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The System of Protection for Persons Belonging to National and Ethnic Minorities in Europe

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**THE SYSTEM OF PROTECTION FOR PERSONS
BELONGING TO NATIONAL AND ETHNIC
MINORITIES IN EUROPE**

The contemporary European continent is very diversified in terms of ethnicity, language, culture and religion. National minorities are found in territories of almost all states (with the exception of Portugal, Island and mini-states). The aim of this paper is to present the most important definitions, to determine the objects and principles of the system of their protection and the related binding documents (as of 2010).

At present, there is no universally acknowledged definition of national minority. The lack of such a definition is caused by the fact that unlike for example in the case of citizenship, it is not possible to capture in legal terms the state of national consciousness inherent in human beings. Regardless of the approach (politological, sociological, historical or legal), national minorities are characterised by: a certain quantitative minority proportion vis-à-vis the remaining population of the given state; separate ethnic origins, striving for cultivation of separate national and cultural features, having a representation of the minority interests vis-à-vis the state authorities. The minorities may be distinguished by their separate cultures, traditions, religions or languages (Kwaśniewski 1992: 9–61). The term „national minority” should be applied to groups that can be identified within a bounded territory of the state; in case of ethnic minorities the element of territoriality is not present (Mikołajczyk 1996: 16).

The creation of a system of legal protection for national and ethnic minorities is in principle intended to prevent ethnic conflicts. An ethnic conflict is an ultimate, violent result of an inter-group opposition involving nations (ethnic groups) which is more related to cultural identities of each of the sides than to issues of ownership, power or information (Kwaśniewski 1994: 52).

Currently, two conceptions of the object of minority protection exist: 1) social groups and 2) physical persons taking advantage of rights that are attributed to each individual. The basing of policy towards minorities on human rights contradicts its group (collective) nature. As a result, a middle ground category appeared – the treatment of minorities as collectives of persons belonging to a minority. As such, the problem of protection for minorities is to be analysed in three aspects: 1. particular physical persons who declare their separate ethnic membership; 2. collectives of physical persons who constitute a minority; 3. national minorities understood as social groups (Janusz, Bajda 2000: 12).

At present, one may distinguish in Europe systems of legal protection for persons belonging to minorities in the frameworks of: 1. Organization of United Nations (UN), 2. Council of Europe (CoE), 3. European Union (EU), 4. Organization for Security and Cooperation in Europe (OSCE), 5. other multilateral agreements, 6. bilateral agreements.

The UN system. Following World War II, a conviction regarding national minorities developed that their protection could be effectively implemented in the framework of a universal system of protection for human rights. The Charter of the United Nations (of 26 June, 1945) and its Universal Declaration of Human Rights (of 10 December, 1948) gave priority to the protection of individual human rights before group rights. Undoubtedly, the said declaration constitutes an important regulation in the area of human rights; however, being a resolution of the UN General Assembly, it has never been binding (Gronowska, Jasudowicz, Mik 1993: 16–24).

Binding legal regulations include an International Covenant on Civil and Political Rights adopted by the United Nations on 16 December in 1966. This Covenant constitutes a „global standard” in the protection of national minorities worldwide and is the only universally recognised legal regulation in this respect (*Międzynarodowy...*, art. 18, 20, 26–27). Infringements upon its provisions may be a basis for citizens of the states parties that had ratified its Facultative Protocol to file individual complaints with the United Nations Committee for Human Rights (*Protokół...*, art. 1–14). In 1994 the UN Committee for Human Rights adopted interpretative rules which, formally speaking, have not, however, been binding.

Currently, the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 10 December 1992 is the most important UN document in the area

of the minority rights protection. Its significance is more of a political nature than legal-international since it does not impose on states any formally binding obligations. The Declaration established principles of protection for minorities introducing them into the framework of security and guarantees of sovereign states.

Within the UN framework, other international documents have also been adopted that are relevant for the protection of national and ethnic minorities. The most important of them are: the UN Convention on the Prevention and Punishment of the Crime of Genocide (of 9 December 1948); the International Labour Organisation's C111 Convention concerning Discrimination in Respect of Employment and Occupation (of 25 June 1958), the Convention to combat discrimination in the area of education (of 15 December 1960), the International Convention on the Elimination of all Forms of Racial Discrimination (of 7 March 1966), Convention on the Rights of the Child (of 20 November 1989) as well as the 169 Convention concerning Indigenous and Tribal Peoples in Independent Countries (of 27 June 1989).

Alongside the Committee for Human Rights that was created on the basis of the aforementioned Covenant, there exist several other mechanisms to control and encourage states to act in accordance with the standards of human rights and to protect rights of persons belonging to national minorities. They include: reports prepared by Secretary General, resolutions of General Assembly, preventive mechanisms (telegrams of Secretary General, appeals, announcements, complaints, investigations, study visits, "good practices", public condemnation), establishing special rapporteurs and working groups, compensation actions, reporting procedures for states parties in the area of the implementation of human rights.

Within the UN framework, apart from the Committee for Human Rights some specialized organs have been established with competences pertaining the ethnic problematic. The most important role is played by the Office of the United Nations High Commissioner for the Protection of Human Rights that was created in 1993. This mandate envisages an active role of the Commissioner who is to counteract abuses of human rights, to co-operate with states in order to prevent such situations and to elaborate opinions or resolutions for the UN organs. In practice, the UN organs deal predominantly with most severe crimes against minorities and their right to existence (ethnic cleansing, genocide). In 1993, the UN established an ad hoc International Criminal Tribunal for

the former Yugoslavia. By contrast, the International Criminal Court in the Hague, which was created in 1998, has a permanent character.

The Council of Europe's system. The CoE system of protection for minority rights has an extraordinary significance in the European continent. All states within the continent, with the exception of Belarus, are members of this organization. Currently, the system of protection for national minorities in the framework of this international organization is determined by its three main documents: the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (which came into force as of 8 September 1953), European Charter for Regional or Minority Languages of 5 November 1992 (which came into force as of 1 March 1998), European Framework Convention for the Protection of National Minorities of 1 February 1995 (which came into force as of 1 February 1995).

The Convention for the Protection of Human Rights and Fundamental Freedoms includes an anti-discrimination clause that is to constitute a guarantee for enjoyment of rights and liberties included in the Convention without any discrimination, among others, because of race, colour or origin (*Konwencja o ochronie...*, art. 14). This clause was included in the Convention by motion of the Danish delegate in the Consultative Assembly, Hermod Kannung. His proposal was accepted by the Legal and Administrative Committee of the Assembly (Mikołajczyk 1996: 43).

The next of the Council of Europe's documents that pertain national minorities is European Charter for Regional or Minority Languages. It started to be elaborated in 1983 by the Standing Conference of European Local and Regional Authorities. Its draft was presented five years later as included in Resolution 192/1988 which was supported by the Parliamentary Assembly in its opinion no. 142/1988 (Malicka 2004: 46). According to the Charter, regional or minority languages are languages that are traditionally used in the territory of the given state by its citizens who constitute a group that is in quantitative terms smaller than the remaining population of that state and who use a language that is different from the official language of that state. The concept of the minority or regional language does not include dialects of official languages of states or migrant languages (art. 1). The provisions of the Charter supplement the Convention of 1950, as the latter's regulations may not be treated as lifting the former. Neither may they infringe upon any more advantageous regulations concerning regional and minority languages that are derived from domestic laws and inter-

national obligations. The Charter regulates most important spheres of life, such as education, justice, administrative procedures and the public sphere, mass media, cultural activities, economic and social life. The Charter does not specify either individual or collective rights of linguistic minorities; it solely creates an obligation for states to protect regional and minority languages in all areas of life. To control the execution of the obligations resulting from the Charter for its signatories, a system of reporting has been introduced (*Europejska karta...*, art. 4–15; Sozański 2002: 90–100).

The third document of the Council of Europe, the one that defines legal frames for protection of rights granted to national minorities is the European Framework Convention for the Protection of National Minorities. This Framework Convention is the first European legally binding multilateral act devoted to the protection of rights of national minorities. It aims at establishing legal principles that states are obliged to respect in order to secure the protection of minorities. This document confers legal force on many obligations that so far had been of political nature. The states are free to choose instruments to implement the resolutions of the Framework Convention, owing to which each state may take into account its own specificity. The aims included in the Convention are to be accomplished by means of national legislation and related governmental policies. The Convention does not include a definition of national minorities (*Konwencja ramowa...*, art. 1–32). The lack of a system to control effectively the implementation by the parties of the provisions included in the Convention constitutes its basic weakness.

In 1994 the European Commission Against Racism and Intolerance was created that now plays an important role in the area of minority protection. Five years later the office of Commissioner on Human Rights of the Council of Europe was established whose task is to promote knowledge of human rights, to undertake actions to increase respect for the rights and to control legislation in the member states (Malicka 2004: 55).

The European Union's system. The postulate to observe minority rights was for the first time articulated in the EU in the so called Copenhagen criteria. In connection with the planned enlargement of the EU, the summit of the European Council in Copenhagen in 1993 determined the criteria whose satisfying was to enable European states to apply for EU membership. The first group of the criteria listed: stability of institutions guaranteeing democracy, the rule of law, implementation

of human rights and protection of minorities. Despite the fact that the criteria mentioned minorities in general, in the pre-accession reports the accession states clearly referred obligations in this area to their national minorities. The introduction of those criteria revealed a policy of „double standards”. The obligation to protect national minorities was imposed on candidate states – it was not imposed on the established member states. In consequence, some of them (France and Greece) still ignore the existence of national minorities in their territories.

Currently, the system of protection for persons belonging to minorities is defined primarily by the Lisbon Treaty that came into force as of 1 December in 2009. It does not contain regulations concerning national minorities specifically subsuming this issue under the Chart of Fundamental Rights that was signed on 7 December in 2000 (*Traktat z Lizbony...*, art. 6). The Chart, similarly to the UN Declaration of 10 December 1948, forbids any discrimination on the basis of race, colour, ethnic origins, genetic features, language, religion, belonging to a national minority, descent etc. The Union declares respect for cultural, religious and linguistic diversity (*Karta praw...*, art. 20, 22).

The coming into force of the Lisbon Treaty meant accession of the EU to the Convention for the Protection of Human Rights and Fundamental Freedoms. This reinforced the protection of human rights in the EU through subjecting its legal system to independent, external control (*Traktat z Lizbony...*, art. 6).

The OSCE system. In the area of legal protection for minorities this organization is basing on its own achievements as well as accomplishments of the Conference for Security and Cooperation in Europe. The final CSCE act of 1 August 1975, stressed in its Principle VII that the participating states within whose territories national minorities exist will respect the right of persons belonging to those minorities to equality before law, will provide them with full opportunities to effectively take advantage of human rights and fundamental freedoms and in this manner will protect their entitlements in this regard (Rotfeld 1983: 117–118). Those provisions were confirmed in the final document adopted during OSCE Madrid summit in 1983. Only in 1989, in the final document of the Vienna summit, did the states parties confirm the Madrid summit resolutions and undertook further obligations pertaining persons belonging to national minorities. The Vienna document constituted a breakthrough in elaborating regulations related to minority rights. Also, on this basis, some control institutions have been introduced (Barcz 1992: 159–168).

The Copenhagen document adopted in 1990 is of fundamental significance as regards the problem of national minorities. This document, basing on the conception of individual rights of members of national minorities, defines both implementation-procedural norms and material norms referring to minorities (Malicka 2004: 60). States participating in CSCE/OSCE acknowledged also the need to improve the situation of national minorities in the Charter for New Europe, signed in Paris on November 21 in 1990 (Gronowska, Jasudowicz, Mik 1993: 291).

In order to implement those resolutions and to strengthen cooperation concerning the protection of national minorities, the participating states decided to call a meeting of experts in the area of national minorities in Geneva in 1991. In the final report from the Geneva meeting, the states recognised the Copenhagen document as the basis for material rights of national minorities that contain optimally defined standards in the area of their protection. The report ultimately acknowledged the obligations undertaken in the CSCE/OSCE documents. The Geneva report introduced the so called civil clause (Barcz 1992: 163–164). The Helsinki summit in 1992 succeeded in establishing the High Commissioner on National Minorities whose office was located in the Hague. The High Commissioner is an instrument of preventive diplomacy and early warning measures who acts at the earliest possible stage (Jeziorski 1994: 139–142). In 1990, Bureau for Free Elections was created in Warsaw (since 1992 – Bureau for Democratic Institutions and Human Rights).

The institutionalization of CSCE and the creation of OSCE as of 1 January in 1995, did not have an impact on the system of legal protection for national minorities. Since the meeting in Lisbon (1996), in the subsequent documents the states acknowledged their respect for the obligations taken so far. Only the Charter of European Security of 19 November 1999 introduced some new elements. According to this Charter, the protection and promotion of rights of persons belonging to national minorities have been acknowledged as relevant components of democracy, peace, justice and internal stabilization of the states. Until 2009, there were no summits of the OSCE states.

Other multilateral agreements. Independently of the initiatives by the Council of Europe, the EU and OSCE in the area of protection for national minorities, in the regional dimension what proved important were the documents of Central and Eastern European Initiative and of the Council of the Baltic Sea States. In the first case, the most important development was the Instrument of the Central and Eastern

European Initiative to protect rights of minorities adopted on 19 November in 1994 (Łodziński, Bajda 1995: 99–105). In 1994, the Council of the Baltic Sea States established the Council's Commissioner on the Russian Minority in the Baltic states and the Office of the Commissioner on Democratic Institutions and Human Rights, inclusive of rights of persons belonging to minorities. Owing to their concentration on selected regions only, these organization are able to resolve problems related to regulations of minority rights more effectively.

Bilateral agreements. The sphere of protection for rights of persons belonging to national minorities may also be determined by bilateral agreements. After 1945, in Europe more than 100 such agreements have been signed. Their provisions regarded the status of national minorities that inhabited mainly borderlands, whereas agreements concerning general rights of persons belonging to minorities were rarely signed.

The implementation of a German-Danish declaration of 1955 concerning the Danish minority in Schleswig is taken as a model case in Europe. The principle of reciprocity may not always be applied, however, depending on the existing relations between nationalities. This might be exemplified by the Polish minority in Latvia (in 2000 – 59 505 persons) that takes advantage of the existing rights even though no Latvian national minority exists in Poland. While constructing bilateral agreements it is important that their resolutions should not diminish entitlements existing so far. Such cases might be illustrated by an Italian-Austrian agreement of 1971 regarding the issue of Southern Tirol/Alto Adige.

Contemporary frames for the protection of persons belonging to national and ethnic minorities are stipulated by agreements, international institutions, control mechanisms and domestic laws. The regulations adopted so far have played a significant role in the reduction of tensions related to nationalities. They impose on persons belonging to minorities an obligation of loyalty towards the state of residence while not infringing upon its sovereignty and territorial integrity.

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