination of All Forms of Racial Discrimination: A Guide for NGOs*, (Minority Rights Group and IMADR, 2001)

³³ *Durmic v Serbia and Montenegro*, Communication No. 29/2003, (2006) available at <http://www.unhchr.ch/html/menu2/8/jurispr.htm>

³⁴ *Lacko v Slovak Republic*, Communication No. 11/1998, (2001), available at <http://www.unhchr.ch/html/menu2/8/jurispr.htm>

³⁵ *L.K. v. The Netherlands*, Communication No. 4/1991, U.N. Doc. A/48/18 at 131 (1993), available at <http://www1>.

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of Morocco, residing in the Netherlands, complained that he was a victim of racial discrimination by citizens of the Netherlands, that the investigation and criminal prosecution were incomplete and that when there are threats of violence on racial grounds, the state is obliged to diligently undertake investigation, which in the case was not respected. Subsequently, the Committee recommended Netherlands to revise the procedures which refer to decision on criminal prosecution of cases of eventual racial discrimination in accordance with the obligation under Article 4 of the Convention and to guarantee the applicant with relief commensurate with the moral damage he had suffered. The Committee asked the Netherlands in its next periodic report to inform about the measures taken in relation to this recommendation. Consequently, the Netherlands in its 13th periodic report to the Committee, provided information on new, stricter guidelines for the police and the public prosecutions department, adding that, it had also complied with the relevant recommendations of the Committee and in consultation with the applicant's counsel and the applicant, it had provided reasonable compensation.³⁶

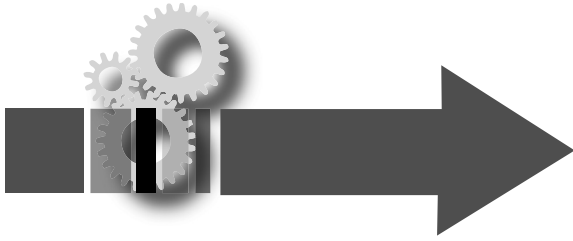
The positive influence of the Convention in the fights against racial discrimination is apparent through many changes made in various states :

- amendments to national constitutions to include prohibiting racial discrimination
- systematic reviewing of existing laws and regulations through their amendment or the passing of new laws in order to comply with the requirements of the Convention
- making incitement to acts of racial discrimination and racial violence a punishable offence
- educational programmes aimed at promoting good relations and tolerance between racial and ethnic groups³⁷

umh.edu/humanrts/country/decisions/CERD-DLR.htm

36 Atsuko Tanaka and Yoshinobu Nagamine, *The International Convention on the Elimination of All Forms of Racial Discrimination: A Guide for NGOs*, (Minority Rights Group and IMADR, 2001)

37 Fact Sheet No.12, *The Committee on the Elimination of Racial Discrimination*, available at the web page of the Office of the United Nations High Commissioner for Human Rights, <http://www.ohchr.org/english/about/publications/docs/fs12.htm>



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INTRODUCTION

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3.1. European Convention on Human Rights

The European Convention on Human Rights³⁸ is an instrument which guarantees a number of rights and freedoms of the individuals and which with its Protocol No. 11 introduced the Court for Human Rights in Strasbourg. The Convention does not guarantee collective rights and is not an instrument, specifically covering minority rights. However, though the freedom of expression, association, and privacy remain essentially individualistic in their outlook in the context of the Convention, they also protect minority views and cultures.³⁹ The Court's case law illustrates how the political participation of minority groups can be protected in an international judicial procedure, through the freedoms of expression, association and assembly of the persons belonging to that group.⁴⁰ On the other hand, the protection of linguistic rights is limited to the obligation for the state to ensure exercise of such rights with no discrimination.⁴¹ Namely, the Convention is relevant for persons belonging to minority groups, in essence through the non-discrimination principle enshrined in Article 14. This Article asserts that the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground including *inter alia*, sex, race, colour, language, religion, association with a national minority. According to the Court, the term discrimination presupposes different treatment of persons in relevantly comparable situations with no objective and reasonable justification.⁴²

But, Article 14 does not have independent existence and complements the other substantive rights. The other substantive rights guaranteed by the Convention taken individually, can be appropriate for the protection of the persons belonging to minority groups.

Theoretically, there are two options:

1) To submit an application claiming discrimination but **mandatory in conjunction with** one of the substantive rights of the Convention:

In such a case the Court may:

a) Determine a violation of the right invoked, and of that right taken together with Article 14

The case of *Nachova and others v Bulgaria*,⁴³ is the first occasion in which this Article is applied in conjunction

38 Adopted on 4 November 1950, entered into force 3 September 1953

39 Hurst Hannum, *Rethinking Self-Determination*, 34 Va. J. Int'l L. 1, (1993)

40 Roberta Medda-Windischer, *The European Court for Human Rights and Minority Rights*, in *European Integration*, Vol. 25 (3), September, 2003

41 *Idem*

42 *Case of Willis v. the United Kingdom*, no. 36042/97, § 48, ECHR 2002 IV

43 *Case of Nachova and others v Bulgaria*, Applications nos. 43577/98 and 43579/98, 6 July 2005, Strasbourg

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with Article 2 (right to life). The Court first determined that the right under Article 2 was violated, and then proceeded to determine violation on the prohibition of discrimination on racial grounds in conjunction with Article 2. This case is important because, although it was not established that the acts complained of were committed as a result of racist attitudes, as the state **failed to investigate** if discrimination played role in the events, the Court held that there has been a violation of Article 14 taken together with Article 2 in its procedural aspect.

b) Establish a violation of the right invoked by the applicant, but it may decide not to consider the application in the part referring to Article 14

The Macedonian minority in Greece and Bulgaria fights for its freedoms of association and peaceful assembly before the Strasbourg Court. Thus in the case of *Sidiropoulos and others v Greece*,⁴⁴ upon an application submitted by the representatives of the Macedonian minority in Greece, the Court held that the refusal by the Greek courts to register their association is in contravention of Article 11 of the Convention (freedom of association) However, the Court did not deal with the allegations of violation of the freedom of association on the basis of discrimination, i.e. Article 11 in conjunction with Article 14. Also, when considering an application lodged by the representatives of the Macedonian minority in Bulgaria, *UMO Ilinden and others v Bulgaria*,⁴⁵ after the Court held that there was a violation of Article 11, it did not consider the application on the part referring to Article 6 and Article 14.

b) Establish that there has not been a violation neither of the substantive right invoked by the application nor in the part of the application alleging discrimination in conjunction with that right (Article 14)

Thus in the case of *Kosteski v the Former Yugoslav Republic of Macedonia*,⁴⁶ the Court held that there was neither a violation of the applicant's freedom of religion, nor a violation of that freedom in conjunction with Article 14 (violation of freedom of religion through the discrimination on religious grounds).

2) To submit an application directly claiming a violation of one of the guaranteed rights:

In such case the applicant only invokes the substantive rights guaranteed by the Convention. The Convention guarantees the following rights and freedoms:

- right to life (Article 2)
- prohibition of torture (Article 3)
- prohibition of slavery and forced labour (Article 4)
- right to liberty and security (Article 5)
- right to a fair trial (Article 6)
- no punishment without law (Article 7)

⁴⁴ Case of *Sidiropoulos and others v Greece*, Application No. 57/1997/841/1047, 10 July 1998, Strasbourg

⁴⁵ Case of *UMO Ilinden and others v Bulgaria*, Application no. 59491/00, 19 January 2006, Strasbourg

⁴⁶ Case of *Kosteski v the Former Yugoslav Republic of Macedonia*, Application no. 55170/00, 13 April 2006, Strasbourg

- right to respect for private and family life (Article 8)
- freedom of thought, conscience and religion (Article 9)
- freedom of expression (Article 10)
- freedom of assembly and association (Article 11)
- right to marry (Article 12)
- right to an effective remedy (Article 13)

Except for rights in the Convention itself the rights set forth by the Protocols to the Convention, can be invoked when applying to the Court. The use of all these rights as grounds for applying to the Court, may be illustrated in the following way:

- the state's interference with the associational and assembly rights of the minority group by a refusal to register an association of a minority group would be a basis for application to the Strasbourg court invoking Article 11 rights of the members of such group. Such are the cases of the Macedonian minority against Bulgaria, like in the case of *Stankov and the United Macedonian Organization Ilinden v Bulgaria*⁴⁷
- restrictions on publication and distribution of materials concerning the history, culture, and political agenda of the national minority would violate the Article 10 rights of the persons belonging to such group
- restrictions on the nomination of political candidates and organization of political parties could be relevant for Article 3 of the First Optional Protocol to the European Convention and Article 10
- unlawful arrest or an unfair trial of activists who are persons belonging to minority groups could be basis for applying to the Court under Articles 5 or 6 respectively.⁴⁸

Of course, this does not mean that the Strasbourg Court will establish a violation in each such case. Whether an application has prospects of success, depends foremost, on the circumstances of every individual case and if the admissibility criteria set forth by the Convention are fulfilled.

a) Protocol No. 12 to the European Convention on Human Rights

Protocol No. 12 to the Convention eradicates the limitations which stem from Article 14. In accordance with the Protocol, the individuals who are eventual victims of discrimination will be able to bring cases invoking

⁴⁷ Case of *Stankov and the United Macedonian Organization Ilinden v Bulgaria*, Applications nos.29221/95 and 29225/95, 2 October 2001, Strasbourg

⁴⁸ Charles F. Furtado, Jr, Guess who's coming to dinner? Protection for National minorities Eastern and Central Europe, 34 Colum. Hum. Rts. L. Rev. 333

discrimination before domestic courts regardless of whether there is a violation of another right under the Convention.⁴⁹ Protocol 12 provides a useful tool for the promotion of the anti-discrimination principle in that it allows for an individual right of action in both domestic and international courts purely on grounds of discrimination⁵⁰

b) Admissibility criteria for applications lodged to the European Court for Human Rights

An application should fulfill certain formal criteria in order to be considered by the Court:

- 1) The Court does not deal with applications which are anonymous, which are an abuse of the right of application, (e.g., containing offensive language), or applications that have already been submitted to another procedure of international investigation or settlement, or applications which are substantially the same as a matter that has already been examined by the Court in respect of the same persons.
- 2) **Exhaustion of domestic remedies:** the domestic remedies available under the national legal system should be exhausted in order the application to be admissible.
- 3) **Who may complain and about whom (Ratione personae):** the Court may receive applications from a direct or indirect victim (persons, non-governmental organization or group of individuals which are eventual victim of violation) . An application may be lodged in respect of a state that has ratified the Convention and in respect of the Protocols to the Convention which it has ratified.
- 4) **Jurisdiction Ratione temporis:** as a rule, the applicant may complain about right violations that have occurred after the Convention has entered into force in respect of the state in question. The Convention entered into force in respect of the Republic of Macedonia on 10 April 1997.
- 5) **Jurisdiction Ratione loci:** as a general rule, the states can be held responsible only for violations that took place on the sovereign territory of the given state.
- 6) **Jurisdiction Ratione materiae** – the Court consider only those applications which refer to rights and freedoms set forth by the Convention. Thus, the application invoking the right to have certain citizenship, right to work or the right to diplomatic protection will be declared inadmissible.
- 7) **Six month limit:** an application may be submitted within a time limit of six months from the date a final decision was served on the applicant.
- 8) The Court will declare inadmissible an application which is **manifestly ill-founded** : that is an application which does not invoke any ground on which it can be established that there has been a violation of the Convention or if the allegations in the applications are unsupported by appropriate documents

After it has established that the application is admissible, the Court proceeds to examine if in the particular case there has been a violation of a right. It has to be stressed that the lodging of an application to the Court, is not a

⁴⁹ Maxine Sleeper, Anti-discrimination laws in Eastern Europe: toward effective implementation, 40 Colum. J. Transnat'l L. 177

⁵⁰ Idem

continuation of the domestic procedure, the Court is not of fourth instance. In case the Court finds that there has been a violation of a certain rights, it will deliver a judgment which is legally binding for the state. The enforcement of the judgments is followed by the Committee of Ministers of the Council of Europe.

Of course, this is just a brief explanation of the admissibility criteria. Their systematic explanation is not the ambition of this guide.

3.2. Framework Convention for the Protection of National Minorities

The Framework Convention for the Protection of National Minorities, though specifically dealing with national minorities, like the rest of the international instruments does not contain a definition of what the term national minority presupposes.

The Convention is legally binding for the states which like the Republic of Macedonia have ratified it.⁵¹ Still, this instrument in its preamble stipulates that though legally binding it can be implemented **only** through the national legislation and policies of the States parties to it.

The term *framework* refers to the fact that the Convention contains programme-type provisions which are predominantly directed towards the upgrading of the system for the protection of the minorities, and less towards the rights as such, though it also contains provisions specifically covering minority rights. The framework Convention though it refers to national minorities (which implies existence of a group) guarantees the individual rights of the persons belonging to such minorities.. The Convention, recognizes the possibility of joint exercise of the rights and freedoms, which is distinct from the notion of collective rights.⁵² The Convention is divided in five sections.

Section I contains the following fundamental principles:

- the protection of national minorities, forms an integral part of the protection of human rights
- the Convention should be implemented with understanding and tolerance and through cooperation among the states
- every person belonging to a national minority has the freedom to choose to be treated or not to be treated as such. Still, there has to be certain objective criteria relevant to the person's identity.

Section II is the main operative part of the Convention. Section III contains various provisions concerning the interpretation of the framework Convention. The monitoring of the implementation of the framework Convention is included in the fourth section.

51 Framework Convention for the Protection of National Minorities adopted on 1 February 1995, entered into force 1 February 1998 . The Republic of Macedonia has signed it on 25 July 1996, ratified it on 10 April 1997, entered into force 1 February 1998. The text of the Convention is available at <http://conventions.coe.int/treaty/en/Treaties/Word/157.doc>

52 Explanatory Report to the Framework Convention for the Protection of National Minorities, available at : <http://www.humanrights.coe.int/Minorities/Eng/FrameworkConvention/Explanatory%20report/explreport.htm>

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The rights for the persons belonging to minorities are set forth in the second section and they include among others:

- right to equality and equal protection by the law - The objective of this Article is ensure the applicability of the principles of equality and non-discrimination for persons belonging to national minorities Still, measures that go beyond what is necessary in order to achieve the aim of full and effective equality are not required..⁵³
- freedom of assembly, association, belief, conscious and religion- These are universal rights and freedoms, but are of special relevance for minorities. In accordance with the Explanatory Report to the Convention these rights may imply positive obligations for the states.
- right of the persons to manifest their religion and to establish religious intuitions, organizations and associations
- right freely and with no interference to use the minority language in private or public, orally or in written form. The use of the minority language concerns one of the principal means by which individuals belonging to a minority can assert and preserve their identity and practice their freedom of expression. In accordance with the Explanatory Report to the Convention, In public means, in a public place, outside, or in the presence of other persons but is not concerned in any circumstances with relations with public authorities. The second paragraph only extends to administrative authorities and the state Parties a wide measure of discretion.
- right to be informed in a language they understand about the reason for arrest, the nature and the cause of the accusation and to defend himself or herself in that language.
- right to use their names in the minority languages - This does not, exclude persons belonging to national minorities from being required to use, in addition, the official language and/or other minority languages..
- right to set up and manage their own private educational and training establishments
- right to learn the minority language

Briefly, this Section contains provisions on equality, prohibition of forced assimilation and many rights that refer to the protection of the identity of the persons belonging to minorities. Thus, it has to be emphasized that though legally binding on states which have ratified it, most of its provisions are not justiciable, though governments are obliged to implement it and judges and civil servants are obliged to Interpret domestic legislation in a way that conforms to the Convention and all international law.⁵⁴

Section III contains several important provisions which refer to the interpretation of the Convention:

- in the exercise of the rights set forth in the Convention, persons belonging to national minorities are

⁵³ Explanatory Report to the Framework Convention for the Protection of National Minorities

⁵⁴ Magdalena Syposz, Framework Convention for the Protection of National Minorities, Opportunities for NGOs and minorities, (Minority Rights Group International, March 2006)

required to respect the national legislation and the rights of the others, especially the rights of majority population and the rights of the persons belonging to other minorities (Article 20)

- The framework Convention **may not be** interpreted in manner which implies any right to engage in activity contrary to the fundamental principles of international law, the sovereign equality, territorial integrity and political independence of the States (Article 21)
- the rights and freedoms set forth in the framework Convention which are also enshrined in the European Convention on Human Rights must be interpreted so as to conform with the corresponding provisions of that Convention

The control of the realization of the obligation which arise from the Convention is performed by the Committee of Ministers of the Council of Europe and the Advisory Committee envisaged in the forth section of the Convention. The **Advisory Committee** is an independent body comprised of experts selected by the Committee of Ministers (comprised of the minister of foreign affairs of each of the member States of the Council of Europe and which takes the main decisions of the organization). The Committee is competent to consider the reports submitted by the states which have ratified the Convention, as well as to prepare opinions in respect of the measure they have undertaken for the implementation of the Convention. The Committee forms its opinions based on the reports submitted by the states, but on the basis of information from other sources, including intergovernmental organizations, such as OSCE or United Nations, Ombudspersons, international non-governmental organizations and national and minority non-governmental organizations. It has been usual practice that, during the monitoring process, the Advisory Committee visits the country and meets minority representatives and non-governmental organizations.⁵⁵ The Opinion of Advisory Committee is submitted to the Committee of Ministers, while the state examined has the opportunity to comment on the Advisory Committee's Opinion, and then the Committee of Ministers issues its Resolution, including conclusions and recommendations to states. The state is obliged to comply with the Resolution.

⁵⁵ Magdalena Syposz, Framework Convention for the Protection of National Minorities, Opportunities for NGOs and minorities, (Minority Rights Group International, March 2006)

3.3. European Charter for Regional and Minority Languages

The Charter has a status of legally binding document. In accordance with its preamble,⁵⁶ the main objectives are in the field of culture.

According to the Explanatory Report to the Charter,⁵⁷ the Charter is relevant for:

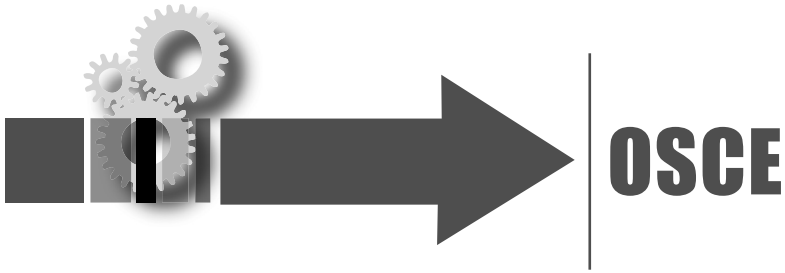
- *regional languages*: denoting languages spoken in a limited part of the territory of a state, within which, moreover, they may be spoken by the majority of the citizens
- *minority languages* - refers to situations in which either the language is spoken by persons who are not concentrated on a specific part of the territory of a state or it is spoken by a group of persons, which, though concentrated on part of the territory of the state, is numerically smaller than the population in this region which speaks the majority language of the state
- Languages traditionally used by nationals of the State that is to say languages which have been spoken over a long period in the state in question.
- languages must clearly differ from the other language or languages spoken by the remainder of the population of the state and it is up to the domestic authorities concerned within each state, to determine at what point a form of expression constitutes a separate language.

The third part contains a number of provisions which refer to the position of such languages in different sector of the life of the community and offers different options for implementation for the states. What the states will opt for, is incorporated in the instrument for ratification in a form of a declaration and as such is binding on the states. The obligation for the states to undertake certain measure of protection depends if there is sufficient number of persons to justify the use of such measure, the states being free to decide on such number. It is important to underline that the Charter excludes every possibility any of the provisions to be interpreted in a manner incompatible with the rights guaranteed by the European Conventions for Human Rights..

The fourth part regulates the implementation of the Charter, including setting up of a Committee of Experts to supervise the implementation of the Charter. The States are obliged to submit periodical reports to the Committee **of Experts**. The Committee on the basis of the report elaborates a report with actual proposals in respect of the given state. The report together with the proposals serves as a foundation for the final recommendations which the Committee of Ministers will adopt, and which refer to the improvement of the realization of the obligations arising from the Charter.

⁵⁶ European Charter for Regional and Minority Languages adopted on 5 November 1992, entered into force on 1 March 1998. The Republic of Macedonia has signed the Charter but it has still not ratified it. The text of the European Charter for Regional and Minority Languages is available at : <http://conventions.coe.int/treaty/en/Treaties/Html/148.htm>

⁵⁷ Explanatory Report to the European Charter for Regional and Minority Languages, available at <http://conventions.coe.int/treaty/en/Reports/Html/148.htm>



4.1.

Document of the Copenhagen Meeting 29 June 1990

The Copenhagen principles to a certain extent leave a wide discretion to the governments in the decisions referring to minority issues, and basically repeat the existing norms, as the principles of equality and non-discrimination. Yet, the document is a significant advance over efforts to define minority rights in other international forums.⁵⁸ The three areas in which the Copenhagen principles contribute most significantly to minority rights are the use of minority languages, education, and political participation.⁵⁹

1) Linguistic rights

- Persons belonging to national minorities have the right freely to express, preserve and develop their linguistic identity
- to use their mother tongue in public and in private
- to disseminate, have access to and exchange information in their mother tongue;
- wherever possible and necessary, to use their mother tongue in conformity with applicable national legislation
- to profess and practise their religion in their mother tongue;
- to maintain unimpeded contacts among themselves within their country as well as contacts across frontiers with citizens of other States with whom they share a common ethnic or national origin, cultural heritage or religious beliefs

2) Education:

- right to establish and maintain their own educational institutions, organizations
- States will endeavor to ensure wherever possible and necessary that persons belonging to national minorities, have adequate opportunities for instruction of their mother tongue or in their mother tongue

3) Political participation:

- the States oblige that they will respect the right of persons belonging to national minorities to effective

⁵⁸ Hurst Hannum, *Contemporary developments in the international protection of the rights of the minorities*, 66 *Notre Dame L. Rev.* 1431

⁵⁹ *Idem*

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participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities.

The European Union in the moment is comprised of 25 member States, and it differs from other organizations, as its members transfer part of their sovereignty to the Union. Article 13 to the Treaty of Amsterdam is the basis for adoption of measures in the fight against discrimination, including *inter alia*, on the grounds of sex, racial or ethnic origin, religion or belief.. The Directive (2000/43/ EC) from 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin is the first instrument of the EU in respect of non-discrimination, followed by the Directive of 27 November 2000, which sets the legal frame for the principle of equal treatment in the field of the employment.. The directives of the Union are binding on the member States as to the goals that have to be accomplished, while it is left to each state to determine, the manner, through which measures that goal will be accomplished.⁶⁰

With the 2000/43/ EC Directive establishes:

- minimum requirements for combating discrimination on grounds of racial or ethnic origin are laid down
- member states must adopt laws, regulations and administrative provisions necessary to comply with the Directive and in order to implement the Directive in the national legislation and practice and to strengthen the protection from discrimination

In accordance with Article 2 of the Directive, **direct discrimination** has occurred where one person is treated less favorably than another in a comparable situation on grounds of racial or ethnic origin. **Indirect discrimination** occurs when an apparently neutral provision, criterion or practice would put persons of racial or ethnic origin at a particular disadvantage compared with other persons. There will be no such discrimination if that provision, criterion or practice objectively is justified by a legitimate aim and the means to that aim are appropriate and necessary.

The Directive refers to all persons on the territory of the Union and prohibits discrimination *inter alia* in (Article 3):

- condition for access to employment
- employment and working conditions, including dismissal and pay
- membership of and involvement in an organization of workers or employers or any organization whose member perform certain profession
- social protection
- education

The **Charter of Fundamental Rights of the European Union** is also important within the European Union. The third part of the Charter guarantees the right to equality, prohibition of discrimination and affirms that the Union will respect the cultural, linguistic and religious diversity.

6

CONCLUSIONS

- The persons belonging to minorities, besides universal human rights, need special rights. Namely, the general norms on equality and the prohibition of discrimination, are not sufficient to accomplish equality in fact .
- The international instruments contain wide range of rights for the persons belonging to minorities including civil, political, economic, social and cultural rights. The acts, also proscribe obligations for the states
- The international instruments envisage mechanism for their implementation, including obligation for the states to submit reports in respect of minorities and the realization of the rights set forth by the given international act. In that sense, the domestic non-governmental organizations may submit alternative reports to which the international organizations attach appropriate importance.
- Some international instruments envisage a possibility for individuals to lodge applications alleging violation of certain rights contained in a given international act.
- The European Convention for Human Rights is not an instrument specifically dealing with the rights of the persons belonging to minorities, but in practice proves to be an efficient instrument in the protection of those rights.
- The familiarity with the national Constitution and laws, and the use of the domestic remedies set forth by them is very important. Namely, the exhaustion of the domestic remedies is prerequisite for lodging applications to the international institutions.

GLOSSARY

Convention - an instrument between two or more states, which is legally binding for the states.

Declaration - international instrument from which the states have political, but not legal obligations

Ratification - process through which the state finally confirms that it is legally bound by a given treaty, which it has previously signed.

Signature - with the signature the state show inclination to be bound by a treaty, but with it, it is still not legally bound

Positive obligations - the classical obligations of the states in the field of human rights are negative, meaning that they are required to refrain from interference in the effective realization of the rights, to refrain from violations. The positive obligations presuppose that the state should be active and ensure conditions for effective exercise of the rights.

Discrimination - different, unfavorable treatment of a person or group on the grounds of race, color, sex, language, religion, political opinion, national or ethnic origin.

The European Union - The European Union is established in accordance with the Treaty on European Union. There are currently 25 member states of The Union. It is based on the European Communities and the member states cooperation in the fields of Common Foreign and Security Policy and Justice and Home Affairs. The five main institutions of the European Union are the European Parliament, the Council of ministers, the European Commission, the Court of Justice and the Court of Auditors.

OSCE – CSCE - the forerunner of the OSCE, was established in 1975 in order to reduce tensions between the West and the Soviet bloc by facilitating dialogue and mutual contacts and functions as a forum for dialogue among the states in the search for common solutions related with security, including preventive diplomacy, human and minority rights, monitoring of elections, economic and environmental security.

Council of Europe – intergovernmental organization established in 1949, to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress.

OSCE and the European Union – Since 1989, the European Community and later the European Union has been represented at CSCE and later OSCE meetings. The cooperation between these two organizations is even closer after the 1992 Treaty of Maastricht. The interaction between the EU and the OSCE underlines the significant contribution which the EU brings to the achievement of OSCE objectives and support the OSCE can give to EU actions. The European Union has important role in many OSCE countries, through its Association, Stabilization and Association, and Partnership and Co-operation Agreements, through the PHARE, CARDS and other assistance programmes.

The Council of Europe and the European Union – after the political changes in Central and Eastern Europe, the Council of Europe and the European Commission as a body of the European Union established important programs in the efforts of various states in the field of democracy, human rights and the rule of law. That cooperation is realized through programs co financed by the European Commission and the Council of Europe. The core areas of cooperation remain democracy, respect for human rights and fundamental freedoms and the rule of law. The Union and the Council of Europe cooperate in many other areas such as justice and home affairs, culture, education etc.

Проектот е поддржан
од Европската комисија



Проектот е инициран од
Фондацијата Крал Бодуен

