INTERNATIONAL LEGAL PROTECTION OF LINGUISTIC MINORITIES

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Abstract

The paper focuses on the issue of protection of language minorities. The theoretical significance of the research consists in the consideration of the phenomenon of “linguistic minority”. The article makes an attempt to reveal international documents implied in this field. Methodological and dialectical approaches are used in the article to determine the scope of the research and examine the ration between the adopted international and regional legal instruments.

The phenomenon of discrimination existed throughout human history, beginning with the emergence of states. The decisions adopted by the country's views to protect linguistic minorities differ significantly for social and political reasons. The prohibition of discrimination at the international level has become a powerful incentive for the emergence of relevant norms of the national legal systems.

Nevertheless, despite the existence of an extensive regulatory framework, the discrimination of linguistic minorities remains one of the most challenging problems of the modern world, which is global in nature, existing in all countries of the world and affecting these segments of population. At a new stage of globalization, which accompanies such negative phenomena as mass migration, terrorism, the desire of separate states and large corporations to extract maximum profits, polarization in society and inequality is intensifying.

This article is inherently an analysis of the international legal protection of linguistic minorities. The aim of the research is to form ideas on the effectiveness of the development of international legal norms, aimed at combating discrimination of linguistic minorities; analysis of various approaches to its content; existing international-legal acts providing for a general prohibition of discrimination and its different types; gaps in the international-legal regulation of protection against discrimination of linguistic minorities.

In the article we applied general scientific methodological approach, which allowed to determine the scope of the research, specifying the basic concepts and categories relating to the international legal protection of linguistic minorities. We also applied the dialectical approach in order to examine the ratio between the adopted international and regional legal instruments on the protection of minority rights and specifically of linguistic minority rights and systematic approach that provides with the opportunity to put the emphasis on the interaction of phenomena, their unity, interrelation, and integrity.

Keywords: legal framework; protection of minority rights; linguistic minorities; international system; international-legal regulation; international norms and standards; international legal instruments; human rights.

1. INTRODUCTION

In all countries of the world minorities were and still represent one of the most vulnerable groups of people who continue to face multiple forms of discriminatory treatment for no other reason than the mere fact that
they differ from the rest of population in one or another way.

The ethnic groups or population minorities have existed in communities through the ages. For the first time it was in the middle of the XVI century when the attention of international community was drawn to the problem of minority protection though the earliest international treaties aimed at securing the special community rights of persons belonging to minorities reflected only the interests of religious minorities. [1; 11]

However, as A. Abashidze states, only in the XIX century minority issues gained international character and became a subject of international legal regulation. [1; 17] Along with this, modern nation-states, associated with the beginning of the modern era of most European societies, were more concerned about the protection of the idea of “nation-state” based on the principle of self-identification than about the protection of minorities as such. According to the definitions of UNESCO (Nation-State // UNESCO) “The nation-state “is one where the great majority is conscious of a common identity and share the same culture”.

By the beginning of the XX century minority issues reached the top of the international legal agenda. After World War I boundaries of many Eastern and Central European states were rearranged. Contrary to the dominance of nationalist aspirations that the boundaries of the nation and the state should coincide, creation of a separate nation-state for every nation was impossible. As a result, a peaceful coexistence between old and new majorities and minorities became a central concern for the reconfigured states, particularly, as D. Wippman underlines, for those that embodied previously separated ethnic groups [2]. Bearing in mind that instability in the new states could pose a threat to international peace, the first international system of the minority rights protection was established. For its creation the League of Nations adopted several special agreements with the countries of Eastern and Central Europe [3]. These treaties ordinarily included provisions mandating nondiscrimination and equality and focused on the positive steps to be taken in order to enable minorities to maintain elements of their self-identification, i.e. culture, language, religion, etc.

Since the proclamation of the principle of non-discrimination in the UN Charter it has been firmly established in the international legal system and has become an imperative norm of jus cogens. The principle is not a static category, but is in a constant development process. The practice of its application revealed the factors that limit its effect, which do not correspond to modern ideas about the essence of this principle. Today, it is required that the prohibition of discrimination extend to all rights provided for minorities by regulatory enactments, and not only those that are regulated by specific international treaties.

As The UNESCO estimates, nowadays more than 6000 languages are spoken all over the world, from which the significant number can be classified as minority languages [5]. Language constitutes a core and integral part of everyday life, culture and identity of any community. Linguistic issues are of great importance for linguistic minorities since minority languages serve as a means of expressing and preserving their group and cultural identity that can be a very challenging goal to achieve, especially for those linguistic minorities who experience exclusion, marginalization or discrimination, including on the grounds of their ethnicity, nationality or religion inasmuch as linguistic minorities may also concurrently be national, ethnic or religious ones. Nowadays linguistic minorities from all regions of the globe are facing difficulties in enjoying their rights. These difficulties are diverse and there are, restrictions on the use of minority languages in education, limitations on the use of these languages in public life and the media, poor provision of information and services in these languages, etc. [4; 3]

The essence of the international legal protection of linguistic minorities is the prohibition of any obstacles to the achievement of legal equality, and is now filled with new content: providing additional guarantees for this category of people in the most vulnerable position, whose capacity is not sufficient to achieve genuine legal equality with the rest of the population. International law, which enshrines the principle of non-discrimination in its norms, has had a progressive impact on bringing national legal systems towards linguistic minorities in line with international humanitarian standards. Its operation extends to all rights and freedoms: civil, political, economic, social and cultural linguistic minorities.

2. MATERIAL AND METHODS

This paper is a content analysis of relevant scholarly theoretical-methodological research, as well as of results obtained in the course of the research confirmed by a diversity of the implied research methods, by the in-depth and thorough examination, and by a wide range of normative sources and materials.

The current literature contains a certain set of approaches to conceptualizing the essence and content of a “linguistic minority”. The issue of “linguistic minority” was dealt by Lino Panzeri (La tutela dei diritti linguistici nella Repubblica delle autonomie. 2016) from the legal and linguistic points of view. Independent Expert on minority issues, Rita Izsák-Ndiaje [4] identifies and discusses nine areas of concern:
1) Threats to the existence of minority languages and linguistic minorities;
2) Recognition of minority languages and linguistic rights;
3) The use of minority languages in public life;
4) Minority languages in education;
5) Minority languages in the media;
6) Minority languages in public administration and judicial fields;
7) Minority language use in names, place names and public signs;
8) Participation in economic and political life; and
9) The provision of information and services in minority languages.

In 1979 Francesco Caportorti, Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, offered the following definition of a “minority” formulated in the context of article 27 of the ICCPR, which has subsequently found the widest recognition in theory and practice: “<g>roup numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language” [6: 4]. This definition contains four primary criteria:

Objective criteria
1) Numerical inferiority of the group;
2) Its non-dominant position in relation to the whole population;
3) Difference of its ethnic, religious, and linguistic characteristics and traditions from those of the rest of population;

Subjective criterion
4) The wish of the group to preserve its special characteristics and culture [7: 123].

The theoretical significance of the research consists in the consideration of the phenomenon of “linguistic minority”, which has been slightly examined in the international legal discourse.

The thesis are: to trace the origins of the international system of the minority rights protection; to examine the contemporary legal frameworks for the protection of minority rights that exist at the universal and regional (Council of Europe) levels; to consider the concepts of “minority” and “linguistic minority”; to deduce the existing universal and regional legal frameworks for the protection of linguistic minority rights and to define the scope of the rights of linguistic minorities.

In the thesis we applied a general scientific methodological approach, which allowed to determine the scope of the research, specifying the basic concepts and categories relating to the international legal protection of linguistic minorities, denoting the key conceptual aspects of the research topic. We also applied the dialectical approach and a systematic approach that provides with the opportunity to put the emphasis on the interaction of phenomena, their unity, interrelation, and integrity.

3. RESULTS AND DISCUSSION

3.1 Legal Framework for the Protection of Minority Rights: Universal Level

After World War II the Organization of the United Nations gradually developed its own system of minority rights protection embracing special norms, procedures and mechanisms, although the new organization did not initially pay much attention to the problem of minority protection as a separate matter of concern.

The first UN treaty that contained a minority-specific provision was the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG) that prohibited in article 2 the destruction, in whole or in part, of “a national, ethnical, racial or religious group, as such”. The relevant specific provisions of the subsequent treaties prohibited discrimination against minorities. Thus, the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) prohibits in article 1 discrimination on the grounds of “race, colour, descent, or national or ethnic origin”, while the 1966 International Covenant on
Economic, Social and Cultural Rights (ICESCR) does the same in article 2 (2) on a more extensive list of grounds that includes “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” [8], thus covering not only national or ethnic minorities, but also religious and linguistic ones.

It follows that minority rights drew close attention as a separate issue and were generally recognized only after the end of Cold War [3: 81]. Accordingly, the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UNDM) [9] was adopted by the General Assembly only in 1992. Notwithstanding its non-binding nature, this document is one of the most outstanding contributions of the United Nations to the advancement of the rights of persons belonging to minorities for two reasons: firstly, it was the first document that dealt solely with minority rights’ issues and, secondly, it was this document that established and fixed the main international norms and standards on the enforcement of minority rights. The Declaration ensures the minorities: a) protection of their existence and their national or ethnic, cultural, religious and linguistic identity (Art. 1); b) the right to enjoy their own culture, to profess and practice their own religion, and to use their own language in private and in public (Art. 2 (1)); c) the right to participate effectively in cultural, religious, social, economic and public life (Art. 2 (2)); d) the right to participate effectively in decisions which affect them on the national and regional levels (Art. 2 (3)); e) the right to establish and maintain their own associations (Art. 2 (4)); f) the right to establish and maintain peaceful contacts with other members of their group and with persons belonging to other minorities (Art. 2 (5)); g) the freedom to exercise their rights, individually as well as in community (Art. 3).

As for the International Labor Organization (ILO), it did not adopt any specific standards for minorities, but some of its core instruments have a direct impact on their well-being in terms of non-discrimination, for instance: a) the 1957 Abolition of Forced Labor Convention (No. 105); b) the 1958 Discrimination (Employment and Occupation) Convention (No. 111), which prohibits discrimination in employment and occupation “on the basis of race, color, sex, religion, political opinion, national extraction or social origin”; c) the 1998 Declaration on Fundamental Principles and Rights at Work, which provides that all Member-States of ILO have an obligation to respect the principles concerning the fundamental rights”.

In this connection we may also give some relevant examples of soft law, in particular: a) the 2005 Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UNDM); b) the General comment No. 23 (1994) of the Human Rights Committee (CCPR) on the rights of minorities; c) the General comment No. 14 (2000) of Committee on Economic, Social and Cultural Rights (CESCR) on the right to the highest attainable standard for minorities [10: 15,16].

The lack of space allows us to mention some more committees only within the UN human rights system committees of independent experts, known as treaty bodies: the Human Rights Committee; the Committee on Economic, Social and Cultural Rights; the Committee on the Elimination of Racial Discrimination; the Committee on the Rights of the Child; the Committee on the Elimination of Discrimination against Women; the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families; and the Committee on the Rights of Persons with Disabilities [10: 19].

A significant role in the promotion and protection of the rights of persons belonging to minorities is also played by the High Commissioner for Human Rights and Office of the High Commissioner for Human Rights (OHCHR). OHCHR deals with minority issues through its global, thematic work and more than 50 field presences, which enable minorities to communicate directly with UN staff and participate in relevant programming, training and monitoring activities. It also services the main UN human rights bodies and mechanisms and leads inter-agency work on minorities.

### 3.2 Legal Framework for the Protection of Minority Rights: Regional Level (Council of Europe)

The Council of Europe established in 1949 is an international intergovernmental organization composed of 47 Member States. The organization seeks to protect human rights, democracy and the rule of law. Inter alia, it pursues such objectives as to encourage the development of Europe’s cultural identity and diversity, to find solutions to diverse problems facing European society, and to consolidate democratic stability in Europe. The CoE has two main treaties on minority rights, namely the Framework Convention for the Protection of National Minorities (FCNM) and the European Charter for Regional or Minority Languages (ECHRML).

Two more European regional inter-governmental organizations, namely the EU and the OSCE, have also
contribute to the protection of minorities, but in this work we examine only the main relevant standards of the CoE and their respective monitoring bodies.

The FCNM aims to protect the existence of national minorities within the territories of its State parties. It also seeks to promote the full and effective equality of national minorities by means of creating appropriate conditions that would enable them to preserve and develop their culture and identity. Although the FCNM is focused on national minorities exercising their individual rights in community with others, there is a collective element in the implementation of the rights set forth in it.

The ECRML entered into force in 1998. It aims, on the one hand, to protect and promote regional or minority languages, which represent a particularly vulnerable and endangered part of the cultural heritage of Europe, and, on the other hand, to provide their speakers with an opportunity of using these languages both in private and public life. The ECRML deals with regional and minority languages, non-territorial languages and less widely used official languages.

The ECtHR is an international court, which was set up in 1959 and which became the first human rights full time court in the world in 1998. It rules on individual or State applications alleging violations of the human rights guaranteed by the ECHR. Rulings of the ECtHR are legally binding on the States Parties and are enforced by the Committee of Ministers of the CoE. On the basis of a report on each ruling the Committee prepares a resolution, in which it specifies the type of reform necessary for changing domestic law in order to satisfy the judgment of the Court.

The jurisprudence of the ECtHR is enormous, and certain minority issues have also been brought up in cases before the Court. It should also be pointed out that, since the ECHR contains no minority rights provision, there is no way in which minorities’ members can directly claim “minority rights” before the ECtHR.

In a number of cases the ECtHR has also dealt with linguistic rights, especially those of linguistic minorities’ members and foreign citizens, under different rights protected by the ECHR. The ECtHR has consistently held that linguistic freedom per se was not one of the rights and freedoms guaranteed by the ECHR, and that, with the exception of the specific rights contained in articles 5 (2) and 6 (3(a, e)) related to the context of judicial proceedings, the Convention as such did not govern the right to use a particular language in communications with public authorities or the right to receive information in a language of one’s choice. The Court also affirmed that the Contracting States were in principle free to impose and regulate the use of their official language or languages in identity papers and other official documents, for the purposes of linguistic unity. Thus, regarding the spelling of surnames and forenames according to minority languages, which falls within the scope of article 8 of the Convention, the ECtHR granted a wide margin of appreciation to States in view of the existence of a great number of historical, linguistic, religious and cultural factors in each country and the absence of a European common denominator (see Mentzen v. Latvia (dec.) (2004), Bulgakov v. Ukraine (2007)).

As for linguistic rights in the field of education, article 2 of Protocol No. 1 does not specify the language in which education must be conducted in order that the right to education should be respected (Case “relating to certain aspects of the laws on the use of languages in education in Belgium” (1968)). In addition, the right of parents to ensure such education in conformity with their own religious and philosophical convictions does not also cover linguistic preferences (Ibid. § 6). The Court therefore excluded the right to obtain education in the language of one’s choice (Ibid.§ 11).

3.3 Linguistic Minorities as a Special Category of International Legal Regulation

It turns out that despite the fact that a diversity of international human rights standards for protecting minority rights has been elaborated since the XX century, there is still no concurrent universally accepted definition of the term “minority” in the modern international legal sphere because of a great variety of manifestations of this phenomenon.

This circumstance has also led to the lack of consensus on the question of minorities’ classification. In this work, we adhere to the classification presented in the UNDM, which differentiates three categories of minorities: national or ethnic, religious and linguistic.

In the absence of a definition that would satisfy the interests of all members of the world community, each State develops its own definition of minorities on the basis of its political considerations, but with due regard to the international legal requirements.

At the same time the following definition seems to be quite widely used: “A minority is a national, ethnic, religious or linguistic group that differs from the other groups within the territory of the sovereign State.”
It has been often highlighted that the existence of a minority is a question of fact, but not of States’ decision on whether or not to recognize this group of population within their territories. Further, it is commonly accepted that the definition of the term “minority” should reflect both objective and subjective factors/criteria. These criteria have been developed by various UN independent experts on the basis of international standards. The objective criteria encompass the shared characteristics of the group such as ethnicity, national origin, culture, language or religion. These categories derive from the UNDM and article 27 of the ICCPR. The subjective criteria address two key issues: the principle of self-identification and the desire to preserve the group’s identity. According to the principle of self-identification, individuals belonging to minority groups have the right to self-identify as a minority or to not self-identify as a minority (Art.3(2) of the UNDM). A minority community has the right to assert its status as a minority and, as a result of that, to claim minority rights. Individuals can claim their membership in such a community on the basis of objective criteria. The preservation of the minority group identity depends on the expressed will of the minority community.

In the UN human rights system the term “minority” usually refers to national or ethnic, religious and linguistic minorities, pursuant to the UN Minorities Declaration.

Returning to the definition of a “minority” formulated Mr. Capotorti, in 1984, in the course of the work that would finally result in the adoption of the UNDM, the Commission on Human Rights charged the Sub-Commission to reconsider this definition. Eventually, Jules Deschênes, member of the Sub-Commission, proposed the following definition: “A group of citizens of a State, constituting a numerical minority and in a non-dominant position in that State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law”. This definition didn’t substantially differ from the one developed by Mr. Capotorti and was criticized on the nearly same grounds.

As a result, the UNDM covers persons belonging to “national or ethnic, religious and linguistic minorities”, but doesn’t define either a minority per se or any of those mentioned. Further, both article 27 of the ICCPR and article 30 of the CRC refer to “ethnic, religious or linguistic” minorities, but do not define them as well.

Moving forward, it turns out that instruments adopted by the CoE refer only to “national minorities” and that the efforts made within the organization to define a “minority” have been fruitless too. In particular, the FCNM, which is the only existing legally binding international instrument for minority protection, doesn’t define a “national minority”. As a result, several States have formulated their own definitions when they ratified the Convention. Many of these definitions exclude non-citizens and migrants from the protection of the FCNM, and some of them identify the specific groups to whom the Convention will apply.

The text of the proposal for an additional protocol on the rights of minorities to the ECHR, which was adopted by the PACE in 1993, contained the following definition of “national minority” in its article 1: “…a group of persons in a State who: a. reside on the territory of that state and are citizens thereof; b. maintain longstanding, firm and lasting ties with that state; c. display distinctive ethnic, cultural, religious or linguistic characteristics; d. are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state; e. are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language”. In comparison with the definitions formulated by Mr. Capotorti and Mr. Deschênes this one lacks the requirement to be in a non-dominant position, but introduces the requirement of “longstanding, firm and lasting ties” with a State and a numerical threshold.

As for the concept of a “linguistic minority”, it represents the topic of different fields of research. The most outstanding of them are linguistics and law, which, unfortunately, have not sufficiently interacted in the past. This has undeniably led to negative consequences, e.g. some scholars maintain that the legal framework for the protection of specifically linguistic minority rights is far for being adequate since it is insufficient in most cases.

In the international legal sphere, as a result of the complexity of the phenomena represented by “minorities”, the state of affairs regarding the definition of the term “linguistic minority” is exactly similar to the one of the term “minority” to the extent that there exists no generally recognized legal definition of this expression and that any international human rights standard for protecting minority rights contains no suggestion on this issue. Nevertheless, we believe that in general terms a “linguistic minority” may be defined, by analogy to the definition of a “minority” that we adhere to, as a linguistic group that differs from the other groups within the territory of the sovereign State.

In its 2005 Commentary to the UNDM the Working Group on Minorities noted that the Declaration does not,
in its substantive provisions, make distinctions between rights of different categories of minorities. In fact, human rights are universal by definition and therefore the whole range of internationally recognized human rights standards and principles protect the rights of linguistic minorities and of minorities in general. But for linguistic minorities language is a central element and expression of their identity and of key importance in the preservation of their distinct group and cultural identity, sometimes under conditions of marginalization, exclusion and discrimination.

In 2015 the Special Rapporteur on minority issues has developed draft of the handbook called “Language Rights of Linguistic Minorities”. According to this draft, “language rights” and “linguistic human rights” are human rights which embrace language preferences of or use by state authorities, individuals and other entities. But the first ones are usually considered broader than the second. Linguistic human rights represent a combination of legal requirements, which are based on human rights treaties and guidelines to States on how to address languages or minority issues, and potential impacts associated with linguistic diversity within a State. These rights can be described as “a series of obligations on state authorities to either use certain languages in a number of contexts, not interfere with the linguistic choices and expressions of private parties, and may extend to an obligation to recognize or support the use of languages of minorities or indigenous peoples”.

Various human rights and freedoms provisions cover language rights, such as the prohibition of discrimination, freedom of expression, the right to private life, the right to education, and the right of linguistic minorities to use their own language with others in their group.

The UNDM further elaborates the rights of minorities, including regarding language, and imposes positive obligations on States and the requirement for positive measures that go beyond standard non-discrimination provisions contained in other international standards. The following provisions of the Declaration are of particular importance for linguistic minorities: under article 1, States shall (a) protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories, (b) encourage conditions for the promotion of that identity and (c) adopt appropriate legislative and other measures to achieve those ends; under article 2 (1), members of national or ethnic, religious and linguistic minorities have the right to enjoy, freely and without interference or any form of discrimination, their culture, religion, and language, in private and in public; under article 4(2-3), States have to protect and promote the rights of persons belonging to national or ethnic, religious and linguistic minorities by virtue of taking measures to create favorable conditions to enable them to express their characteristics and to develop their culture, language, religion, traditions and customs and to provide them with adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.

As it appears from the existing legal framework, the core language rights operate at the level of the following base points: dignity, liberty, equality and non-discrimination, and identity.

In the 2003 guideline document of UNESCO “Education in a Multilingual World”, various recommendations of the UN Forum on Minority Issues on implementing the UNDM describe basic approaches to meet their human rights obligations involving language, according to which they must: a) respect the integral place of language rights as human rights; b) recognize and promote tolerance, cultural and linguistic diversity and mutual respect; c) have in place legislation and policies that address linguistic human rights; d) implement their human rights obligations by generally following the proportionality principle in the use of or support for different languages; e) integrate the concept of active offer as an integral part of public services to acknowledge a state’s obligation to respect and provide for language rights; f) have in place effective complaint mechanisms before judicial, administrative and executive bodies to address and redress linguistic human rights issues.

4. CONCLUSION

Contemporary international law has considerable potential to combat various types of discrimination based on a number of international agreements, thanks to which considerable success has been achieved, and, first of all, condemnation of discrimination, as a result, in most cases it is not open and odious character. An essential shortcoming of the international legal system is the absence of a single universal international act, aimed at eliminating all forms of discrimination. The capabilities of modern information technologies are often used by destructive forces to spread the ideas of intolerance around the world, so an international treaty must be adopted to combat the dissemination of materials provoking human rights abuses on the Internet.

The contemporary universal legal framework for the protection of minority rights encompasses eight binding documents and one non-binding. The most of them contain only relevant anti-discrimination provisions owning
to which they are nevertheless of particular significance for minorities’ protection. At the universal level the ICCPR (Art.27), CRC (Art.30) and UNDM can be regarded as the most important legal instruments concerned with the minority rights protection.

The contemporary legal framework of the CoE for the protection of minority rights includes three main legal instruments, which refer to specifically national minorities. The respective mechanisms include one international court and two monitoring bodies. The jurisprudence of the ECtHR is enormous, and certain minority issues have also been brought up in cases before the Court.

Notwithstanding the fact that nowadays there exist a good number of international legal instruments that are devoted to the minority rights protection or contain some minority-specific provisions; there is still no concurrent universally accepted definition of the term “minority” in the modern international legal sphere because of a great variety of manifestations of this phenomenon. This circumstance has also led to the lack of consensus on the question of minorities’ classification. The classification presented in the UNDM distinguishes only three categories of minorities: national or ethnic, religious and linguistic.

Various UN bodies, researchers as well as organizations have made attempts to formulate an apt definition of a “minority”. It has been often highlighted that the existence of a minority is a question of fact, but not of States’ decision on whether or not to recognize this group of population within their territories. Further, it is commonly accepted that the definition of the term “minority” should reflect both objective and subjective factors/criteria. The objective criteria encompass the shared characteristics of the group such as ethnicity, national origin, culture, language or religion, while the subjective criteria address the principle of self-identification and the desire to preserve the group’s identity. The main shortcoming of the most well-known definitions of a “minority” that have been proposed at different times was the inclusion of the nationality criterion. In fact, minorities don’t have to be citizens in order to claim basic minority rights, but historically resident minorities may have claims to greater positive measures than those minorities who have more recently arrived.

No universal legal act, which is concerned with the minority rights protection, defines either a minority per se or any category of minorities. Further, the legal instruments of the CoE refer only to “national minorities”, and the efforts made within the organization to define a “minority” have been fruitless too.

In the absence of a definition that would satisfy the interests of all members of the world community, each State develops its own definition of minorities on the basis of its political considerations, but with due regard to the international legal requirements.

As for the concept of a “linguistic minority”, it represents the sphere of interest of both linguistics and law, which, unfortunately, haven’t sufficiently interacted in the past, and that has undeniably led to negative consequences. In the international legal sphere, as a result of the complexity of the phenomena of “minorities”, the situation regarding the definition of the term “linguistic minority” is exactly similar to the one of the term “minority” to the extent that there exists no generally recognized legal definition of this expression and that any international human rights standard for protecting minority rights contains no suggestion on this issue.

We adhere to the definition of a “minority” which states that it is “a national, ethnic, religious or linguistic group that differs from the other groups within the territory of the sovereign State”. We believe that, by analogy to this definition, a “linguistic minority” may be defined in general terms as a linguistic group that differs from the other groups within the territory of the sovereign State.

The whole range of internationally recognized human rights standards and principles protect the rights of linguistic minorities and of minorities in general since human rights are universal by definition. For linguistic minorities, language is a central element and expression of their identity and of key importance in the preservation of their distinct group and cultural identity, sometimes under conditions of marginalization, exclusion and discrimination. For this reason, language rights and linguistic human rights, from which the first ones are usually considered broader, are of particular importance for linguistic minorities. Various human rights and freedoms provisions cover language rights, such as the prohibition of discrimination, freedom of expression, the right to private life, the right to education, and the right of linguistic minorities to use their own language with others in their group.

Language rights have also been elaborated upon in various international quasi-legal instruments.

As it can be deduced from the existing international legal and quasi-legal framework, the core language rights operate at the level of such base points as dignity, liberty, equality and non-discrimination, and identity.
International law allows, in certain cases, restrictions in the rights. The legality of the restrictions lies in their compliance with the following criteria: enforcing the law, applying exclusively to protect the most important values, compatibility with the nature of specific rights, applicability to all, and not to members of individual social groups. Non-compliance with these criteria may indicate discrimination. Positive actions, aimed at achieving legal equality must also meet strict criteria, otherwise they can lead to discrimination: they should be used only to ensure proper progress of target groups, preserve their identity or achieve genuine legal equality in the exercise of rights and freedoms; they must to be temporary, when determining their users, the state should apply an individual approach, they should not contradict the essence of a specific rights.

Discrimination entails suffering and threat to the lives of millions of people around the world: from feelings of humiliation and insult to physical destruction. It is based primarily on human vices, as well as inadequate legal framework aimed at eliminating it. Today, everyone realizes that discrimination is unjust in nature, and this was largely facilitated by its prohibition at the international level. The principles of equality and non-discrimination are those ideas, to which humanity should strive to achieve, with maximum efforts. They will contribute to peace and prosperity on Earth.

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