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INTERNATIONAL LEGAL PROTECTION OF LINGUISTIC MINORITIES

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ABSTACT--*The paper focuses on the issue of protection of language minorities. The theoretical significance of the research consists in the consideration of the phenomenon of "linguistic minority". The article makes an attempt to reveal international documents implied in this field. Methodological and dialectical approaches are used in the article to determine the scope of the research and examine the ration between the adopted international and regional legal instruments. This article is inherently an analysis of the international legal protection of linguistic minorities. The aim of the research is to form ideas on the effectiveness of the development of international legal norms, aimed at combating discrimination of linguistic minorities; existing international-legal acts providing for a general prohibition of discrimination and its different types; gaps in the international-legal regulation of protection against discrimination of linguistic minorities.*

The ***results*** *of the research may be of practical use while treating linguistic minorities fairly and show the ideas which humanity should strive to achieve.*

Key words--*legal framework; protection of minority rights; linguistic minorities; human rights; international-legal regulation; international legal instruments*

I. INTRODUCTION

In all countries of the world minorities were and still represent one of the most vulnerable groups of people who continue to face multiple forms of discriminatory treatment for no other reason.

The ethnic groups or population minorities have existed in communities through the ages. For the first time the international community drew its attention to the problem of minority protection in the middle of the XVI century though the earliest international treaties aimed at securing the special community rights of persons belonging to minorities reflected only the interests of religious minorities. (Abashidze, 1996: 11)

It was not until the XIX century that minority issues gained international character and became a subject of international legal regulation. (ibid: 17) Along with this, modern nation-states were more concerned about the protection of the idea of "nation-state" based on the principle of self-identification than about the protection of minorities as such.

By the beginning of the XX century minority issues reached the top of the international legal agenda. After World War I boundaries of many Eastern and Central European states were rearranged. As a result, a peaceful coexistence between old and new majorities and minorities became a central concern for the reconfigured states, particularly for those that embodied previously separated ethnic groups. (Wippmann, 1997) Bearing in mind that instability in the new states could pose a threat to international peace, the first international system of the

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minority rights protection was established under the auspices of the League of Nations through the adoption of several special agreements concluded with the countries of Eastern and Central Europe (Sastry, 2012). These treaties ordinarily included provisions mandating non-discrimination and equality and focused on the positive steps to be taken in order to enable minorities to maintain elements of their self-identification.

Since the proclamation of the principle of non-discrimination in the UN Charter it has been firmly established in the international legal system and has become an imperative norm of *jus cogens*. The principle is not a static category, but is in a constant development process. The practice of its application revealed the factors that limit its effect, which do not correspond to modern ideas about the essence of this principle.

The UNESCO estimates that nowadays more than 6000 languages are spoken all over the world, from which the significant number can be classified as minority languages. Language constitutes a core and integral part of everyday life, culture and identity of any community. Linguistic issues are of great importance for linguistic minorities since minority languages serve as a means of expressing and preserving their group and cultural identity. Nowadays linguistic minorities from all regions of the globe are facing difficulties in enjoying their rights. (Language Rights of Linguistic Minorities, 2015)

The essence of the international legal protection of linguistic minorities is the prohibition of any obstacles to the achievement of legal equality. Its operation extends to all rights and freedoms: civil, political, economic, social and cultural linguistic minorities.

II. MATERIAL AND METHODS

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

The current literature contains a certain set of approaches to conceptualizing the essence and content of a "linguistic minority". The issue of "linguistic minority" was dealt by Lino Panzeri (Panzeri, *2016*) from the legal and linguistic points of view. Independent Expert on minority issues, Rita Izsák-Ndiaje (2012) identified and discussed nine areas of concern:

1) threats to the existence of minority languages and linguistic minorities;
2) recognition of minority languages and linguistic rights;
3) the use of minority languages in public life;
4) minority languages in education;
5) minority languages in the media;
6) minority languages in public administration and judicial fields;
7) minority language use in names, place names and public signs;
8) participation in economic and political life; and
9) the provision of information and services in minority languages.

In 1979 Francesco Capotorti, Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, offered the following definition of a "minority" formulated in the context of article 27 of the (International Covenant on Civil and Political Rights) ICCPR: "A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of

the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language" (Petričušić, 2005: 5). This definition contains four primary criteria, from among which the first three are objective and the last one is subjective: 1) numerical inferiority of the group; 2) its non-dominant position in relation to the whole population; 3) difference of its ethnic, religious, and linguistic characteristics and traditions from those of the rest of population; 4) the wish of the group to preserve its special characteristics and culture (Jabareen, 2011).

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

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

In the work we applied a general scientific methodological approach, to determine the scope of the research, specifying the basic concepts and categories relating to the international legal protection of linguistic minorities. We also applied a dialectical approach in order to examine the ration between the adopted international and regional legal instruments on the protection of minority rights and specifically of linguistic minority rights.

III. RESULTS AND DISCUSSION

1.1 Legal framework for the protection of minority rights: universal level

After World War II the Organization of the United Nations gradually developed its own system of minority rights protection embracing special norms, procedures and mechanisms.

The first UN treaty that contained a minority-specific provision was the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG) that prohibited in article 2 the destruction, in whole or in part, of "a national, ethnical, racial or religious group, as such". The relevant specific provisions of the subsequent treaties prohibited discrimination against minorities. The 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) prohibits in article 1 discrimination on the grounds of "race, colour, descent, or national or ethnic origin"; the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) does the same in article 2 (2) on a more extensive list of grounds that includes "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

It follows that minority rights drew close attention as a separate issue and were generally recognized only after the end of Cold War (Sastry, 2012). Accordingly, the UNO Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UNDM) was adopted by the General Assembly only in 1992. **T**his document is one of the most outstanding contributions of the UN to the advancement of the rights of persons belonging to minorities for two reasons: firstly, it was the first document that dealt solely with minority rights' issues and, secondly, it fixed the main international norms and standards on the enforcement of

minority rights (Minorities: Introduction, 2009). The Declaration grants to persons belonging to minorities: a) protection of their existence and their national or ethnic, cultural, religious and linguistic identity; the right b) to enjoy their own culture; c) to participate effectively in cultural, religious, social, economic and public life; d) to participate effectively in decisions which affect them on the national and regional levels.

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

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

1.2 Legal framework for the protection of minority rights: regional level (Council of Europe)

The Council of Europe seeks to protect human rights, democracy and the rule of law. Inter alia, it pursues such objectives as to encourage the development of Europe's cultural identity and diversity, to find solutions to diverse problems facing European society. The CoE has two main treaties on minority rights, namely the Framework Convention for the Protection of National Minorities (FCNM) and the European Charter for Regional or Minority Languages (ECRML).

The FCNM aims to protect the existence of national minorities within the territories of its State parties. It also seeks to promote the full and effective equality of national minorities by means of creating appropriate conditions that would enable them to preserve and develop their culture and identity (Framework Convention for the Protection of National Minorities, 2017). FCNM also includes a collective element in the implementation of the rights set forth in it (Marginalized Minorities, 2016).

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

The ECHR is an international court, which was set up in 1959. It rules on individual or State applications alleging violations of the human rights guaranteed by the ECHR (The Court in brief, 2000: 2).

The ECHR has consistently held that linguistic freedom *per se* was not one of the rights and freedoms guaranteed by the ECHR. The Convention as such did not govern the right to use a particular language in communications with public authorities or the right to receive information in a language of one's choice (European Convention on Human Rights). The Court affirmed that the Contracting States were free to impose and regulate the use of their official language or languages in identity papers. Thus, regarding the spelling of surnames and forenames according to minority languages, the ECHR granted a wide margin of appreciation to

States in view of the existence of a great number of historical, linguistic, religious and cultural factors in each country and the absence of a European common denominator (see *Mentzen v. Latvia* (dec.) (2004), *Bulgakov v. Ukraine* (2007)).

As for linguistic rights in the field of education, article 2 of Protocol No. 1 does not specify the language in which education must be conducted in order that the right to education should be respected (*Case "relating to certain aspects of the laws on the use of languages in education in Belgium"* (1968)).

1.3 Linguistic minorities as a special category of international legal regulation

There is still no concurrent universally accepted definition of the term "minority" in the modern international legal sphere because of a great variety of manifestations of this phenomenon.

This circumstance has also led to the lack of consensus on the question of minorities' classification. In this work we adhere to the classification presented in the UNDM, which differentiates three categories of minorities: national or ethnic, religious and linguistic (Declaration on the Rights…, 1992).

In the absence of a definition that would satisfy the interests of all members of the world community, each State develops its own definition of minorities on the basis of its political considerations (Sastry, 2012).

At the same time the following definition seems to be quite widely used: "*A minority is a national, ethnic, religious or linguistic group that differs from the other groups within the territory of the sovereign State*" (Abashidze, 1996).

It has been often highlighted that the existence of a minority is a question of fact, but not of States' decision on whether or not to recognize this group of population within their territories. Further, it is commonly accepted that the definition of the term "minority" should reflect both objective and subjective factors/criteria. These criteria have been developed by various UN independent experts on the basis of international standards. The ***objective criteria*** encompass the shared characteristics of the group such as ethnicity, national origin, culture, language or religion. The ***subjective criteria*** address two key issues: the principle of self-identification and the desire to preserve the group's identity. A minority community has the right to assert its status as a minority and to claim minority rights. Individuals can claim their membership in such a community on the basis of objective criteria. (Marginalized Minorities, 2010).

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

Returning to the definition of a "minority" formulated Mr. Capotorti, in 1984, Jules Deschênes, member of the Sub-Commission, proposed the following definition: "*A group of citizens of a State, constituting a numerical minority and in a non-dominant position in that State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only* implicitly, *by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law*"

As for the concept of a ***"linguistic minority",*** it represents the topic of different fields of research. The most outstanding of them are linguistics and law, which, unfortunately, have not sufficiently interacted in the past. This has undeniably led to negative consequences, e.g. some scholars maintain that the legal framework for the protection of linguistic minority rights is insufficient in most cases (Literature and Human Rights, 2015).

In the international legal sphere, as a result of the complexity of the phenomena represented by "minorities", the state of affairs regarding the definition of the term "linguistic minority" is exactly similar to the one of the term "minority" to the extent that there exists no generally recognized legal definition of this expression (Parliamentary Assembly Documents, 2001). Nevertheless, we believe that in general terms a "linguistic minority" may be defined, by analogy to the definition of a "minority" that we adhere to, as a linguistic group that differs from the other groups within the territory of the sovereign State.

Human rights are universal by definition and therefore the whole range of internationally recognized human rights standards and principles protect the rights of linguistic minorities and of minorities in general. But for linguistic minorities language is a central element and expression of their identity and of key importance in the preservation of their distinct group and cultural identity, sometimes under conditions of marginalization, exclusion and discrimination

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

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

The core language rights operate at the level of the following base points: dignity, liberty, equality and non-discrimination, and identity (ibid, p. 5).

IV. CONCLUSION

Contemporary international law has considerable potential to combat various types of discrimination based on a number of international agreements, thanks to which considerable success has been achieved. An essential shortcoming of the international legal system is the absence of a single universal international act, aimed at eliminating all forms of discrimination. The capabilities of modern information technologies are often used by destructive forces to spread the ideas of intolerance around the world, so an international treaty must be adopted to combat the dissemination of materials provoking human rights abuses on the Internet.

The contemporary universal legal framework for the protection of minority rights encompasses eight binding documents and one non-binding. The most of them contain only relevant anti-discrimination provisions owing to which they are nevertheless of particular significance for minorities' protection.

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The contemporary legal framework of the CoE for the protection of minority rights includes three main legal instruments, which refer to specifically national minorities. The respective mechanisms include one international court and two monitoring bodies.

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

Various UN bodies, researchers as well as organizations have made attempts to formulate an apt definition of a "minority". It has been often highlighted that the existence of a minority is a question of fact, but not of States' decision on whether or not to recognize this group of population within their territories. Further, it is commonly accepted that the definition of the term "minority" should reflect both objective and subjective factors/criteria. The objective criteria encompass the shared characteristics of the group such as ethnicity, national origin, culture, language or religion, while the subjective criteria address the principle of self-identification and the desire to preserve the group's identity. The main shortcoming of the most well-known definitions of a "minority" that have been proposed at different times was the inclusion of the nationality criterion.

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

In the absence of a definition that would satisfy the interests of all members of the world community, each State develops its own definition of minorities on the basis of its political considerations.

As for the concept of a "linguistic minority", it represents the sphere of interest of both linguistics and law, which, unfortunately, have not sufficiently interacted in the past, and that has undeniably led to negative consequences. In the international legal sphere, as a result of the complexity of the phenomena of "minorities", the situation regarding the definition of the term "linguistic minority" is exactly similar to the one of the term "minority" to the extent that there exists no generally recognized legal definition of this expression.

We adhere to the definition of a "minority" which states that it is "a national, ethnic, religious or linguistic group that differs from the other groups within the territory of the sovereign State" (Abashidze, 1996). We believe that, by analogy to this definition, a "linguistic minority" may be defined in general terms as a linguistic group that differs from the other groups within the territory of the sovereign State.

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

the right to private life, the right to education, and the right of linguistic minorities to use their own language with others in their group.

As it can be deduced from the existing international legal and quasi-legal framework, the core language rights operate at the level of such base points as dignity, liberty, equality and non-discrimination, and identity. International law allows, in certain cases, restrictions in the rights. The legality of the restrictions lies in their compliance with the following criteria: enforcing the law, applying exclusively to protect the most important values, compatibility with the nature of specific rights, applicability to all, and not to members of individual social groups. Non-compliance with these criteria may indicate discrimination. Positive actions, aimed at achieving legal equality must also meet strict criteria, otherwise they can lead to discrimination.

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

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