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The international standards of the rights of minorities in Europe

The article discusses the legal regulation of the status of minorities Council of Europe, the importance of protecting persons belonging to national minorities, as an integral part of the international protection of human rights in the interests of equality, justice, stability, democratic security and peace in Europe. According to the UN Declaration on the Rights of Minorities, said about minorities as original national or ethnic, cultural, religious and linguistic groups, and obligation of states to protect their existence provides.

Key words: Minorities, Council of Europe, Framework Convention for the Protection of National Minorities, the legal regulation of the status of minorities, international legal acts.

The value of protection of persons belonging to national minorities as part of the international protection of human rights in the interests of equality, justice, stability, democratic security and peace in Europe was the most important task of the Council of Europe. The main instrument of the Council of Europe for the protection of minority rights is the «Framework Convention for the Protection of National Minorities» (hereinafter referred to as «the Framework Convention») [1]. The preamble of the Framework Convention recognizes that the turmoil of European history have shown that the protection of national minorities is essential to stability, the protection of democracy and peace on the continent. It emphasizes, among other things, that a pluralistic and truly democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop their identity. Thus, Member States are required to take action. It also declares that «the creation of a climate of tolerance and dialogue is necessary to ensure that the cultural diversity could be a source and a factor, not of division, but of enrichment for each society».

As the UN Charter [2], and the basic documents of the Organization for Security and Cooperation in Europe (hereinafter — OSCE) aimed at maintaining and strengthening international peace and security through the development of friendly relations and cooperation between equal sovereign States, to respect human rights, including the rights of persons belonging to minorities. Indeed, history shows that lack of respect for human rights, including minority rights, can lead to undermining domestic stability and negatively affect relations between States, thus endangering international peace and security.

Beginning with Principle VII of the Decalogue, enshrined in the Helsinki Final Act of 1975 [3], states — OSCE participating States have emphasized the fundamental link between respecting the legitimate interests of persons belonging to national minorities and the preservation of peace and stability. In this connection again and again stated in the founding documents of the later, particularly in the Concluding document of the Madrid Meeting (1983) [4] (Principle 15), Concluding document of the Vienna Meeting (1989) [5] (principles 18 and 19) the Charter of Paris for a New Europe (1990) [6], as well as in documents subsequent summits, such as the Helsinki Document (1992) [7] (item 24 of Part IV) and Lisbon document 1996 [8] (Part I, Lisbon Declaration on a Common and Comprehensive Security Model for Europe XXI Century, paragraph 2). In addition, by adopting the Charter of Paris for a New Europe, all states — participants of the OSCE expressed its commitment to the principles of democratic governance.

Creating equal opportunities for all-round enjoyment of human rights by persons belonging to minorities includes their effective participation in decision-making, especially those that directly affect them. Although the exact situation may be very different, and to meet the needs and aspirations of minorities can be quite normal democratic procedures, the experience also shows that for the effective participation of minorities in decision-making is often necessary to take special measures. The obligation of States to do so in such cases recorded in a number of international standards: for example, in accordance with paragraph 35 of the Document of the Copenhagen meeting of the Conference on the human dimension (1990) [9] («Copenhagen Document»), the state — OSCE participating States «will respect the rights of individuals, 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»; in accordance with paragraphs 2 and 3 of Article II of the Declaration on Minorities (1992), «Persons belonging to minorities have the right to partici-

pate in the [...] public life» and «the right to participate in decisions on the national and, where We need regional solutions concerning the minority to which they belong or the regions in which they live»; in accordance with Article 15 of the Framework Convention, states parties «shall create the necessary conditions for effective participation of persons belonging to national minorities in cultural, social and economic life, as well as in the conduct of public affairs, in particular those affecting them».

From the idea of equal dignity and inalienable rights of the non-discrimination principle implies, embodied in virtually all international human rights instruments, notably the Article 2 of the Universal Declaration of Human Rights, Articles 2 and 26 of the International Covenant on Civil and Political Rights and article 2 of the International Covenant on Economic, Social and Cultural Rights. Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination has clearly stated that this document prohibits discrimination, in particular on the basis of «descent, or national or ethnic origin». Article 14 of the European Convention on Human Rights (1950) [10] (hereinafter — referred to as «the European Convention on Human Rights») also expressly extends the principle of non-discrimination to discrimination on grounds of «national or social origin, association with a national minority» in all cases, when it comes to the rights and freedoms guaranteed by the Convention. These provisions and principles are reflected in the constitutions of most states - members of the OSCE.

As soon as the persons belonging to national minorities are entitled to effective participation in the socio-political life, they should be able to enjoy this right without any restrictions, on as indicated in paragraph 3 of the Copenhagen Document, Article 4 of the Framework Convention and in Article 1 4 UN Declaration on Minorities. However, pursuant to paragraph 2 of Article 4 of the Framework Convention to ensure equal rights to dignity means not only the principle of non-discrimination but also «full and effective equality between persons belonging to a national minority and those belonging to the majority» for which States should «adopt, where necessary, adequate measures ... in all areas of ... political ... life» in respect of which they are «adequately take into account the special situation of persons belonging to national minorities».

It envisages linkage between respect for human rights and development of civil society reflects the requirement of «effective political democracy» which, as stated in the preamble of the European Convention on Human Rights are inextricably linked to the provision of justice and peace in the world. In the Charter of Paris for a New Europe states — participants of the OSCE also stated that the democratic system of government, and in particular the respect for human rights, is the basis of prosperity.

Specific institutions that ensure the effective participation of minorities in political life should not be created at the expense of the rights of others. Human rights must be fully respected in all cases, including the institutions to which the State may delegate authority. According to paragraph 33 of the Copenhagen Document, when making the states — participants of the necessary measures to protect the identity of national minorities «any such measures would be consistent with the principles of equality and non-discrimination against other citizens of the countries — participants». Next, in paragraph 38 of the Copenhagen Document states that «States Parties in their efforts to protect and promote the rights of persons belonging to national minorities, will fully respect their obligations under existing human rights conventions and other relevant international instruments». A similar provision is contained in Article 20 of the Framework Convention: «In exercising the rights and freedoms flowing from the principles enshrined in the present framework Convention, any person belonging to a national minority shall respect the national legislation and the rights of other persons, in particular the rights of persons belonging to the majority or to other national minorities. «This should include and respect the rights of women, including freedom from discrimination «in political and public life of the country», as referred to in Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women (1979) [11].

The principle of self-identification of persons belonging to minorities, is a number of fundamental obligations. In paragraph 32 of the Copenhagen Document specifies that «To belong to a national minority is a matter of personal choice and no disadvantage may arise from the exercise of such a choice». Paragraph 1 of Article 3 of the Framework Convention in the same way provided that «any person belonging to a national minority has the right to freely choose to be treated or not treated as such and this choice or from the exercise of rights that are associated with such a choice should not prejudice the individual».

A necessary condition for the functioning of participatory procedures is tolerance. The socio-political climate of mutual trust and equality should be ensured in the legislation, at the same time leading the educational work according to this social ethics throughout the population. In this regard, a special role belongs to the media. Paragraph 1 of Article 6 of the Framework Convention provides that «The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect, under-

standing and cooperation among all persons living on their territory, regardless of their ethnic, cultural, linguistic or religion, particularly in the fields of education, culture and the media. «In particular, states are obliged to prevent the use in public statements disparaging or derogatory epithets and words and eliminate negative stereotypes. Ideally, representatives of affected groups should be involved in identifying and developing any measures to address these problems.

In order to ensure realization of the rights provided for in international human rights conventions, committees have been established to monitor the progress of States parties in implementing their commitments.

Committee, which is particularly relevant to the rights of minorities:

1 The Human Rights Committee is the body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights by its State parties.

All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the Covenant and then whenever the Committee requests (usually every four years). The Committee examines each report and addresses its concerns and recommendations to the State party in the form of «concluding observations».

In addition to the reporting procedure, article 41 of the Covenant provides for the Committee to consider inter-state complaints. Furthermore, the First Optional Protocol to the Covenant gives the Committee competence to examine individual complaints with regard to alleged violations of the Covenant by States parties to the Protocol.

The full competence of the Committee extends to the Second Optional Protocol to the Covenant on the abolition of the death penalty with regard to States who have accepted the Protocol.

The Committee meets in Geneva and normally holds three sessions per year.

The Committee also publishes its interpretation of the content of human rights provisions, known as general comments on thematic issues or its methods of work.

2 The Committee on the Elimination of Racial Discrimination (CERD) is the body of independent experts that monitors implementation of the Convention on the Elimination of All Forms of Racial Discrimination by its State parties.

All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the Convention and then every two years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of «concluding observations».

In addition to the reporting procedure, the Convention establishes three other mechanisms through which the Committee performs its monitoring functions: the early-warning procedure, the examination of inter-state complaints and the examination of individual complaints.

The Committee meets in Geneva and normally holds two sessions per year consisting of three weeks each.

The Committee also publishes its interpretation of the content of human rights provisions, known as general recommendations (or general comments), on thematic issues and organizes thematic discussions.

3 The Committee on the Elimination of Discrimination against Women (CEDAW) is the body of independent experts that monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women.

CEDAW Committee consists of 23 experts on women's rights from around the world.

Countries who have become party to the treaty (States parties) are obliged to submit regular reports to the Committee on how the rights of the Convention are implemented. During its sessions the Committee considers each State party report and addresses its concerns and recommendations to the State party in the form of concluding observations.

In accordance with the Optional Protocol to the Convention, the Committee is mandated to: (1) receive communications from individuals or groups of individuals submitting claims of violations of rights protected under the Convention to the Committee and (2) initiate inquiries into situations of grave or systematic violations of women's rights. These procedures are optional and are only available where the State concerned has accepted them.

The Committee also formulates general recommendations and suggestions. General recommendations are directed to States and concern articles or themes in the Conventions.

4 The Committee on Economic, Social and Cultural Rights (CESCR) is the body of independent experts that monitors implementation of the International Covenant on Economic, Social and Cultural Rights by its

States parties. The Committee was established under ECOSOC Resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to the United Nations Economic and Social Council (ECOSOC) in Part IV of the Covenant.

All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially within two years of accepting the Covenant and thereafter every five years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of «concluding observations».

In addition to the reporting procedure, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which entered into force on 5th May 2013, provides the Committee competence to receive and consider communications from individuals claiming that their rights under the Covenant have been violated. The Committee may also, under certain circumstances, undertake inquiries on grave or systematic violations of any of the economic, social and cultural rights set forth in the Covenant, and consider inter-state complaints.

The Committee meets in Geneva and normally holds two sessions per year, consisting of a three-week plenary and a one-week pre-session working group.

5 The Committee on the Rights of the Child (CRC) is the body of 18 Independent experts that monitors implementation of the Convention on the Rights of the Child by its State parties. It also monitors implementation of two Optional Protocols to the Convention, on involvement of children in armed conflict (OPAC) and on sale of children, child prostitution and child pornography (OPSC). On 19 December 2011, the UN General Assembly approved a third Optional Protocol on a communications procedure (OPIC), which allow individual children to submit complaints regarding specific violations of their rights under the Convention and its first two optional protocols. The Protocol entered into force in April 2014.

All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must submit an initial report two years after acceding to the Convention and then periodic reports every five years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of «concluding observations».

The Committee also reviews the initial reports which must be submitted by States who have acceded to the first two Optional Protocols to the Convention, on involvement of children in armed conflict and on sale of children, child prostitution and child pornography.

The Committee is also able to consider individual complaints alleging violations of the Convention on the Rights of the Child and its first two optional protocols (OPAC and OPSC) by States parties to the OPIC, as well as to carry out inquiries into allegations of grave or systematic violations of rights under the Convention and its two optional protocols.

The Committee meets in Geneva and normally holds three sessions per year consisting of a three-week plenary and a one-week pre-session working group. In 2010, the Committee considered reports in two parallel chambers of 9 members each, «as an exceptional and temporary measure», in order to clear the backlog of reports.

The Committee also publishes its interpretation of the content of human rights provisions, known as general comments on thematic issues and organizes days of general discussion.

6 The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) is the body of independent experts that monitors implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families by its State parties. It held its first session in March 2004.

All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the Convention and then every five years. The Committee will examine each report and address its concerns and recommendations to the State party in the form of «concluding observations».

The Committee will also, under certain circumstances, be able to consider individual complaints or communications from individuals claiming that their rights under the Convention have been violated once 10 States parties have accepted this procedure in accordance with article 77 of the Convention.

The Committee meets in Geneva and normally holds two sessions per year.

The Committee also organizes days of general discussion and can publish statements on themes related to its work and interpretations of the content of the provisions in the Convention (general comments).

7 Committee on the Rights of Persons with Disabilities (CRPD) is the body of independent experts which monitors implementation of the Convention by the States Parties. The Committee shall meet in Geneva and normally hold two or three sessions per year.

The Committee will comprise 12 independent experts following the entry into force of the Convention. Following an additional sixty ratifications or accessions to the Convention, the membership of the Committee shall increase by six, to 18 independent experts.

Countries who have become party to the Convention (States parties) are obligated to submit regular reports to the Committee on how the rights of the Convention are implemented. During its sessions, the Committee considers the reports of States parties and addresses its concerns and recommendations to the State party concerned in the form of concluding observations. States parties must report initially within two years of accepting the Convention and thereafter every four years.

The Optional Protocol to the Convention gives the Committee competence to examine individual complaints with regard to alleged violations of the Convention by States parties to the Optional Protocol or to undertake inquiries in the case of reliable evidence of grave and systematic violations of the Convention.

In addition, and in keeping with the practice of other human rights treaty bodies, the Committee may also issue General Comments elaborating the meaning of the provisions of the Convention or cross-cutting themes. The Committee may also hold Days of General Discussion with States, civil society, United Nations entities and other international organizations.

By ratifying the Convention, States commit themselves to appropriate committees periodic reports, covering the decisions they legislative, judicial, policy and other measures to implement these agreements enshrined in the rights owned by, in particular, directly minorities. On the basis of information submitted to the Committee, they can engage in dialogue with the reporting States parties. Following consideration of the report of the State party, the Committee adopts «concluding observations», which can be observed that there had been violations of the rights of minorities, contained a recommendation to the state to refrain from any further attacks on the right or call to take action to rectify this situation.

The international community, in their instruments and mechanisms intended to ensure that international and national protection of minorities — recognize these problems. However, as society evolves, it is essential to consider re-analyze and correct, if necessary, these instruments and mechanisms, so that they ensure effective participation of minorities in society.

Thus, more attention in the international law on the rights of individuals. Often, a person belonging to a minority are not fully possess human rights and fundamental freedoms are discriminated because of ethnic, religious or linguistic grounds. However, the non-discrimination provisions are not enough to ensure that minorities full and effective equality. The prohibition of discrimination is equality before the law, but does not provide de facto equality. Moreover, the necessary special rights and measures for the protection of minorities, in order to overcome the stereotypes of discrimination and to implement equality in practice.

It is true also that the situation of minorities differs from country to country and therefore require different approaches, the danger is that the common objectives and principles would be interpreted restrictively by certain parties. This flexibility allows you to translate the principles into domestic national legislation and policies that best covers their particular situation, it can be probably used by some States parties to avoid their obligations.

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Еуропадағы азшылықтар құқықтарының халықаралық стандарттары

Мақалада ұлттық азшылықтарға жататын тұлғаларды қорғаудың мәні теңдік мүдделерін, әділеттілікті, тұрақтылықты, демократиялық қауіпсіздік пен бейбітшілікті қамтамасыз ету мақсатындағы адам құқықтарын халықаралық қорғаудың құрамдас бөлігі ретінде Еуропада Еуропа кеңесінің азшылықтар жағдайын құқықтық реттеу мәселелері қарастырылған. Біріккен Ұлттар Ұйымының Азшылықтардың құқықтары туралы декларациясына сәйкес, азшылықтар ерекше болмысқа ие, ұлттық немесе этникалық, мәдени, діни және тілдік топтар ретінде қарастырылды және мемлекеттер олардың тіршілік етуін қорғауға міндетті болып табылады.

Д.К.Рүстембекова

Международные стандарты прав меньшинств в Европе

В статье рассмотрены вопросы правового регулирования положения меньшинств Советом Европы, значение защиты лиц, принадлежащих к национальным меньшинствам, как составной части международной защиты прав человека в интересах обеспечения равенства, справедливости, стабильности, демократической безопасности и мира в Европе. Автор отмечает, что в Декларации ООН о правах меньшинств говорится о меньшинствах как о самобытных национальных или этнических, культурных, религиозных и языковых группах и предусмотрена обязанность государств охранять их существование.

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