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INTERNATIONAL RULES ON LINGUISTIC RIGHTS OF MINORITIES IN EUROPE: A Brief Look At Some Factors Affecting The Efficiency Of Protection

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Introduction

A proliferation of international human rights documents[1] either of general nature or dealing with specific aspects of human rights protection is typical for the historical period which started after the WW II.[2] However, the need for protecting the rights of persons belonging to national minorities is a relatively new phenomenon as it was considered until recently that the particular interests of persons belonging to minorities[3] could be served merely through the general regime of human rights.[4] Apart from the universal rights that should be enjoyed by all humans, for national minorities enjoyment of some additional rights is important. These rights do not privilege persons belonging to minorities, but act to ensure equal respect for their dignity, in particular their identity.[5] Therefore, as the speaking of language presents a means of communication between humans, and as such is - at least within the framework of non-discrimination clause - a basic human right, for each linguistic group it has an additional dimension of providing for the maintenance of the group's identity. The use of own language in private and public, in education and culture, contributes not only to the preservation of history, traditions and culture of a group and strengthens the feeling of belonging to or being part of, but also to the political and social stability of states in which they live.

An inadequate national protection of minorities regarding the use of languages might be the result of a number of reasons. These include, inter alia, the lack of a sound legal framework or the lack of supporting mechanisms and institutions for the implementation of the laws providing for linguistic protection due, for example, to the restrictive state policy towards minority group(s), lack of democratic institutions, bad economic conditions, etc. In such a situation of an inadequate national protection of linguistic minorities, the international rules establishing standards and supervisory mechanisms can be of a great importance in imposing on states certain international obligations. Indeed, there are some who believe that the protection of minority languages needs to be addressed at the level of speech community, rather than initiating safeguards through legislation at the state level. Such opinions, however, neglect the fact that the majority of the linguistic communities in the world are weak vulnerable groups without possibility of creating themselves the conditions necessary for preservation and protection of their characteristics. For these groups national protection of human rights is vital. At the same time, as most breaches of human rights are caused by a state acting against its own citizens or against those within its jurisdiction, much of international human rights law operates beyond the national legal system in order to afford redress to those whose human rights are infringed.[6] Therefore, there is a broad consent that both the national and international protection of human rights and in this framework of minority rights are indispensable in protection of linguistic rights.

Currently, there is a relatively huge body of international norms and rules relevant for the use of

languages. It consists of: (a) norms prohibiting discrimination on any grounds including languages; (b) norms providing for protection of the right of individuals to use their own language in specific situations (in judicial procedures, for example); and (c) norms which, in addition to the two previous types, provide for linguistic rights of persons belonging to minorities. Such rules exists on both the United Nations and regional levels (for the European, as well as American[7] and African[8] continent), though, at least in Europe, some sub-regional documents are of relevance too. [9]

Whereas most of the existing international documents contain standard setting and some of them create also supervisory mechanisms not all of them have the same validity and are equally applicable to all states. While the adoption of international documents and their mere existence presents in itself an important step in protection of minorities and minority languages, various factors have impact on the creation of concrete international obligations for states. Of course, one of the most important is the wording of the provisions. It is supposed to be clear and determined in setting the rights and at the same time in creating the corresponding obligations for states. Provisions, like "states will endeavour", "states recognise the need", "will encourage the creation of conditions", etc., are but few examples of weak formulations which can be an obstacle to a genuine protection. Some authors point at the mediocrity of international law by emphasising that 'The normative system of international law comprises […] more and more norms whose substance is so vague, so uncompelling, that A's obligations and B's right all but elude the mind.' [10]In this sense everybody agrees that "while the emergence of international law as a 'normative order' is due to the need to fulfil certain functions, it will not be capable of actually fulfilling them unless it constitutes a normative order of good quality." [11]

It is not, however, the purpose of this paper to discuss the content of the international provisions relevant for linguistic rights of minorities. Rather, it will discuss some of the formal conditions that affect the obligations of states to provide for protection. For this, two preliminary and general remarks concerning contemporary international law are needed. Firstly, nobody can decline the fact that the international law is in the process of rapid development. This notably goes for human rights protection. However, despite the fact that various international and national subjects and actors, continuously and increasingly invoke international rules, it is still characterised by some major weaknesses. One of the weaknesses is presented in the fact that it is less elaborate and more rudimentary than domestic legal orders. This can be illustrated in the context of what was said above, by numerous examples revealing that some treaty provisions are so vaguely formulated that they in fact do not create any concrete obligation, but present some promises whereby the parties undertake merely to consult, to negotiate, to settle certain problems, etc. Secondly, state sovereignty is still one of the most important international legal principles, though substantially diminished in the post-Cold War period especially with the appearance of the New World Order. The principle of state sovereignty affords the states the freedom to accept new international rules or not. So, any rules, except those being of jus cogens and erga omnes nature, are the subject of explicit or tacit (absence of objections) acceptance by the states. "The rules of law binding upon states […] emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims."[12] In this respect, as it has been pointed out, there is no question of some 'international democracy' in which a majority of representative proportion of states is considered to speak in the name of all and thus be entitled to impose its will on other states, for in that case the international law would not be performing its functions of assuring coexistence of different interests and cooperation. [13]

By taking these remarks in mind, the further discussion will be limited to three aspects affecting the obligations of states to protect linguistic rights of minorities. These are: (a) the international legal status of norm(s) providing for linguistic rights of minorities; (b) impact of ratifications and reservations; and (c) the binding nature of the international supervisory systems.

Notes

[1]According to some sources there are more than 100 various international human rights documents accepted by states either in the framework of the United Nations system or on regional and sub-regional level.

[2]The UN Charter makes in its Preamble the basis for this development by saying: "We the peoples of

the United Nations determined […] to reaffirm faith in fundamental human rights, in the dignity and worth of human person, in the equal rights of men and women […]".

[3]There is no adopted definition of minorities in international law. According to the definition proposed (in 1979) by Francesco Capotorti, Special Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, minority is a 'group which is numerically inferior to the rest of the population of a state and in a non-dominant position, whose members possess ethnic, religious or linguistic characteristics which differ from those of the rest of the population and who, if only implicitly, maintain a sense of solidarity, directed towards preserving their culture, traditions, religion or language'.

[4]Address by the OSCE High Commissioner on National Minorities, Max van den Stoel, to Pazmany Peter Catholic University, Faculty of Law, 24 November 1999.
Idem.

[5]Martin Dixon and Robert McCorquodale, Cases and Materials on International Law, Blackstone Press Limited (1st Ed., 1991), pp. 165-166.

[6]The most relevant American documents are: 1948 Declaration of the Rights and Duties of Man; 1969

[7]American Convention of Human Rights; 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights; and 1997 Draft American Declaration on the Rights of Indigenous Peoples (http://www.unesco.org/most/ln2int.htm#UN).

[8]Major African documents of relevance are: 1981 African Charter on Human and Peoples' Rights; and 1990 African Charter on the Rights and Welfare of the Child (http://www.unesco.org/most/ln2int.htm#UN).

[9]See, for example, the Instrument for the Protection of Minority Rights, adopted by the Central European Initiative in 1994.

[10]Prosper Weil, 'Towards Relative Normativity in International Law', 77 American Journal of International Law (1988) pp. 413-442 at pp. 413-415.

[11]Prosper Weil, op. cit. n. 10, p. 413.

[12]The case of the S.S. "Lotus", Judgement of the Permanent Court of International Justice, Ser. A, No. 10, 7 September 1927, at 18.

[13]Prosper Weil, op. cit. n. 10, at p.419.