

PROTECTION MECHANISMS OF NATIONAL AND ETHNIC MINORITIES

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ABSTRACT:

IN CONTEMPORARY SOCIETY, THE PROTECTION AND PROMOTION OF HUMAN RIGHTS HAS BECOME A MATTER OF MAJOR IMPORTANCE. BASIC RIGHTS SUCH AS LIFE, LIBERTY, PROPERTY, FREEDOM OF EXPRESSION, RELIGION, ASSOCIATION AND CONSCIENCE ARE INDIVIDUALLY ASSIGNED AND PROTECTED BY NUMEROUS CONVENTIONS. BUT THESE GENERAL RIGHTS ARE NOT ENOUGH TO STOP DISCRIMINATION, OPPRESSION OR HUMILIATION OF DIFFERENT GROUPS. IN STATES WHERE THERE ARE MINORITIES, PARTICULAR ATTENTION SHOULD BE PAID TO THE MANAGEMENT OF THEIR SPECIFIC RIGHTS. THIS IMPLIES A CERTAIN DEGREE OF INTEGRATION, ACHIEVED WITH THE MINORITY'S CONSENT. PROTECTION INCLUDES ACCESS TO RESOURCES AND SERVICES, CULTURAL HERITAGE, CONFESSONAL FREEDOM, EDUCATION IN MOTHER TONGUE ETC. IN ORDER TO PROTECT MINORITIES PROPERLY AND BRING TOGETHER ALL THESE ISSUES, STATES AND INTERNATIONAL ORGANIZATIONS HAVE TRIED TO REACH A CONSENSUS THROUGH NUMEROUS CONVENTIONS AND AGREEMENTS TO FACILITATE THIS MISSION. THUS, EACH ORGANIZATION HAD ITS OWN ATTEMPTS AND CAME UP WITH ITS OWN SOLUTIONS. THIS ARTICLE AIMS TO ANALYZE THE MAIN MECHANISMS FOR THE PROTECTION OF MINORITIES, AS ELABORATED BY INTERNATIONAL ORGANIZATIONS.

KEYWORDS: NATIONAL AND ETHNIC MINORITIES, DISCRIMINATION, MINORITY RIGHTS, PROTECTION MECHANISMS, INTERNATIONAL ORGANIZATIONS.

INTRODUCTION

The relationship between state, majority and minorities has never been a simple one and has embraced several forms over time. Whether it was elimination, assimilation, tolerance or protection, this issue has always raised questions and required solutions and decisions.

Currently, elimination or extermination is an illegal practice that is harshly punished. Forced assimilation is neither accepted. Even tolerance is no longer considered an option, because in order to develop harmoniously from a cultural, social or economic point of view, a minority must not be ignored and marginalized, but needs the support and positive attitude of the state and its citizens towards cultural pluralism. The best solution, the only viable option in contemporary society, is the protection and promotion of minority rights. This implies a certain degree of integration, achieved with the consent of minorities, in order to ensure the rights, without undermining or restricting the identity of the group or persons. But protection is not limited to integration, but also includes their physical existence on the territories where they live, access to resources, cultural heritage and confessional freedom, access to services,

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education in the mother tongue etc. To protect minorities and bring together all these issues, states and international organizations have tried to reach a consensus by numerous conventions and agreements.

THE UNITED NATIONS AND THE PROTECTION OF MINORITIES

The first step made by the United Nations organization in managing the minorities issue was the adoption of the UN Charter, on June 26, 1945, which has its main objectives mentioned in the Preamble: "We the peoples of the United Nations are determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom."²

Even if the document does not have specific references regarding minorities, it sets the general framework for the protection of fundamental human rights.

Moreover, it introduces the Economic and Social Council as the managing body for the economic, social, cultural, educational or healthcare systems.

Three years later, in 1948, the UN Commission on Human Rights drafted the Universal Declaration of Human Rights, that promotes freedom, equality and non-discrimination. Thus, the first three articles thereof mentions that " All human beings are born free and equal in dignity and rights. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Everyone has the right to life, liberty and security of person."³

The document also refers to issues such as equality before the law and the right to legal protection without discrimination, the right to property and association, freedom of thought, expression, conscience and religion, the right to education, etc.

Because the Universal Declaration of Human Rights had no legal value, the Commission on Human Rights decided to create the necessary legal framework for human rights protection. Thus, in 1976, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were introduced.

Article 27 of the International Covenant on Civil and Political Rights refers to minorities and provides that: "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 practise their own religion, or to use their own language."⁴ The rest of the articles address general principles for human rights protection, such as self-determination, avoiding discrimination of any kind, confessional freedom, freedom of thinking or expression, freedom of association or participation in public life, access to services and social protection, equality before the law or the right to vote. One of the main provisions of the Covenant is the exclusion of any form of racial, national or religious hatred.

The International Covenant on Economic, Social and Cultural Rights supports in Article 1 the right of peoples to self-determination: „By virtue of that right they freely

² "UN Charter", accessed August 29, 2017, www.un.org/en/sections/un-charter/un-charter-full-text/.

³ "Universal Declaration of Human Rights", accessed August 29, 2017, www.un.org/en/universal-declaration-human-rights/.

⁴ "International Covenant on Civil and Political Rights", accessed August 29, 2017, <https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf>.

determine their political status and freely pursue their economic, social and cultural development. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law.”⁵

The Convention comes with mentions regarding basic human needs: food, clothing, housing, access to medical services and education. It also supports gender equality and women’s rights, as well as working force occupation.

The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted on December 18, 1992 is the only document that specifically targets minority issues. It mentions that: “States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.”⁶ Also, “Persons belonging to national or ethnic, religious and linguistic minorities have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.”⁷

According to the Declaration, the integration of minorities can only be achieved through active involvement in economic, social or cultural life. The state is obliged to ensure the necessary conditions for preserving their identity and promoting minorities in all fields. Providing education in the mother tongue is essential, so is the implication in the decision-making process targeting minority issues. Effective participation involves creating associations to promote the interests and representation at local and national level.

THE COUNCIL OF EUROPE AND THE PROTECTION OF MINORITIES

The Council of Europe has come up with its own approach to human rights with the European Convention for the Protection of Human Rights and Fundamental Freedoms, which came into force in 1953. The only article of the Convention which refers directly to minorities is Article 14, which provides as follows: " The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”⁸ Other articles support freedom of thought, expression, conscience, religion, freedom to use their mother tongue and freedom of association in order to protect their interests.

The Council of Europe’s Framework Convention for the Protection of National Minorities is the legal instrument for the protection of minorities and entered into force in 1998. The convention reiterates that protection of minorities is an integral part of human rights. Article 4 stipulates equality before the law and in all fields of activity: economic, social, cultural, political, between majority and national minorities. Article 5 illustrates the role of the state in this respect: "The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions

⁵ “International Covenant on Economic, Social and Cultural Rights”, accessed August 29, 2017, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

⁶ “Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities”, Article 1, accessed August 30, 2017, <http://www.un.org/documents/ga/res/47/a47r135.htm>.

⁷ “Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities”, Article 2, accessed August 30, 2017, <http://www.un.org/documents/ga/res/47/a47r135.htm>.

⁸ “Convention for the Protection of Human Rights and Fundamental Freedoms”, accessed August 30, 2017, http://www.echr.coe.int/Documents/Convention_ENG.pdf.

and cultural heritage”.⁹ The convention promotes tolerance, dialogue and cooperation irrespective of ethnic, linguistic, religious or cultural identity. Minorities enjoy freedom of religion, of thought and expression, have the right of association and the right to education in their mother tongue. States will also support cross-border cooperation between people sharing ethnic, linguistic, religious and cultural identities.

The European Charter for Regional or Minority Languages of the Council of Europe, signed on November 5, 1992, has as its central objective:

“a. the recognition of the regional or minority languages as an expression of cultural wealth;

c. the need for resolute action to promote regional or minority languages in order to safeguard them;

d. the facilitation and/or encouragement of the use of regional or minority languages, in speech and writing, in public and private life;

e. the maintenance and development of links, in the fields covered by this Charter, between groups using a regional or minority language and other groups in the State employing a language used in identical or similar form, as well as the establishment of cultural relations with other groups in the State using different languages;

f. the provision of appropriate forms and means for the teaching and study of regional or minority languages at all appropriate stages.”¹⁰

According to the Charter, member states work to eliminate any restriction on regional or minority languages that can jeopardize the harmonious development, to ensure pre-school, pre-university and university total or partial education, to offer the possibility to address authorities in their native languages, to encourage media and any form of cultural manifestation and favor the contact between speakers of the same languages living in different states.

THE EUROPEAN UNION AND THE PROTECTION OF MINORITIES

The respect for minorities is a matter the EU considers of great importance. Consequently, the Treaty on European Union mentions in Article 2 that: " The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."¹¹

The EU Charter of Fundamental Rights prohibits discrimination of any kind, supports equality before the law, freedom of thought, expression and association, confessional freedom and access to education.

Moreover, the Copenhagen Criteria (1993) regarding accession set some conditions. To become a member, a candidate must have "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities."¹²

⁹“Framework Convention for the Protection of National Minorities”, accessed August 30, 2017, http://www.coe.int/t/dghl/monitoring/minorities/1_AtGlance/PDF_H%2895%2910_FCNM_ExplanReport_en.pdf.

¹⁰“European Charter for Regional or Minority Languages”, accessed August 30, 2017, <http://conventions.coe.int/Treaty/EN/Treaties/Html/148.htm>.

¹¹“The Treaty on European Union”, accessed August 30, 2017, eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0013:0045:en:PDF.

¹²“Copenhagen Criteria”, accessed August 30, 2017, http://europa.eu/legislation_summaries/glossary/accession_criteria_copenhagen_en.htm.

Directive 2000/43/EC requires member states to develop a national legislation that prohibits discrimination on ethnic or racial grounds in the economic or social sphere, as well as the creation of bodies to support discriminated persons.¹³

Also, inciting to violence and racial, ethnic or religious hatred should be punished according to the Council Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law, adopted in 2008, which engages member states to adopt appropriate legislation in this field.¹⁴

Thus, the EU offers financial support to actors such as NGOs, foundations or associations that support the fight against discrimination through a number of programs such as the European Instrument for Democracy and Human Rights (EIDHR) which addresses the issue of minorities with the aim of combating discrimination and ensuring equality and active participation of minorities in the social, economic and political life.

CONCLUSIONS

As we can notice, states and major international organizations have realized the need for specific measures to protect minorities. The process of integrating them is one that requires increased attention as well as the opening of both parts, the majority and the minority. Thus, fundamental human rights must be doubled by specific rights, such as access to mother tongue education, identity preservation through culture and religion or active participation in society to avoid exclusion.

In this regard, international organizations such as the UN, the Council of Europe or the EU have come up with viable solutions, establishing the legal framework for the protection of minorities. The documents with which they operate are numerous, ranging from general to specific rights.

Given that discrimination still exists in areas such as employment, education or health services, the ultimate goal is to combat it effectively, as well as combating racism or xenophobia, engaging in programs and activities aiming to reduce these phenomena. In addition to the legal framework or financial support, cooperation with civil society is important in bringing the minorities issue to public attention.

¹³ “The European Union and the Protection of the Rights of Persons Belonging to Minorities”, accessed August 30, 2017, www.eidhr.eu/files/dmfile/minorities-guide_en.pdf.

¹⁴ “The European Union and the Protection of the Rights of Persons Belonging to Minorities”, accessed August 30, 2017, www.eidhr.eu/files/dmfile/minorities-guide_en.pdf.

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