

## **Protection of National Minorities as a factor of stabilization and democratic safety – selected international law regulations**

From the point of international law regulations the problem of minority is a complex, diversified problem with an unsystematized law, imprecise standard of protection, and what is more, with an unclear subjective range. Difficulties resulting from the last issue are a result first of all of a fact that the notion of national minority is still undefined. The notion of national minority is diverse. In doctrine the trials of defining this notion were undertaken many times, always with unsatisfying results. The first definitional trials appeared in the XIXth century. They resulted from the fact that the feeling of national identity in this period began to shape.<sup>1</sup>

The term "minority" is derived from Latin word meaning "minor". In literature the most often used definitions are: "national minority" and "ethnic minority". The first being characteristic for European conditions.<sup>2</sup>

The first acts which regulated minorities as such (however without their definitional aspect) appeared in decisions of treaties at: Augsburg (1555) as well as Versailles (1648).<sup>3</sup> The protection of minority as such functions from the XXth century, when the Treaty of Versailles and also a lot of agreements between allied powers and different states were signed. In some way the standard was made by a treaty signed between allied powers and Poland<sup>4</sup> called "Little Treaty of Versailles."

At that time the League of Nations worked out the first definition of "minority" – understood as "circle of persons of different race, religion or the language than the majority living within the state. These minorities are of two kinds:

- a) those who are the citizens of a foreign state,
- b) those who are the citizens living within the state".<sup>5</sup>

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<sup>1</sup> J. Tomaszewski, *Mniejszości narodowe w Polsce XX wieku*, Warszawa 1991, 7.

<sup>2</sup> A. Malicka, *Ochrona mniejszości narodowych. Standardy międzynarodowe i rozwiązania polskie*. Wrocław 2004, 16.

<sup>3</sup> J. Białocerkiewicz, *Prawo międzynarodowe publiczne*, Olsztyn 2005, 313.

<sup>4</sup> P. Thornberry, *International law and the rights of minorities*, Oxford 1992, 42.

<sup>5</sup> J. Barcz, *Historyczne i polityczne aspekty tez RFN o niemieckiej mniejszości narodowej w Polsce*, Warszawa 1988, 362.

“Little” Treaty of Versailles guaranteed the protection of life and the freedom to all inhabitants of Poland regardless of birth, nationality, language, race or religion.<sup>6</sup> It emphasized the rule of equal treatment with regard to political and civil rights.

Moreover, it gave the League of Nations the right to control all the lodged complaints, in cases when the rights of religious and linguistic minorities could be violated. The minorities were also given a right to lodge complains to this types of violations.<sup>7</sup>

The other definition was formulated by *International Court of Justice* in 1930 and referred to *Greco – Bulgarian "Communities"* case. It referred only to a contract between Greece and Bulgaria, however its universal character determined its inclusion into general minority protection system. Regarding to this definition: „community is a group of persons living in a given country or locality, having a race, religion, language and traditions, and united by the identity of such race, religion, language and traditions in a sentiment of solidarity, with a view of preserving their traditions, maintaining their form of worship, securing the instruction and upbringing of their children in accordance with the spirit and traditions of their race and mutually assisting one another.”<sup>8</sup>

The works of United Nations Sub–Committee of Prevention of Discrimination and Protective National Minorities<sup>9</sup> made up the next stage in defining the notion of national minorities. The Sub–Committee formulated three projects of minority definition. First and the most extensive definition comes from 1950, it showed, that the notion of minority refers only to social groups, which are not predominant in the state of the groups’ residence, which want to support their ethnic, religious or linguistic traditions and the features distinguishing them from the rest of the society.

The definition puts emphasise on a suitable number of members who can take care of the above mentioned values, and it also emphasized that they had to be loyal to the country they lived<sup>10</sup>. The second definition was formulated three years later and it also stressed the

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<sup>6</sup> *Traktat między głównymi mocarstwami sprzymierzonymi i stowarzyszonymi a Polską podpisany w Wersalu 28 czerwca 1919 r.*, art. 2, Dz. U. from 1933, nr 110, poz. 728, available at: [http://dziedzictwo.polska.pl/katalog/slide,Maly\\_Traktat\\_Wersalski\\_podpisany\\_przez\\_Polske\\_28\\_VI\\_1919\\_roku\\_chroniacy\\_mniejszosci\\_narodowe\\_i\\_etniczne\\_opublikowany\\_w\\_Dzienniku\\_Ustaw\\_w\\_1920\\_roku\\_strona\\_5,pid,266891.htm?view=big](http://dziedzictwo.polska.pl/katalog/slide,Maly_Traktat_Wersalski_podpisany_przez_Polske_28_VI_1919_roku_chroniacy_mniejszosci_narodowe_i_etniczne_opublikowany_w_Dzienniku_Ustaw_w_1920_roku_strona_5,pid,266891.htm?view=big), (last visited June 4, 2009).

<sup>7</sup> Art. 12, *Ibidem.*, It must be underline that the expression „national minorities” was not used then.

<sup>8</sup> *Collection of Advisory opinions, The Greco–Bulgarian „Communities”*, 31 st July 1930, Publications of The Permanent Court of International Justice, Series B nr 17, available at: [http://www.icj-ij.org/pcij/serie\\_B/B\\_17/01\\_Communautes\\_greco-bulgares\\_Avis\\_consultatif.pdf](http://www.icj-ij.org/pcij/serie_B/B_17/01_Communautes_greco-bulgares_Avis_consultatif.pdf). (last visited June 4, 2009).

<sup>9</sup> A. Malicka, *op.cit.*, 17.

<sup>10</sup> G. Janusz, *Prawa mniejszości narodowych. Standardy europejskiej*, Warszawa 1995, 27, podano za A. Malicka, *op.cit.*, 17.

necessity of living on a foreign territory, subordinate character, but also a fact, that given group distinguishes from the rest of population in terms of language, religion and other features. The important fact was that the group had to express their will of separateness.<sup>11</sup> Third *Sub-Committee* trial to formulate the definition of minority took place in 1979. This definition contained elements of the previous two; however also it did not meet acceptance.

While analysing the question of minority it's necessary to attention to the definition formulated by F. Catoportiego during his studies over article 27 of the International Covenant on Civil and Politics Rights. In his opinion "minority" is: „group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being national of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sentiment of solidarity, directed towards preserving their culture, traditions, religion or language.”<sup>12</sup>

This definition was not accepted. First of all it was said that it combined both objective and subjective elements. Another accusation was that it included a statement<sup>13</sup> – "numerically inferior to the rest of the population of and State".

In the critics' opinion this regulation made unnecessary limitations in defining minority. It's necessary to agree that in fact the number of people representing minority will be numerical smaller than the remaining number of inhabitants, but it can't be forgotten, that as in the case of Bengalis there could be some exceptions. The Bengals– living in the eastern part of Pakistan – made up 54% of the population inhabiting the territory , and they made up minority. First of all due to limited political rights and constitutional guarantees, and also of other features making them similar to national minorities. Refusing them the status of minority would create not only the essential factor of destabilization, but it would also be the violation of basic human rights.

The Council of Europe undertook the trial to define the notion of "national minorities". The definition, however came into being only for the need of works of the European Commission for the Democracy through Law (the Venice Commission).

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<sup>11</sup> J. Barcz, *Definicja mniejszości narodowych w prawie międzynarodowym*, *Sprawy Międzynarodowe* nr 11, 1986, 89.

<sup>12</sup> J. Rehman *The weaknesses in the international protection of minority rights*, The Hague, London, Boston, 2000, 15.

<sup>13</sup> *Ibid.*

With regard to their works "national minorities" is defined as "the smaller group in number from the rest of population, which being the citizens possess also ethnic, religious linguistic features which are different of characteristic features of population and which they will keep regarding to their own culture, tradition, religion and the language."<sup>14</sup>

Analysing the above quoted definitions we have to ask if and how many shared elements we can find in them. All above mentioned definitions certainly share a common thing they concern a group belonging to a different race, confessing different religion or using different language than a group being the official representation of the state. Moreover this group clearly highlights its distinctness as well as it takes care of its traditions, culture and language.

It's possible to form a thesis that problems connected with indefinite status of minority are caused by numerous sources of law, which can regulate these matters. Within these sources we can find international agreements with universal character, regional standards, bilateral agreements and at last internal rights.

The protection of national minorities is one of the major questions of the universal standards of human rights protection. Pointing out the origins of the acknowledgement of protection of national minorities, it is necessary to point out that it is their complicated situation. Belonging to a minority is the reason of a more difficult life start as well as worse social position. Another thing is that very often a person belonging to a minority group has a strong relationship with that group, and that is why the situation of the group influences the situation of the individual.<sup>15</sup> The state, as a warrant of law and respect of human rights should undertake every possible action to reduce inequality and other possible discrimination regulations.

The Charter of the United Nations underlines that its main aim is "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small".<sup>16</sup> It's possible to find similar regulations in one of the main documents in the Universal Declaration of Human Rights. However, one should remember that the Declaration's regulations are very general. The International Bill of

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<sup>14</sup> B. Gronowska, *Rada Europy wobec problemów mniejszości narodowych*, Sprawy Międzynarodowe nr 10, 1991, 119.

<sup>15</sup> B. Mikołajczak, *Mniejszości w prawie międzynarodowym*, Katowice 1996, 65 i nast.

<sup>16</sup> Preamble, The Charter of the United Nations, 26 June 1945, San Francisco, available at: <http://www.un.org/en/documents/charter/intro.shtml>, (last visited June 4, 2009).

Human Rights –the Minorities the declaration taking into account lack of uniform solutions as well as its universal character does not contain any special minority problems regulations.<sup>17</sup>

The UNESCO Convention against Discrimination in Education also includes national minorities' regulations.<sup>18</sup> Members of national minorities have a right to carry on their own educational activities. They can also maintain schools and use or teach their own language. Possible limitations resulting from realization of these rights are potential disturbances connected with undermining the sovereignty of state.

A major step towards the acknowledgement of the appropriate protection to minorities was made in 1966, when basic documents of human rights protection were adopted. In International Covenant on Civil and Political Rights it was written that “in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”<sup>19</sup>

However, the construction of article 27 had numerous comments in literature.<sup>20</sup> It is necessary to emphasize, that construction of protection resulting from this article is very general and limited to activities which aim is to prevent the loss of ethnic, religious and linguistic identity. On the other hand, it's important to remember that at the same time a problem of the range of works of the state, where a minority exists, for the benefit of satisfying its needs.

The basic problem was the answer to the questions: whether article 27 of ICCPR brings a positive result in obligation. Some of the researchers<sup>21</sup> say that this article does not justify positive obligations to the state. That is why the state does not have to make any special actions to enable the minorities to use their own rights. Later publications are not that restrictive regarding this matter, actually it was thought whether the lack of positive actions of

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<sup>17</sup> Resolutions adopted by the General Assembly, Part C of General Assembly Resolution 217 (III). International Bill of Human Rights, 217 C (III). Fate of Minorities, 10 December 1948, available at: <http://www.un-documents.net/a3r217c.htm>. (last visited June 4, 2009).

<sup>18</sup> Convention against Discrimination in Education/Konwencja w Sprawie Zwalczenia Dyskryminacji w Dziedzinie Oświaty, Paris, December 15 1960 r., Dz. U. from 1964 r.

<sup>19</sup> Art. 27, International Covenant on Civil and Political Rights/Międzynarodowy Pakt Praw Politycznych i Obywatelskich, December 16 1966 r., Dz. U. from 1977 r. nr 38, poz. 167.

<sup>20</sup> See: G. Pentassuglia, *Minorities in international law: an introductory study*, Council of Europe, 2002; Y. Dinstein, M. Tabor, *The Protection of minorities and human rights*, Martinus Nijhoff Publishers, 1992; C. Tomuschat, *Protection of Minorities under Article 27 of the International Covenant on Civil and Political Rights*, in R. Bernhardt et al. *Volkerrecht; als Rechtsordnung Internationale Gerichtsbarkeit Menschenrechte*, Springer, Berlin 1983.

<sup>21</sup> T. Modeen, *The International Protection of National Minorities in Europe*, Abo 1969, 108, Y. Dinstein, *Collective Human Rights of Peoples and Minorities*, 25 *International & Comparative Law Quarterly* 1976, 118.

state will not cause actual discrimination. In Ch. Tomuschat's opinion the effect of this article is to bring effective protection of minority with respect to principles of legal and factual equality.<sup>22</sup>

It needs to be considered what such activities mean for minorities. First of all the duty to realize their rights means facilitating, propagating and the introduction of such mechanisms, which will permit to preserve own language of religion as well as the free ability to organize cultural life. Each of these activities has to be led – as it was said – on principles of equality in law, they would not introduce any discrimination towards other citizens. Secondly, all activities with positive obligations character should not cause "over-protectiveness" of state, because it could be the reason for losing the ability of dealing with everyday problems. Thirdly, the excessive highlighting of the distinction, not undertaking any integration works can result in the alienation of the minority, which can be undesirable not only from legal, but also from the sociological point of view.

The protection of minorities rights concerns also the article 26 of ICCPR: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and 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."<sup>23</sup> International Covenant on Economic, Social and Cultural Rights also contains similar regulation against discrimination: "The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."<sup>24</sup>

From the point of view of practical realization of basic minorities rights also essential is Optional Protocol to the International Covenant on Civil and Political Rights which acts based on the Human Rights Committee as an authorised one to accept and consider complaints, which individual persons will lodge because of state violation of rights guaranteed in Pact.

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<sup>22</sup> C. Tomuschat, *op. cit.*, 967.

<sup>23</sup> Art. 26, International Covenant on Civil and Political Rights/Międzynarodowy Pakt Praw Politycznych i Obywatelskich, December 16 1966 r., Dz. U. from 1977 r. nr 38, poz. 167.

<sup>24</sup> Art. 2 International Covenant on Economic, Social and Cultural Rights, Międzynarodowy Pakt Praw Gospodarczych, Społecznych i Kulturalnych, December 19 1966 r., Dz. U. from December 29 1977 r., nr 38, poz. 169.

The Convention on the Rights of the Child contains special regulations of minorities. In article 2 the Convention obliges State Parties to “respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, (...).”<sup>25</sup> States shall also take appropriate measures to be sure the child is protected against all forms of discrimination. Moreover, in the states in which the ethnic religious or linguistic minorities exist, a child belonging to such minority shall not be denied the right to enjoy his or her culture and also practice his or her religion and use own language.

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It is necessary to admit, the standard of child rights protection is sufficient. On one hand there is protection against discrimination on the other hand the state is obliged not to deny the right to enjoy culture, practice religion or use language.

In this last case it's recognized that the notion “use” also includes the obligation to create the possibilities to learn. It's important to stress the fact that the introduction of minority regulations into children's rights control system, is a huge step towards creating in children respect and tolerance towards different cultures or beliefs.

Introduced in 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities has also a universal character. One of the reasons for its passing was the will of “emphasizing the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities”. As we can read this kind of behavior is an integral part of the development of society as a whole and within a democratic framework based on the rules of law, and would also contribute to the strengthening of friendship and cooperation among people and States.<sup>27</sup>

This declaration puts on the State – Parties not only the duty to protect national or ethnic religious and linguistic identity of the minority, but it obliges State to guarantee mechanisms which will also serve the preservation of this kind of identity. Protection of minority rights was stressed by giving them the right to establish their own organizations also – associations, and also by providing (suitably on regional and state level) the right to participate in decisions, which will have influence on the fates of minority. Additionally, the

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<sup>25</sup> Art. 30, Convention on the Rights of the Child/Konwencja o Prawach Dziecka, Konwencja o prawach dziecka Adopted by General Assembly of UN, November 20 1989 r., Dz. U. 1991 r., nr 120, poz. 526.

<sup>26</sup> Art. 30, Ibid.

<sup>27</sup> Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities Adopted by General Assembly resolution 47/135 of 18 December 1992, available at: [http://www.unhcr.ch/html/menu3/b/d\\_minori.htm](http://www.unhcr.ch/html/menu3/b/d_minori.htm). (last visited June 4 2009).

state is obliged to provide suitable resources for effective realization of every given right. Declaration is a *soft-law* document, but it's possible to say that the included rights and obligations – especially state obligations – will have a real influence on other universal documents regulations. Particularly a lot of regulations might be included in some *hard-law* acts – like conventions.

More regulations concerning minorities rights were included in regional, european human rights protection system. In this system works on protecting rights of minority were undertaken by three organizations: The Council Europe, The Organization for Security and Co-operation in Europe, and by European Union.

At the begging it's necessary to look at the major act on European area – Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>28</sup> Convention is not the act including only and exclusively rights of minority, just the opposite, it concerns outright general rights of human being, but among its regulations it's possible to find some minorities elements.

First of all, the convention includes general regulation against discrimination. According to the regulation the use of all rights and freedoms enclosed in Convention shall be secured to everyone without discrimination on any ground such as sex, race, colour, language, religion, political or other opinions, national or social origins, association with a national minority. Similarly as in the case of other acts the main problem of understanding the regulations was the lack of minority definition. The situation was complicated additionally, by the fact that the regulation included in the Convention has a general character.

In the sixties there was an initiative of including into the Protocol No. 2 to the Convention for the Protection of Human Rights and Fundamental Freedoms a separate article which would concern only exclusively minority. The essence of the article project was similar to regulations in International Covenant on Civil and Political Rights,<sup>29</sup> however it was not put in.

Since the eighties the policy concerning minority has changed. It was decided to abandon general, relating to this group, controls and concentrate on specific problems.<sup>30</sup> It

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<sup>28</sup> Convention for the Protection of Human Rights and Fundamental Freedoms/Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności, November 4 1950 r., Dz. U. 1993 r. Nr 61 poz. 284.

<sup>29</sup> Regarding the propositions: „The people who belong to national minority - in community from different members this group and so much so, as this peaceable is with public order - the rights can not be devoid to using own culture, the using of own language of creating of own schools and the taking in chosen the science the language as well as to confessing and the practising the own religion”, in: B Gronowska, *op. cit.* 112.

<sup>30</sup> A. Malicka, *op.cit.*, 45.



was recognized that the least touchy matters, to which one could take law-making action are matters connected with the right to using the language. Works on a suitable document took over ten years – finally in 1992 the European Charter For Regional or Minority Languages was accepted.

Regarding the Charter regulations States-Parties are obligated to base their policies, legislation and practice on the principles allowing: recognition of the regional or minority languages as an expression of cultural wealth, the facilitation and encouragement of the use of regional or minority languages, in speech and writing, in public and private life, provision of appropriate forms and means of teaching and study of regional or minority languages at all appropriate stages, promotion of study and research on regional or minority languages at universities or equivalent institutions.<sup>31</sup> The whole card was divided into parts connected with protection and using language in education, judicature, administration, the media as well as the culture. Despite the fact that Charter is neither an obligatory document, nor it does not regulate all problems of minority it should be recognized that its acceptance was an essential element in the system of minority protection. It's necessary to stress that the works begun from comparatively not very problematic questions. The definition was limited to specifying, what is the minority language and not the minority itself.

The acceptance of Charter did not mark the end of the trials to make general regulations which took place in 1995 when the Framework Convention for the Protection of National Minorities was accepted.<sup>32</sup> Framework Convention is the first act fully protecting national minorities. It appeals to the already existing regulations in the field of protection of minority, particularly to documents made by UN and CSCE .

The basic principles in the Convention contained the right of equality before the law, equal protection of the law, right to maintain and develop their culture, to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage, respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media. In article 1, the importance of protection of minorities was stressed – “The protection of national minorities and of the rights

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<sup>31</sup> art. 7, European Charter For Regional Or Minority Languages/Europejska Karta Języków Regionalnych lub Mniejszościowych, Strasburg, November 5 1992, available at: [http://pl.kaszubia.com/wp-content/uploads/2008/08/europejska\\_karta\\_jezykow\\_regionalnych\\_lub\\_mniejszosciowych.pdf](http://pl.kaszubia.com/wp-content/uploads/2008/08/europejska_karta_jezykow_regionalnych_lub_mniejszosciowych.pdf) (last visited June 4, 2009).

<sup>32</sup> Framework Convention for the Protection of National Minorities/Konwencja Ramowa o ochronie mniejszości narodowych, Strasburg February 1 1995, available at: <http://www.vilp.de/Plpdf/p024.pdf> (last visited June 4, 2009).

and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation”.<sup>33</sup>

In the second part of the Convention one could find the basic rights of minorities. From the point of view of inner state stabilization article 6 is the most important. With regard to this article States–Parties should encourage a spirit of tolerance and intercultural dialogue. They should also take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity particular in the fields of education, culture and the media.”<sup>34</sup> The Obligations of State–Parties include the assurance of undertaking of suitable measures which would protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.<sup>35</sup>

The last obligation makes the State not just provide legal mechanism of control, but also a duty of keeping the right policy and some kind of social campaign action. The third part of Charter is also important. This part includes the duties of representatives of a minority. These people have to respect not only Constitutional law but the common law acts as well and the rights of different people living on the territory of the state.<sup>36</sup>

Within OSCE a special place is occupied by the principle VII of Act of Final Conference on Security and Co-operation in Europe. According to this principle „the participating States on whose territory national minorities exist will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere.”<sup>37</sup>

This principle had influence on later, essential OSCE documents including the regulations of minority problems. It is important to pay attention to Final Act of the meeting in Vienna. It is stressed in the act the meaning of introducing into legal systems an obligation of States guarantees the protection of human rights and fundamental freedoms of minority. The principle of equality as well as the actions against discrimination, and the protection of

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<sup>33</sup> Art. 2, Ibid.

<sup>34</sup> Art. 6, Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Art. 20, Ibid.

<sup>37</sup> See Rule VII, Conference for Security and Co-operation in Europe 1975 Summit Helsinki Final Act, 1 August 1975, available at: <http://www.vilp.de/Enpdf/e257.pdf> (last visited June 4, 2009).

own national identity were also emphasized.<sup>38</sup> This document had a decisive character because it introduced to CSCE system controlling institutions.

Another, but not less essential act was the final act of Copenhagen meeting relating to the human dimension of the CSCE.<sup>39</sup> The regulations in this document say “the questions relating to national minorities can only be satisfactorily resolved in a democratic political framework. This framework must be based on the rule of law, and with a functioning independent judiciary which guarantees full respect for human rights and fundamental freedoms. It is also necessary to underline in legal system equality in rights and “status for all citizens, the free expression of all their legitimate interests and aspirations, political pluralism, social tolerance and the implementation of legal rules that place effective restraints on the abuse of governmental power.”<sup>40</sup>

Two key types of decisions relating to minorities were described in the document. The first concerns the right to sustain identity by use of own language and receiving information in own language, practising religion, making associations or contacting between one another. The second concentrated on the state duties such as protection of identity, teaching of language. Last, third group of decisions were of a political character.

Within the system of law protection of minorities the OSCE, the essential fact was establishing in 1992 the High Commissioner on National Minorities. His role is connected with protecting minorities' rights, especially „taking early action to prevent ethnic tensions from developing into conflict”.<sup>41</sup>

Analysing OSCE it might be said that first of all it's quite expanded. The list of presented regulations is not full, but it includes the main ones. However, the fact that these regulations have a very wide range deserves a special attention.

Secondly they include both common as well as individual and rights. Last but not least they include an important instrument of rights execution and also a position of the High Commissioner on National Minorities as an instrument of conflict prevention at the earliest possible stage of it.

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<sup>38</sup> Point 31, Concluding Document of the Vienna Meeting 1986 of Representatives of the Participating States of the CSCE, available at [http://www.osce.org/documents/mcs/1989/01/16059\\_en.pdf](http://www.osce.org/documents/mcs/1989/01/16059_en.pdf) (last visited June 4, 2009).

<sup>39</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 29 June 1990, available at: [http://www.osce.org/documents/odihr/1990/06/13992\\_en.pdf](http://www.osce.org/documents/odihr/1990/06/13992_en.pdf) (last visited June 4, 2009).

<sup>40</sup> Ibid.

<sup>41</sup> *Factsheet on the OSCE High Commissioner on National Minorities*, 7 August 2008, available at: [http://www.osce.org/publications/hcnm/2008/09/32905\\_1177\\_en.pdf](http://www.osce.org/publications/hcnm/2008/09/32905_1177_en.pdf) (last visited June 4, 2009).

European Union didn't take a question of protection of national minorities for quite long time. This was caused first of all you, by the initial period of this organization concerned economic matters. After making a background when the co-operation of states tightening, EU started wondering how over widening on another fields and in the same time the integration controls system appeared also relating minorities.

First act was the European Parliament resolution whose the requirement of ratification be joint from European Charter For Regional Or Minority Languages Beyond showing the weight of problem it did not bring anything new in EU system.

The Treaty of Amsterdam, which changed article 13 of Treaty Establishing the European Community and obliged the organs of communities for works against discrimination and begun legislative preparations.

First of all there were two proposals of European Commission directives. First was a directive establishing a general framework for equal treatment in employment and occupation and includes the rules of equal regards access to employment, vocational training, promotion, and working conditions.<sup>42</sup> Field of control of second directive „implementing the principle of equal treatment between persons irrespective of racial or ethnic origin” is wider. This directive establish that “any direct or indirect discrimination based on racial or ethnic origin as regards the areas covered by this Directive should be prohibited throughout the Community.”<sup>43</sup>

The legal control system of national minority protection is in Charter of Fundamental Rights of the European Union also. This document is based on the catalogue of human rights and includes as fundamental rights like: right to dignity, the right to life, the right to freedom, the freedom of conscience and the religion, right to equality, or the property as well as it contains regulations against discrimination Article 21 of Charter forbids every discrimination on "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 sexual orientation.”<sup>44</sup>

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<sup>42</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, Official Journal L 303 , 02/12/2000 P. 0016 – 0022.

<sup>43</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19.7.2000, p. 22–26.

<sup>44</sup> Charter of Fundamental Rights of the European Union, Official Journal C 303 of 14 December 2007, available at <http://eur-lex.europa.eu/en/treaties/dat/32007X1214/htm/C2007303EN.01000101.htm>, (last visited June 4 2009).

European Union started formation of standards of minority protection. This actions should be seeing as a positive especially, that in European Union there is a lot of effective mechanisms introducing the law than it took place has in case of universal standards, or even the OSCE forum.

On the other hand one should remember the discrimination with regard on racial origin or ethnic can make difficult the achievement of aims of EU: high level of employment and the social care, high level of life quality, economic cohesion and social safety and can delay the realization aim of European Union like justice, safety and freedom.

The analysis of national minorities safety control systems permits to affirm, that is the matter which will require active working of organs on international level quite long.

First of all the regulations are not cohesive. The introduced regulating of minority problem are different from each other by the catalog of entity, which ratified individual acts how and also by virtue of the ratified agreements. OSCE activity as well as – in same range – universal initiatives are in this moment the most complex also, however they can't be always qualify as effective. Documents OSCE first of all have a political character documents, the same, only making some attention of States but without any possibility pressure.<sup>45</sup>

The creators of minorities protection standards has to answer itself on many questions. Firstly it must me consider what way of minorities rights is the most effective – complex permitting on location in suitable conventions of guarantee of realization the minority rights or sector one, which let working out only on selected rights of the minority. Secondly it is necessary to create an uniform and similar minorities protection mechanisms. In this aspect it's necessary to underline the permitting the representatives of minority on initiating the individual procedures guarantees.

In sum it must be emphasize that the problem of national minorities have to become the international one. We should remember that state beyond this, that it possesses on owlsh area of representatives of minority, has also almost to take care about person identifying with him, and living on different territory.

Abide by the law of minorities is not just in the interests of states as a community, but in interest of each separate country. Only the complex regulations will be able to assure stabilization, safety and security in states with national minorities. The condition of correctness state existence in – on the one hand respect of distinction and on the other principles of equality in relation to remaining occupants.

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<sup>45</sup> B. Mikołajczak, *op. cit.* s. 144