

Dragana Kovačević

Ethnicity Research Center

Belgrade

International Minority Protection System

Introduction

The creation of documents which are the bases and contain the most important incentives related to international minority protection system have a specific history and causes. After the creation of nation states and the creation of the concept of nation in that sense that we use today, the problems appeared related to minority protection system for minorities within these newly formed states.¹ The concept of human rights protection is a legal concept that requires constant perfection and development.² The questions such as what is the definition of national minority and who are the members of minority community, and what the criteria are for determining the membership are the complex additional problems in the field of nationalism and legal studies. The truth is that there is no and there cannot be given the strict definition of the membership criteria, except for vague implicit criteria of fact, intention or desire.³ However, the membership cannot be regarded simply as arbitrary individual choice either.

Minority Rights have been accepted into the canon of human rights as individual, not collective or group rights. The League of Nations has made the first attempts to protect „racial“, „religious“ and „linguistic“ minorities after the Second World War, when the focus was placed on protection of individual rights and the principle of non-discrimination. The history has shown us that the so-called minorities without a mother-state had been especially vulnerable before,

¹The emphasis is on the ethnicity and national minorities due to the fact that ethnic differences have too often been the basis for the oppression and discrimination, but national minorities are not the only minority whose rights should be legally protected.

² Thornberry, Patrick. "An Unfinished Story of Minority Rights." In Anna Maria Biro and Petra Kovacs (eds). *Diversity in Action. Local Public Management of Multiethnic Communities in Central and Eastern Europe*. Budapest: LGI, 2001

³ Ibid, p.47.

during and after the two World Wars.⁴ Another sensitive category of people whose rights need to be protected with special treaties and conventions are the indigenous peoples. Their rights are being protected through these specific documents⁵ due to their specific conditions and maltreatments and injustices done to them by the dominant groups in the past.⁶

In Will Kymlicka's opinion, the concept of European colonialism was based on the assumptions about a hierarchy of peoples that were widely accepted throughout the West up until World War II. But he thinks that today we live in a world where the idea of human equality is unquestioned, at least officially. This dramatic reversal in these policies has started in the early 1970s. "Today, all of the countries I just mentioned accept, at least in principle, the idea that indigenous peoples will exist into the indefinite future as distinct societies within the larger country, and that they must have the land claims, cultural rights (including recognition of customary law) and self-government rights needed to sustain themselves as distinct."⁷ In democracies there cannot be another option but to allow the political mobilization and shift away from historic policies of assimilation or exclusion.⁸

The History of Minority Rights' Protection

After the end of the World War 2, the emphasis has for a long period been on individual rights, But, in 1940s there were some pointers that the re-emergence of minority rights is to happen, and those are, as Thornberry lists it: The setting up of the UN Sub-Commission on the

⁴ In the times when the nation-states were formed, the Jews have proven to be an especially vulnerable minority and the target of the discrimination, which culminated in the World War 2 and the Holocaust. The situation has changed after the creation of the state of Israel, but many other nations are still in that vulnerable position. The Roma people are the most vulnerable and the most numerous group of such kind.

⁵ ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989). The convention states that rights for the indigenous peoples to land and natural resources are recognized as central for their material and cultural survival. In addition indigenous peoples should be entitled to exercise control over, and manage, their own institutions, ways of life and economic development in order to maintain and develop their identities, languages and religions, within the framework of the States in which they live.

⁶ „In the past, all of these countries had the same goal and expectation that indigenous peoples would eventually disappear as distinct communities, as a result of dying out, or intermarriage, or assimilation.“ (Kymlicka, Will. *Multiculturalism and Minority Rights: West and East*, "Journal on Ethnopolitics and Minority Issues in Europe", Issue 4/2002, p. 3)

⁷ Kymlicka, *Multiculturalism and Minority Rights: West and East*, 5

⁸ Ibid, p. 7 i 8.

Prevention of Discrimination and the Protection of Minorities, and drafting of Article 27 of the Covenant on Civil and Political Rights (ICCPR). And further on, we could trace moves in the direction of greater complexity in international law regarding the matters of minority rights and standards.⁹ ICCPR is an initial point for discussion international minority protection, as the first truly important and binding document dealing with it. The Covenant was adopted in 1966. Thornberry is giving the list of most important instruments and mechanisms developed in the 20th century in order to achieve these goals, although he notes that apart from ICCPR, most of other important texts were drafted much later, in 1980s and 1990s. In December 1992, the most important non-treaty text devoted to minority rights was created, that is the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

Human Rights Committee is the implementing body of ICCPR, which called for the respect of the rights of minorities to their own identity. That identity may be ethnic religious or linguistic, or sometimes all three together. General Comment No 23 of the Human Rights Committee: “The existence of an ethnic, religious or linguistic minority in a given State party... requires to be established by objective criteria.” The term minority rights carry a specific ambiguity in it, based in the fact that minority rights have been admitted into canon of human rights as rights of individual, not collective or group rights. It is clear in Article 27 that the rights are for persons belonging to minorities, although, as already pointed out, there is no definition of membership, of belonging, which is also opening the door for many obscurities. In 1988 the Human Rights Committee stated that a restriction upon a right of an individual must be shown to have an objective justification for the welfare of the minority as a whole. Human Rights Committee has also been creative in usage of certain other articles wherever this article could not be applied, in order to secure analogous ends, and this is a proof that human rights strategies need not be narrowly focused, as the author puts it. And since the creation of ICCPR until today we could trace moves in the direction of greater complexity in international law regarding the matters of minority rights and standards.

In the past two decades in particular, the European Union has become the important factor and in Europe, the minority protection system has been improved over the past decade, due to the

⁹ Thornberry, Patrick. “An Unfinished Story of Minority Rights.” In Anna Maria Biro and Petra Kovacs (eds). *Diversity in Action. Local Public Management of Multiethnic Communities in Central and Eastern Europe*. Budapest: LGI, 2001

increase in the number of the instruments and the mechanisms of their implementation ¹⁰

Along with the various schools of multiculturalism and the experiences that various states had connected with this phenomenon, there are two European international institutions that had impact on the development of political and legal awareness: The Council of Europe and Organization for European Security and Cooperation. (Philips i Rosaas, 1995). The Council of Europe has started this process back in the 1950s with the adoption of the Convention for the protection of human rights and basic freedoms, and was continued by creating European the Charter on Regional or Minority Languages in 1992, and three years after this the Framework Convention for the Protection of National Minorities, so far the only multilateral instrument of minority rights protection in Europe.

OSCE standards are mainly supplied in the Copenhagen document from June 1993., with the purpose of human rights guarantees and minority protection.¹¹ The primary goal is to revalidate minority rights, to realize the importance of the group recognition in order to promote culture, and the importance of the autonomy for resolving ethnic conflicts. The end of communism has created the new possibilities for imposing transnational regime of rights in Europe.¹² Prior to the Copenhagen meeting, the shift towards ‘the group rights’ was obvious in the recommendations of the Badinter’s commission as well, which was established in August 1991 by the EU to supply the legal view on the break–up of Yugoslavia. The declaration of the ministers of the foreign affairs about the recommendations for the recognition of the new countries in Eastern Europe and the Soviet Union decided to make the recognition dependent on the guarantees of the rights of ethnic and national groups. As a consequence of this, once the Copenhagen criteria dropped the conventional formulation of a “person”, it was another confirmation of the new “group” approach.

¹⁰ This, of course, cannot deny the fact that there are numerous problems with these institutions “EU law is virtually nonexistent, and EU practice is so divergent, in the policy area of minority protection” (Hughes, James and Gwendolyn Sasse, *Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs*, “Journal on Ethnopolitics and Minority Issues in Europe”, Issue 1/2003, p. 2)

¹¹ The first Copenhagen criteria states: “Membership requires that the candidate country has achieved stability institutions guaranteeing democracy, human rights, the rule of law and respect for and protection of minorities”.

¹² Hughes and Sasse, *Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs*, p. 4

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

UNDM is a non-treaty instrument adopted in 1992. It is more of a fresh start than the expansion of ICCPR. The drafters were well aware of the distinctions between individual and group rights. The most important positive outcome is the fact that “shall not be denied the rights”, the negative formulation from Article 27 of ICCPR, has been replaced with stronger formulation” in article 2: “Have the right”. Due to this, it is an explicitly positive approach. The rights to establish minority associations are clearly set out in article 27 of ICCPR, but here it is supplemented by rights to establish peaceful contacts across frontiers. Members of minorities have the right to “fully and effectively” exercise all their human rights, and although Thornberry says that measures are not defined, he is claiming that the term is appropriate to cover both legislative and non-legislative measures.

He considers the provisions on learning and instruction in mother tongue to be ambiguous, with the intended contrast in the references to learning and instruction. Learning is performed through the medium of one’s own language, and instruction means being taught the rudiments of that language. The fourth paragraph of Article 4 has a “philosophical” point- to promote self knowledge of minorities and to let others be informed about specific cultural and other contributions. Article 8 is important because it makes connection with the fear of states that granting “too much” minority rights leads to self –determination and possibly independence, although the Declaration itself does not say anything about self-determination.

In the same year, the Council of Europe created the Charter on Regional or Minority Languages and in 1995, the Framework Convention for the Protection of National Minorities was created, and both of them will be dealt with separately and in more details. What is important to be additionally stressed at this point is the fact that bilateral treaties and declarations between various states are also very important for minority protection. This protection has also been incorporated into incorporated in The Dayton Agreement and the Stability Pact for South-East Europe, and when we look at the European Union in particular, there is a body called The European Bureau for Lesser Used Languages”, financed mostly by the European Commission. And one of the most important differences that in Thornberry’s opinion exist between European instruments and international ones, is the fact that UN treaties combine overview reporting

procedures with those for individual claims, and European instruments usually detach these.

Framework Convention for the Protection of National Minorities ¹³

Table 1. – The Framework Convention for the Protection of National Minorities

State	Signed	Ratified	Implementation started
Albania	29/6/1995	28/9/1999	1/1/2000
Andorra			
Austria	1/2/1995	31/3/1998	1/7/1998
Azarbeijan		26/6/2000	1/10/2000
Belgium	31/7/2001		
Bosnia and Herzegovina		24/2/2000	1/6/2000
Bulgaria	9/10/1997	7/5/1999	1/9/1999
Montenegro		11/5/2001	6/6/2006
Czech Republic	28/4/1995	18/12/1997	1/4/1998
Denmark	1/2/1995	22/9/1997	1/2/1998
Estonia	2/2/1995	6/1/1997	1/2/1998
Finland	1/2/1995	3/10/1997	1/2/1998
France			
Georgia	21/1/2000	22/12/2005	1/4/2006
Germany	11/5/1995	10/9/1997	1/2/1998
Greece	22/9/1997		
Armenia	25/7/1997	20/7/1998	1/11/1998
Croatia	6/11/1996	11/10/1997	1/2/1998
Netherlands	1/2/1995	16/2/2005	1/6/2005
Island	1/2/1995		
Ireland	1/2/1995	7/5/1999	1/9/1999
Italy	1/2/1995	3/11/1997	1/3/1998

¹³ The table taken for PhD thesis : Bašić, Goran, [*The Politics of Multiculturalism and the Status of Serbian Minority in Contemporary South–East and Central Europe*, 2007], 2007 (forthcoming in 2009)

Cyprus	1/2/1995	4/6/1996	1/2/1998
Latvia	11/5/1995	6/6/2005	1/10/2005
Lichtenstein	1/2/1995	18/11/1997	1/3/1998
Lithuania	1/2/1995	23/3/2000	1/7/2000
Luxembourg	20/7/1995		
Malta	11/5/1995	10/2/1998	1/6/1998
Macedonia	25/7/1996	10/4/1997	1/2/1998
Hungary	1/2/1995	25/9/1995	1/2/1998
Moldavia	13/7/1995	20/11/1996	1/2/1998
Norway	1/2/1995	17/3/1999	1/7/1999
Poland	1/2/1995	20/12/2000	1/4/2001
Portugal	1/2/1995	7/5/2002	1/9/2002
Romania	1/2/1995	11/5/1995	1/2/1998
Russia	28/2/1996	21/8/1998	1/12/1998
San Marino	11/5/1995	5/12/1996	1/2/1998
Serbia		11/5/2001 a	1/9/2001
Slovakia	1/2/1995	14/9/1995	1/2/1998
Slovenia	1/2/1995	25/3/1998	1/7/1998
Spain	1/2/1995	1/9/1995	1/2/1998
Sweden	1/2/1995	9/2/2000	1/6/2000
Switzerland	1/2/1995	21/10/1998	1/2/1999
Ukraine	15/9/1995	26/1/1998	1/5/1998
Great Britain	1/2/1995	15/1/1998	1/5/1998

The framework convention ¹⁴ has been signed by 39 states before November 24th 2006,

¹⁴ **Article 10**

1 The Parties undertake to recognize that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing.

2 In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavor to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.

Article 11

1 The Parties undertake to recognize that every person belonging to a national minority has the right to use his or her

and ratified by 35 of them, however, the standards of the minority rights protection are being implemented through other instruments and mechanisms of the Council of Europe. The already mentioned bilateral agreements between states are the next step in the process of fulfilling the standards of the minority rights protection in Europe. The first treaties of such kind were concluded between Germany and Denmark in 1955 and Austria and Italy in 1992. This has inspired the states in central and southeast Europe to initiate mutual negotiations in order to improve the status of their minorities. Until this moment, the agreements have been signed between: Hungary and all its neighbors, Romania– with Serbia and Ukraine in addition to Hungary, Slovenia and Croatia also with Italy, Croatia with Serbia, and Poland– with Lithuania and Russia.¹⁵

surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system.

2 The Parties undertake to recognize that every person belonging to a national minority has the right to display in his or her minority language signs, inscriptions and other information of a private nature visible to the public.

3 In areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavor, in the framework of their legal system, including, where appropriate, agreements with other States, and taking into account their specific conditions, to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is a sufficient demand for such indications.

Article 12

1 The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.

2 In this context the Parties shall inter alia provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.

3 The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.

Article 13

1 Within the framework of their education systems, the Parties shall recognize that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments.

2 The exercise of this right shall not entail any financial obligation for the Parties.

Article 14

1 The Parties undertake to recognize that every person belonging to a national minority has the right to learn his or her minority language.

2 In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavor to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.

3 Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language.

Article 20

In the exercise of the rights and freedoms flowing from the principles enshrined in the present framework Convention, any person belonging to a national minority shall respect the national legislation and the rights of others, in particular those of persons belonging to the majority or to other national minorities.

¹⁵ Bašić, Goran, *[The Politics of Multiculturalism and the Status of Serbian Minority in Contemporary South–East and Central Europe, 2007]*, 2007.

European Charter on Regional or Minority Languages

This is a charter of the Council of Europe, and it focuses on languages of the region or a minority, not on the minority rights per se. Different authors stress that one of the most serious objections to this Charter is the fact that it disregards the rights of the immigrants who also form a part of European identity, and contribute to their alienation. However, this charter is the first instrument which was created by Council of Europe and relates to the protection and preservation of the identity of ethno-cultural minorities. It was initiated at the beginning of the 1990s by at the time The Standing Conference and today The Congress of Local and Regional Authorities of the Council of Europe.¹⁶ The aim of this charter is to contribute to the preservation of linguistic heritage of Europe, the important part of its cultural heritage. The signatory states are obliged to undertake the measures that will contribute to the preservation and the development of regional and minority languages in different aspects of the private and social life. The regional languages are those spoken on a part of a state's territory, while minority language is that spoken by persons who do not homogeneously inhabit certain areas and their number is smaller than the number of people that speak the majority language.

The Charter is focused on the concrete mechanisms of minority or regional languages protection, in the field of education, public informing, cultural activities, economic and social life, in the courts of law, wherever it is justified to introduce the official usage of a minority language, in the work of the local and central administrations.

It has to be emphasized once again that the states undertake to protect the languages traditionally spoken in Europe, and not to protect the linguistic heritage of those ethno-cultural groups that migrated into Europe over past couple of decades. However, the charter does encourage the multicultural approach and does avoid to regulate the relation between the official languages and regional and minority languages.

The specificity of this Charter compared to the most of other international treaties that signatory states undertake to accept and fully implement is that it leaves the freedom to the states in regards to which legal provisions will be enforced. Therefore, the Charter is exclusive in that sense that it is not expected that the states accept the entire content of it, but the minimal percentage of those regulations that are assessed to contribute to the preservation of the language

¹⁶ The Charter became valid on March 1st 1998., three months after it was ratified by five EU member states.

diversity. Finally, it needs to be mentioned that the Charter did not determine the list of regional or minority languages protected by it, but kept the flexible approach which gives the states the right to choose by themselves which languages need to be protected and determine the measures.

EU recommendations

Ten applicants for the EU joined the Union in April 2003, as the last phase in the long process of the intensive preparatory phase during which the way they met the criteria that needed to be fulfilled was annually monitored through the so-called regular reports. This initiated the question how the commission comes up with the evaluations and what criteria are applied to judge the success of the candidate-state. Kymlicka's main criticism is based on the fact that the post-communist countries of Europe were being forced to adopt western standards and models related to minority rights. It is true that the respect for the minority rights has been one of the criteria that needs to be fulfilled in order to join EU or NATO and that countries are being ranked and evaluated based on how much they manage to fulfill these standards.

Kymlicka¹⁷ believes there are two interlinked processes at work here, the 'internationalizing' of minority rights issues and the fact that this international framework is deployed to export Western models to newly-democratizing countries in Eastern Europe. "How states treat their minorities is now seen as a matter of legitimate international concern, monitoring and intervention."¹⁸ This trend implicitly rests on four premises: (i) that there are certain common standards or models in the Western democracies; (ii) that they are working well in the West; (iii) that they are applicable to Eastern and Central Europe, and would work well there if adopted; (iv) that there is a legitimate role for the international community to play in promoting or imposing these standards. He thinks that the decision to act this way had been reached when Western leaders were in panic that ethnic conflicts of the 90s will spiral out of control, but since there was little public debate about it at the time, this decision needs to be questioned today. In addition to Kymlicka's points, another issue that needs to be discussed further is what is actually meant by the concepts such as the western model of multiculturalism and the minority rights. prava manjina. Kymlicka points out: "At the beginning of the twentieth-century, only Switzerland and Canada had adopted this combination of territorial autonomy and official

¹⁷ Kymlicka, *Multiculturalism and Minority Rights: West and East*, 3

¹⁸ Ibid.

language status for substate national groups. Since then, however, virtually all Western democracies that contain sizeable substate nationalist movements have moved in this direction.”¹⁹

Conclusions and Basic Problems

In order to protect the minority rights more efficiently, there are a lot of obstacles and ambiguities that need to be overcome, and the most noteworthy are the indeterminacy, generality, narrowness and vagueness contemporary minority rights. Another very important and still unresolved dilemma is whether the primacy should be given to the individual or the group rights. Majority of modern theorists take the stand that human rights belong to the individuals in particular, and the corporate conception of a group as an entity needs to be avoided.

In very practical sense, one of the biggest problems and challenges when it comes to the protection of the ethnic minorities was the fact that the states avoided to fulfill the international standards even after signing the conventions and the treaties basing this on claims that they have no minorities. These claims themselves need to be judged based on international standards. The potential for instability, is particularly associated with the presence of territorialized minorities, perhaps leading to the worst possible outcome of violent secession²⁰. Hughes and Sasse also suggest how national and ethnic conflict suggests that such deeply divided societies can be stabilized by institutional designs which accommodate diversity. It has to be stressed that in minority related issues, the education has often been balanced between the integration and separation and proven to be a mighty instruments for social engineering.²¹

In conclusion, it can be agreed upon with Thornberry that governments have modified their behavior working through the international standards of minority rights, and that the minority rights are not an end in itself, but that end is Justice.²²

¹⁹ Ibid., 4. “only France is an exception to this trend, in its refusal to grant autonomy to its main substate nationalist group in Corsica.”

²⁰ Vidi Hughes and Sasse, *Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs*, p. 3

²¹ Thornberry, *An Unfinished Story of Minority Rights*, p. 45.

²² Ibid..

Bibliography

- Bašić, Goran and Katarina Crnjanski, *[Political participation and cultural autonomy of the national minorities in Serbia]*,. Belgrade: Friedrich Ebert Stiftung i Ethnicity Research Center, 2007
- Bašić, Goran, *[The Politics of Multiculturalism and the Status of Serbian Minority in Contemporary South–East and Central Europe, 2007]* (forthcoming in 2009, PhD thesis defended in 2007)
- Brantenberg, Terje et al., eds. *Becoming Visible - Indigenous Politics and Self-Government*. The University of Tromsø: Centre for Sámi Studies, 1995.
- Eidhem, Harald: When Ethnic Identity is a Social Stigma. In Bart, Fredrik (ed) *Ethnic Groups and Boundaries*. Oslo: Pensumtjeneste, 1994
- Hughes, James and Gwendolyn Sasse, *Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs*, “Journal on Ethnopolitics and Minority Issues in Europe”, Issue 1/2003
- Kymlicka, Will. *Multiculturalism and Minority Rights: West and East*, “Journal on Ethnopolitics and Minority Issues in Europe”, Issue 4/2002
- Malloy, Tove H. *National Minority Rights in Europe*. Oxford: Oxford University Press, 2005
- Thornberry, Patrick. “An Unfinished Story of Minority Rights.” In Anna Maria Biro and Petra Kovacs (eds). *Diversity in Action. Local Public Management of Multiethnic Communities in Central and Eastern Europe*. Budapest: LGI, 2001
- Toggenburg, Gabriel N. *Minorities (...) The European Union: Is the Missing Link an “off” or a “within”*, “European Integration”, 2003, Vol. 25(3), September, pp. 273–284
- Wallace, Chloë and Jo Shaw, *Education, multiculturalism and the EU Charter of Rights*, “Webpapers on Constitutionalism & Governance beyond the State”, No 5., 2002.

Online izvori:

- “Draft United Nations Declaration on the Rights of Indigenous Peoples”
http://en.wikisource.org/wiki/Draft_United_Nations_Declaration_on_the_Rights_of_Indigenous_Peoples

- “Indigenous peoples within the framework of the development cooperation of the Community and the Member States” Council Resolution of 30 November 1998 [ec.europa.eu externalrelations/humanrights/ip/res98.pdf](http://ec.europa.eu/externalrelations/humanrights/ip/res98.pdf)
- “Study Guide: The Rights of Indigenous Peoples.” *University of Minnesota Human Rights Library* <http://www1.umn.edu/humanrts/links/indigenous.html>