

# *The Rights of Minorities in International Law: Tracing Developments in Normative Arrangements of International Organizations*

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## **Introduction**

There are 8,000 languages accompanied spoken by similar number of distinct ethnic groups worldwide, while at the same time the Organization of United Nations comprises of approximately 200 states. A discrepancy between a number of ethnic communities and sovereign political agents in the international arena implies that many ethnic, language or religious minority groups seek recognition and protection within states they inhabit.<sup>1</sup> As a part of human rights agenda minority rights are guaranteed at the international level. Although the current international system presents a large set of provisions relevant to the protection of minorities, its main weakness is the fact that majority of them are not legally binding. This paper should provide an introductory review on the minority protection regimes which have developed in the main international institutions (i.e. the United Nations, Council of Europe, Organization for Security and Cooperation in Europe and the European Union) in response to the demands of minority groups.

The hypothesis of the paper claims that an inadequately solved question of minority protection may disrupt peace and stability of states. This hypothesis has been promoted in works of numerous scholars and also in documents of international organizations<sup>2</sup> Indeed, after the fall of communism at the end of 1980s and the occurrence of ethnic conflicts in early 1990s which took place in multiethnic federations of socialist states but also in Rwanda, East Timor and Sri Lanka, minority issues have become much more discussed issue in the international agenda.

The first part of this analysis on minority rights in international law will offer a theoretical framework for defining the concept of 'minority'. This part of the present paper will offer a brief overview of the historical development of the minority protection. The second part of the paper will define several concepts relating to minority protection: definition of minority, a notion of non-discrimination, importance of recognition by majority and significance of preserving minority's identity. This part of the paper will as introduce the issues such as affirmative action and divergence in individual and collective rights. In the third part the paper will

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1 Ernest Gellner. *Nations and Nationalism*. Oxford: Blackwell, 1983.

2 The Framework Convention for the Protection of National Minorities states in its Preamble: "Considering that the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent." Similar attitude has been expressed in the United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities: "Considering that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live." See also Gaetano Pentassuglia. *Minorities in International Law*. Strasbourg: ECMI Handbook Series, 2002 and Max van der Stoep. *Peace and Stability through Human and Minority Rights*. Baden-Baden: Nomos Verlagsgesellschaft, 2001.

describe existing, globally and regionally accepted international documents regarding minority protection passed by the United Nations and the main European international organizations.

## 1. The International Protection of Minorities in History

The oldest roots of minority protection can be traced in the seventeenth century reforms regarding protection of religious minorities.<sup>3</sup> Sigler conversely argues that “the contemporary minority issues with which we have familiarity are largely rooted in the nineteenth century”<sup>4</sup> since the nineteenth century was “concerned less with religious or racial groups than with linguistic and ethnic groups.”<sup>5</sup> The three great congresses of the nineteenth century, Vienna (1814-15), Paris (1856), and Berlin (1878), encompassed minority protection provisions in treaties establishing rights and security of populations that were to be transferred to a foreign sovereignty.<sup>6</sup> Nevertheless, more reasonable is to claim that modern international minority protection was for the first time in the history systematically prescribed in the Treaty of Versailles, after the World War I. The League of Nations<sup>7</sup> system for the international protection of minorities originates from the Paris Peace Conference held in 1919. Although Pact of the League of Nations contained no provisions regarding human rights, it incorporated two relating systems of mandates and of minorities.<sup>8</sup> The League's failure to establish an effective minorities system reflected the economic, social, and political problems of the inter-war period and contributed to the fall of the Wilsonian vision<sup>9</sup> of 1919 of security system and disarmament, what resulted with the Second World War. The idea of human rights<sup>10</sup> protection emerged stronger after Second World War's extermination peoples that would be considered minorities from today's perspective. At that time, those peoples did not enjoy any rights.

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3 Compare for example Treaty of Westphalia, which in 1648 granted religious right to the Protestant German population, or the Treaty of Oliva in 1660 in favor of the Roman Catholics in Livonia, ceded by Sweden and Poland, or the Treaty of Paris in 1763, signed between France, Spain and the Great Britain, in favor of Roman Catholics in Canadian territories ceded by France. For more detailed historical overview see Natan Lerner. *Group Rights and Discrimination in International Law*. Dordrecht/Boston/London: Martinus Nijhoff Publishers. 1991.pp. 7-22.

4 Jay A. Sigler. *Minority Rights. A Comparative Analysis*. Westport, Connecticut/London, England: Greenwood Press. 1983. pp. 68.

5 *Ibid.*

6 Detailed overview offers the chapter ‘Historical Background: International Law Moves from Protection of Particular Groups to Norms of a Universal Character’ in Patrick Thornberry. *International Law and the Rights of Minorities*. Oxford: Clarendon Press. 1991. pp.25-37.

7 Carole Fink. *The League of Nations and the minority question*. World Affairs, Spring 95, Vol. 157 Issue 4, p197, 9p.

8 The Great Powers introduced the enforcement procedure and assigned it to the new League of Nations. Whereas in the past, the winners would implement the minority protection clauses in international treaties, this time they decided to endow the new world organization with this responsibility since the League of Nations derived its right to protect minorities from treaties concluded after World War I. See Thomas Buergenthal. *International Human Rights in a Nutshell*

9 The League of Nations was central to Woodrow Wilson's vision of the postwar world, a vision he shared with French, British, and American internationalists who sought a new order based on peace and justice.

10 The human rights can be defined as the set of rights a person has simply because he or she is a human being. Another definition for human rights is those basic standards without which people can not live in dignity. For the theoretical explanation of human rights concept see for example Louis Henkin. *The age of rights*. New York: Columbia University Press, 1990, John S Gibson. *Dictionary of international human rights law*, Lanham: Scarecrow, 1996, Gudmundur Alfredsson and Asbjorn Eide. *The Universal Declaration of Human Rights: a common standard of achievement*. The Hague: Kluwer, 1999.

When the Organization of the United Nations had been established, the most developed countries of the world did not acknowledge existence of minority problems.<sup>11</sup> Even today some states, who have declared to be unitary ones, fear that recognition of minority groups within their territories would rekindle the regional claims against which they have had to fight in the past.<sup>12</sup>

## 2. Rights Pertaining to Minority Rights

### 2.1. Definition of minority

There is no common consent upon a definition of minority in international instruments. Furthermore, the word is interpreted differently in different societies. A number of contemporary scholars are reluctant to use the term 'minority' claiming this term was closely connected with the League of Nations system and therefore is obsolete. Others, on the contrary, argue that since minority implicates the group of people that is numerically smaller than the dominant group, this leaves out non-dominant groups that are majorities in their countries. Therefore, following changes of the term were suggested: 'communities', 'communalities', 'social groups', and recently even term 'peoples'.<sup>13</sup> National minorities are "neither the authentic reproduction of their 'mother people', although they are tied to their people particularly by language and culture, nor a reflection of the sociological and ideological satisfaction of the dominant people, to whom they are linked by their geographical situation and economic, cultural, historical and political features."<sup>14</sup> Therefore, they deserve an exceptional accomplishment of their preserving and fostering in the state they inhabit, though the kin-states as well shape minority policies.<sup>15</sup>

General agreement has not been achieved even in some international documents dealing with the issue of minority protection. Despite the title of the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (hereinafter: UN Declaration) would imply the definition of the national minority, the UN has failed to agree a definition of what constitutes a minority. Some explain that attempting a precise statement would deny certain rights to certain groups of people in some countries. Furthermore, efforts on the defining concept of minority have been unsuccessfully undertaken within the Council of Europe. Council of Europe's (hereinafter: CoE) Framework Convention for the Protection of National Minorities (hereinafter: FCNM), the only existing legally binding international instrument for minority protection, contains no definition of the notion "national minority". Pragmatic approach has been

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11 United States delegate to UN, Eleanor Roosevelt for example argued during the debate on the draft on the Universal Declaration of Human Rights that it ought not to include the rights of minorities. UN Doc. E/CN 4/S.R., 73, pp.5. Cited in Jay A. Sigler *op.cit.* pp. 67.

12 Florence Benoit-Rohmer. *The Minority Question in Europe*. Strasbourg: Council of Europe Publishing. 1996. pp. 12.

13 For specified definitions of mentioned terms see Nathan Lerner. *Group Rights and Discrimination in International Law*. Dordrecht/Boston/London: Martinus Nijhoff Publishers. 1991. pp. 28-34.

14 Miran Komac. *Nationalities and Minorities in Yugoslavia*. European Minorities. Contemporary European Affairs. Volume 4, Issue 4, 1991. pp. 129.

15 See Konrad Huber and Robert W. Mickey. *Defining the Kin-State: An Analysis of its Role and Prescriptions for Moderating its Impact* in Arie Bloed and Pieter Van Dijk (Eds.). *Protection of Minority Rights Through Bilateral Treaties. The Case of Central and Eastern Europe*. The Hague/London/Boston: Kluwer Law International. 1999. pp.17-51.

adopted since member countries of CoE were not capable of mustering general support to a common definition. However, the Proposal for an Additional Protocol on the Rights of National Minorities to the European Convention on Human Rights and Fundamental Freedoms (hereinafter: ECHR) contained definition of a “national minority group.” According to the proposal expression “national minority” refers to a

*“group of persons in a state who reside on the territory of the state and are citizens thereof; mainly longstanding, firm and long-lasting ties with a state; display distinctive ethnic, cultural, religious or linguistic characteristics; are sufficiently representative, although smaller in number than the rest of the population of the state or of a region of the state.”<sup>16</sup>*

The Commission for Democracy Through Law<sup>17</sup> (hereinafter: Venice Commission), which proposed the Additional Protocol to the ECHR, suggested that:

*“a minority consists of group of persons which is smaller in number than the rest of the population of the State, whose members, who are not nationals of the State, have ethnical, religious or linguistic features different from those of the rest of population, and are guided by the will to safeguard their culture, traditions, religion and language.”<sup>18</sup>*

The OSCE has also been trying to draft a definition, but usually experts agree that a search for a widely accepted definition would have delayed the work on the documents concerning minority issues.<sup>19</sup> Probably most widely accepted theoretical definition of minority is one by the Francesco Capotorti, a Special Reporter of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, made in accordance with the Article 27 of the Covenant on Civil and Political Rights (hereinafter: ICCPR). Article 27 of the Covenant provides that, in those States in which ethnic, religious or linguistic minorities exist, persons belonging to these minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.<sup>20</sup> The terms used in Article 27 indicate that the persons designed to be protected are those who belong to a group and who share in common a culture, a religion and/or a language. Therefore, the rights protected by Article 27 include the right of persons in community with others, to engage in economic and social activities which are part of the culture of the community to which they belong. In accordance with this, Capotorti defined a minority group as:

*“a group which is numerically inferior to the rest of the population of a State and in a non-dominant position, whose members posses ethnic, religious or linguistic characteristics which differ from those of the rest of the population and who, if only implicitly, maintain a sense of solidarity, directed towards preserving their culture, traditions, religion or language.”<sup>21</sup>*

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16 Recommendation 1201 (1993) on an Additional Protocol on the Rights of National Minorities to the European Convention on Human Rights and Fundamental Freedoms. Cited in Florence Benoit-Rohmer. *op.cit.* pp. 13.

17. [http://www.coe.int/T/E/Communication\\_and\\_Research/Press/Theme\\_Files/Democracy\\_through\\_law/](http://www.coe.int/T/E/Communication_and_Research/Press/Theme_Files/Democracy_through_law/)

18 Article 2, Paragraph 1 of the Proposal.

19 Florence Benoit-Rohmer. *op.cit.* pp. 13 and Jay A. Sigler *op.cit.* pp. 3-10.

20 Francesco Capotorti. *The Protection of Minorities under Multilateral Agreements on Human Rights* in The Italian Yearbook of International Law, 1976, II, 14 and idem, Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities, Geneva UN Center for Human Rights, UN Doc E/CN.4/Sub.2/384/Add.1-7.

21 Study on the Rights of persons Belonging to Ethnic, Religious and Linguistic Minorities, UN Doc. E/CN.4/Sub.2/384/Rev. I (1979), reprinted as UN Pub. E.78.XIV.1 (1979). Cited in Natan Lerner. *op.cit.* pp. 9.

The other legal definitions differ from Capotorti's in minor respects, and follow his "general line of demarcation"<sup>22</sup> keeping following elements of a definition: citizenship or a residence in the territory of a state that is granting minority status, numerical inferiority, non-dominant position, sense of solidarity among minority members who, in the same time have will to survive and preserve their distinguishing characteristics (language, religion, ethnicity). Therefore, in the absence of the precise definition of minority in international law, we can conclude that the existence of a minority is a question of fact and not of definition. However, the absence of the exact definition of minority in international law can be substituted by the saying that belonging to a national minority is a matter of a person's individual choice.<sup>23</sup>

## **2.2. Recognition and Identity**

In the absence of the precise definition of the concept of minority in international level, it is up to each state to recognize a certain group of their citizens as minority and provide for their protection, since the state of majority population, not a national 'mother state' bears the responsibility of minority rights realization.<sup>24</sup> Recognition of minorities within states is the precondition for their rights. Since the consensus of defining national minority has neither been reached in international nor in domestic law, many issues have to be taken into consideration when seeking recognition of a certain group as a minority one. Correspondingly, "the numerical size of the group, its economical strength, its homogeneity, territorial location and density, as well as its claims based mostly on its historical past and sometimes on the changed contemporary conditions" are relevant factors for the maintenance and recognition of the minority identity.<sup>25</sup>

Minority is a group with linguistic, ethnic or cultural characteristics, which distinguish it from the majority. Minority group usually does not only seek to preserve its identity but also tries to give stronger expression to that identity. While for the dominant group in a society (majority), their particular identity is transparent and not perceived by them as a specific identity, for non-dominant groups (minorities); their identity is always experienced as particular and as specific to them as members of a group. The basic claim of the identity argument is that race, ethnicity, and culture are central to decent identity of a human being. Own culture is important element of the life, thus minority cultures must be given special protection so that all members of society will have equal opportunities and if they are continue to exist. Preservation of the culture and identity of minority groups, together with manifestation of religion should include measures preserving way of life associated with the use of land resources, especially in the case of indigenous peoples.<sup>26</sup> The enjoyment of those rights may require legal measures of protection and measures to ensure the effective participation of members of minority communities in political and societal decisions which affect them.

## **2.3. Prohibition of discrimination and Positive Measures**

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22 Patrick Thornbery. *op.cit.*

23 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, <http://www.osce.org/docs/english/1990-1999/hd/cope90e.htm>

24 Certain states, e.g. France, Greece and Turkey, refuse to recognize existence of national minorities in their territories. By denying their existence, they avoid to apply arrangements and mechanisms provided in international documents.

25 Snezana Trifunovska (Ed.). *Minorities in Europe. Croatia, Estonia and Slovakia*. The Hague: T.M.C. Asser Press.1999. pp. 21.

26 That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law.

Prohibition of discrimination is a fundamental principle of human rights, contained in majority of human rights instruments.<sup>27</sup> This fundamental and general principle is a manifestation of the principle of equality and means the equal protection of the law for all. Principle of non-discrimination requires that any right set forth by legislation shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. The International Convention on the Elimination of All Forms of Racial Discrimination, regarding non-discrimination measures, obliges states to “prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization.”<sup>28</sup> Alexander Morawa, depending on the status of the non-discrimination norm in the framework of a treaty and its language, makes distinction between ‘non-discrimination’ as an *accessory right* – what means equality safeguarded merely with respect to the other substantive rights enumerated in the treaty, and as an *independent right* to equality demanding material justice.<sup>29</sup>

Accessory nature of non-discrimination principle is demonstrated in the Article 14 of the ECHR that guarantees the right not to be discriminated but only in the enjoyment of the Convention rights on the ground, *inter alia* of their belonging to a national minority, language, religion and national origin. On the contrary, non-discrimination principle may be considered as an independent right in the Article 26 of the ICCPR Covenant on Civil and Political Rights which provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Both UN Covenants, on civil and political rights and on economic, social and cultural rights prescribed that those rights articulated in the Covenants should be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The UN International Convention on the Elimination of All Forms of Racial Discrimination of 1966 (hereinafter: ICERD) guarantees enjoyment of certain human rights to everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law. The UN Convention on the Rights of the Child (hereinafter: CROC) as well stipulates that children's rights should be ensured to every child without discrimination.

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27 Non-discrimination provisions are contained in the United Nations Charter of 1945 (Arts. 1 and 55), the Universal Declaration of Human Rights of 1948 (Art. 2) and the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights of 1966 (Art. 2). Such provisions also appear in a number of specialized international instruments, including: ILO Convention concerning Discrimination in Respect of Employment and Occupation No. 111 of 1958 (Art. 1); International Convention on the Elimination of All Forms of Racial Discrimination of 1965 (Art. 1); UNESCO Convention against Discrimination in Education of 1960 (Art. 1); UNESCO Declaration on Race and Racial Prejudice of 1978 (Arts. 1, 2 And 3); Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief of 1981 (Art. 2); and the Convention on the Rights of the Child of 1989 (Art. 2). European regional human rights documents, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter and the Framework Convention on National Minorities of the CoE the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE also contain non-discrimination clauses.

28 General Assembly Resolution 2106 (XX) of 21 December 1965, Article 2 (1) (d).

29 Alexander Morawa. *The Concept of Non-Discrimination: An Introductory Comment*. JAMIE, European Centre for Minority Issues, Issue 3/2002, [http://www.ecmi.de/jemie/download/Focus3-2002\\_Morawa.pdf](http://www.ecmi.de/jemie/download/Focus3-2002_Morawa.pdf)

Nevertheless, the mere application of the non-discrimination principle may not be sufficient to achieve equality in fact. Therefore, states are required to take positive actions, or special measures to preserve minority existence. A number of newly established states in 1990s re-actualized the question of minority protection because a good portion of them engaged in ethnic conflicts. For that reason it is considered that particularly those states should create, in the course of nation building, more egalitarian societies allowing minorities to have their identity preserved by affirmative measures or positive discrimination, which vary from state to state.<sup>30</sup> Some of those measures foreseen for minority inclusion might include promotion of the employment of minorities in the public administration and institutions, double voting systems in the parliamentary elections etc.

International instruments advocate as well minorities to participate in the political life of the State, particularly with respect to matters affecting its culture, identity and institutions.<sup>31</sup> Exclusion from participation in the political can easily lead to the destabilization of internal security issues. However, some scholars argue that “the legal instruments in which the political representation and participation of minority groups is embodied constitute an exception of the equality principle, at least in formal sense.”<sup>32</sup> Effective participation of national minorities in public life is an essential component of a peaceful and democratic society. Experience in Europe and elsewhere has shown that, in order to promote such participation, governments often need to establish specific arrangements for national minorities, [with the] aim to facilitate the inclusion of minorities within the State and enable minorities to maintain their own identity and characteristics, thereby promoting the good governance and integrity of the State.<sup>33</sup> Effective participation of minorities requires established channels of consultation for the prevention of conflicts and dispute resolution. Those can be achieved through inclusion of minorities in the decision making processes, in both state and local levels, but also by adequately solved “judicial resolution of conflicts, such as judicial review of legislation and administrative action, which requires an independent, accessible, and impartial judiciary, additional dispute resolution mechanisms, such as negotiation, arbitration, an ombudsperson for national minorities can be useful for the resolution of grievances.”<sup>34</sup>

Furthermore, minorities should be entitled to organize themselves in institutions to promote their interests. Apart for the freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion<sup>35</sup> are also granted certain rights that aim to preserve their identity: right to right to manifest his or her religion or belief and to establish religious institutions, organizations and

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30 *Ibid.*

31 Article 15 of the FCNM.

32 Francesco Palermo and Jens Woelk. *No Representation Without Recognition. The Right to Political Participation of (National) Minorities*. Kirchner – Journal for European Integration.

33 Recommendation 1 The Lund Recommendations on the Effective Participation of National Minorities in Public Life, September 1999 (OSCE HCNM); the recommendation is based on the similar formulation in par. 35 of the Copenhagen Document: "Participating States will respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities", ILM 29 (1990), 1305

34 The Lund Recommendations, IV. B. 24 (Remedies) Cited in Francesco Palermo and Jens Woelk. *No Representation Without Recognition. The Right to Political Participation of (National) Minorities*. Journal for European Integration, Volume 5, No. 3, September 2003. pp. 225-248.

35 Article 7 of the FCNM.

associations,<sup>36</sup> right to use minority language,<sup>37</sup> right to be educated in the language and curricula of national minority.<sup>38</sup>

International instruments granting rights to minority members have usually careful formulations setting out positive rights. Several international instruments impose obligations on states parties, making in that way states obliged to actively engage and take positive measure. The protection of the rights contained in the Article 27 of the ICCPR “are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language or religion. Accordingly, positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practice their religion.”<sup>39</sup> In its general Comments to Article 27 Human Right Committee has stated that “positive measures must respect the provisions of Article 2.1. of the ICCPR (rights ensured to all individuals within the territory of the state party without distinction of any kind) and Article 26 (equality before law) both as regards the treatment between different minorities and the treatment between the persons belonging to them and the remaining part of the population. However, as long as those measures are aimed at correcting conditions which prevent or impair the enjoyment of the rights guaranteed under article 27, they may constitute a legitimate differentiation under the Covenant, provided that they are based on reasonable and objective criteria.”<sup>40</sup>

Article 9 of the FCNM provides that "the parties shall ensure, within the framework of their legal systems that persons belonging to a national minority are not discriminated against in their access to the media. (...) The Parties shall not hinder the creation and the use of printed media by persons belonging to national minorities." Article 14 of the same Convention provides that "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."

In the field of political participation, states are bound by the FCNM's provisions that require States to “create” conditions necessary for such participation (Article 15). The ICERD requires that “equal access to public service” not be denied on grounds of race or ethnicity (Article 5 c). The ICCPR sets forth the right of every citizen, without discrimination, to be elected at genuine periodic elections, guaranteeing the free expression of the will of electors (Article 25). In those countries where minority communities are ensured effective non-discrimination and equality, as well as full and effective participation in matters affecting them, are more likely to opt for the prevention and peaceful solution of human rights problems and situations involving minorities, than in those countries where minorities are suppressed and excluded from a public life.

### **3. Existing International Mechanisms for Minority Protection**

#### **3.1. United Nations**

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36 Article 8 of the FCNM.

37 Article 10 of the FCNM.

38 Articles 12-14 of the FCNM.

39 Human Rights Committee, General Comment 23, Article 27 (Fiftieth session, 1994), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI\GEN\1\Rev.1 at 38 (1994).

40 Ibid.

The developed concept of human rights launched by the Organization of United Nations (hereinafter: UN) in 1948 in its Universal Declaration is mainly concerned with individual protection of rights what resulted with the blurred approach to the minority rights protection.<sup>41</sup> The list of fundamental rules of the equal enjoyment of rights and non-discrimination incorporated in the UN documents dealing with minority rights *prima facie* looks quite impressive. Following UN's documents contain provisions or regulate minority rights: Article 27 of the ICCPR, Article 13 of the ICESCR, Article 5 of the UNESCO Declaration on Race and Racial Prejudice, Article 5 of the UNESCO Convention against Discrimination in Education, Article 11 of the Convention on the Prevention and Punishment of the Crime of Genocide, Articles 2 and 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 30 of the Convention on the Rights of the Child, the Declaration of the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities.

Minority rights have achieved affirmation in the Article 27 of the ICCPR that guarantees their recognition in a following context:

*“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”*

Since it was not specified which minorities can enjoy the protection, Article 27 is a kind of compromise “skillfully worded, but ambiguous in content. In its literal wording, the article appears to confer rights only on individuals, but in fact it allows the exercise of collective rights.”<sup>42</sup> What is probably most important about this particular article is that “it governs the exercise of all rights, whether protected under the Covenant or not, which the State party confers by law on individuals within its territory or under its jurisdiction, irrespective of whether they belong to the minorities specified in article 27 or not.”<sup>43</sup> This is especially important with regard to the fact that some States parties claim that they have no minorities. Nonetheless, as a result of the Article 27 they are not allowed to discriminate on grounds of ethnicity, language or religion.

Article 13 the International Covenant on Economic, Social and Cultural Rights (hereinafter: ICESCR) provides the right of everyone to education, stating in some of its paragraphs that states should made possible for parents or legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards. States are also expected to ensure the religious and moral education of their children in conformity with their own convictions. The Limburg principles on the implementation of ICESCR<sup>44</sup> endeavor to eliminate all kind of discrimination and adopt special measures that allow disadvantaged groups access to the enjoyment of the economic, social and cultural rights.<sup>45</sup>

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41 Universal Declaration of Human Rights (UDHR), the first international document that set up human rights standards broadly accepted nowadays, did not mention in any of its provisions protection of minorities.

42 Florence Benoit-Rohmer. *op.cit.* pp.23.

43 *Supra* note 37.

44 Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, <http://shr.aaas.org/thesaurus/instrument.php?insid=94>

45 Insightful overview on the economic, social and cultural rights, also in relation to minority protection, offers a book of Asbjorn Eide, Katarina Krause and Allan Rosas (Eds.). *Economic, Social and Cultural Rights. A textbook.* Dordrecht/ Boston/ London: Martinus Nijhoff Publishers. 1995.

The first Optional Protocol to the ICCPR<sup>46</sup> allows individuals to submit complaints to the Human Rights Committee. The Human Rights Committee, an expert body, was established to monitor the implementation of the ICCPR and the Protocols to the Covenant in the territory of States parties. One part of its activities is the assessment of the reports<sup>47</sup>, which States parties must submit every five years on the legislative and implementation measures they have adopted regarding the rights recognized in the Covenant and on the progress made in the enjoyment of those rights. The other scope of Human Rights Committee competences is individual procedure mechanism, designed for individuals who claim that their rights and freedoms have been violated by the State who is the party to the Optional protocol.<sup>48</sup>

The International Convention on the Elimination of All Forms of Racial Discrimination has protective closes extending to minorities.<sup>49</sup> Under the scope of the Article 14 the Committee on the Elimination of Racial Discrimination (hereinafter: CERD),<sup>50</sup> that was the first body by the United Nations created to monitor and review States' actions taken in fulfillment of their obligations under a specific human rights agreement.<sup>51</sup> The Convention establishes three procedures to make it possible for CERD to review the legal, judicial, administrative and other steps taken by individual States to fulfill their obligations to combat racial discrimination. Firstly, all States which ratify or accede to the Convention must submit periodic reports to CERD. Secondly, the Convention provides for State-to-State complaints. And last but not least, the Convention makes possible for an individual or a group of persons who claim to be victims of racial discrimination to lodge a complaint with CERD against their State.

The Convention on the Prevention and Punishment of the Crime of Genocide<sup>52</sup> also extends its protection to minority groups, defining the genocide in the Article 2 as an acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, such as: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life

46 Adopted by the General Assembly on 16 December 1966 and entered into force on 23 March 1976. See the text at [http://193.194.138.190/html/menu3/b/a\\_opt.htm](http://193.194.138.190/html/menu3/b/a_opt.htm)

47 Article 40 of the Covenant on Civil and Political Rights.

48 Great part of the minority rights related cases decided by the Human Rights Committee are related to rights of indiginour peoples. See *Lubicon Lake Band (Bernard Ominayak) V Canada* (No 167/1984) (CCPR/C/38/D/167/1984), *Lovelace V Canada* (No.24/1977), *Mikmaq V Canada* (No.78/1980), 2 Selected Decisions 23, *Kitok V Sweden* (No. 197/1985), 1988 Report of the Human Rights Committee, GAOR 43rd Session, *Cadoret V France* (Nos 221/1987 and 323/1988 *ibid* at 219), *McIntyre V Canada*, (No. 359/1989), *Lansman V Finland* (No. 511/1992) *Guesdon V France* (No. 219/1986), *PCC V Netherlands* (No.212/1986), *Broekes V Netherlands* (No.172/1984), *Danning V Netherlands* (No.180/1984), *Blom V Sweden* (No.191/1985).

49 *Ibid.* Article 2. paragraph 2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

50 Adopted and opened for signature and ratification on 21 December 1965, entry into force 4 January 1969, [http://193.194.138.190/html/menu3/b/d\\_icerd.htm](http://193.194.138.190/html/menu3/b/d_icerd.htm)

51 Five other committees with comparable constitutions and functions have since been created: the Human Rights Committee (which has responsibilities under the International Covenant on Civil and Political Rights), the Committee on the Elimination of Discrimination against Women, the Committee against Torture, the Committee on Economic, Social and Cultural Rights, and the Committee on the Rights of the Child.

52 Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277, entered into force on January 12, 1951. <http://www1.umn.edu/humanrts/instreet/x1cpcpg.htm>

calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group.

The 1992 United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities is generally seen as the consequence of events occurred after the fall of communism. The Declaration contains a list of rights in favor of persons belonging to ethnic, national, religious or linguistic minority, and obliges State parties “to protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and encourage conditions for the promotion of that identity.”<sup>53</sup> The weak point of Declaration is lack of precise states’ obligations. Nevertheless, although it is not a legally binding document, but simply a political declaration, it represents one of the first international documents that attempted to promote protection of minority rights, and therefore “carries very considerable moral authority.”<sup>54</sup>

### **3.2. Council of Europe**

In addition to global system of the UN, the achievements in the European legislative system make this continent the starting point for a regional instrument on minorities. The minority protection in European level is achieved through the joined efforts of the Council of Europe (hereinafter: CoE) and the Organization for Security and Cooperation in Europe (OSCE) and lately by limited activities of the European Union (hereinafter: EU).

However, the process of achieving legislative framework on minority protection within these organizations is ongoing and has faced many difficulties. In first part of this section I will primary discuss the relevant provisions of the basic legal instrument of the CoE and later the scope of commitment of two bodies of the Council of Europe in minority protection: the European Court on Human Rights and the European Commission for Democracy Through Law. I should also discuss the effects of existing CoE’s instruments for minority protection: the European Convention on Human Rights, the Framework Convention for the Protection of National Minorities and the European Charter for Regional and Minority Languages.

#### **3.2.1. Minority Rights Provision in the ECHR**

The Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR) represents a catalogue of civil and political rights and freedoms and it entered into force in September 1953, after it was opened for signatures in 1950. Since the Convention’s entry into force twelve Protocols have been adopted.<sup>55</sup> Protocol No. 11, which came into force on 1 November 1998, replaced the part-time Court and Commission by a single, permanent Court of Human Rights. The Convention set up a mechanism for

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53 Article 1 of the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities.

54 Florence Benoit-Rohmer. *op.cit.* pp.24.

55 Protocols Nos. 1, 4, 6, 7 and 12 added further rights and liberties to those guaranteed by the Convention, while Protocol No. 2 conferred on the Court the power to give advisory opinions. Protocol No. 9 enabled individual applicants to bring their cases before the Court subject to ratification by the respondent State and acceptance by a screening panel. Protocol No. 11 restructured the enforcement machinery. The remaining Protocols concerned the organization of and procedure before the Convention institutions.

the enforcement of the obligations entered into by Contracting States. Three institutions were entrusted with this responsibility: the European Commission of Human Rights (set up in 1954), the European Court of Human Rights (set up in 1959) and the Committee of Ministers of the Council of Europe, the latter organ being composed of the Ministers of Foreign Affairs of the member states or their representatives.

Under the Convention in its original version, complaints could be brought against Contracting States either by other Contracting States or by individual applicants (individuals, groups of individuals or non-governmental organizations). Recognition of the right of individual application was, however, optional and it could therefore be exercised only against those States which had accepted supremacy of the Convention and the Court (Protocol No. 11 to the Convention was subsequently passed to make its acceptance compulsory).

For a very long time consensus on the general framework on minority protection has not been reached within CoE. The ECHR does not guarantee rights that are peculiar to minorities: rights and freedoms set out in the Convention are, by virtue of Article 1 of the Convention, secured to “everyone” within the jurisdiction of the High Contracting Parties. The ECHR contains no minority rights provision akin to Article 27 of the ICCPR, but prescribes in Article 14, which is the only reference to minorities is to be found in ECHR, that

*“the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”*

In 2000 the Council of Europe promulgated Protocol No.12 to the ECHR which provides right to non-discrimination separate from the other substantive articles. It came into force in 2005 after ten member states ratified it. The linkage between the ECHR and the Framework Convention has been further confirmed by a recent proposal discussed at the Parliamentary Assembly of the Council of Europe to draft an additional protocol to the Convention recognizing to the Court the competence to give advisory opinions concerning the interpretation of the Framework Convention.<sup>56</sup>

### 3.2.2. European Court of Human Rights

The European Court of Human Rights (hereinafter: the Court) set up under the ECHR as amended by Protocol No. 11 is composed of a number of judges equal to that of the contracting states. Judges sit on the Court in their individual capacity and do not represent any state. Any contracting state or individual claiming to be a victim of a violation of the Convention may seek compensation for the violation of their rights, after the legal remedies have been exhausted in their state. Although the official languages of the Court are English and French, applications may be submitted in one of the official languages of the Contracting States. All final judgments of the Court are binding on the respondent States concerned. The Committee of Ministers of the Council of Europe supervises the execution of judgments. As a part of its supervisory activities, the Committee of Ministers verifies whether States have taken adequate remedial measures to comply with the specific or general obligations arising out of the Court’s judgments in which a violation of the Convention is found.

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<sup>56</sup> Council of Europe, Parliamentary Assembly, Debate of 23 January 2001 (3rd Sitting); Rec. 1492(2000) Rights of national minorities. Stated in Roberta Medda-Windischer. *Op. cit.* pp. 3.

There is no direct way for members of minority groups to claim minority rights in Strasbourg's Court. Article 14 of the ECHR is not a freestanding non-discrimination clause like Article 27 of the ICCPR, and can only be invoked in aid with another Convention right. Furthermore, member States are permitted a margin of appreciation that is a degree of discretion to accommodate domestic factors, when the Court considers whether Article 14 has been breached. The Court has reviewed a great number of cases concerning minority rights in spite of the absence of the specific provisions for the protection of minorities in the Convention in its Protocols.<sup>57</sup>

By referring to the Framework Convention for the Protection of National Minorities, the Court acknowledged in the case *Chapman vs. the United Kingdom*<sup>58</sup> emerging international consensus amongst the Contracting States of the CoE recognizing the special needs of minorities and an obligation to protect their security, identity and lifestyle, not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity of value to the whole community. In their joint opinion, the dissenting judges in the same case stated that "this consensus ... requires not only that Contracting States refrain from policies or practices which discriminate against them (minorities, op.a.) but that also, where necessary, they should take positive steps to improve their situation through, for example, legislation or specific programs."<sup>59</sup> In respect to the implementation of the FCNM the Court stated in this judgment that its role was a strictly supervisory one.

European Court of Human Rights has been deciding in a number of cases concerning discriminatory treatments of minorities. Court's judgment in the case *Willis vs. the United Kingdom* stated that "... a difference of treatment is discriminatory if it 'has no objective and reasonable justification', that is, if it does not pursue a 'legitimate aim' or if there is not a 'reasonable relationship of proportionality between the means employed and the aims sought to be realized'."<sup>60</sup> The right not to be discriminated, as guaranteed by the ECHR, was examined with respect to minority groups in the case *Thlimmimos vs. Greece*. Discrimination exists, the Court ruled, "when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different."<sup>61</sup> The Court found that the Article 14 of the ECHR is of relevance to the applicant's complaint and applies in the circumstances of this case in conjunction with Article 9 thereof. The Court considered in its judgment that the State, having enacted the relevant legislation, violated the applicant's right not to be discriminated against in the enjoyment of his right under Article 9 of the Convention which deals with the right to manifest ones religious beliefs.

The case of *Sidiropoulos vs. Greece*<sup>62</sup> has been considered as a leading case in the Convention's case-law on minority rights and represents a "new era" of the Court's approach towards minority rights. In reaching its conclusion the Court noted that the aims of the minority association appeared to be legitimate, finding furthermore that Greek "democratic society" had to tolerate such minority associations and even protect and support them according to the principles of international law. What is particularly interesting is that the Court has referred in its reasoning in this particular to the documents of another international organization, namely Conference for Security and Co-operation in Europe (hereinafter: CSCE) Document on Human

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57 For comprehensive explanation of ECHR's legislation concerning minority rights see Roberta Medda-Windischer. *The European Court of Human Rights and Minority Rights*, Journal for European Integration, Volume 5, No. 3, September 2003. pp. 249-272. See also Geoff Gilbert. *Jurisprudence of the European Court and Commission of Human Rights in 1999 and Minority Groups*. E/CN.4/Sub.2/AC.5/2000/CRP.1, 10 April 2000

58 *Chapman vs. the United Kingdom*, ECHR. Appl. No. 27238/95, judgment of 18 January 2001.

59 *Ibid.*, para.94.

60 Eur. Ct. H.R., Appl. 36042/97, *Willis v. the United Kingdom*, judgment of 11 June 2002, para. 39.

61 *Thlimmimos vs. Greece* (2000) 31 EHRR 411, at p 424, para 44.

62 *Sidiropoulos vs. Greece*, ECHR, judgment of 10 July 1998, D.R. 98.

Dimension.<sup>63</sup> Court hesitated to evoke the Framework Convention in this particular ruling because Greece had not yet ratified the Framework Convention but was bound by the OSCE instruments. Besides, the CSCE Documents and the Framework Convention, as specified in the Preamble of the Framework Convention, are closely related.

### 3.2.3. Venice Commission

The European Commission for Democracy Through Law, an expert body of the CoE, was established in 1990, and its main activity is constitutional assistance. The Commission co-operates with the countries seeking its advice, and in that way promotes democracy, human rights and the rule of law, the basis of all the Council of Europe's activities. Within this institution's mission is also constitutional assistance to post-communist countries aiming at conforming their constitutional arrangements to the standards of Europe's constitutional heritage. The Venice Commission had proposed in 1991, the European Convention for the Protection of Minorities.<sup>64</sup> However, this insightful document has not been accepted by member States of the CoE.

### 3.2.4. Framework Convention for the Protection of National Minorities

Vienna Declaration of Head of State and Government of the member States of the CoE was the document that laid the foundation of the Framework Convention for the Protection of National Minorities, the first actual and comprehensive legally binding instrument concerning minority protection. Council of Europe's members stated in the Preamble:

*"Being resolved to protect within their respective territories the existence of national minorities, and considering that the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in European continent."*<sup>65</sup>

Ratification by the majority of CoE States indicates willingness of member states to protect and promote the rights of minorities.<sup>66</sup> It has introduced the scheme that minority communities shall be encouraged and improved prescribing legally binding minimum standards that must be met by States. It has also established values which states are obliged to implement through their national institutions such as the right to full and effective equality, education in minority languages and effective participation. The Framework Convention has predominantly flexible legal wording as a result of compromises in its drafting procedure. The

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63 Ibid., paragraphs 41 and 44. "The inhabitants of a region in a country are entitled to form associations in order to promote the region's special characteristics, for historical as well as economic reasons. Even supposing that the founders of an association like the one in the instant case assert a minority consciousness, the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Section IV) of 29 June 1990 and the Charter of Paris for a New Europe of 21 November 1990 - which Greece has signed - allow them to form associations to protect their cultural and spiritual heritage."

64 See Doc. CDL-MIN(93)6 and also the Explanatory Report on the Proposal for an European Convention for the Protection of Minorities, Doc. CDL-MIN(93)7.

65 Preamble of the FCNM, European Treaty Series, No. 157.

66 Up to date 37 of the 45 member States of the Council of Europe have ratified the Convention, giving a pan-European dimension to this treaty.

Parliamentary Assembly of the CoE requires that states applying for membership of CoE to ratify the FCNM and eventually to conform their legislation to the requirements set by FCNM.

The monitoring mechanisms which involve country visits and constructive dialogue between CoE, governments and minorities are extremely valuable component of the FCNM. The implementation of the FCNM has been assessed by the monitoring bodies: Advisory Committee, which are Committee of independent minority rights experts and the Committee of Ministers of the CoE. This assessment led to a collection of texts, adopted in a country-by-country approach, with a legal and political value. These texts are the fruit not only of an analysis of the national laws and practice concerning minorities, but also of a continuous dialogue with government and non-government actors of the countries concerned.<sup>67</sup>

### 3.2.5. European Charter for Regional and Minority Languages

Another contribution of the CoE to minority protection in its member states was the European Charter for Regional and Minority Languages (hereinafter: ECRML), open for signature in 1992. The Charter aims at protecting and preserving minority and regional languages as an essential part of the European cultural heritage. It defines regional or minority languages as non-official languages traditionally used in a country by nationals of that country who form a group numerically smaller than the rest of the country's population.

It is important to emphasize that the principle objective of this international document is to protect and promote regional or minority languages, not linguistic minorities in particular. The Charter does not establish any individual or collective rights for the speakers of minority languages, but the obligations States take in order to promote and protect minority languages. Of course, it is to expect that this kind of protection have effects on the communities using minority languages. The Charter is designed to be used as “à la carte” instrument, allowing each party to the Charter to choose certain number of provision which will be transposed to its domestic legislation and practices. The introduced flexibility of the Charter makes available its adoption as closely as possible to the specific situation of each minority or regional language. The other advantage of the Charter is that countries are not required to exceed the limits of their capabilities while applying Charter’s provisions into domestic legislation. The approach adopted in the Charter enables countries to apply only those provisions which the state is capable of applying at the time of ratification, but with the intention of applying additional provisions later. The Charter is based on 8 basic principles and a choice of 68 specific undertakings in 7 areas of public life. Each Party is required to select at least 35 of the 68 undertakings in order to be considered as a state party to the Charter. Even non-member states of the CoE are invited by the Committee of Ministers<sup>68</sup> to confirm their legislation to the Charter.<sup>69</sup> After ratifying the Charter, parties undertake number of obligations in the fields of education, judiciary, administration and public services, media, culture, economy, social life and in the cross-border exchanges.<sup>70</sup>

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67 For more information on the FCNM see Marc Weller (Ed.). *The Rights of Minorities in Europe: A Commentary on the European Framework Convention for the Protection of National Minorities*, Oxford: Oxford University Press, 2005.

68 Treaty parties to the European Charter for Regional and Minority Languages are Austria; Croatia; Denmark; Finland; Germany; Hungary; Liechtenstein; Netherlands; Norway; Slovakia; Slovenia; Spain; Sweden; Switzerland; United Kingdom.

69 Ibid. Art. 20

70 Ibid. Art. 8-14

### 3.3. Organization for Security and Co-operation in Europe

The Organization for Security and Co-operation in Europe's (hereinafter: OSCE) goals include the defending human and minority rights and building democratic institutions in member states. OSCE decisions are merely politically, but not legally binding while membership in the CoE requires state parties to implement treaties ratified in their national legislation. The question of minority protection was on the OSCE agenda from the beginning of its existence. In that time, Conference on the Security and Cooperation in Europe, in the Helsinki Final Act of 1975 prescribed the obligation of participating states:

*“on whose territory national minority exist will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere.”<sup>71</sup>*

In the Copenhagen Declaration of the Conference on the Human Dimension of the CSCE states recognized that “respect for the rights of persons belonging to national minorities is an essential factor for peace, justice, stability and democracy”.<sup>72</sup> This document was important because it stated for the first time the “possibility that positive measures, intended to restore real and effective equality with the majority, may be taken with respect to minorities without these measures being considered as discrimination against the majority”.<sup>73</sup> The Copenhagen Declaration prescribed variety general rights but was not legally binding on the states. However, it established a certain number of political principles for protection of minorities. The Charter for a New Europe, signed on November 21 in the same year, marks the awareness of the urgent need to strengthen international cooperation in this area. Emerging new democratic countries, in witch minority question was an issue of great importance, required different approaches to the problem than mature democracies. Therefore, following conference in Moscow Conference held in autumn 1991 concluded that organization should strengthen machinery for minority protection.

The Lund Recommendations on the Effective Participation of National Minorities in Public Life<sup>74</sup> were adopted by the OSCE in 1999 with the aim to encourage and facilitate States to adopt specific measures to reduce tensions related to national minorities and thus to serve as a conflict prevention measure. The Recommendations are divided into four sub-headings which group the twenty-four recommendations into general principles, participation in decision-making, self-governance, and ways of guaranteeing such effective participation in public life. The basic conceptual division within the Lund Recommendations follows two points: participation of national minorities in governance of the State as a whole, and self-governance over certain local or internal affairs.

Another two documents made by the OSCE concern minority protection: the Hague Recommendations Regarding the Education Rights of National Minorities and the Oslo Recommendations Regarding the Linguistic Rights of National Minorities whose purpose was to provide “a useful reference for the development of State policies and laws which will contribute to an effective implementation of the language

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71 Helsinki Final Act (1975), Principle VII of the “Declaration on Principles Guiding Relations between Participating States”. <http://www.osce.org/docs/english/1990-1999/summits/helfa75e.htm#Anchor-29952>

72 Copenhagen Declaration of the Conference on the Human Dimension, June 5-29, 1990.

73 Ibid.

74 The Lund Recommendations on the Effective Participation of National Minorities in Public Life , <http://www.osce.org/hcnm/documents/recommendations/lund/index.php3>

rights of persons belonging to national minorities, especially in the public sphere.”<sup>75</sup> The Hague Recommendations Regarding the Education Rights of National Minorities addresses comprehensively the use of the language or languages of national minorities in the field of education. The Oslo Recommendations Regarding the Linguistic Rights of National Minorities<sup>76</sup> attempts to provide a useful reference for the development of State policies and laws which will contribute to an effective implementation of the language rights of persons belonging to national minorities, especially in the public sphere. The Recommendations are divided into sub-headings that respond to the language related issues which arise in practice. Finally, the High Commissioner commissioned a group of experts to develop Guidelines on the use of Minority Languages in the Broadcast Media in 2003.<sup>77</sup> The Guidelines describe the standards that states should meet, based on general principles of freedom of expression, cultural and linguistic diversity, protection of identity, and equality and non-discrimination.

### **3.3.1. High Commissioner on National Minorities**

Responding to emerging ethnic conflicts Helsinki Conference in 1992 of the CSCE of that time, introduced the institution of the High Commissioner on National Minorities (hereinafter: HCNM) with the role to mediate in conflicts involving national minorities at the earliest possible stage. The HCNM might be perceived as an innovative OSCE’s instrument put forward to prevent ethno-political disputes to happen in parts of the OSCE region<sup>78</sup>, is appointed by the Council of Ministers and is required to act with total independence with respect to all parties directly involved. Although one could be misunderstood by the title of his post having an impression that the High Commissioner is intended to function as a national minorities’ ombudsman or as an investigator of individual human rights violations, this is not the case. Therefore representatives of the HCNM’s office often emphasize that the title of the institution reads High Commissioner ‘*on*’ but not ‘*for*’ national minorities.

His mandate has a twofold mission; first, to try to control and de-escalate tensions in potential ethnic conflicts and, second, to inform the OSCE countries whenever such tensions threaten to develop to a level at which he cannot contain them with the means at his disposal. Its mandate could be criticized since it is limited to “an interstate dimension of minority problems; and minorities that live entirely within one state do not fall under protection of the early-warning mechanism.”<sup>79</sup> The other limitations of the High Commissioner’s mandate are inability to involve actively, in a way of the mediator, in already outgoing violent interethnic conflicts or in conflicts that include terrorist components.<sup>80</sup> The later has been foreseen because certain Western European states (e.g. Spain, the United Kingdom) were unwilling to let the HCNM interfere in their internal issues.

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75 The Oslo Recommendations Regarding the Linguistic Rights of National Minorities & Explanatory Note, at <http://www.osce.org/hcnm/documents/recommendations/oslo/index.php3>

76 <http://www.javier-leon-diaz.com/minorities/the%20Oslo%20recommendations.pdf>

77 Guidelines on the use of Minority Languages in the Broadcast Media, at [http://www.osce.org/documents/hcnm/2003/10/2242\\_en.pdf](http://www.osce.org/documents/hcnm/2003/10/2242_en.pdf)

78 Arie Bloed and Pieter Van Dijk (Eds.). *op.cit.* pp. 17.

79 Hans-Joachim Heintze. *Minority Issues in Western Europe and the OSCE High Commissioner on National Minorities*. International Journal on Minority and Group Rights. Volume 7 Issue 4. 2000. pp. 386.

80 Walter A. Kemp (Ed.). *Quiet Diplomacy in Action: The OSCE High Commissioner on National Minorities*. The Hague: Kluwer Law International, 2001, 416 pp.

### 3.4. European Union

Even though protection of human rights, fostering democracy and the rule of law have been core values of the European Union it has been much less engaged in the issue of minority protection, compared with other European international organizations. European integration process has primarily been an economic project and therefore should not be surprising that attempts for the harmonization of legislation of the member states regarding minorities has only lately taken place within the European Commission.<sup>81</sup> The principle of non-discrimination on grounds of nationality is enshrined in the EC Treaty. The Treaty of Amsterdam extends this principle by making it possible for the Council to take action "to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation" (Articles 12 and 13 of the EC Treaty).

In spite of the interest of certain groups<sup>82</sup> to systematize the issue of minority protection the internationalization of minority-protection within European system has not yet been achieved. The absence of the minority paragraph in the EU Charter of Fundamental Rights,<sup>83</sup> which defines civil, political, economic and social rights of European citizens and all persons resident in the EU, does not contribute to the homogeneity of the issue. For that reason majority of minority rights scholars argue that the minority question in the EU is "mainly about the political willingness of using legal bases and possibilities which are already today on the disposal."<sup>84</sup>

Respect for human and minority rights is a prerequisite for countries seeking to join the Union. EU enlargement process takes into account the protection of minorities because it interprets it as an important issue of political stability of applicant states. The Amsterdam Treaty also provides that the applicant countries must respect the principles set out in Article 6(1) of the EU Treaty (Article 49 of the EU Treaty) referring to human rights, democracy and the rule of law. In addition to this, the Copenhagen Criteria for Central and Eastern European designed in 1993 for countries wishing to join the Union, stated that "membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and the respect for and protection of minorities."<sup>85</sup> The Copenhagen Criteria's demand for a demonstration of the respect for and protection of minority rights resulted with significant adjustments of new ten member countries' legislations and practices regarding minorities and contributed to the consociational power-sharing models in accession countries.<sup>86</sup> Nevertheless, the European Union's role in the insistence on the improvement of minority protection in the accession states reveals double standards since

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81 For more information see Gabriel von Toggenburg. *A Rough Orientation Through a Delicate Relationship: The European Union's Endeavors for (its) Minorities*, European Integration online Papers (EIoP), Vol4. (2000), No. 16, at <http://www.wu-wien.ac.at/eiop/pdf/2000-016.pdf>

82 See for example proposal made by the expert team of the European Academy of Bolzano, *The Package for Europe - Measures for Human Rights, Minority Protection, Cultural Diversity and Economic and Social Cohesion*, 1998, <http://www.eurac.edu/websites/EURAC/publications/package.asp>

83 The text of the Charter of Fundamental Rights at [http://www.europarl.eu.int/charter/pdf/text\\_en.pdf](http://www.europarl.eu.int/charter/pdf/text_en.pdf)

84 Gabriel von Toggenburg. *op.cit.* pp. 17.

85 The text of the Copenhagen Criteria at <http://europa.eu.int/comm/enlargement/intro/criteria.htm>,

86 See Gwendolyn Sasse. *EU Conditionality and Minority Rights in Central and Eastern Europe*. Conference "Nations, Minorities and European Integration", European University Institute, Florence, May 2004, at <http://www.iue.it/SPS/Workshops%20&%20conferences/PDFfiles/GwendolynSasse.pdf>

some older EU countries have themselves failed to ratify and implement the FCNM or even claim that there are no minorities within their territories.<sup>87</sup> The Treaty on European Constitution included protection of minority rights among its fundamental principles, thus introducing minority rights in a possibly primary law instrument of the Union.

The fact that some old member states have not signed or ratified the legally binding FCNM, create a suspicion on double standards for the current and prospective states in implementation of international minority instruments. The discrepancy in the interpretation of minority rights in member states also hinders eventual development of primary law norms on minority protection at EU level. Minority rights activists worry that once the former candidate countries will become members, the Commission will no longer be able to influence policy decisions in the field of minority protection.

## Conclusion

Undoubtedly, the variety of existing international instruments has established the base for the protection of national minorities. However, the sufficiency of existing normative arrangements in international law is dubious. Namely, the existing system for minority protection in the international level is insufficient for the actual accommodation of minorities in states they inhabit and for the fulfillment of their rights. Even though international instruments insist in implementation of the general principle of non-discrimination and of the active implementation of equality,

In addition, the international documents and policy recommendations regarding minority protection have not solved a contradiction between collective rights of a group versus citizen rights of the individual. The emphasis on the individual rights is indeed central to the existing concept of human rights protection. Nevertheless, minority rights, usually exercised with other members of a community, imply a notion of collectivity, thus expanding in the content general individual human rights. The reluctance of international law to name groups as holders of rights, rather preferring to attribute rights to members of groups, indicate inexistence of a strong international minority regime. This issue has been prescribed in the international law in 1990s such as the 1992 United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, the 1998 Council of Europe Framework Convention for the Protection of National Minorities, the series of recommendations issued by the OSCE High Commissioner on National Minorities on the educational rights (The Hague 1996), on the linguistic rights (Oslo 1998) and on the effective participation of national minorities in public life (Lund 1999). The argument on weakness of international minority rights system is additionally strengthen by the fact that majority of those documents are not legally binding, but they serve as a point of departure in shaping national minority legislation in the member states of international organization that had passed those minority protection related documents.

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87 Out of a total of ten CoE States who have not ratified the FCNM, five are existing EU members (Netherlands, Belgium, Luxembourg, France and Greece). These EU member States continue to fail to embrace pluralism and to protect minorities by failing to implement the FCNM, offering encouragement for prospective new member States such as Turkey to do likewise.

The absence of binding rules in the majority of written international law documents concerning minority protection makes the issue inadequately solved in the international level and lays emphasis on the state in the protection and promotion of internationally attained obligations. While international instruments tends to establish basic rights for minority groups without explicitly recognizing them, national laws legally recognize differences and prescribe measures, often deriving from international law, specifically directed to minority communities. Apart from legislative frameworks at national level, very often positive measures by states are necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practice their religion. In democratic states committed to human rights, the accommodation of existing diversity through the protection of the rights of minorities constitutes an important matter of policy and law. Failure to achieve the appropriate balance may be the source of inter-ethnic tensions and conflicts.

**Bibliography**

- Gudmundur Alfredsson and Asbjorn Eide. *The Universal Declaration of Human Rights: a common standard of achievement*. The Hague: Kluwer, 1999.
- Florence Benoit-Rohmer. *The Minority Question in Europe*. Strasbourg: Council of Europe Publishing, 1996.
- Thomas Buergenthal. *International Human Rights in a Nutshell*
- Francesco Capotorti. *The Protection of Minorities under Multilateral Agreements on Human Rights*. The Italian Yearbook of International Law, 1976, II, 14.
- Francesco Capotorti. *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*. Geneva UN Center for Human Rights, UN Doc E/CN.4/Sub.2/384/Add.1-7.
- Asbjorn Eide, Katarina Krause and Allan Rosas (Eds.). *Economic, Social and Cultural Rights. A textbook*. Dordrecht/ Boston/ London: Martinus Nijhoff Publishers, 1995.
- Carole Fink. *The League of Nations and the minority question*. World Affairs, Spring 95, Vol. 157 Issue 4, 9p.
- Ernest Gellner. *Nations and Nationalism*. Oxford: Blackwell, 1983.
- John S Gibson. *Dictionary of international human rights law*, Lanham: Scarecrow, 1996.
- Geoff Gilbert. *Jurisprudence of the European Court and Commission of Human Rights in 1999 and Minority Groups*. E/CN.4/Sub.2/AC.5/2000/CRP.1, 10 April 2000
- Hans-Joachim Heintze. *Minority Issues in Western Europe and the OSCE High Commissioner on National Minorities*. International Journal on Minority and Group Rights. Volume 7 Issue 4. 2000.
- Louis Henkin. *The age of rights*. New York: Columbia University Press, 1990.
- Konrad Huber and Robert W. Mickey. *Defining the Kin-State: An Analysis of its Role and Prescriptions for Moderating its Impact* in Arie Bloed and Pieter Van Dijk (Eds.). *Protection of Minority Rights Through Bilateral Treaties. The Case of Central and Eastern Europe*. The Hague/London/Boston: Kluwer Law International, 1999.
- Walter A. Kemp (Ed.). *Quiet Diplomacy in Action: The OSCE High Commissioner on National Minorities*. The Hague: Kluwer Law International, 2001.
- Miran Komac. *Nationalities and Minorities in Yugoslavia*. European Minorities. Contemporary European Affairs. Volume 4, Issue 4, 1991.
- Natan Lerner. *Group Rights and Discrimination in International Law*. Dordrecht/Boston/London: Martinus Nijhoff Publishers, 1991.
- Roberta Medda-Windischer. *The European Court of Human Rights and Minority Rights*, Journal for European Integration, Volume 5, No. 3, September 2003. pp. 249-272.
- Alexander Morawa. *The Concept of Non-Discrimination: An Introductory Comment*. JAMIE, European Centre for Minority Issues, Issue 3/2002, [http://www.ecmi.de/jemie/download/Focus3-2002\\_Morawa.pdf](http://www.ecmi.de/jemie/download/Focus3-2002_Morawa.pdf)
- Francesco Palermo and Jens Woelk. *No Representation Without Recognition. The Right to Political Participation of (National) Minorities*. Journal for European Integration, Volume 5, No. 3, September 2003. pp. 225-248.
- Gaetano Pentassuglia. *Minorities in International Law*. Strasbourg: ECMI Handbook Series, 2002.

Gwendolyn Sasse. *EU Conditionality and Minority Rights in Central and Eastern Europe*. Conference “Nations, Minorities and European Integration”, European University Institute, Florence, May 2004, at <http://www.iue.it/SPS/Workshops%20&%20conferences/PDFfiles/GwendolynSasse.pdf>

Jay A. Sigler. *Minority Rights. A Comparative Analysis*. Westport, Connecticut/London, England: Greenwood Press. 1983.

Patrick Thornberry. *An Unfinished Story of Minority Rights*. pp. 47 in Anna-Maria Biro and Petra Kovacs (Eds.) *Diversity in Action: Local Public Management of Multi-Ethnic Communities*.

Patrick Thornberry. *International Law and the Rights of Minorities*. Oxford: Clarendon Press. 1991.

Snezana Trifunovska (Ed.). *Minorities in Europe. Croatia, Estonia and Slovakia*. The Hague: T.M.C. Asser Press. 1999.

Max van der Stoep. *Peace and Stability through Human and Minority Rights*. Baden-Baden: Nomos Verlagsgesellschaft, 2001.

Gabriel von Toggenburg. *A Rough Orientation Through a Delicate Relationship: The European Union's Endeavors for (its) Minorities*, European Integration online Papers (EIoP), Vol4. (2000), No. 16.

Marc Weller (Ed.). *The Rights of Minorities in Europe: A Commentary on the European Framework Convention for the Protection of National Minorities*, Oxford: Oxford University Press, 2005.

**List of acronyms used in the paper:**

CoE	Council of Europe
CROC	UN Convention on the Rights of the Child
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECOSOC	United Nations' Economic and Social Council
ECRML	European Charter for Regional and Minority Languages
EU	European Union
FCNM	Framework Convention for the Protection of National Minorities of the Council of Europe
HCNM	High Commissioner on National Minorities
ICCPR	UN International Covenant on Civil and Political Rights
ICESCR	UN International Covenant on Economic, Social and Cultural Rights
ICERD	UN International Convention on the Elimination of All Forms of Racial Discrimination
OSCE	Organization for Security and Cooperation in Europe
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees