

COUNCIL OF EUROPE AND THE PROTECTION OF NATIONAL MINORITIES

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Abstract

European protection of national minorities and the rights of persons belonging to their identity is part of human rights protection system developed at the universal level under the United Nation respectively regionally in the Council of Europe and other European institutions. Examined the international legal framework (adopted in the Council of Europe), as in the field and others with official regulations (universal or regional) that concern protection of minorities, “does not authorize any activity that is contrary to fundamental principles of international law, especially that of sovereignty, territorial integrity and political independence of states”.

Keywords: *minority protection, minimum standards, universal rules, regional regulations, ethnic autonomy criterion, identity rights.*

Introduction

The great diversity of concrete situations and the political interests of countries of the world in the protection of minorities has made so far can not adopt an international convention at the U.N. in this field.

We note in this context that not all regional human rights documents do not contain provisions aimed at minorities. Illustrating this are examples, such as the American Convention on Human Rights of 1969, the African Charter on Human and Peoples of 1981 - which refers only to the prohibition of mass expulsion in the case of national groups, racial, ethnic or religious European Convention Human Rights in 1950, a document that stipulates only the association with a “national minority” as a reason for any discrimination.

Although the issue of minorities has its global dimension, it has particular significance for Europe. Consequently, it has been the concerns of European institutions, among which detaches the Council of Europe.

Thus, in 1949 in a report by the Administrative Committee on Legal Affairs and the Parliamentary Assembly, it recognized “the importance of the wider protection of minority rights”.

However, the European Convention of Human Rights¹ adopted after the Council of Europe, contains general provisions on the rights of persons belonging to minorities, merely provide in article 14 that “the exercise of rights and freedoms set forth in this Convention shall be ensured without any discrimination, especially based on sex, race, color, language,

¹ Passed at Rome on 4 November 1950. It entered into force on 3 September 1953. Romania ratified the Convention and its additional protocols by Law no.30 of 18 May 1994, Official Gazette no. 135/1994. Protocol 11 July 1995 was ratified by Law no. 179.

religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.

If this text is clearly a case of non-discrimination clause concerning, among other reasons, and that of belonging to a national minority. The provisions of this article can not be invoked unless the infringement of one of the rights mentioned in previous articles in the document (right to life, liberty and personal security, due process, privacy, and so on...) and is not therefore a independent regulation of minority rights².

In article 14th of the Convention implementation plan, the European Court of Human Rights has developed an interesting case law which has surpassed the limited nature of that provision.

Evolution of European minority rights was due to a greater extent the relations between Central European and Eastern European states, as well as those between them and Western Europe. Also drive the efficient solution of the problem of minorities on the continent was driven by the idea of building a multicultural Europe, sentence has been observed since the early 1960³. Finally, we note increasing interest in minorities in the context of the Berlin Wall fell, and the bloody disintegration of Yugoslavia and the USSR.

The result of these trends and developments in the field of minority issues has resulted in the adoption of two conventions within the European Community, which have direct tangency with the protection of persons belonging to minorities, namely the European Charter for Regional or Minority Languages and the Convention - Framework protection of minorities, documents that we will continue this.

*Documents regarding minorities adopted by Council of Europe - Presentation
European Charter for Regional or Minority Languages*

The purpose of this document is to promote and use regional and minority languages, as “an expression of cultural wealth” and to contribute to a Europe founded on principles of democracy and cultural diversity within the national sovereignty and territorial integrity.

Charter defines the phrase “regional and minority languages” as traditionally used languages in a given territory of a State of its citizens who form a group numerically lower than the general population that differs from the state and the official state language, without include dialects and languages of migrants (article 1).

Charter structured in five parts (general provisions, purposes and principles of the use of measures to promote regional and minority languages in public life, implementation and final provisions), setting characteristics to promote goals of this document, a “set” of measures which State Parties can choose what they will be implemented internally⁴.

In addition to this flexibility, the book provides in article 19 paragraph 1 number only five ratifications to enter into force. The intention of the authors of the document written in such a way as to produce effects in the shortest time is obvious. The merit is that the originators of the document in a time when the trend in favor of resuscitation at the European level of protection of minorities was not quite clear yet, were able to rule in an international convention of rights of minorities. On the other hand Charter allows states to opt for measures on the set of measures provided by Part III of the Charter, that adequate protection of the language, education (article 8), justice (article 9), administration and public services (article

² See *Introducere în Convenția Europeană a Drepturilor Omului* Gomieu Donna, All Publishing House, Bucharest, 1993, p.127 and following.

³ The Lannung Report, United Nations, Doc.1299, 26 April 1961. Scandinavian origin having an effective practice American concept of multicultural society finds its explanation in the economic interests of states.

⁴ Article 2, paragraph 2 requires that States commit themselves to a minimum of 35 paragraphs, however, stipulating that at least three must be selected from Articles 8 (on education) and 12 (cultural activities and facilities) and one of articolele.9 (justice), 10 (administrative authorities and public services), 11 (media) and 13 (economic and social life). A wide choice of both is, on the one hand, it reflects the mosaic of positive European language and negative on the other, leaving much to be political will of governments.

10), media (11), cultural life (article 12), economic and social (13). Note that, for culture, the Charter emphasizes the importance of hiring a staff to be very well acquainted with minority or regional traditions, facilitating the direct participation of minority groups in the planning of cultural activities, the development and promotion of economic language, administrative, commercial, technical, legal, and so on... appropriate minority languages.

Power conferred by the Charter Member of choice of different alternatives, in more limited areas or their problems, certainly lead to different types of commitments by States Parties, to a certain lack of uniformity in the application of the act. This fact, however generous answer a real need for flexibility, resulting in different situation of the Council member countries, regional and minority languages spoken and minorities living on their territories.

Positive side of the document and is the defining instruments are intended to support the practical application of the provisions contained therein. Thus, parties are required to submit periodically a report on measures taken in this area, and a committee of independent experts established the effect of the Charter, will be able to examine these reports.

Framework Convention on National Minorities

It was adopted on 10 November 1994 and opened for signature on 1 February 1995. Romania signed the Framework Convention on 1 February 1995 in Paris and in the same year he made the ratification document⁵. The Framework Convention was adopted in place of an Additional Protocol to the European Convention on Human Rights, proposed by the Council of Europe Recommendation 1201.

The Framework Convention is the first multilateral treaty governing the exclusive protection of minorities. For this reason the provisions of this document have been made with great rigor and caution. In this context, states have imposed the policy in contrast to their pragmatic purposes, without stipulating a right that virtually no minorities might prevail as such (direct)⁶.

Also, the Framework Convention, as in other international documents, does not contain a definition of "national minority" and not in any way recognize the existence of collective rights for persons belonging to minorities.

But there are situations in which use terms such as "where possible", "within the national legal systems", "if there is sufficient demand", and so on..., highlights the flexibility provisions of the Convention to taking the reported solutions to the peculiarities of States Parties.

Title I of the Framework Convention (articles 1 to 3) contains general provisions, and enshrines the protection of national minorities and the rights of persons belonging to them as part of the international protection of human rights (article 1), application of the Convention in good faith in a spirit of understanding, tolerance and respect for good neighborly, friendly relations and cooperation between states (article 2), the right of persons belonging to minorities to freely choose whether or not to be treated as such without any disadvantage to result from this choice (article 3, paragraph 1), and possibility for them to exercise their rights under the Framework Convention, individually or jointly with others (article 3, paragraph 2).

⁵ Romania has ratified the Framework Convention by Law No.33 of 29 April 1995, published in the Official Gazette, Part I, no.82 of May 4, 1995.

⁶ See R. Hofman, Die Rolle des beim Europarates Minderheitenschutz in Manfred Mohr, Friedenssichernde Minderheitenschutz in der Aspekt des Arc des Vereinten Nationen und des Volkerbundes in Europe, Springer Verlag, Berlin, Heidelberg, 1996, p. 131. To see a critical position and Christoph Pan Recommendation 1201/1993 and the Framework Convention, the Altera No.1 (1995), p.121-122 Valentin Stan, Convenția-cadru reprezintă rezultatul unui compromis, the Altera No.1 (1995), p. 122-124.

The first two articles repeat rules established long ago in public international law. With regard to article 3, it brings a new element⁷, the right of option.

The second title (article 4-19) contains provisions which stipulate a set of principles: equality and prohibition of discrimination (article 4), the right to own culture and identity (article 5), the obligation to foster a spirit of tolerance (article 6), freedom of assembly, freedom of thought, conscience, religion (article 7), the right to manifest one's religion and the establishment of religious associations (article 8), freedom of expression (article 9), right to use their own language in private and in public, orally and writing (article 10), the right to use its full name in the language (11), the obligation to take steps to encourage education knowledge culture, history, language and religion, as both minority and majority (article 12), the right to establish and manage private educational institutions (13), the right to learn the minority language (article 14), right to participate in economic, social and cultural life and public affairs (article 15), refraining from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities, are directed against the rights and freedoms flowing from the principles enshrined Framework Convention (article 16) States refraining from interference with the right of persons belonging to minorities to establish and maintain contacts across frontiers (article 17), the parties will endeavor to conclude bilateral and multilateral agreements with other states especially with neighboring countries to ensure that persons belonging to minorities (article 18), committing themselves to respect the principles enshrined in the Convention, bringing them only those changes or limitations, restrictions and exceptions set out in international instruments, in particular the Convention for rights and fundamental freedoms (ECHR), to the extent they are relevant to the rights and freedoms flowing from the principles specified (19).

Part of the Framework Convention (those relating to equality, nondiscrimination, freedom of religion, religious cult) do nothing than to reiterate in a slightly modified form, provision of universal or regional international documents, to protect human rights. New elements are recorded on the right to use the name in their language or if rights-border contacts with persons of the same language, ethnicity or religion. Noteworthy that the provisions of article 19 on limitations made pursuant to the principles of the Framework Convention has a certain generality, so that will pose problems of interpretation.

Title III (article 20-23) contains provisions relating to the application and interpretation of the Convention. Thus, article 20 stipulates that persons belonging to national minorities to respect national laws and rights of the majority or other minorities, to interpret article 21 of the Convention prohibits in any manner that would involve an infringement of sovereign equality, territorial integrity or independence political states, and article 22 prohibits the interpretations that might affect human rights and freedoms. Article 23 provides a priority of the Convention on Human Rights and Fundamental Freedoms in the interpretation of the Framework Convention with the same object⁸.

The fourth title (article 24-26) deals with the supervision and control over the implementation of the Convention by States Parties on this subject, tasks in mind the Council of Europe Committee of Ministers (article 24) General Secretariat of the Council of Europe (article 25) and providing for the establishment of an Advisory Committee to assist the Committee of Ministers to assess the system of protection of national minorities (article 26).

Title V contains the final provisions, based on model clauses for conventions and agreements concluded within the Council of Europe. The Convention shall remain open and those that are not members of the Council of Europe.

⁷ Option right of members of minorities is enshrined in the UN Declaration in 1992, but it has the effect of creating obligations for states.

⁸ View Niciu I. Martian, *Drept International public*, Ed Servosat, Arad, 2004, p. 173; Tudor Tanasescu, *Drept International public*, undergraduate course, Ed Sitech, 2009, p. 100.

In addition to legal documents submitted which concerns exclusively the rights of persons belonging to minorities, and thus their protection system, in 2003 the same body of the Council of Europe adopted Resolution 13349 on the positive experiences of autonomous arrangements as inspiration for conflict resolution in Europe, an act which has the recommendation for villages States and has a certain relevance to the case of categories of persons and entities referred to in which they take part (in limited circumstances and conditions stipulated in the document - in other ways unable to ensure the framework required to exercise language rights and preservation of cultural identity and circumscribed entity to which they belong, and the lack of mechanisms to prevent or extinguish certain conflict, involving people national minorities).

In the first six points provisions of the document refers to political tensions and crises in Europe (point 1) the origin of these events - the territorial changes and the birth of new states, more frequent applications of rights of minority groups to preserve their identity and conflicting issues manifested in terms of interpretation between the principle of indivisibility of states and the identity of persons belonging to minorities (points 2 and 4) and certain recommendations which are states in anticipation avoid tension within the meaning of democracy and adapt requirements the interpretation of international law concept of sovereign nation-state, and to develop a flexible framework to meet the demands of preserving the national identity of minorities (points 3 and 6).

The provisions of paragraphs 7 and 8 refer to the fact that the positive experience of autonomous regions (nn geographic regions, not ethnic) can be a source of inspiration for some way to resolve internal conflicts, given the experience of some European countries mitigate such tensions by introducing territorial or cultural autonomy.

In paragraph 9 states but the negative connotation of the concept of autonomy for the territorial integrity of states. Further, it expressly states that autonomy should be seen as an “arrangement between sub-state entities” that allow a minority group within a state to exercise its rights and to preserve cultural identity while ensuring the integrity and unity but with the state (10).

Paragraph 11 of document develops the period of territorial autonomy “howing that it involves an arrangement, usually adopted by sovereign states, where citizens of a given area are granted rights that reflect their specific geographical situation and protect and / or promote their cultural traditions and religious”. The concept involves the exercise of linguistic and cultural rights.

The following provisions specifying that the indivisibility of the state is compatible with autonomy, regionalization and federalization (point 12), the autonomy that can be applied to various political systems based on decentralization in unitary states to a genuine power-sharing in regional states or federal (point 13).

The provisions of point 14 refers to the steps and sources of autonomy introduction.

Importance are attractive and some restrictive provisions stipulated in the resolution, namely that: autonomy is not a panacea and the solutions they offer are not universally relevant and applicable (point 15), this status must never give the impression that the community self-government is applicable only to local community concerned (point 16), autonomy must respect the principle of equality and discrimination along with integrity and sovereignty of states (point 17), interpretation and management autonomy should be the object of state authority and determined by the national parliament and its institutions (point 19).

⁹ It was adopted by the Council of Europe Parliamentary Assembly on 24 June 2003 following the report entitled “Positive experiences of autonomous regions as a source of inspiration for conflict resolution in Europe” presented by Swiss parliamentarian Andreas Gross.

Autonomy requires special measures to protect “minorities and other minorities to ensure that the majority and other minorities do not feel threatened by the rights conferred autonomous entities” (21).

Endpoint (22) contains basic principles that need to be respected by governments of member states where the autonomy is recognized.

The contents of the resolution shows that *this document is to promote the issue by Member States on grounds of autonomy and ethnic minorities in general grant thereof, but evidence of the beneficial role of some form of autonomy (territorial or cultural) in solving the conflict resolution or prevent strain relations between the majority population and a certain national minority in a state*¹⁰.

Also, the same document states that *autonomy can not be considered a pertinent solution applicable in all situations, so provisions of the resolution are not binding, but constitute an alternative recommended for certain circumstances. Under the uniform application document for the member raised the autonomous status of the resolution is through decentralization, and in case of regional or federal states with real power-sharing procedures circumscribed to the principles of decentralization, local autonomy, and deconcentration of public services and not territorial autonomy on ethnic criteria.*

In the context of the restrictions stipulated by resolution entered the national minorities and outlined its provisions from point 16 and 17. They provide the autonomous status that the application is not an exclusive deal to empower minorities and that involves the development of balanced relations between majority and minority rule, and also among all minorities. Also, those provisions show that any autonomy status should respect the principles of equality and discrimination and be based on territorial integrity and sovereignty of states.

The analysis procedure for the adoption of the document, or text and category to which it belongs reveals unequivocally that *Resolution 1334 is worth a recommendation to Member States, it features political nature and, therefore, is not binding on countries that are members of the Council of Europe on whose territory national minorities living.*

Conclusions

Documents analysis shows that European protection of minorities and the rights of persons belonging to their identity is part of human rights protection system developed at the universal level under the United Nation respectively regionally in the Council of Europe and other European institutions. Examined the international legal framework (Council of Europe adopted on level), as in the field and others with official regulations (universal or regional) that concern protection of minorities, does not authorize any activity that is contrary to fundamental principles of international law, especially that of sovereignty, Territorial integrity and political independence of States".

Regulatory provisions for the protection are given to minorities and their rights as such and person's freedoms belonging to such minorities. This distinction and difference forms indicate clearly, that has no recognition of collective rights to minorities (art. 1, Framework Convention for the Protection of National Minorities). Parties recognize, however, that protection of national minorities can be achieved by protecting the rights of persons belonging to such minorities.

Translation in the lives of various provisions related to minority protection is, par excellence, an issue of the jurisdiction of sovereign states. Obviously, there is no challenge to the international community right to know and to assess how international standards on minority rights are respected. International community action is performed but the complementary action of the internal organs of states and it shall be conducted only in

¹⁰ View Tudor Tanasescu, *Minoritatile. Repere institutionale si legislative*, Ed Sitech, Craiova, 2006, p. 58-59.

accordance with the rules and principles of law that establish international organizations and treaties that define the mechanisms of cooperation of States in respect of human rights.

Documents submitted to the Council of Europe adopted, except for Resolution 1334 which has the recommendation to Member States, together with other previous regulations which are part of the universal international legal instruments or regional level have contributed to a minimum standard regarding outlining rights of persons part of minorities, a general conception about their rights in the overall identity of human rights.

Such standards will be to ensure preservation of individuality of persons belonging to such minorities and ensure their full rights but also harmonize with this issue general obligations incumbent minority in their capacity as citizens and the general principles of international law relating to sovereignty and territorial integrity of all European states.

Addressing the issues of rights protection system as part of national minorities can not be done through measures separatist or autonomist ethnic assimilation or forced to assume that because they would either destroy the unity of the State or the disappearance of the minority.

Bibliography

Tănăsescu T., *Drept international public, curs universitar*, Sitech Publishing House, Craiova, 2009;

Tănăsescu T., *Minoritatile. Repere instituționale și legislative*, Sitech Publishing House, Craiova, 2006.

Niciu I. M., *Drept International public*, Servosat Publishing House, Arad, 2004;

Hofman R., *Die Rolle des Europarates beim Minderheitenschutz, în Mohr Manfred, Friedenssichernde Aspekte des Minderheitenschutz in der Arc des Volkerbundes und des Vereinten Nationen in Europa*, Springer Verlag, Berlin, Heidelberg, 1996

Stan V., *Convenția-cadru reprezintă rezultatul unui compromis*, in "Altera" Review, no.1, 1995;

Gomieu Donna, *Introducere în Convenția Europeană a Drepturilor Omului*, All Publishing House, Bucharest, 1993.