

AMERICAN UNIVERSITY OF ARMENIA

THE RIGHTS OF NATIONAL MINORITIES: ARMENIA'S COMMITMENTS UNDER
INTERNATIONAL CONVENTIONS AND PROVISIONS IN DOMESTIC
LEGISLATION

A MASTER'S ESSAY SUBMITTED TO
THE FACULTY OF THE GRADUATE SCHOOL OF
POLITICAL SCIENCE AND INTERNATIONAL AFFAIRS
FOR PARTIAL FULFILLMENT OF THE DEGREE OF
MASTER OF ARTS

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YEREVAN, ARMENIA
JANUARY 2008

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ACKNOWLEDGMENTS

In this paper I would like to express my deep gratitude to the Dean of the Graduate School of Political Science and International Affairs, Dr. Lucig Danielian, for the knowledge and skills provided during my studies. Due to the great efforts of Dr. Danielian I gained not only theoretical knowledge but also practical skill and abilities during the course of my studies, which facilitated my research in this paper. I would like also to thank Dr. Danielian for the inspired courage to undertake challenging tasks and pioneer in areas not yet widely revealed.

I would also like to express my gratefulness to my Faculty Adviser Ms. Theresa Khorozyan, for her great help in the research process, and particularly for the very valuable guidance. Due to the fact that the topic of the paper of not yet widely covered in the literature and due to its practical mode, the recommendations and advises done in the course of the research were especially valuable.

I would also like to thank the Department of the Graduate School for all the assistance and support provided.

ABSTRACT

The main aim of this paper is to analyze the provisions of national legislation concerning the rights of people belonging to national minorities and reveal their compatibility with the basic international human rights standards enshrined in international legal documents. Bearing in mind that examination of legislation is not a sufficient for the comprehensive overview of the stance of national minorities in the Republic of Armenia, this paper will also reveal the actual implementation of the laws through the analysis of state policy and practice in this area. And finally, on the bases of the assessment recommendations will be provided aimed at the better protection and promotion of the rights of national minorities.

In order to achieve its aim, this paper will review the international standards stipulated in main document of the international organizations to which Armenia is a part, and particularly, the hard and soft law instruments of the United Nations Organization, conventions and other documents of the Council of Europe, and the basic documents adopted by the Organization for Security and Cooperation in Europe.

After the review of the international standards and commitments undertaken by the Republic of Armenia under these documents, the provision of the domestic legislation regulating the rights of persons belonging to national minorities will be revealed. Particular attention will be devoted to the compatibility of these provisions with international standards.

And finally, the implementation of these laws will be examined in different spheres pertaining to the national minorities, such as prohibition of discrimination and the conduct of law enforcement officials, rights to education, rights to freedom of conscience, religion and belief, right to preservation of culture and identify, right to citizenship, right to participation in public life, and the stance of Yezidi community in Armenia the biggest national minority living in Armenia.

And finally, on the bases of examination of laws and policies, recommendations will be provided aimed to ensure the better protection and promotion of the rights of national minorities, paying special attention to the draft law on the rights of national minorities.

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1. INTRODUCTION

Minority issues are one of the fundamental political issues of democracy and the rule of law (European Centre for Minority Issues). Wherever people come together as a community to collectively organize their lives – their social coexistence, there will be some, who in terms of culture, ethnic origin or religious background differ from the others. Where there is community there are minorities. However, the way these ethnic religious or cultural differences are dealt with, says a lot about a community (European Centre for Minority Issues). Indeed, the extent to which minorities can preserve their distinctiveness and at the same time participate in and shape community life is the litmus test for democracy, collective and individual rights (European Centre for Minority Issues).

The rights of individuals belonging to national minorities are enshrined in various international human rights instruments. Since its independence Armenia committed itself to a number of obligations ensuring the implementation of these rights while joining different international organizations and ratifying these international instruments. Domestic legislation of the Republic of Armenia also stipulates for the rights of national minorities. However, besides the existence of international and some national legislation on the issue, their provisions and the actual implementation of these rights requires further analysis and examination.

The main aim of this paper is to analyze the domestic legislation in the light of international standards; examine the state policy and practice on rights of national minorities; and provide recommendations for further improvement of protection and promotion of these rights in Armenia.

In order to empirically examine the proposed areas, the following research questions will be examined:

1. Is the domestic legislation in line with international human rights standards, in particular with provisions of hard and soft laws of the United Nations, Council of Europe (CoE) and Organization for Security and Cooperation in Europe (OSCE)?
2. What is the state of the implementation of domestic legislation and what are the main problems/obstacles to ensure these rights in practice?
3. What legislative and policy improvements are needed in order to ensure realization of the rights of national minorities in Armenia?

In order to answer the research questions posed in this study the following methods will be employed: content analysis of the national legislation in light of international human rights standards on the rights of national minorities; analysis of implementation of legislation and state policies through the review of reports of national and international governmental and non-governmental organizations on protection of these rights.

2. INTERNATIONAL STANDARDS IN THE FIELD OF RIGHTS OF NATIONAL MINORITIES

2.1 United Nations Instruments

There is no generally recognized legal definition of the term “national minority”. A significant amount of energy and time was spent over the past five decades in various international organizations in the quest for a generally acceptable definition of the term minority, mainly for codification purposes, yet no conclusive results can be reported.

Modern human rights legal protection for minorities began with the system of minority rights created under the League of Nations through special treaties with Central and Eastern European states (Minority Rights Group International). With the creation of the United Nations Organization after World War Two, the particular vulnerability of minorities to human rights abuses was recognized by the establishment the Sub-Commission for the Prevention of Discrimination and the Protection of Minorities, followed by article 27 of the International Convention on Civil and Political Rights (ICCPR), specifically dedicated to minorities (Minority Rights Group International). However, before the adoption of ICCPR Universal Declaration of Human Rights enshrined the non-discrimination clause.

The ICCPR, that entered into force in 1976, states that “[i]n 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” (United Nations High Commissioner for Human Rights). Referring to the ICCPR as a whole, it is the only global treaty that includes a provision specifically referring to minority rights (Pamphlet 4, p.3). Article 27 technically applies only to “persons belonging to... minorities”, not to minority groups or communities themselves, although the collective aspect of this right is underscored in the next phrase “in community with the other members of their group” (Pamphlet 4, p.3).

The articulation of minority rights is relatively narrow and is confined to those areas concerned with identity and culture, i.e., the rights to culture, to the free exercise of religion, and to use one’s own language. The wording “shall not be denied” may give the impression that the State has merely to refrain from certain actions rather than be obliged to adopt positive measures to promote or assist minorities in exercising their rights (Pamphlet 4, p.3). However, the Human Rights Committee has observed that States may be required to adopt “positive measures of protection” to protect rights from being violated not only by the government but also by other persons (Pamphlet 4, p.3).

In addition, a General Comment on the implementation of the article 27 was adopted, which asserts that “[t]he Committee observes that this article establishes and recognizes a right which is conferred on individuals belonging to minority groups and which is distinct

from, and additional to, all the other rights which, as individuals in common with everyone else, they are already entitled to enjoy under the Covenant” (General Comment No.23). From the other hand, the General Comment additionally states that article 27 relates to rights conferred on individuals as such and is included, like the articles relating to other personal rights conferred on individuals and is cognizable under the Optional Protocol (General Comment No.23). The right to identity covers the rights of person belonging to minorities to enjoy their own culture, to profess and practice their own religion, or to use their own language (ICCPR, art. 27).

The fact that article 27 is placed in the context of a document on individual civil and political rights, that the *travaux préparatoires* to the Covenant, emphasize that minorities do not have a legal personality under international law, and the fact that the Optional Protocol to the Convention recognizes *locus standi* only to individuals, are all arguments supporting the position that article 27 guarantees only individual rights (Akermark). This General Comment also specifies that article 27 is designed to protect the rights of persons who belong to a group and who share in common a culture, a religion and/or a language, who need not be citizens of the State party and need not be permanent residents, targeting migrant workers or even visitors to a state party (General Comment No.23). Furthermore, article 26 of the Covenant, protects persons from discrimination and guarantees effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other

opinion, national or social origin, property, birth or other status.

A range of other instruments, followed - crucially, the UN 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 and the Declaration on the Rights of Indigenous Peoples, adopted in 1992 (Minority Rights Group International). The UN Declaration of 1992 in its article 2 states that persons belonging to national or ethnic, religious and linguistic minorities have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination (Minority Rights Group International).

The declaration acknowledges the right of minorities to participate in effectively in cultural, religious, social, economic and public life, in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, as well as have the right to establish and maintain their own associations. Article 4 (3) also states that appropriate measures should be taken by states so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue (Minority Rights Group International).

Another important development was the Resolution 2005/79 on Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities adopted by General

Assembly in 2005 which endorses the implementation of 1992 UN Declaration (GA 2005/79, Resolution). The rights of minorities are also protected in the General Assembly Convention on the Prevention and Punishment of the Crime of Genocide, which came into force in January 1951; International Convention on the Elimination of All Forms of Racial Discrimination, entered into force in 1969; Convention on the Rights of the Child (articles 17 and 30 pertaining to the rights of children belonging to ethnic, religious or linguistic minorities), which entered into force in 1990; and the UNESCO Universal Declaration on Cultural Diversity, adopted by the 31st Session of the General Conference of UNESCO in 2001, and the International Labour Organization Conventions No.111 and 169 (though not yet ratified by Armenia).

Referring to the jurisprudence of the UN Treaty Bodies within the framework of the individual complaints procedure, it should be mentioned that the especially the Human Rights Committee has examined a number of national minority cases; both from the perspective of non-discrimination and the right to identity (Preece, p.3). However, the committee cannot issue legally binding judgments and may only make recommendations to the government and request follow-up information on what actions, if any, the government has take (Pamphlet 4, p.13). Even though a committee's "views" are not legally binding, ignoring them exposes a government to domestic and international criticism that it is not complying with its international obligations. However, this jurisprudence won't be examined in this paper as

though these decisions read like judgments they are not legally binding (Preece, p.3).

2.2 The Standards Set by the Council of Europe

The Council of Europe, set up in 1949, was the first international organization established to foster co-operation between European democracies for the purpose of realising and safeguarding their common ideals and principles, which include democracy, human rights and the rule of law (National Minority Standards: A compilation of OSCE and Council of Europe Texts, p.7). National and religious minority issues constitute essential part of its mandate (National Minority Standards: A compilation of OSCE and Council of Europe Texts, p.7). One of the basic treaties of the Council of Europe is the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, however it does not contain any provision on protection of rights of national minorities. The right of individual petition is inherent in the Convention system, and all of the Court's judgments are legally binding on States Parties (Pamphlet 7, p.1). The execution of the Court's judgments is overseen by the Committee of Ministers, which has the authority to suspend or expel a State from the Council of Europe if the State does not comply with a Court judgment (Pamphlet 7, p.1).

In the context of the rights of ethnic and linguistic minorities to exercise their religion, article 9 of the European Convention on Human Rights (ECHR) states that "[e]veryone has

the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance”.

Freedom to manifest one’s religion or beliefs, as a no-derogable right, shall be subjected only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others. The ECHR also contains an article on prohibition of discrimination on grounds 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. Also, the Protocol No.12 of the ECHR also contains a provision on general prohibition of discrimination and stipulates that “[n]o one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1”.

However, it should be underlined that non-discrimination in itself is regarded as insufficient for the effective integration of minorities. Not falling into details of the analysis of the scope of this non-discrimination provision of ECHR, it should be stated that non-discrimination provisions are generally considered to be negative rights, implying that they specify that states should refrain from some actions that could lead to discrimination, without

entitlement to a set of rights. Thus, this article has been of little practical relevance as concerns the protection of the rights of persons belonging to minorities (Bossuyt, p.3). It was only in July 2005 that the European Court of Human Rights (ECHR) found for the first time a violation of the principle against racial discrimination contained in article 14 ECHR (Bossuyt, p.4). The Court considered in *Nachova v. Bulgaria* that any evidence of racial verbal abuse used by law enforcement agents when using force against persons from an ethnic or other minority is highly relevant to the question of whether or not hatred-induced violence has taken place (Bossuyt, p.4).

With the *Nachova* judgment, the Court confirmed its increasing attention to the specific problems of Roma. Moreover, it also confirmed that certain forms of racial discrimination can even amount to “degrading treatment”. Since this is prohibited by article 3 ECHR, the Court examined the actions of states in this regard with heightened scrutiny.¹ However, the ECHR remains demanding when it comes to the evidence required to prove discrimination and in scrutinizing the margin of appreciation of states. The Court always examines the case from the perspective of the individual application and not the overall social context. Statistics, for example, are not considered as sufficient in their own right to disclose a practice that might be classified as discriminatory. More substantive evidence is necessary.

¹ ECHR, Appl. Nos. 43577/98 and 43579/98, *Nachova and others v. Bulgaria*, judgment of 6 July 2005, para. 164.

Discrimination is not limited only to those cases in which a person or group is treated worse than another similar group (Pamphlet 7, p.2). It may also be discrimination to treat different groups alike: to treat a minority and a majority alike may amount to discrimination against the minority. Moreover, the European Court of Human Rights has held that if a State takes positive measures to enhance the status of a minority group (for example, with respect to their participation in the democratic process), the majority can not claim discrimination based on such measures (Pamphlet 7, p.2).

Thus, despite the fact that the European Convention does not contain a specific provision devoted to the rights of national minorities, the ECHR has issued a number of pertinent decisions that are of relevance to national minorities (National Minority Standards: A compilation of OSCE and Council of Europe Texts, p.163). The jurisprudence of the ECHR is carefully progressive, especially since 2000, the ECHR has made use of the substantive provisions of the ECHR in support of minority protection (Bossuyt, p.5). The ECHR generally deals with minority protection when scrutinizing the margin of appreciation of states.²

² Margin of appreciation is a concept the European Court of Human Rights and allows the Court to take into effect the fact that the European Convention on Human Rights will be interpreted differently in different signatory states, taking into account the cultural, historic and philosophical differences between Strasbourg and the nation in question. This doctrine is based on the notion that each society is entitled to certain latitude in resolving the inherent conflicts between individual rights and national interests or among different moral convictions.

Taking into account one of the core interests for a minority is the preservation of its culture and identity one of the first set of judgments of the ECHR on protection of this right was the judgments on the traditional lifestyle of Roma under article 8 ECHR on the right to respect for private and family life (Bossuyt, p.3). Gradually the Court started to explicitly deal with minority problems, encompassing cases on the traditional lifestyle of Roma (*Chapman v. the United Kingdom*), emphasizing the importance for a minority to maintain its identity, including the possibility to maintain a travelling lifestyle, considering the removal orders without providing any possibility for taking individual circumstances into account as incompatible with the requirements of article 8 (cases of Russian-speaking minorities living in Latvia, *Slivenko v. Latvia*) (Bossuyt, pp.5-6).

The individual right to freedom of religion (article 9) includes the right to manifest that religion, which allows a minority the necessary degree of control over community religious matters. The ECHR considers that state parties that do not recognize minority churches or refuse them legal personality, when the church is often central to the minority's culture, are in breach of the freedom of religion (Bossuyt, pp.6-7). The Court has held that the State must not interfere in the internal affairs of the church: "freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. The pluralism inseparable from a democratic society, which has been dearly won over the centuries, depends on it" (Pamphlet 7, p.3). Recognizing this plurality of religions

the Court also allows the possible necessity to place restrictions on that freedom in order to reconcile the interests of the various groups and to ensure that everyone's beliefs are respected (*Canea Catholic Church v. Greece* and *Metropolitan Church of Bessarabia and others v. Moldova*) (Bossuyt, p.7).

The ECHR contains few rights related to use and protection of minority group language. The few that exist concern procedural and police related matters and are interpreted in a "minimalistic" way (Bossuyt, p.12). Referring to the procedural rights of national minorities, it should be noted that, despite the existence of a great number of cases dealing with linguistic rights, the Strasbourg institutions have consistently held that there is no right to use a particular language in contacts with government authorities (in a language of national minority). In the context of judicial proceedings, however, everyone has the right to be informed promptly, in a language he/she understands, of the reasons for arrest (article 5.2) and the nature of any criminal charges (article 6.3.a). There is also a right to a free interpreter if a defendant cannot speak or understand the language used in court (article 6.3.e) (Pamphlet 7, p.3).

Furthermore, the right to use a minority language in private or among members of a minority group is protected by the right to freedom of expression guaranteed under article 10. Thus, minorities have a right to publish their own newspapers or use other media, without interference by the State or others (*Association Ekin v. France, Özgür Gündem*) (Bossuyt,

p.7). The State must allow the minority group free expression; even if this calls into question the political structure of the State (Pamphlet 7, p.3). In general, according to the Court, it can be concluded that minority groups enjoy a broad degree of freedom of expression that might challenge state structures. It should be noted, however, that the emphasis that the Court has placed on the obligation of parties to regulate in a pluralistic way is not necessarily interpreted by the parties as a general obligation to take positive measures. The most interesting developments with regard to the language rights of minorities are made on the bases of Articles 2 (right to education) and 3 (right to free elections) of Protocol 1 to the ECHR.

Among one of the important means of preserving and protecting the minority's language and identity is education of children (article 2, Protocol 1) belonging to the group. However, there is no right to mother-tongue education under the ECHR (the Court found that the provision does not imply right to education in particular language in *Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium*) (Bossuyt, p.12), unless it previously existed and the State then tries to withdraw it. Refusing to approve schoolbooks written in the minority's kin-State might be a breach of the right to freedom of expression. Even when the books might give the kin-State's view of history and culture, the government must "show that the undisputed censorship or blocking of the books was done in accordance with law and pursued a legitimate aim, such as the prevention of disorder. It

would then be for the respondent government to show that the censorship measures were necessary in a democratic society” (Pamphlet 7, p.3).

In regard to the protection of the rights of (linguistic) minorities on the basis of article 3 of Protocol 1 (right to free elections), the ECHR ruled in *Mathieu-Mohin and Clerfayt v. Belgium* that this provision is on the participatory rights of minorities (Bossuyt, pp.12-13). The ECHR contains two provisions that could favour the participation of minorities. On the basis of article 11 ECHR, which provides for freedom of assembly and association, since 1998, the ECHR has consistently confirmed its protective stance towards (political) associations with a minority focus by sanctioning refusals of parties to recognize or register such considerations (*Sidiropoulos and others v. Greece*) (Bossuyt, p.14). The Court refers to the limited margin of appreciation of states and makes clear that parties may not forbid the application of registration of an association because it aims to promote the culture of a minority. After all, pluralism is built on the genuine recognition of and respect for diversity and the dynamics of traditions and of ethnic and cultural identities. The Court held the same line of reasoning in subsequent judgments. However, it clarified in *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* that if there had been a call for the use of violence or an uprising or any other form of rejection of democratic principles by the association, parties enjoy a wider margin of appreciation (Bossuyt, p.14).

The above summary suggests ways in which the ECHR can protect minority rights, however this is not the primary task of the Convention. In many respects, the Convention addresses a fairly narrow range of rights. There is a risk that, if a minority group tries to assert “minority rights” *per se*, the claim might be dismissed as beyond the scope of the Convention and may therefore be considered “manifestly ill-founded”. At the same time, however, the Strasbourg system is perhaps the most legally powerful mechanism for protecting human rights in the world. It resembles a domestic court proceeding in both its sophistication and in the equality it maintains between the parties involved. It is unlikely to be the first forum to which a minority group may turn, and it cannot consider the general situation of minority rights within a country. Nevertheless, it should be considered a potentially useful tool in the right circumstances (Pamphlet 7, p.7).

However, the basic treaties devoted to minority issues are the Framework Convention for the Protection of National Minorities, 1995 and the European Charter for Regional or Minority Languages, 1992, the first legally binding multilateral instruments devoted to the protection of minorities and minority languages and is still regarded as the most comprehensive standard in the field of minority rights (Pamphlet 8, p.2). To a large extent Framework Convention transforms the political commitments of the 1990 Copenhagen Document of the OSCE into legal obligations (Pamphlet 8, p.2). Accession to the Convention is obligatory, at least politically, for States that apply for membership in the Council of

Europe. Taking into account that minority situation differ from country to country and consequently require different approaches, the drafters of the Convention opted for “programmatic” provisions that establish principles and objectives that should guide States in protecting their minority populations. For this reason, the Convention is largely constructed as a series of States’ obligations rather than as a detailed list of rights of persons belonging to national minorities. Realization of these principles and objectives must take place at the national level, notably through the adoption of legislation and policies. States can, to some extent, use their discretion in designing legislation and policies that are appropriate to their own circumstances (Pamphlet 8, p.2).

The programmatic provisions are worded in general terms and often contain qualifying phrases such as “substantial numbers”, “a real need”, “where appropriate”, and “as far as possible”. While this level of generality might seem to weaken the rights guaranteed under the Convention, it gives States Parties the flexibility to translate the Convention’s objectives into national laws and policies that are most appropriate. However, this flexibility does not release States from their obligation to implement the Convention’s provisions in good faith and in a manner that results in the effective protection of national minorities (Pamphlet 8, p.2).

The Convention does not define “national minority”, so one must first determine to whom the Convention applies. Several parties set out their own definition of “national minority”

when they ratified the Convention, exclude (non-citizens and migrants from protection under the Convention) and identify the specific groups to whom the Convention will apply. Liechtenstein, Luxembourg, and Malta are parties to the Convention, but each declared that there are no national minorities within their respective territories (Pamphlet 8, p.3). Article 4.1 of the Convention proclaims the fundamental principles of non-discrimination and equality. Article 4.2 makes it clear that a State's obligations may also require affirmative action on the part of the government and not merely abstention from discrimination. States are to adopt, "where necessary", measures to promote "full and effective equality between persons belonging to a national minority and those belonging to the majority" taking "due account of the specific conditions" of national minorities.

The remaining substantive provisions of the Convention cover a wide range of issues, many of which may require that States adopt special measures: promote the conditions necessary for minorities to maintain and develop their culture and identity (article 5), protect the rights to freedom of assembly, association, expression, thought, conscience, and religion (articles 7, 8, and 9); facilitate access to mainstream media and promote the creation and use of minority media (article 9); recognize the right to use a minority language in private and in public and display information in the minority language (articles 10 and 11); "endeavor to ensure" the right to use the minority language before administrative authorities and to display

bilingual topographical indications in the minority language in areas inhabited by national minorities “traditionally” or “in substantial numbers” (articles 10 and 11).

The Convention also calls upon States to foster knowledge of the culture, history, language, and religion of both majority and minorities (article 12); recognize the rights of minorities to set up and manage their own educational establishments and learn their own language (Articles 13 and 14); “endeavor to ensure” that there are adequate opportunities to be taught in the minority language, in areas traditionally inhabited by national minorities or where they live in “substantial numbers” (article 14); “create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life, and in public affairs, in particular those affecting them” (article 15); refrain from measures that alter the proportions of the population in areas inhabited by minorities (article 16); not interfere with the rights to maintain contacts across frontiers and participate in the activities of national and international NGOs (article 17).

The oversight over implementation of the Framework Convention is by the Committee of Ministers of Council of Europe. In its activities the Committee of Ministers shall be assisted by an Advisory Committee, the members of which shall have recognized expertise in the field of the protection of national minorities (Framework Convention on National Minorities, article 26). Unlike in the European Convention on Human Rights, there is no procedure that allows for individual complaints. State reports are examined first by the Advisory Committee,

which evaluates the adequacy of the measures taken by States and gives its “opinions” on the reports. The Committee of Ministers, in turn, considers the State reports and the opinions of the Advisory Committee before adopting its own conclusions on the Convention’s implementation. Where appropriate, the Committee may also adopt recommendations. The Advisory Committee’s opinions are confidential until the Committee of Ministers issues its conclusions, at which time both committees’ observations are published.

Referring to the European Charter for Regional or Minority Languages, 1992 it primarily defines in its article 1 the regional or minority language as “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; it does not include either dialects of the official language(s) of the State or the languages of the migrants”. Also in article 7 the Charter enshrined “the recognition of the regional or minority languages as an expression of cultural wealth; ... the facilitation and/or encouragement of the use of regional or minority languages, in speech and writing, in public and private life”. In accordance with the article 8 Parties undertake to make available preschool, primary, secondary, technical and vocational education, to make available university and other higher education in regional or minority languages, to arrange for the provision of adult and continuing education courses which are taught mainly or wholly in the regional or minority

languages, as well as to make arrangements to ensure the teaching of the history and culture which is reflected by the regional or minority language.

The Charter also regulates the conduct of criminal, civil and administrative proceedings in regional or minority languages in accordance with the article 9. The provisions on the usage of regional or minority languages are also specified in relation to administrative authorities and public services and media. Particularly, Parties undertake “to ensure the creation of at least one radio station and one television channel in the regional or minority languages... to encourage and/or facilitate the creation and/or maintenance of at least one newspaper in the regional or minority languages” in accordance with article 11. The Charter also provide for the Parties undertake to encourage the cultural activities and facilities in regional or minority languages (article 12), as well as promote the usage of regional or minority languages in economic and social life (article 13).

The monitoring of the Charter is implemented through the presentation of periodical reports to the Secretary General of Council of Europe, in a form prescribed by the Committee of Ministers (article 15). The reports presented to the Secretary General of the Council of Europe shall be examined by the committee of experts in accordance with article 17.

2.3 The Commitments of the Organization for Security and Cooperation in Europe on Rights of National Minorities

Prior to 1995, the OSCE was known as the Conference on Security and Cooperation in Europe (CSCE). The CSCE was an inter-governmental diplomatic conference, better known as the “Helsinki process”, begun during the 1970s as a forum for East-West dialogue during the Cold War. As the descendent of this process, the post-Cold War OSCE is still primarily a “soft security” organization, that is, it is not a defence alliance and does not possess military assets. The main emphasis is on security and, as the name of the organization implies, on cooperation between and among States aimed at achieving security and stability for all its members. The 56 participating States are committed to ongoing dialogue rooted in fundamental values within the framework of open, democratic societies with free market economies and based on the rule of law and respect for human rights.

Referring to the rights of national minorities under the framework of the OSCE it is necessary to mention that there are several documents containing general principles and commitments of participating States on minority issues. Primarily, the Final Act of the Conference on Security and Cooperation in Europe (Helsinki, 1975) provides that “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 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 (National Minority Standards: A

compilation of OSCE and Council of Europe Texts, p.11). As was provided in the Concluding Document of Madrid, 1983, the participating States “stress also the importance of constant progress in ensuring the respect for and actual enjoyment of the rights of persons belonging to national minorities as well protecting their legitimate interests as provided for in the Final Act” (National Minority Standards: A compilation of OSCE and Council of Europe Texts, p.11).

In Concluding Document of Vienna, 1989, it is stated that “participating States will exert sustained efforts to implement the provisions of the Final Act and of Madrid Concluding Document pertaining to national minorities” (National Minority Standards: A compilation of OSCE and Council of Europe Texts, pp.11-12). They will take all the necessary legislative, administrative, judicial and other measures to ensure the protection of the rights of persons belonging to national minorities, as well as will protect and create conditions for the promotion of the ethnic, cultural, linguistic, and religious identity of national minorities on their territory. The states “will ensure in practice that persons belonging to national minorities or regional cultures on their territories can disseminate, have access to, and exchange information in their mother tongue” (National Minority Standards: A compilation of OSCE and Council of Europe Texts, p.12).

In June 1990, the Copenhagen Document on the Human Dimension of the (then) CSCE was adopted; it is still regarded as the basic OSCE standard-setting instrument concerning

minority rights and contains more overwhelming provisions on the rights of national minorities. Taking individual human rights as its point of departure, paragraph 33 of the Copenhagen Document commits States to “protect the ethnic, cultural, linguistic and religious identity of national minorities on their territory... in conformity with the principles of equality and non-discrimination.” States also commit themselves, where necessary, to take special measures to ensure this equality. These special rights and measures do not constitute preferential treatment for persons belonging to national minorities. Rather, they aim to achieve equal and meaningful enjoyment of rights in fact as well as in law.

While the concept of minority rights grows out of the concept of individual human rights, it is only the joint exercise of these rights that enables persons belonging to a national minority to preserve their identity. The Copenhagen Document grants all persons belonging to national minorities a number of specific rights that may be exercised both individually and in community with other members of the group. These include, *inter alia*: the right to “express, preserve and develop” their identity and culture, free from any attempts at forced assimilation (para. 32); the right to use their mother tongue in private and public and to exchange information in their mother tongue (paras. 32.1, 32.5); the right to establish and maintain minority educational, cultural, and religious institutions and to seek funding for them, “in conformity with national legislation” (para. 32.2); the right to practice their religion, including using religious materials and conducting religious educational activities in

the minority mother tongue (para. 32.3); the right to maintain “unimpeded contacts” with those with whom they share common origin, heritage, or religious beliefs, within and across frontiers (para. 32.4); the right to “effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities” (para. 35) (Pamphlet 9, p.9).

States are to “create conditions for the promotion of... [minority] identity” (para. 33) and “will endeavor to ensure” that members of minorities “have adequate opportunities for instruction of their mother tongue or in their mother tongue, as well as, wherever possible and necessary, for its use before public authorities” (para. 34). Although individuals may exercise their rights in community with others, there is no basis for “collective” rights *per se* within the OSCE framework (Pamphlet 9, p.4).

In Charter of Paris for a New Europe, 1990, the states affirm that “the ethnic, cultural, linguistic and religious identity of national minorities will be protected and that persons belonging to national minorities have the right freely to express, preserve, and develop that identity without any discrimination and in full equality before law (National Minority Standards: A compilation of OSCE and Council of Europe Texts, p.17). According to the Report of the CSCE Meeting of Experts on National Minorities, Geneva, 1991, provides for the right to effective participation in public affairs, and when the issues relating to the situation of national minorities are discussed, they themselves should have the effective

opportunity to be involved, in accordance with the decision-making procedures of each State (National Minority Standards: A compilation of OSCE and Council of Europe Texts, p.20).

Participating States consider that appropriate democratic participation of persons belonging to national minorities or their representatives in decision-making or consultative bodies constitutes an important element of effective participation in public affairs. “In accordance with paragraph 31 of the Copenhagen Document, the participating States will take the necessary measures to prevent discrimination against individuals, particularly in respect of employment, housing and education, on the grounds belonging or not to a national minority” (National Minority Standards: A compilation of OSCE and Council of Europe Texts, p.21).

The Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 1991, reaffirmed the provisions of all CSCE documents, furthermore, the CSCE Helsinki Document 1992: The Challenges of Change, obliged participating States from resettling and condemn all attempts, by the threat or use of force, to resettle persons with the aim of changing the ethnic composition of areas within their territories ... and assure everyone on their territory protection against discrimination on racial, ethnic and religious grounds as well as to protect all individuals including foreigners, against acts of violence, including on any of these grounds (National Minority Standards: A compilation of OSCE and Council of Europe Texts, pp.26-28).

In the Concluding Document of Budapest: Towards a Genuine Partnership in New Era,

1994 and Lisbon Document 1996 participating States reaffirmed all their commitments relating to the rights of persons belonging to national minorities (National Minority Standards: A compilation of OSCE and Council of Europe Texts, p.30). Accordingly, the Istanbul Document (1999), recalled the key role of the Office for Democratic Institutions and Human Rights (ODIHR), the High Commissioner on National Minorities (HCNM), and the Representative of the Media, pledging to take measures to take measures to promote tolerance. Participating States also reaffirmed that “everyone has the right to a nationality and that no one should be deprived of his or his nationality arbitrarily”. Participating States committed themselves “to secure the full right of persons belonging to minorities to vote and to facilitate the right of refugees to participate in elections held in their countries of origin” (National Minority Standards: A compilation of OSCE and Council of Europe Texts, p.32).

Finally, the Document of the Maastricht Ministerial Council (2003), enshrined also the non-discriminatory clause, particularly in relation to Roma and Sinti, supporting the adoption of comprehensive anti-discrimination legislation to promote full equality of opportunities for all (National Minority Standards: A compilation of OSCE and Council of Europe Texts, pp.32-33). Responding to the lack of some clarity for the protection of minorities in international standards and in order to assist policy- and lawmakers more generally, the High Commissioner on National Minorities (HCNM) has on three occasions sought the assistance of internationally recognized experts to clarify the content of minority rights in specific areas

and to offer generally applicable recommendations. These sets of recommendations provide States with guidance in formulating policies for minorities within their jurisdiction in the spheres of education, language, and participation in public life. They are: the Hague Recommendations regarding the Education Rights of National Minorities (1996); the Oslo Recommendations regarding the Linguistic Rights of National Minorities (1998); the Lund Recommendations on the Effective Participation of National Minorities in Public Life (1999) (Pamphlet 9, p.5).

States are expected to respect their minimum international commitments; but the broader values of the OSCE urges governments to go beyond the minimum in responding to the reasonable demands of minorities and others within their society. Accordingly, the HCNM frequently encourages governments to accommodate desires voiced by minorities, and he assists all the parties in finding reasonable compromises in this regard. OSCE instruments speak of “persons belonging to national minorities”. In the context of the Helsinki process, the term “national minority” is generally understood to mean a non-dominant population that is a numerical minority within a State but that shares the same nationality/ethnicity as the population constituting a numerical majority in another, often neighboring or “kin”, State. In practice, there is considerable latitude left to each State to establish the definition that it will apply within its own jurisdiction and there are substantial differences among such definitions within the OSCE area. However, this does not mean that States are free to make any

unilateral determination, no matter how unreasonable, as to the existence of a minority. The enjoyment of minority rights requires no formal legal recognition of a group by the State (Pamphlet 9, p.5).

The OSCE approach to the problem of definition follows the principle that to belong to a national minority is a matter of individual choice and that no disadvantage may arise from the exercise of such a choice. In short, while individual States may define what a minority is, the question of who does or does not belong to a minority can be determined only by the subjective feelings of its members. The HCNM has followed this approach and has stated that “the existence of a minority is a question of fact and not definition.” He has, in addition, identified some objective criteria for what constitutes a minority: that is, a group with linguistic, ethnic, or cultural characteristics distinct from the majority and that usually not only seeks to maintain its identity but also tries to give stronger expression to that identity. In practice, the lack of definition may have serious implications in real situations. For example, the term “national” in “national minority” has been interpreted by some to imply that persons belonging to a minority must be citizens of the State in whose territorial jurisdiction they are found. This interpretation has caused problems and increased inter-ethnic tensions in some OSCE States.

Summarizing the part devoted to the international standards on minority rights, it should be highlighted that overall these standards provide for negative rights of the national

minorities, which are invoked to call upon states to refrain from actions that could violate national minority rights. Furthermore, in most of the cases these documents are framed as “programmatic” provisions and along with soft measures (“substantial numbers”, “a real need”, “where appropriate”, and “as far as possible”) that establish principles and objectives that should guide States in protecting their minority populations through the adoption of laws and policies. They are constructed as a series of obligations rather than rights of persons belonging to national minorities. Furthermore, it should be again underlined that treating different groups alike could also be considered as discrimination to treat different groups alike and also according to ECHR the majority can not claim discrimination based on positive measures taken by the State to enhance the status of a minority group (for example, with respect to their participation in the democratic process).

3. PROVISIONS OF NATIONAL LEGISLATION REGULATING THE RIGHTS OF NATIONAL MINORITIES AND THE ANALYSIS OF THE ARMENIAN LEGISLATION IN LIGHT OF INTERNATIONAL STANDARDS

The rights of national minorities are provided for and regulated by the domestic legislation. The provisions relating to the national minorities in the domestic legislation are contained in the Constitution and other laws. Article 14.1 of the Constitution, in particular,

provides that “[a]ny discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or other personal or social circumstances shall be prohibited.” Article 41 of the Constitution provides that “[e]veryone shall have the right to preserve his or her national and ethnic identity. Persons belonging to national minorities shall have the right to preservation and development of their traditions, religion, language and culture.” The RA Constitution enshrines the freedom of thought, conscience and religion, which includes freedom to change one’s religion or belief and freedom to, either alone or in community with others manifest the religion or belief, through preaching, church ceremonies and other religious rites. The exercise of this right may be restricted only by law in the interests of the public security, health, morality or the protection of rights and freedoms of others (article 26).

Touching upon the issue of religious rights of national minorities, it should be pointed out that the Republic of Armenia Law “On Religious Organizations and the Freedom of Conscience” was adopted on June 17, 1991 on the basis of a 1990 USSR law with the same name. The Law has since been twice amended (in 1997 and 2001). The Law contains many inconsistencies and shortcomings. Some provisions of the Law contradict the Republic of Armenia Constitution and international treaties ratified by the Republic of Armenia. However, the Law also contains a provision providing for easier procedures in registering a

religious organization pertaining to national minorities (5.e).

In November 2006, Speaker of the National Assembly Tigran Torosyan initiated and, without either any public debate or the knowledge of the relevant authorities, hurriedly incorporated in the agenda of the National Assembly a draft Law on the Special Relationship between the Republic of Armenia and the Armenian Holy Apostolic Church; many provisions of this draft Law contradict the international standards and the provisions of the Armenian Constitution regarding the freedom of conscience. The draft Law contains elements of discrimination against other religious organizations and citizens that do not belong to any religious organization.

There is particular concern over the article entitled “Role of the Armenian Holy Apostolic Church in the Field of Education,” which violates the secular nature of the education sector and the constitutional rights of citizens with other beliefs and convictions. With this Law, the Church may enter the public general schools and acquire the right to determine the content of textbooks on history of religion and to organize the testing of teachers (Yerevan Press Club, p.26). It was adopted in first reading by a majority vote of the National Assembly. It is known that official and independent experts have expressed negative opinions of the draft Law (Yerevan Press Club, p.31).

The rights of national minorities are also regulated by the RA Law “On Citizenship” (1995), stipulating that every person has the right to acquire Armenian citizenship (article 1)

and regulates the conditions of attaining Armenian citizenship (permanent residence in Armenia for the last three years, ability to communicate in Armenian, familiarity with the Armenian Constitution) (article 13). Furthermore, in accordance with the decision of the Government No.821 of 1998, the RA citizen's passport can contain a provision on nationality on the basis of the consent of the citizen. The Civil Code in its article 22 specifies also that the citizen attains rights and responsibilities and implements them through his/her name, which includes his name and surname. The Civil Procedure Code enshrines the right to familiarization with the materials of the case, to participation in the proceedings and to appearance in court speaking another language, with the help of an interpreter (article 7).

The new Criminal Code, entered into force on 1 August 2003, in article 226 prohibits incitement to national, racial or religious hatred and stipulates sanctions for ethnic and racial discrimination, also provides that when this crime is committed publicly or by the media, by public official or by an organized group, this is considered to be an aggravating circumstance. Also when crimes such as murder, grievous bodily harm, torture, the deliberate destruction or damage to property and the defiling of dead bodies or burial places are committed for reasons of national, racial or religious hatred, this is considered to be an aggravating circumstance (European Commission against Racism and Intolerance, p.11). Article 143 of the Criminal Code provides that direct or indirect breach of the human rights and freedoms of citizens for reasons of the citizen's nationality, race, ..., language, religion ... which damages the

citizen's legal interests is punished with a fine in the amount of 200 to 400 minimal salaries, or with imprisonment of up to 2 years (European Commission against Racism and Intolerance, p.11). The Criminal Procedure Code provides for the provision of the free of charge help of interpreter; provision of a verified copy of the documents in their language (article 15); an obligatory participation of defence attorney is provided when the suspect and the accused have no command or sufficient knowledge of the language of the criminal proceedings (article 69).

The RA Law "On Language" (1993) also enshrines in article 1 that the Republic of Armenia ensures the free usage of minority languages on its territory. The Law also stipulates that national minorities may be educated in their mother tongue by the approval of authorities as long as they also learn Armenian (article 2). The Law also specifies the procedure of entrance exams to the educational institutions for persons belonging to national minorities, which is implemented in accordance with the order set by the Government (article 4). The Law "On Basics of the Cultural Legislation" (2002) in article 8 pertaining to the attitudes toward the culture of national minorities, stipulates that the RA supports the preservation and development of cultural identity of minorities residing on its territory and through state programs contributes to the preservation, dissemination and development of their religion, traditions, language and cultural heritage. It also specifies that every person has the right to participate in the cultural life without discrimination to national and other origin (article 9).

The RA Law “On Child” (1996) also enshrines that every child has the right to know the history, traditions and values of his/her nation. The new Labour Code also contains a non-discrimination provision on the basis of ethnic origin (article 3.2). The Law “On Advertisement” (1996) also prohibits the advertisement containing offences of the racial and national origin (article 8). The Law “On Television and Broadcasting” stipulates the following: prohibition of discrimination (article 24); provision the audience with programs that consider the interests of ethnic minorities, different social groups and different regions of Armenia. Additionally, Public Television and Radio can provide airtime for the ethnic minorities in their languages, which should not exceed one hour per week for television and one hour per day for radio (article 28). Furthermore, article 59 of the Law provides that national minorities should be fully represented on television and radio channels, including through programmes in their mother tongue.

Despite the numerous efforts to adopt legislation regulating the rights of national minorities no legal act has yet been adopted. The Government Department of Ethnic Minorities and Religious Affairs has drafted a Law entitled “The Republic of Armenia Law on the RoA Citizens of Non-Armenian Ethnicity and Ethnic Minorities”, which has been ready for adoption by National Assembly since August 2005 (CoE Resolution CM/ResCMN(2007)5, p.1). The draft Law recognizes the collective rights of minorities, thing that is not recognized in international minority rights standards, though dispute exists in

academic literature regarding the better protection of minority rights on individual or collective basis. It intends to safeguard the rights of ethnic minorities and to create conditions for the development of their culture.

The draft also contemplates that the Government will create a special fund for ethnic minorities, which will support the preservation of their cultural uniqueness. It does not merely support the cultural self-sufficiency of ethnic minorities, but protects their representation in local government (through quota system). However, it became a subject of criticism by members of national minorities. Some representatives of national minorities did not endorse the draft as it does not provide for real advantage to the situation and provide for the same rights as are provided under general legislation (Human Rights Defender Report, p.215). They consider it to be very general and containing rights that are already entrenched in the amended Constitution (rights which national minorities inherently enjoy on a par with everyone under Armenian jurisdiction).

The other aspects of the law which have been criticised include the perceived attempts to limit the channels of communication with minority interlocutors (CoE Resolution CM/ResCMN(2007)5, p.2). Furthermore, article 6 of the draft law, which contains anti-discrimination provisions, is entitled “Prohibition against and Prevention of Ethnic Discrimination”. However, this title does not sufficiently encompass the notion of racial discrimination as defined in article 1 of the International Convention on the Elimination of

All Forms of Racial Discrimination, which provides that the term “racial discrimination” “shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin....” Furthermore, article 6 relates to some issues that are outside the material scope of discrimination regulations, such as the prohibition of deportations and ethnic assimilation, whilst not governing all aspects of the principle of equality and non-discrimination. Furthermore, it does not provide for positive measures for persons belonging to national minorities (Yerevan Press Club, p.9).

In 2006, the Government’s Department of Ethnic Minorities and Religious Affairs initiated an open and public discussion with a view to elaborating the principles for the law, but the discussion has since been halted. Considering that parliamentary elections that have taken place in 2007 and presidential elections will still take place on February 2008, respectively, the processing of this draft will most probably be delayed (Yerevan Press Club, p.27).

According to the Constitution of Armenia, and particularly the article 6, if ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail. Simultaneously, it also includes that the international treaties not complying with the Constitution can not be ratified. However, the cases of real reference in the courts to these international documents are still very rare. Considering the compatibility of the national legislation provisions with international standards, it was found the existing

provisions are overall not contrary to the established international standards. Thus, overall the negative rights, *inter alia*, protecting from violations, are guaranteed by the national legislation. Particularly, the non-discrimination provisions are included in Constitution and basic laws; discrimination is also punishable in accordance with the Criminal Code. However, some positive, entitlement rights are also stipulated by the legislation, particularly the rights to be educated in minority language. Thus, the further implementation of these laws and policies of the state receives particular attention and will be examined below.

4. IMPLEMENTATION OF LAWS AND POLICIES IN THE FIELD OF NATIONAL MINORITIES

Referring to the analysis of implementation of legislation and state policies, first of all, it is necessary to reveal the main sources and data used and incorporated. For the more comprehensive examination of state practice in this field the reports of national and international governmental and non-governmental organizations will be reviewed. Particularly, the reports of active non-governmental organizations such as Yerevan Press Club, Armenian Helsinki Committee; the extracts from press; data from State Statistical Service; and the Annual Reports of Human Rights Defender will be reviewed on national level. Moreover, the data of international governmental organizations such as the Resolution

of the CoE Committee of Ministers on Implementation of the Framework Convention on National Minorities and Recommendation of the CoE Committee of Ministers on the application of the European Charter for Regional or Minority Languages;³ Reports of European Commission against Racism and Intolerance (ECRI) on Armenia and the Follow-up Comments of the Armenian Government; Concluding Observations of the UN Human Rights Committee; US State Department's reports; and finally, the reports of the international non-governmental organizations, such as Freedom House, Amnesty International, Human Rights Watch, Article 19.

Armenia is ethnically homogeneous state and approximately 98% of the population is ethnic Armenian. According to the 2001 Population Census, ethnic minorities (Assyrians, Yezidis, Kurds, Russians, Ukrainians, Greeks, Molokans, Jews, and others) comprise 2.2% of Armenia's population. The more sizeable ethnic minorities are the Yezidis (40,620), Russians (14,660), Assyrians (3,409), Ukrainians (1,633), Kurds (1,519), and Greeks (1,176) (Yerevan Press Club, p.31). A significant part of the minorities are scattered in different places in the country which, to a certain extent, complicates targeting of educational and cultural programs for separate ethnic minorities and execution of their collective group rights. However, there are some settlements that are compactly populated by Yezidis, Assyrians, and Molokans

³ Also, 2nd Cycle State Reports, Advisory Committee Opinion, Government Comments on the Opinion and the Resolution of the Committee of Ministers on Implementation of the Framework Convention on National Minorities; 1st State Periodical Report, Committee of Experts' Evaluation Report, Committee of Ministers' Recommendation on the Application of the European Charter for Regional or Minority Languages.

(Yerevan Press Club, p.10). Recently, a large number of Iranian citizens have moved to Armenia for temporary residence, but no statistics on their number have been published (Yerevan Press Club, p.31).

The ECRI in its second report on Armenia has highlighted some progress that has been made in a number of fields since 2003. Particularly, on 15 October 2004 Armenian ratified the Protocol No.12 to the European Convention on Human Rights; the Constitution was amended to provide for equality before the law for everyone under Armenian jurisdiction. Furthermore, according to the ECRI's report, in 2003 the Armenian authorities adopted a new Criminal Code, which sanctions hate crimes. They also created a Department of Ethnic Minorities and Religious Affairs, which is, *inter alia*, entrusted with promoting minority languages and cultures (European Commission against Racism and Intolerance, p.6). The Government's Department of Ethnic Minorities and Religious Affairs has taken initiatives to support educational and cultural projects of ethnic minorities.

4.1 The Right to Participation in Public Life

Generally, the ethnic minorities are politically passive, and no obstacles have been posed to their engagement in politics. The ethnic minorities in Armenia do not have their parties. Some members of ethnic minorities have joined different parties operating in Armenia and

have been included in the party lists in parliamentary elections, but currently, ethnic minorities are not represented in the Parliament or in Government. Ethnic minorities are represented in local governments, including both elected and appointed positions (Yerevan Press Club, p.32). All the national minorities in Armenia have their own social organizations (even several), which are united into the Council of Ethnic Minorities.

4.2 The Right to Education

Ethnic minorities do not encounter any resistance to the exercise of their right to teach the mother tongue. According to the law ethnic minorities may study their mother tongue and receive education in their mother tongue in public general schools of Armenia. However, virtually all the ethnic minorities face difficulties in terms of the availability of qualified teachers, textbooks for education in minority languages and lack in curriculum development. Although members of the country's tiny ethnic minority population rarely report cases of overt discrimination, they have complained about difficulties in receiving education in their native languages (Freedom House, p.8). The Russian community is better off, because it receives academic materials from and has specialists trained in Russia.

The Government is implementing a special program to publish textbooks and to develop curriculum for ethnic minorities. Thus, textbooks (to teach minority language and in minority

language) for Yezidi children in some grades has been published and one is being drafted for Assyrian pupils. Minority representatives and NGOs have raised concerns that more textbooks and teachers are needed, especially in rural areas. Another issue is that textbooks used in Russian classes are published in Russian Federation (RF), although RF's syllabus differs from that of Armenia. Some minority representatives indicated that they would prefer that their children studied in Russian, rather than in their minority language, as they are mostly Russian speakers. However, not all the national minorities agree with this position. The other salient issues are the substantial drop-out rates among students from some minority groups, in particular among girls and young women (CoE Resolution CM/ResCMN(2007)5, p.2).

Regarding the issue of maintaining and promoting minority languages by, *inter alia*, training mother tongue teachers, it should be highlighted that the measures have been taken by the Armenian authorities to enable minorities to enter pedagogical institutions, such as scholarship programs for studying their national language or culture. However, minority representatives have expressed a wish to have places allocated to members of their communities in higher education institutions (European Commission against Racism and Intolerance, p.19).

Some minority representatives have indicated that they would prefer that their children studied in Russian, rather than in their minority language as they are mostly Russian speakers

(CoE Resolution CM/ResCMN(2007)5, p.2). However, as this is not, strictly speaking the mother tongue of any minority other than the Russians, minority representatives have indicated that any endeavour to teach their children in Russian would not fall within article 2 (2) of the Law “On Language” (European Commission against Racism and Intolerance, p.19). The other issue connected with the educational needs of the national minorities is connected with the Yezidi community and their semi-nomadic lifestyle. Their children tend to leave the school in April to move with their parents to the maintain pasture taking part in various household tasks. Children then return in Autumn, and as a result are placed in special classes in order to catch up. Although, the Yezidis initially agreed to place their children in general classes as the others in order to catch up, later on they changed their mind. Furthermore, there is a tendency, for some Yezidi children to be withdrawn permanently at a relatively early age (European Commission against Racism and Intolerance, p.26).

Regarding the issues of religious freedom, starting from 2003, schools have taught the “History of the Armenian Church” subject. Religious organizations may not teach religion at schools; however, organizations registered by the state may do so through private classes for the children of their members. In public general schools, the History of the Armenian Church is sometimes taught by priests of the Armenian Apostolic Church. In particular, such cases have been reported in the Lori Marz. Teaching this subject has been the cause of tension in some schools against students that are not followers of the traditional church. As was already

mentioned, there have been cases in which the clergymen taught the classes. All of this casts doubt on the constitutional provision about the separation of the church from the state (Yerevan Press Club, pp.27-28).

4.3 The Right to Conscience, Religion and Belief

Considering the right to freedom of conscience, religion and belief as one of the basic rights pertaining to national minorities it is necessary to mention that no signs of discriminatory policies have been expressed by the high ranking officials on the issue. However, middle-rank officials, especially some representatives of local governments and law-enforcement authorities, have made statements threatening religious communities and have performed acts that limit the constitutional rights of religious organizations (Yerevan Press Club, p.10). Though, no allegations have been raised in relation to the religious organizations pertaining to national minorities.

4.4 The Right to Preservation of Culture and Identity

Referring to the issue of preservation of minority culture, the Armenian government has allocated funds for the promotion of national minorities' culture (Yerevan Press Club, p.32).

However, the minority representatives have mentioned that their projects and initiatives are not sufficiently funded. Particularly, the minority representatives have pointed out that the resources were allocated to them in accordance with the number of people in a given community. However, in this regard those national minorities who have a historic kin State are in a better position than those with no kin State, which cannot supplement the funding received from the State (European Commission against Racism and Intolerance, p.20).

Regarding the media representation, the presence of minorities and minority languages remains limited in the media and there remain legislative restrictions on the use of minority languages in public radio and television, particularly in regard to the time allowed for the minority languages (one hour per week for television and one hour per day for radio) (CoE Resolution CM/ResCMN(2007)5, p.2). The majority of national minorities in Armenia publish their newspapers and journals, and the Ministry of Culture and Youth Affairs, provides one million Armenian Drams for minority print media (European Commission against Racism and Intolerance, p.21).

4.5 The Right to Citizenship

Article 30 (1) of the amended Armenian Constitution provided that “[n]o person should be deprived of the right to change citizenship”. And Articles 4 and 5 of the Law “On

Citizenship” of the Republic of Armenia establish the conditions and modalities for relinquishing Armenian citizenship. In this regard the ECRI has received the reports of undue delays in some members of minority groups being notified about the decision taken by authorities concerning their application for renouncing Armenian citizenship. As a result, some people who, because of this delay, were still in a possession of their Armenian citizenship when their acquired that of their kin-State have been prosecuted for draft evasion and an international arrest warrant has been issued against them in CIS member-States. The Armenian authorities have informed the ECRI, that even with the adoption of new constitutional amendments, persons who acquire dual citizenship are not exempt from military duty if Armenia has not signed a bilateral agreement regulating issues relating to citizenship and military duty with state in question (European Commission against Racism and Intolerance, pp.9-10).

Furthermore, the ECRI has noted that article 11 (3) of the amended Constitution provides that “Armenians by birth shall acquire citizenship of the Republic through a simplified procedure”, and that its article 30 (1) states that “[t]he rights and responsibilities of the citizens with dual citizenship shall be defined by the law”. And ECRI therefore expressed a hope that a combined aim of article 11 (3) of the amended Constitution and this draft law is not to facilitate access to dual citizenship solely for ethnic Armenians living in Diaspora, but

it will encompass all Armenian citizens (European Commission against Racism and Intolerance, p.10).

4.6 Stance of Yezidi Community

Referring separately to the stance of national minorities living in Armenia, the situation over Yezidi community raises some concerns. Yezidi community, is predominantly a pastoral community, and the main areas of disputes are with regard to issues of land privatization, the adjudication of land, water and grazing issues, and the manner in which the members of this community are treated by the police and the army. Particularly, according to the representatives of Yezidi, there is a degree of insecurity with regard to pasture lands and they are vulnerable to manifestations of ill will on the part of local authorities in allocating land. There is also a problem of adequate irrigation or water management in some villages with Yezidi residents, though irrigation is a more general problem for Armenia.

Regarding the issue of land privatisation, there are questions about the proportion of Yezidi who have been given property right to their land (European Commission against Racism and Intolerance, p.24). The village of Zovuni, which has the largest Yezidi community (approximately 300 families) appears to be particularly problematic in this matter. The government's assertion that members of the Yezidi community did not fill in the required

application forms in order to acquire these titles have been challenged by NGOs. Moreover, the law adopted in 2000 provided for the privatization of land by auction. This system appears to have further disadvantaged the Yezidi community which is largely poor. There have been allegations that in exchange of good land Yezidi received wasteland or unworkable land in the mountains. However, there are also arguments defending the present system of land privatization and the amount of land allocated to members of the Yezidi community. Moreover, the authorities have articulated that the courts provided a remedy for any disputes (European Commission against Racism and Intolerance, p.24).

4.7 Prohibition of Discrimination

Problems also remain in the relationships between the police and members of the Yezidi community, and the Yezidi community appear to be reluctant to seek police assistance when they need it. Also, the ECRI received allegations of Yezidi police officers being disproportionately dismissed from the police force (European Commission against Racism and Intolerance, p.25). In spite of this the authorities have informed ECRI that no complaints have been received concerning police misconduct and there is no discrimination in the police force (European Commission against Racism and Intolerance, p.25). The Yezidi community has claimed that police and local authorities sometimes subject them to discrimination

(Freedom House, p.8). However, according to the report of the RA Human Rights Defender those small cases received from the representatives of national minorities have very general pattern of human rights violations and are not connected with their origin. And generally, the representatives of national minorities do not complain about the discrimination on behalf of authorities or society at large (Human Rights Defender Report, p.213). In respect to the Jewish Community and the measures taken by the Armenian government against anti-Semitic incidents, the example of the prosecutor's decision to prosecute, *proprio motu*, the leader of right-wing organization for his anti-Semitic remarks could be recalled. Particularly, Armen Avetisyan, the Chairman of the "Union of Armenian Aryans," was held criminally liable for making statements containing ethnic discrimination. No other widely-publicized cases of this nature have been reported (Yerevan Press Club, p.32).

4.8 Conduct of Law Enforcement Officials

Generally, there are also problems regarding the arrested and detained persons and the necessity to communicate the charge in their language and also to provide for translators in the court proceedings (CoE Recommendation RecChL(2006)2; Yerevan Press Club, p.21). From the other point of view, as was documented by the Committee of Ministers of the CoE, the legal basis for the use of minority languages in dealings with the administrative

authorities was improved in 2004 (CoE Resolution CM/ResCMN (2007)5, p.2). Regarding the issue of reliable data collection system pertaining to national minorities, it should be noted, that there is no statistical information on religion, but information based on the ethnic name and mother tongue of individuals does exist. However, no comprehensive policy of ethnic data collection has yet been adopted by the Government that would enable to establish the existence, if any, of racial discrimination in areas such as employment, housing and education and to set up policies for addressing this problem (European Commission against Racism and Intolerance, p.23).

5. CONCLUSIONS AND RECOMMENDATIONS

The review of the provisions of national legislation has demonstrated that the existing provisions are in line with provisions included in international minority rights standards. There are provisions regulating the minority rights in various legislative documents, covering not only the negative rights, but also some positive measures that should be adopted by state for better protection of national minorities. One of the instances of imposing restriction on minority rights is contained in the Law “On Television and Broadcasting” providing that national minorities should be provided with the airtime, but no more than one hour per week for television and one hour per day for radio. Thus, measures also could be taken to improve

the access of national minority languages in public radio and television and to eliminate the existing restriction, in accordance with the European Charter for Regional or Minority Languages.

On the legislative and policy implementation level measures should be taken by the Armenian government to ensure minority access to the country's public and political life. The authorities should continue to take measure to ensure equal access to education for minorities by, *inter alia*, providing for positive measures to increase their chances of entering higher education institutions, in line with the statement of the Human Rights Committee, which observed that states may be required to adopt "positive measures of protection" to protect rights. Furthermore, programs directed at training of minority teachers should be promoted. Also, the government should be encouraged to continue to publish textbooks for minority children at all stages of the secondary school system that correspond to the Armenian syllabus; and also provide for bilingual and Russian classes and take action to reduce drop-outs affecting in particular the national minorities.

Taking into account the importance of the promotion of the national minorities' culture, measures should be undertaken to provide funding to national minority initiatives, taking into consideration the needs of national minorities in accordance with the provisions of the Copenhagen Document and other international standards. Also, it should be ensured that the national minorities who have no kin State are able to benefit from sufficient financial

assistance. Measures should be taken also to eliminate any disadvantages in connection with citizenship, particularly, effective procedure for relinquishing Armenian citizenship should be established in order to enable those who do not wish to have dual citizenship to acquire that of another State without incurring the risk of being prosecuted for, *inter alia*, draft evasion. Also, and further discrimination contained in the proposed legislation providing for dual citizenship should be avoided (in line with article 11 (3) of the amended Constitution).

With regards to the issues pertaining to Yezidi community, the special attention should be diverted to the issues relating to Yezidi land, water and grazing rights, and the process of ensuring fair and equitable land acquisition procedures (such as to investigate allegations of unfair land allocation and treatment against the Yezidi community in Zovuni) and duly examine the complaints raised by Yezidi concerning their living conditions, police misconduct and mistreatment in the army. Regarding the issue of education of Yezidi community, the dialogue with the Yezidi community should be encouraged on the best manner of ensuring an equal, all-inclusive access to education for Yezidi children and ensure that solutions are found for providing Yezidi children with educational opportunities which fall within their lifestyle. Furthermore, the establishment of a system of ethnic data collection to assess and redress any racial discrimination that may exist in the country should be encouraged by the authorities.

Finally, the law on national minorities should be further elaborated, not excluding the

expertise of international governmental organizations, which takes into account, as much as possible, national minorities' suggestions and points of view in accordance with the international standards.

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