



Minority protection is and will continue to be a priority for European countries. Migration is a parallel phenomenon, with different causes and requiring separate treatment. Of course, migration can affect the majority – minorities balance in some areas, and some migrants can group together, forming new minorities, but it is premature to make such an analysis.

The problem of national minorities cannot be analyzed in a rigid normative framework, but is a rather constantly changing issue. The proof is a relatively recent document of the Parliamentary Assembly of the Council of Europe, Resolution 1985 (2014), “Situation and Rights of National Minorities in Europe”, adopted in April 2014.

Regarding the definition of national minorities, the Resolution notes its absence from the Framework Convention for the Protection of National Minorities, recalling that the only definition may be found in Recommendation 1201 (1993): “a group of persons from a state that: a) reside in the territory of that state and are its citizens; b) maintain strong and long-lasting ties with that state; c) have distinctive ethnic, cultural, religious or linguistic characteristics; d) are sufficiently representative, although they are numerically less than the rest of the population of the state or a region of the state; e) are motivated by the desire to preserve together what their common identity is, including their culture, traditions, religion or language.”<sup>1</sup> The lack of a definition gives Member States a very wide margin of discretion when determining which minorities they offer protection to. This situation may lead to different approaches to the concept of minority protection, depending on the national context. The fact that through this Resolution a new definition has not been reached but merely reiterated one that had already been given, but which only acquired the status of recommendation, shows that there is a need for a more consistent approach in the future – either to transform the 1993 definition into a legal norm, or to reach a consensus on a new definition.

The Resolution 1985 (2014) also reviews the current state of international instruments for the protection of national minorities. States that have not signed (Andorra, France, Monaco, Turkey) or ratified (Belgium, Greece, Iceland, Luxembourg) the Framework Convention for the Protection of National Minorities are urged to do so, the same recommendation being made with regard to the European Charter for Regional or Minority Languages. The Resolution urges states to sign the Declaration on Indigenous Rights, adopted by the UN General Assembly in September 2007. Reference is also made to «good practices» for the protection of minorities. Among these, according to Ferenc Kalmar<sup>2</sup>, and those described in Resolution 1832 (2011), «National sovereignty and statehood in current international law: the need for clarification», as well as those derived from ECHR jurisprudence, the recommendations of the High Commissioner for National Minorities of OSCE, and bilateral treaties between states.

The concrete measures that shall be taken with regard to minority rights are summarized as follows:

a. The right to identity. It is necessary to respect Article 5.1 of the Framework Convention, the International Covenant on Civil and Political Rights and United Nations General Assembly Resolution No. 47/135. Participation of minorities in public life must be ensured, in accordance with art. 15 of the Framework Convention. States must refrain from adopting policies and practices to assimilate minorities,

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1 Regarding the national minorities definition, see R.-A. Petraru, *Minoritățile în context legislativ internațional [The minorities in the international law framework]*, (Iași: Adenium, 2015), 13-37.

2 The text of the Resolution 1985 (2014) and also the Explicative Memorandum have been published by *Noua Revistă de Drepturile Omului [New Review on Human Rights]*, no. 2 (2014): 95 – 117.

according to Article 5.2 of the Framework Convention. Good practices developed in regions such as Südtirol or those of Finland shall be studied and applied. The right to identity is seen as an intermediary between individual rights and group rights because both individuals and communities can benefit from it.

b. Territorial arrangements. States must implement self-governing arrangements that respect the general principles of international law. When reforming the administrative structure of a state, account must be taken of the added value of historical regions in terms of culture, language, traditions and religions. For a long time it has been considered that the right to self-determination can only be granted to nations which have a certain territory, and not to national minorities, since the granting of this right would lead to separatism and to the dissolution of the states on whose territory those minorities claiming this right live. The Resolution 1985 (2014) is based on another premise: "the right to self-determination, the integrity of the state and national sovereignty can be reconciled so as to increase tolerance." In this context, it is worth mentioning Resolution 1334 (2003) on positive experiences of autonomous regions as a source of inspiration for conflict resolution in Europe, which states that the establishment and maintenance of an autonomous entity can be seen as part of the process of democratization. There is also Resolution 361 (2013) on regions and territories with special status in Europe, adopted by the Congress of Local and Regional Authorities of the Council of Europe, recognizing that the particular status of certain regions has brought stability and economic well-being within them and implicitly for the states they are located in. Resolution 1334 (2003) underlines that "in order to alleviate internal tensions, the central government must react with understanding toward minority groups ... when they ask for greater freedom in self-governance of their own affairs. At the same time, the granting of autonomy must never give the community the impression that local government is exclusively the issue of the community". Self-determination of minorities can therefore be achieved through participation in state authorities, but also through the delegation of competences at local level, through the development of regional autonomy, which can lead to limited self-government in areas such as education or culture. Internal self-determination does not affect the right of states to territorial integrity. The most developed model in this regard is the Åland Islands.

Territorial self-governance arrangements have been established in order to reduce the risk of intra-state conflict by about 50%, and these arrangements combined with a parliamentary regime and a proportional central electoral system reduce the chances of a conflict of about 70%.

From an economic perspective, living standards are higher in some regions where compact minorities live: Catalonia, Scotland, The Basque Country, South Tyrol and the Åland Islands. Of course, this is not the rule, and there are also regions where GDP per capita is below the national average. The difference is given by the level of fiscal autonomy. In South Tyrol, 90% of the collected taxes return to this region, and the distribution of resources is decided by the local government. Scotland recently acquired, through the Scotland Act from March 2016, the right of more than 50% of taxes to be redistributed only at provincial level<sup>3</sup>. In other regions, most of the collected taxes are redistributed centrally-based on a formula that takes into account the unitary development of the country, or is random. In these regions, the standard of living is obviously not superior to the overall one. The conclusion is that the definition of a self-government arrangement must consider ensuring a fiscal autonomy that leads to a sustainable development of the region in which the arrangement is applied and the advantages at national level can only be subsequently perceived through trade with the region or regions concerned;

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<sup>3</sup> The text of the Scotland Act. Retrieved October 10, 2019, from <http://www.legislation.gov.uk/ukpga/2016/11/contents>.

c. Conflict prevention. Continuous dialogue with representatives of national minorities is needed in order to prevent conflicts;

d. Right to education and minority languages. States must promote the official use of minority languages in accordance with the European Charter for Regional or Minority Languages. However, the protection of minority languages should not be done at the expense of official languages and the obligation to learn them. It is advisable to write history books together with related states and representatives of minorities. Funds are needed for media organizations or institutions representing minorities and also measures to ensure the continuity of mother tongue education at secondary (including vocational) and university levels. The term regional or minority language is defined by Article 1 of the Charter which refers to languages traditionally used in a given territory of a state by citizens who form a group less numerous than the rest of the population. There are 84 regional and minority languages used by 206 national minorities or language groups in 23 of the 25 states that have ratified the Charter. The right to education in the mother tongue is recognized by Article 14 of the Framework Convention as "one of the main ways in which individuals can assert and preserve their identity". Recommendation 1740 (2006) states that education in the mother tongue "significantly increases the chances of educational success". The right of persons belonging to national minorities to set up and manage their own educational institutions, financed from public and / or private sources, is described in art. 13 of the Framework Convention;

e. Fighting discrimination. States should not commit acts of discrimination against minorities and adopt "affirmative action" measures in order to promote equal opportunities for members of the majority and of the minorities.

The Resolution 1985 (2014) does not establish a new model for the protection of minorities in Europe, but only draws up a summary of legal instruments (constraint or recommendation) and non-legal (good practices) existing at the time of its adoption. Such a panorama was necessary, given that several ways of protection evolved in parallel: the Council of Europe instruments generated by inter-state cooperation, ECHR jurisprudence, OSCE involvement, national instruments. This review provides the occasion for expressing specific recommendations to member states of the Council of Europe. The most controversial issues related to the protection of minorities refer to territorial self-determination and fiscal autonomy. As regards the first element, the Resolution states that self-determination must be reconciled with the integrity and sovereignty of the State in whose territory the minority has such claims. Regarding fiscal autonomy, Resolution 1985 (2014) does not refer to this issue because it is given to a region not only on ethnic grounds but on a number of factors related to the historical development of the relationship between majority and ethnic, linguistic or religious minorities. The protection of national minorities therefore does not include a clearly defined, immutable set of instruments and practices, but is constantly evolving, depending on the concrete needs of the persons belonging to the minorities and the communities they belong to.

## BIBLIOGRAPHY

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