СПИСАНИЕ
DE JURE

ОФИЦИАЛНО ИЗДАНИЕ НА
ЮРИДИЧЕСКИЯ ФАКУЛТЕТ НА
ВТУ „СВ. СВ. КИРИЛ И МЕТОДИЙ“

Брой 1/2020 (20), ISSN 1314-2593

ЧУЖДЕСТРАНЕН ОПИТ / FOREIGN EXPERIENCE

THE WEAKNESSES IN THE MINORITY RIGHTS PROTECTION FRAMEWORK WITHIN THE EUROPEAN REGIONAL HUMAN RIGHTS SYSTEM

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НЕСЪВЪРШЕНСТВА В ПРАВНАТА РАМКА НА ЗАЩИТА ПРАВАТА НА МАЛЦИНСТВАТА В ЕВРОПЕЙСКАТА СИСТЕМА ЗА ЗАЩИТА НА ЧОВЕШКИТЕ ПРАВА

Мохаммед Санка

Abstract: *Much of the discourse on minority rights protection under international law is focused on the UN system, notably article 27 of the International Covenant on Civil and Political Rights and the Declaration on the Rights of National or Ethnic, Religious or Linguistic Minorities. In such discourse, the regional systems, especially the more comprehensive and progressive European system, are not appraised as often as they should be. The author of this paper focuses therefore on the minority rights protection regime within the European Union. And in doing so, he gives an overview of the legal instruments and mechanisms dedicated to the protection of minority rights within the EU, analyzes the loopholes of this system and makes critical conclusions on the suitability of this system to the concerns minority groups face.*

Key words: *Minority rights, International Covenant on Civil and Political rights, the Framework Convention on the Rights of National Minorities, European Charter for Regional or Minority Languages, Council of Europe.*

Right from their inception minority rights have always evoked controversy, and still do today. Much of this controversy dwells on whether or not these groups can enjoy collective rights as such. The fundamental elements of minority rights are enshrined in Article 27 of the International Covenant on Civil and Political rights (hereinafter ICCPR). Article 27 stipulates:

"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 practise their own religion, or to use their own language"[1].

Rights of minorities were further developed in the United Nations Declaration on the Rights of National or Ethnic, Religious or Linguistic Minorities (hereinafter UNDM), which was adopted unanimously by the UN General Assembly in 1992. In addition to more detailed cultural, social, economic, religious and other specific rights[2], States committed to "[..protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity," and in doing so "[…shall adopt appropriate legislative and other measures to achieve those ends"[3]. Other legal

[1] International Covenant on Civil and Political Rights, 16 December 1966, UNTS vol. 999, p. 171, art. 27, Available at https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx (last accessed 29.01.2020)

[2] Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Adopted by General Assembly resolution 47/135 of 18 December 1992, Available at https://www.ohchr.org/EN/ProfessionalInterest/Pages/Minorities.aspx (last accessed 29.01.2020)

[3] Ibid, art. 1

instruments of core relevance to minority rights protection are the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter Genocide convention), the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter ICERD), etc. Whereas the latter protects minorities from targeted discrimination based on racial, ethnic, national or other grounds[4], the former enshrines the collective right of minorities to existence by protecting them against acts of genocide[5].

Apart from the universal regime of protection of minority rights within the framework of the UN there are regional arrangements, which address the minority question with due cognizance given to the peculiarities of the region in question. For example, minority rights are protected through the so-called "peoples"[6] rights within the African human rights system, while the Inter-American human rights mechanisms have progressively interpreted legal instruments of the Organization of American States (hereinafter OAS) to protect rights of minority groups[7]. In this paper, however, our primary focus will be on the legal framework of minority rights protection within the European regional human rights system.

Unlike the African Charter on Human and Peoples Rights, neither collective nor individual rights of minorities per se are envisaged in the European Convention on Human Rights (hereinafter European Convention). The prohibition against discrimination envisaged under Article 14 of the European Convention is nonetheless relevant to the protection of minority rights.[8]

In recent decades the Council of Europe has been actively engaged in the advancement of minority rights. Resolution 192 (1988) of the Congress of Local and Regional Authorities proposed the text of the European Charter for Regional or Minority Languages, while recommendation 1134 (1990) of the Parliamentary Assembly on Minority Rights called for the adoption of a protocol to the European Convention or a special convention on this topic. The Committee of Ministers adopted on June 22 1992 the European Charter for Regional or Minority Languages (hereinafter European Charter for Minority Languages). "Regional or minority languages," pursuant to Article 1 of the aforementioned charter, are languages that are: traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population; and different from the official language(s) of that State." Languages (such as Romani, Lemko, Yiddish, etc.) not confined to a particular territory within a state but otherwise are used traditionally by linguistic minorities within the country as a whole or over a wide geographical area fall within the ambit of the Charter,[9] as are official languages within provinces or federal units of a State (for example Catalan in Spain) that are not considered official languages of the State as a whole. Thus, the charter seeks to protect the linguistic and cultural identity of minority groups by proposing a series of measures to promote the use, maintenance and development of regional or minority languages in diverse fields such as education, litigation, public services, the media, cultural facilities, economic and social life, as well as trans-frontier exchanges[10].

[4] International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, UNTS vol. 660, p. 195, art. 1-4, Available at https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx (last accessed 29.01.2020).

[5] Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, UNTS vol.78, p. 277, art. I-III

[6] African Charter on Human and Peoples' Rights, 27 June 1981, UNTS vol.1520, p.363, art. 19–24. See also, Malawi African Association & Others v Mauritania (2000) AHRLR 149 (ACHPR 2000), paras 65–67

[7] In this regard, it is important to note that the Inter-American Court of Human Rights was the first human rights body to interpret property rights to include the right of tribal peoples to communal property, and not just the right to private property. See Case of the Mayagna (Sumo) Awas Tingni Community v Nicaragua, para. 148, Merits, reparations and costs, Series C No. 79, August 31 2001.

[8] Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, ETS No.5, art. 14: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." Available at https://www.echr.coe.int (last accessed 03.02.2020) It is noted that discrimination is not limited to cases where a person or group is treated worse than others. Treating different groups alike may amount to discrimination in some cases. In one of the cases of the ECtHR, it was obvious that treating a minority and a majority alike may amount to discrimination against the minority. See ECtHR, Thlimmenos v. Greece, judgment of 6 March 2000.

[9] European Charter for Regional or Minority Languages, 5 November 1992, ETS No. 148, art.1, Available at https://rm.coe.int/168007bf4b (Last accessed 03.02.2020)

[10] See, Ibid, art. 7–14.

Two years after the adoption of the European Charter for Regional or Minority Languages, the Committee of Ministers of the Council of Europe adopted the Framework Convention for the Protection of National Minorities (hereinafter Framework Convention) on 10 November 1994. The Framework Convention enshrines the right to equality before the law of persons belonging to national minorities and prohibits discrimination on the basis of belonging to a national minority. In view of the preceding, Contracting Parties to the Convention commit to "adopt appropriate measures, if necessary, in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and persons belonging to the majority"[11]. State Parties also undertake to promote the conditions necessary for persons belonging to minorities to develop their culture and preserve the basic elements of their identity, namely their religion, language, traditions and cultural heritage.[12] The foregoing commitment comes with an obligation undertaken by Contracting Parties to "[..refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will" and to "[…protect these persons from any action aimed at such assimilation." The possibility of collective exercise of the individual rights of persons belonging to national minorities is envisaged in the Framework Convention,[13] while in areas of traditional residence, as well as where persons belonging to national minorities constitute a significant number, in cases where these persons ask for this and if such requests meet real needs, the State Parties undertake to ensure, as far as possible, conditions enabling the use of the minority language in relations between these persons and administrative authorities[14]. Furthermore, according to Art. 15 State Parties are obliged to refrain from measures that alter the geographical proportions of the population in areas populated by national minorities.

Critics of the Convention have opined that provisions of the treaty offer little new on already existing international treaties and contain many qualifying phrases such as "where appropriate," "a real need," "as far as possible etc."[15] Another criticism of the Framework Convention is that, it does not give any definition of the term "national minorities," since no consensus was reached[16] on its meaning during negotiations. This situation led to a number of State Parties adopting their definition of the term when they ratified the Convention.[17] However, in Recommendation 1201 (1993), adopted by the Parliamentary Assembly and reaffirmed in Recommendation 1255 (1995), it was proposed that a national minority refers to persons who reside on the territory of that state and are citizens thereof; maintain longstanding, firm and lasting ties with that state; display distinctive ethnic, cultural, religious or linguistic characteristics; are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state; are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language[18].

The Framework Convention and the European Charter for Minority Languages constitute the fundamental legal framework for the protection of mino-

[11] Framework Convention for the Protection of National Minorities, 10 November 1994, ETS No.157, art. 4. Available at https://rm.coe.int/16800c10cf (Last accessed 03.02.2020).

[12] Ibid, art. 5

[13] Ibid, art. 7–9

[14] Ibid, art. 10(2)

[15] Ibid, See for example art. 4, 10(2), etc.

[16] Explanatory Report to the Framework Convention for the Protection of National Minorities, paras. 4 and 12. Para 12 states: "[It was decided to adopt a pragmatic approach, based on the recognition that at this stage, it is impossible to arrive at a definition capable of mustering general support of all Council of Europe member States." Available at https://rm.coe.int/16800c10cf (Last accessed 03.02.2020).

[17] Many of the State Parties to the Framework Convention have, upon ratification, submitted reservations or declarations on their own definition of the term "national minority". This includes Austria, Denmark, Estonia, Germany, Poland, Slovenia, Sweden, Switzerland, and The Former Yugoslav Republic of Macedonia (see http://conventions.coe.int/Treaty/EN/v3MenuDecl.asp). Liechtenstein, Luxembourg, and Malta are parties to the Convention, but each declared that there are no national minorities within their respective territories. France has not ratified the Convention and declared, with respect to Article 27 of the ICCPR, its understanding that there are no national minorities in France. For the text of these declarations, see https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/157/declarations? (last accessed 05.02.2020)

[18] Recommendation 1201 (1993), Additional protocol on the rights of minorities to the European Convention on Human Rights, art. 1. Available at https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=15235&lang=en (last accessed 04.02.2020)

rity rights within the EU. Nevertheless, other subsidiary instruments contribute to this legal regime, some of which shall be discussed below.

The Organization for Security and Co-operation in Europe (hereinafter OSCE) deserves the first mention in this regard. Largely a pan-European body with a current membership of 57 participating States (including European states, former Soviet Union republics, as well as Canada and the United States), the OSCE is the largest intergovernmental security organization in the world. It has neither a constitutive instrument no a charter on human rights, but rather operates on sheer political will and decision-making based on consensus of its member states. It is in this context that the OSCE has, since its inception as the Conference on Security and Co-operation in Europe (hereinafter CSCE), gradually developed a set of documents and institutions addressing human and minority rights. The CSCE in the Helsinki Final Act of 1975 established that:

"The participating States on whose territory national minorities 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"[19].

In the Copenhagen Declaration, the OSCE Human Dimension Conferences recognized that "respect for the rights of persons belonging to national minorities is an important factor for peace, justice, stability and democracy"[20]. This document is vital because it recognized for the first time "the possibility of positive measures aimed at restoring real and effective equality with the majority in favor of minorities without considering such affirmative action as discrimination against the majority[21]. The Copenhagen Declaration provided for a number of diverse minority rights, most of which were later incorporated into the Framework Convention. However, these provisions are not legally binding on states, they are rather political principles for protecting minorities. The Charter of Paris for a New Europe, signed on November 21 1990, recognized the urgent need to strengthen international cooperation in the area of minority rights. The new democracies that were faced with the question of minorities were in need of different approaches to the problem than mature democracies. Consequently, in a subsequent conference in Moscow in the autumn of 1991, it was concluded that the organization should strengthen minority protection mechanisms.

In 1999 the OSCE adopted the Lund recommendations on the effective participation of national minorities in public life[22] with the aim of encouraging and facilitating the adoption by states of specific measures to reduce tensions associated with national minorities, and thereby serve as a measure of conflict prevention. The recommendations are divided into four subheadings, which combine twenty-four recommendations into general principles, participation in the decision-making processes, self-governance and guarantees (ways to ensure effective participation in public life).[23] The main conceptual division in the Lund recommendations is 2 points: the participation of national minorities in government as a whole, as well as self-government on some local or domestic issues.

Other documents adopted by the OSCE regarding the protection of minorities are the Hague Recommendations on the right to education of national minorities and the Oslo Recommendations on the Linguistic Rights of National Minorities. These instruments seek to provide "a useful basis for the development of state policies and laws that will contribute to the effective exercise of the linguistic rights of persons belonging to national minorities, especially in the public sphere"[24]. The recommendations are subdivided into 4 components, which deal with language-related problems that arise in practice. The Hague Recommendations on the right to education of national minorities comprehensively cover the use of the language or languages of national minorities in the field of education.

Finally, in 2003, an expert group was established by the High Commissioner on National Minorities to develop guidelines for the use of minority lan-

[19] Conference on Security and Co-Operation in Europe, Final Act, Helsinki, 1 August 1975. Principle VII. Available https://www.osce.org/helsinki-final-act?download=true (last accessed 23.03.2018)

[20] Copenhagen Declaration of the Conference on the Human Dimension, June 5-29, 1990, Available at https://www.osce.org/odihr/elections/14304 (last accessed 23.03.2018)

[21] Ibid.

[22] The Lund Recommendations on the Effective Participation of National Minorities in Public Life, Available at https://www.osce.org/odihr/elections/14304 (last accessed 23.03.2018)

[23] See, Ibid.

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

guages in the media[25]. The Guidelines spell out the fundamental standards that states must meet based on the general principles of freedom of expression, cultural and linguistic diversity, protection of the individual, equality and non-discrimination.

Adopting instruments that protect rights is not enough, it is equally important to create mechanisms to monitor implementation of such instruments by their State Parties. The role of human rights mechanisms in monitoring human rights and translating norms into guidance and practical measures to achieve social justice has an impact on all stakeholders – from rights-holders and victims of human rights violations to States as duty-bearers and other actors, including the private sector. When considering the issue of the implementation of minority rights at the regional level, we can name the European, African and Inter-American systems, the first of which is perhaps the most effective. As noted earlier, in 1992 the European Charter for Minority Languages was adopted, in accordance with which a number of measures were taken to promote the use of regional or minority languages in the fields of education, litigation, public services, media, cultural sites, economic and social life, as well as cross-border exchanges. Monitoring of this charter's implementation is based on information analysis and consultation. State Parties are required to present periodic state reports to the Secretary General of the Council of Europe on the policies and measures adopted to implement the Charter[26]. These reports are reviewed by a committee of experts comprised of individuals of recognized competence in the matters covered by the Charter[27]. Bodies or organizations legally established in the territory of the Participating States may draw the attention of the committee of experts to issues related to the obligations undertaken by that state. On the basis of state reports and the information received from bodies established in the territory of State Parties, the committee of experts prepares a report for the Committee of Ministers. The report of the committee of experts may be accompanied by comments submitted by the participating states, and may also contain proposals by the committee of experts to the Committee of Ministers on the preparation of such recommendations by the latter body to one or more participating states that may be required[28] Furthermore, the Secretary General also submits to the Parliamentary Assembly a two-yearly detailed report on the application of the Charter[29].

The monitoring of the implementation of the Framework Convention is executed by the Committee of Ministers of the Council of Europe[30] with assistance from an advisory committee[31]. The monitoring is based on periodic reports of the participating States giving full information on legislative and other measures taken to implement the instruments' provisions, within one year of its entry into force for the respective state party.[32] Subsequent reports are to be submitted in cycles of five year intervals, or whenever the Committee of Ministers so requests. In 1997 the Committee of Ministers adopted the rules on monitoring mechanisms and the composition of the advisory committee pursuant to Article 26 of the Framework Convention[33]. The advisory committee examines the periodically submitted state reports and evaluates the adequacy of measures taken by states and then prepares an opinion on these measures[34]. In doing so

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

[26] European Charter for Regional or Minority Languages, 5 November 1992, ETS No. 148, art.15, Available at https://rm.coe.int/168007bf4b (Last accessed 03.02.2020)

[27] Ibid, art.17.

[28] Ibid, art. 16. See also, Council of Europe: Committee of Ministers, Recommendation RecChL (2001)1 on the application of the European Charter for Regional or Minority Languages by the Netherlands, 19 September 2001, RecChL(2001)1, available at: https://www.refworld.org/docid/53ff05d54.html [accessed 6 February 2020].

[29] Ibid, art. 16

[30] Framework Convention for the Protection of National Minorities, 10 November 1994, ETS No.157, art. 24. Available at https://rm.coe.int/16800c10cf (Last accessed 03.02.2020)

[31] Ibid, art. 26.

[32] Ibid, art. 25.

[33] CoE Resolution on the Rules Adopted by the Committee of Ministers on the Monitoring Arrangements under Articles 24 to 26 of the Framework Convention for the Protection of National Minorities, 97(10), 601st meeting (1997) [hereinafter Resolution 97(10)]. On this document, see Weckerling, M. 'Der Durchfьhrungsmechanismus des Rahmenьbereinkommens des Europarates zum Schutz nationaler Minderheiten', No. 24, Europдische Grundrechte Zeitschrift, (1997), 605

[34] The state reports are made public by the Council of Europe upon receipt from the state party. Resolution 97(10), 601st meeting (1997), Rule 20. See also Rule 23. All state reports are available at http://www.coe.int/minorities/

the advisory committee may request additional information from the State Party[35] or other sources,[36] including individuals and NGOs, but cannot resolve individual complaints. It may hold meetings with representatives of the government whose report is being evaluated and shall hold a meeting if the government concerned so requests[37]. Upon receipt of the opinion of the advisory committee, the Committee of Ministers makes final decisions regarding the adequacy of the measures taken by the State Party. Such decisions are called conclusions. As appropriate, it may also adopt recommendations with respect to the State Party concerned, and set a time-limit for the submission of information on their implementation[38]. The conclusions and recommendations of the Committee of Ministers are published after their adoption[39] along with any comments that the State Party may have submitted in relation to the opinion of the advisory committee[40]. The opinion of the advisory committee is usually published along with the conclusions of the Committee of Ministers, or at the latest, 12 months after transmission of the opinion to the State Party concerned,[41] unless the Committee of Ministers decides otherwise[42]. Making the opinion of the Advisory Committee public is done on the authorization of the State Party concerned, or four months after transmission of the opinion to the State Party concerned, unless that State Party submits a reasoned written objection to the Secretariat[43]. The first monitoring cycle began in 1998 with thirty-four opinions adopted by the advisory committee and two-stage resolutions adopted by the Committee of Ministers. The second monitoring cycle began in February 2004, and by December 31 2006 the Committee of Ministers had adopted 47 country-specific resolutions[44].

The OSCE also plays a vital role in the implementation of minority rights within the territories of its member states. In 1992 the mandate of the High Commissioner on National Minorities (hereinafter HCNM) was created to provide early warning and intervention, where necessary, regarding tensions surrounding national minority issues that could escalate into conflict[45]. Thus, the daily activities of the HCNM are the identification and search for means to counter the causes of interethnic tension and conflicts arising on the basis of such tension. As part of his role in de-escalating conflict situations in which minorities are involved, the HCNM addresses the short-term causes of interethnic tensions or conflicts, as well as long-term structural triggers of such tensions. At the same time, the HCNM acts as a "signaling device at the earliest possible stage,"[46] warning the OSCE when there is a likelihood that a situation may escalate into violent conflict. This allows the OSCE, through the "silent diplomacy" of the HCNM, to keep such a situation under control. The HCNM acts in confidentiality, he may also collect relevant information and carry out country visits. His mandate also includes the adoption of general thematic recommendations for all OSCE members and country-specific recommendations to OSCE member States regarding their treatment of national minorities[47].

[35] Resolution 97(10), no. 5 Rule 29.

[36] Ibid, Rule 30, 31.

[37] Resolution 97(10), no. 5 Rule 32.

[38] Ibid, no. 3 Rule 24.

[39] Ibid, no. 4, Rule 25.

[40] Ibid, Rule 27.

[41] Resolution CM/Res (2009)3 amending Resolution (97) 10 on the monitoring arrangements under Articles 24-26 of the Framework Convention for the protection of National Minorities (Adopted by the Committee of Ministers on 16 April 2009) [Hereinafter Resolution CM/Res (2009)3], Available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d15f0 (last accessed 05.02.2020)

[42] Resolution CM/Res (2009)3.

[43] Ibid.

[44] The resolutions adopted were with respect to the following States Parties: Denmark, Finland, Hungary, Slovakia, Liechtenstein, Malta, San Marino and Cyprus, Croatia, Czech Republic, Romania, Estonia, the United Kingdom and Italy; Armenia, Germany, Moldova, Ukraine, Norway, the Russian Federation, Lithuania, Sweden, and Switzerland, Austria, Ireland and Azerbaijan. All Resolutions are available at http://www.coe.int/minorities (last accessed 06.02.2020)

[45] Quiet Diplomacy in Action: The OSCE High Commissioner on National Minorities (ed. W. A. Kemp), The Hague, 2001; Drzewicki, K. 'The OSCE High Commissioner on National Minorities – Confronting Traditional and Emerging Challenges' in OSCE and Minorities. Assessment and Priorities. Warsaw (ed. S. Parzymies), 2007.

[46] Mandate of the CSCE High Commissioner on National Minorities, reprinted in the Conference on Security and Cooperation in Europe: analysis and basic documents, 1972–1993, Arie Bloed ed., 1993, p. 715.

[47] The Hague Recommendation on Education Rights of National Minorities, 1996; The Oslo Recommendations on Linguistic Rights of National Minorities, 1998; The Lund Recommendations on Effective Participation of National

Despite the positive appraisal, the framework for minority rights protection within the European human rights system is not without blemish. To begin with, even though the European Charter on Minority Languages has 'minority' in its title and operative provisions, it does not seem to address minority rights per se, but rather focuses on protecting and promoting traditionally used regional and minority languages considered to be threatened elements of Europe's cultural heritage that must be protected through international legal arrangements. The charter's approach differs from other international legal instruments in this field in the sense that, it does not establish rights (individual or collective) for the speakers of regional or minority languages, but establishes obligations for states and their respective legal systems with regard to the use of these languages. The word "rights" is seldom seen in the operative text of the charter, with the provisions of the charter focusing primarily on practical measures for the protection and promotion of languages in order to ensure that they remain constituent parts of Europe's linguistic heritage. In view of this, it may be argued that the charter seeks to promote regional and minority languages, and can thus be considered as a legal instrument for the protection of linguistic rights of minorities only in an indirect manner.

Moreover, both the European Charter for National Languages and the Framework Convention envisage no collective rights[48]. Thus, they mirror the individualistic approach favored in international instruments such as the ICCPR[49] and UNDM. To base minority rights protection solely on the individual rights of members of minorities is, however, problematic since it cannot address the more complex violations of collective rights of such groups. Minorities are after all groups that, like "peoples", have their distinct identities, which can only be protected collectively. Despite its shortcomings, Art. 27 of the ICCPR recognizes this need by stating that members of minorities should be able to enjoy their culture, practise their religion, and use their language "in community with other members" of their groups. In fact, an individual member of a group can only be protected if the existence of the entire group is ensured. According to the UN Human Rights Committee, although the rights protected under Article 27 are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language or religion[50]. Thus, we can convincingly conclude that the protection of the collective identity of minorities follows from the wording in Art. 27[51].

A minority group cannot maintain its culture, language and religion if the group does not exist both in the physical and cultural sense. There cannot be talk of individual members of a physically non-existent group or their rights arising from their affiliation to this (non-existent) group. It is precisely because of this reason that the Genocide Convention criminalizes diverse acts intentionally aimed at the destruction of a national, ethnic, racial or religious group[52] in direct response to the holocaust and the persecution of Jews in Nazi Germany and throughout occupied Europe. Genocide is directed at a (minority) group as an entity, and the action involved is aimed at individuals, not in their individual capacity, but as members of the group[53]. Destruction of a group may manifest in other forms (including cultural)[54] other than physical or biological, even though it was only the latter that was envisaged in the Genocide Convention. Thus, minority groups' collective right to physical and cultural existence is protected under international law. The

Minorities in Public Life, 1999; the Guidelines on the Use of Minority Languages in the Broadcast Media, 2003, and The Recommendations on Policing in Multi-Ethnic Societies, 2006; See generally www.osce.org/hcnm/documents.html

[48] Explanatory Report to the Framework Convention for the Protection of National Minorities, paras. 31. Available at https://rm.coe.int/16800c10cf (Last accessed 03.02.2020).

[49] Article 27 stipulates: "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 practise their own religion, or to use their own language."

[50] General Comment No. 23: The rights of minorities (Art. 27): 08/04/94. CCPR/C/21/Rev.1/Add.5, General Comment No. 23, (Fiftieth session, 1994), para. 6.2

[51] Tomuschat, C. Protection of Minorities under Art. 27 of the International Covenant on Civil and Political Rights, in: Festschrift für Hermann Mosler (Publication in honour of Herman Mosler), Berlin 1983, p. 960.

[52] The Genocide Convention, 9 December 1948, UNTS vol. 78, p. 277.

[53] See Lemkin, R. "Genocide as a Crime Under International Law," U.N. Bulletin, 1948, pp.70–71 and Lemkin, R. Axis rule in occupied Europe. Washington D.C.: Carnegie Endowment for International Peace, 1944, p. 79.

[54] Case No: IT-98-33-A, judgement dated Apr. 19, 2004, para. 578, where the destruction of a group through the targeted destruction of its culture and identity, which will lead to the final disappearance of the group as a community, different from the rest of the population was considered a form of genocide by the International Criminal Tribunal for the former Yugoslavia. See also Lemkin, R. "Genocide as a Crime Under International Law," U.N. Bulletin, 1948, pp.70–71 and Lemkin, R. Axis rule in occupied Europe. Washington D.C.: Carnegie Endowment for International Peace, 1944, p. 79.

failure to address the collective aspects of minority rights is a reflection of the lack of political will both at the international and regional levels due to state interests. It is like failing to "call a spade a spade" but rather a "big spoon," as it is in contrast with not only the realities of the complex collective problems minorities face (physical, biological and cultural genocides, discrimination, denial of internal self-determination, etc.) but also certain norms regulating minority rights such as the Genocide Convention, the ICERD etc.

Also, despite the range of rights granted to minorities in the Framework Convention being manifestly greater than what is provided for in UN documents, its ambition is narrower, since it is assigned to "national minorities." As noted earlier, the convention failed to define the term "minorities." The proposed definition by the Parliamentary Assembly in Recommendation 1201 (1993) raised more questions than it answered. Notably, the restriction of the status of minorities to only citizens of the state is in contrast with the UN Human Rights Committee's position that such persons need not be citizens[55] of the state in order to enjoy minority rights conferred on them by international law. This restriction has therefore been deservedly criticized by some authors[56].

The shortcomings elaborated above do not undermine the status of the Framework Convention as the first, thus far, legally binding and most comprehensive multilateral instrument devoted entirely to the protection of minorities. The European system remains undoubtedly the most comprehensive international standard in the field of minority rights. Against this background, it should be viewed as a start rather than a failure, as its flexible nature allowed a great number of states to ratify the treaties discussed in this paper so quickly. Half a loaf is better than none.

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