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PROTECTION OF THE RIGHTS OF NATIONAL MINORITIES IN THE UNITED NATIONS: POLITICAL AND LEGAL ASPECT

Abstract. The article attempts to briefly outline the problem of protection of fundamental rights and freedoms of national communities under international law. The author defines the concept of fundamental rights in accordance with the legal acts adopted after the Second World War - in the 40s and 60s of the twentieth century. It is emphasised that one of the first international normative documents to mention minority rights was the International Covenant on Civil and Political Rights, but it did not refer to national minorities, only to linguistic, religious and ethnic minorities.

The United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, enacted in the early 1990s, was a kind of new start in the protection of minority rights, and it was the basis for a number of subsequent UN documents that brought the European community closer to understanding the concept of "national minorities". At the same time, in the 1990s, separate structures within the UN dealing with minority issues began their work - the Working Group on Minority Issues (1995) and the Forum on Minority Issues (2007), into which the Working Group was transformed. These United Nations working bodies have facilitated international dialogue during the most acute periods of debate on ethnic diversity and minority rights.

The article focuses on the activities of individual UN working bodies on national minority issues - the author discusses the work of both individual bodies (individual experts) and collective bodies (working groups and commissions). In



addition, the author points out the important role of the Universal Periodic Review as a mechanism that serves to summarise information on the observance of minority rights in all UN member states. One of the most important instruments for the protection of national minorities is the Framework Convention, which contains a preamble and 32 articles. The study notes that this particular Convention is the first binding multilateral legal instrument that serves to protect the rights and freedoms of national communities around the world.

Keywords: national minorities, legal act, international law, UN, Framework Convention for the Protection of National Minorities, European Union.

The problem. Minorities are particularly vulnerable to both external and internal factors of influence, and in order to be able to develop in a particular country, to feel safe and equal, it is not enough that their members are equated with other citizens, but that they have special, additional rights. This is in the interests of the minority and the majority, as it facilitates their coexistence. National communities in any United Nations country exercise their rights in accordance with international legal agreements and documents dealing with human and civil rights. The vast majority of these documents were adopted during the second half of the twentieth century, but not all of them have been properly characterised in the scientific literature.

Analysis of recent research and publications. The legal framework for certain aspects of political participation of national minorities at the European and national levels is reflected in the works of M. Žagar, V. Krzysnik-Bukic, M. Komac, I. Kristan, G. Pentassuglia, K. Ribičić, P. Rother.

The purpose of the article is to characterise the fundamental documents of the United Nations in the field of protection of national minority rights.

Summary of the main material. Modern approaches to international cooperation in addressing a range of issues related to the protection of national minorities were developed after the Second World War, when the United Nations became the successor to the former League of Nations. It is in its structures and documents that new trends in this area and the involvement of UN bodies and specialised agencies are most noticeably reflected. The basic rights of persons belonging to national minorities (the right to physical existence and inviolability, prohibition of discrimination, etc.) were guaranteed by such international treaties as the Convention on the Prevention and Punishment of the Crime of Genocide of 1948 and the International Convention on the Elimination of All Forms of Racial Discrimination of 1965.

However, it was only in 1966 that the UN adopted the document that first mentioned minority rights - the International Covenant on Civil and Political Rights. The Covenant is the starting point for discussions of international protection of minorities, as the first binding document relating to these groups. Article 27 of the

Covenant states: "In those countries where ethnic, religious or linguistic minorities are found, persons belonging to such minorities shall not be deprived of the right to enjoy their own culture, to profess their own religion, or to use their own language in community with the other members of their group." The article does not use the term "national minorities" instead dividing all minorities into ethnic, religious and linguistic minorities.

The article states that "no one shall be deprived of the right to enjoy their own culture..." - It implies tolerance of states towards national minorities, but not commitment to the preservation and development of their distinctive national identity. Being directed to a special category of subjects - persons belonging to minorities, this provision not only does not exclude the application to them of other rights guaranteed by the Covenant (including the right to participate in public affairs, the right to freedom of association with others, the right to defence, etc.), but also provides for the existence of certain obligations of states due to the peculiarities of the exercise of their rights by these persons and the need to protect them [2].

The adoption by the UN General Assembly of Resolution 47/135 "Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities", which sets out the basic principles of minority rights protection in the preamble, was of great importance in the development of the protection of national minorities. A number of OSCE meetings also contributed to the protection of the rights and freedoms of national minorities: in Madrid in 1983, attention was focused on the requirement to develop the protection of national minorities; in Vienna in 1989, the equality of minorities with the majority was emphasised, the right to develop their culture, to preserve cultural and historical materials, to education within their own culture was defined; in Copenhagen in 1990, the cultural, religious and linguistic spheres of protection of national minorities were specified, and the issue of their political rights was raised for the first time; in Helsinki in 1992, a commitment was made to refrain from practising the practice of national minorities, specified the cultural, religious and linguistic spheres of protection of national minorities, and for the first time raised the issue of their political rights; in Helsinki 1992, a commitment was made to refrain from the practice of resettlement.

The United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities was adopted on 18 December 1992. On the one hand, it is based on previous documents that guarantee equal rights for such categories of population, and especially on the International Covenant on Civil and Political Rights. On the other hand, it should not be seen as an extension of the Covenant, but as a new start in the process of legally enshrining minority rights at the international level. However, the Declaration is rather general, since it is impossible to define in such detail at the global level the rights that would apply to all minorities and that would be supported by all countries.



The protection of minorities in the Declaration is based on four requirements: protection of existence, non-exclusion, non-discrimination and non-assimilation of the respective groups. The document contains nine articles, a preamble and covers all the special rights of minorities and, above all, calls on states to actively promote the enjoyment of these rights by persons belonging to minorities. The first article is rather general, obliging states not only to protect the existence of minorities and their distinctive identity, but also to create opportunities for the promotion of this. It is worth noting that the aforementioned Article 27 of the ICCPR did not call on states to promote the preservation and development of identity.

The second article guarantees minorities the right to profess and practise their own religion and to use their own language (both in private and in public); to participate actively in cultural, religious, social, economic and public life, to form their own associations, and the right to "take an active part in the adoption of decisions at national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not inconsistent with national law". In addition, persons belonging to minorities have the right to establish and maintain free and peaceful contacts both with other members of their group and with persons belonging to other minorities, as well as contacts across borders with citizens of other states with whom they have national, ethnic, religious or linguistic ties [1].

A new effective mechanism for ensuring the protection of the rights of national minorities was the creation of the post of the OSCE High Commissioner on National Minorities at the meeting. In the Helsinki Summit Decisions of 10 July 1992, the mandate of the High Commissioner on National Minorities was adopted. According to the mandate, the High Commissioner operates under the auspices of the Committee of Senior Officials (CSO) (renamed the Steering Board in 1994), which is supposed to serve as a mechanism for preventing conflicts at the earliest possible stage [4].

Following the adoption of the Declaration, the Working Group on Minorities was established in 1995 to engage in dialogue on minority issues, monitor implementation and promote their rights. The Working Group on Minorities held annual meetings with UN Member States, experts, representatives of minorities, non-governmental organisations and representatives of UN agencies. This diversity ensured a broader approach - different practices, different opinions and experiences. In 2007, the Working Group on Minorities was replaced by the current Forum on Minority Issues, following similar principles and thus assisting and advising the Human Rights Council on the basis of information obtained during the study of minority issues.

We would like to highlight two mechanisms that are crucial in the UN human rights and thus minority protection system. The Human Rights Council establishes special procedures - either individual work (independent experts and special

rapporteurs) or collective work (working or expert groups). Their work focuses either on a specific area of human rights or on a particular country and its human rights regime. Their tasks include visiting countries, examining individual cases of violations and studying the problem as a whole, on the basis of which they can then propose solutions, guidelines and improvements for each country, as well as for the Human Rights Council and the Office of the High Commissioner for Human Rights.

Another key mechanism is the Universal Periodic Review, a unique mechanism that examines the protection of human rights in all 193 UN member states. The review is based on the national report of the country under review, information collected by the UN and information provided by other organisations (regional, non-governmental, etc.). A key element of the review is the dialogue with the country under review, which results in the country's ownership of the adoption and implementation. Thus, through these institutions and mechanisms, the UN is actively involved in the development, implementation and monitoring of human rights protection, including minority rights [7, p. 219-222].

In the 1990s, the Council of Europe became more active and substantive in dealing with the issue of national minorities. The 1993 Vienna Declaration of the Council of Europe proclaimed compliance with the principles of international law in the protection of national minorities as a decisive criterion for assessing any application for admission of new countries to the Council of Europe. At the same time, documents were adopted that regulate minority rights in addition to the more general Convention for the Protection of Human Rights and Fundamental Freedoms. These are the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities, which represent the most important legal sources regulating these issues.

The Framework Convention contains a preamble and 32 articles. As its name suggests, it provides a framework within which states must act, and its provisions are programmatic, meaning that states must implement individual measures. The preamble of the Convention actually sets out all the main reasons for the very origin of the Convention, for example, that the protection of minorities is necessary for peace, that the protection of human rights and thus of minorities preserves unity, and that in a democratic society it is necessary not only not to discriminate against persons belonging to minorities but also to promote their culture.

It can be said that the Framework Convention was the first multilateral binding legal instrument dedicated to the protection of the interests and rights of national minorities. Article 1 already states that the protection of national minorities, their rights and freedoms is now an integral part of international human rights protection. Article 3 enshrines the free choice of each person to decide whether to belong to a national minority and the free choice of nationality, respectively. It is in this document that the ideas of so-called positive discrimination, i.e., some measures of protection in relation to persons belonging to national minorities (affirmative



action), appear. Thus, Article 4 proposes not only to take all necessary measures to promote full equality between the ethnic minority and the majority in all areas of economic, cultural, social and political life, but also to take due account of the "special situation of persons belonging to national minorities". At the same time, the same article suggests that this "special situation" should not be considered an act of discrimination.

The Convention pays special attention to the problems of assimilation and in Article 5, the parties undertake to take all possible measures to prevent forced assimilation and to encourage dialogue between cultures, to promote mutual respect and cooperation in the fields of culture, language and education. Article 9 enshrines the possibility and right of national minorities to freedom of expression and freedom of information regardless of frontiers, which is of great importance for divided peoples or diasporas. At the same time, the Convention provides for the free establishment and use of their own media. It enshrines the unimpeded use of one's own language of communication in private and public life (Article 10); the right to establish private educational institutions to encourage the study of minority culture and language, as well as to publish one's own textbooks (Article 12). The Convention supports the idea of free and unimpeded communication and contacts between persons of common ethnic or cultural identity, including across borders (Article 17), as well as to take an active part in public and political life, especially in matters affecting them directly (Article 15).

It should be emphasised that, in stipulating the linguistic rights of minorities and their right to education, the Convention calls on states to take certain measures (e.g., bilingual inscriptions or native tongue instruction) if this is appropriate or if there is a significant minority population in the area. This could be applied to ethnically mixed areas, but the provision is worded broadly enough to allow states to interpret it in their own way - even to the detriment of minorities.

Article 20 of the Convention, which obliges persons belonging to minorities to respect the law and the rights of others in the exercise of their rights, is a novelty compared to the 1992 UN Declaration [3].

A number of acts have been adopted at the OSCE level, in particular: the 1996 Hague Recommendations on the Rights of National Minorities to Education attempted to highlight the content of those minority rights to education that apply mainly in situations that are the field of activity of the OSCE High Commissioner on National Minorities. In addition, the interpretation of the norms has been made in such a way as to ensure consistency in their application. The Recommendations are divided into eight sub-sections, according to the practical issues of education. A detailed explanation of the Guidelines is provided in the accompanying Explanatory Note, which contains clear references to the relevant international standards.

Another feature worth mentioning is that the Framework Convention does not contain a definition of a national minority. During the preparation of the text of the

Convention, it was not possible to reach an agreement that would be supported by the majority of member states. However, there are a number of provisions in the Framework Convention that, as a result of compromise wording and a pragmatic approach, in a sense leave the definition of the concept to the authorities that control the implementation of the Framework Convention. In addition, a number of previous and subsequent CoE documents (but not the Convention) contain interpretations of this term [5-6].

Summary. Thus, in the field of protection of the rights of ethnic and national minorities, the UN, like the League of Nations, for almost half a century acted extremely slowly, sluggishly, indecisively and ineffectively. It was only in the early 1990s that it began to act more actively, decisively and constructively. This happened only when ethnic and national minorities, tired and frustrated by the fruitless expectation of expanding their rights from states, intensified their struggle for these rights, resorting to ethno-national uprisings or revolutions, or to guerrilla methods or terrorist actions.

The two main dilemmas at the methodological level in the protection of national minority rights are the lack of a universally recognised, legal definition of a national minority and the uncertainty of the nature of its rights in terms of individual or collective rights. It should be noted that the absence of a standardised definition of a minority allows different countries to vary their own choices. As for the second problem, it is to find out whether the best way to protect members of national minorities is to provide clear guarantees of individual rights accompanied by a prohibition of discrimination, or whether there should be a special constitutional principle (or set of principles) guaranteeing special rights to members of minorities.

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