EVOLUTION OF THE EDUCATIONAL RIGHTS OF MINORITIES IN THE LEAGUE OF NATIONS, UNITED NATIONS AND COUNCIL OF EUROPE SYSTEMS

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Executive Summary

The present thesis is devoted to the comprehensive analysis of the historic development of the educational rights of persons belonging to national or ethnic, religious or linguistic minorities. The study focuses on the transformation of the minorities' protection regimes established within the League of Nations after World War I into more individualistic system of the protection of the rights of persons belonging to minorities that emerged after World War II within the United Nations and Council of Europe.

From the wide array of the rights of persons belonging to minorities, education plays a crucial role and is paramount to the survival and further development of minority communities. While the rights of persons belonging to minorities are perceived as individual rights – such approach is practical and important for jurisdictional reasons, the collective aspect of minority rights is undisputed. This is particularly relevant for the educational rights of persons belonging to minorities, as educational process mostly has collective character.

The research focuses on the evolution of minority education rights within three legal systems: minority protection regimes under the League of Nations, educational rights of persons belonging to minority groups under the United Nations, and the regional Council of Europe system. The study also provides an overview of modern understanding of the educational rights of persons belonging to minority groups. In this aspect, thesis analyzes the minority rights as human rights – focusing on the subjective element of the minority education rights, and examines the content or material elements of the educational rights of minorities.

Dedication

To my wife Lilia, who has been an infinite source of support and inspiration!

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Introduction

The minority rights protection regime was first introduced after the I World War and significant change of borders within Europe to avoid further tensions based on ethnic, religious or linguistic differences. Although the regime was progressive at the time, it was not designed as human rights protection regime. Minority rights were considered and construed as group rights in international law, and individuals could not claim the violation of their minority rights on international arena.

After the Second World War and the establishment of the United Nations, the paradigm changed and the human rights system was gradually developed. Although, the rights of minorities were not explicitly mentioned in the Universal Declaration of Human Rights, several other treaties were adopted, containing the provisions on minority rights or closely related issues, e.g., the International Covenant on Civil and Political Rights (ICCPR), Convention on the Prevention and Punishment of the Crime of Genocide, Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Rights of the Child.

The issue of minority rights has always been on the agenda of the UN. In 1947, the Sub-Commission on Prevention of Discrimination and Protection of Minorities was established as a subsidiary body of the former Commission on Human Rights. Its activities resulted, *inter alia,* in drafting the article 27 of the ICCPR on the protection of the rights of persons belonging to minorities (the Human Rights Committee adopted the General Comment No 23 on article 27 in 1994). In 1992, the UN General Assembly adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

In 1995, the Working Group on Minorities was established, replaced in 2007 by the Forum on Minority Issues, established by the Human Rights Council Resolution. In 2005, the Special Rapporteur on minority issues was appointed by the Commission on Human Rights and the mandate was subsequently renewed by the Human Rights Council.

In the realm of the Council of Europe, the rights of minorities are partially protected by the European Convention on Human Rights. Article 14 provides as one of the grounds of discrimination an association with a national minority. However, non-discrimination right prescribed in article 14 can only be invoked in conjunction with the alleged violation of other rights protected by the Convention. Besides that, there are two special treaties on minorities adopted under the auspices of the Council of Europe: the Framework Convention for the Protection of National Minorities adopted in 1994 and the European Charter for Regional or Minority Languages adopted in 1992.

It is evident that the minority rights continue to be relevant and problematic nowadays. The minority protection issues persist to be on the agenda of international and regional human rights bodies and the 'old' problem of minorities still influences the relations among and inside the states. Among the issues concerning the rights of persons belonging to minorities, the educational rights are probably the most important. Education has a significant instrumental value as means to further professional development, self-realization, and participation in social life. Additionally, education, particularly for persons belonging to minorities, has a value in itself as it helps the preservation and development of minority groups.

While there is plenty of scholarship devoted to the evolution of minority rights after World War I and its subsequent transformation after World War II, there is much less research focusing on the development of the educational rights of persons belonging to minority groups. Hence, the main goal of my thesis is to analyze the historical development of minority rights framework in international law. In particular, I will examine the influence of the relevant jurisprudence of the Permanent Court of International Justice (PCIJ) on the subsequent evolution of minority education rights law, and conduct a comparative study of

the current state of the art in this area in the United Nations' and the Council of Europe systems.

The main research question of my thesis, therefore, reads as follows: How did the minority protection regime established under the League of Nations influence the subsequent development of minority education rights law.

Historical and comparative methods of research are employed to analyze the defined research question. The research is a desk-study and does not involve interviews or field research. The thesis is based on the analysis of the treaties concluded within the League of Nations, United Nations, and Council of Europe systems, as well as other documents produced by or under auspices of these organizations. The research also uses the relevant case-law of the Permanent Court of International Justice and European Court of Human Rights, as well as documents of quasi-judicial bodies, e.g. UN Human Rights Committee, other UN treaty bodies and the Council of Europe advisory bodies. Hence, the research is based both on primary and secondary sources.

The study is limited from geographic perspective and focuses mainly of European region. This is due to the historical development of minority rights mainly within Europe, as well as reach normative and institutional basis developed by the Council of Europe on this problem.

The term 'minorities' is used within the meaning adopted by the UN Declaration and other international documents and is limited to national or ethnic, religious and linguistic minorities. The study also does not focus on educational rights of indigenous people whose status and scope of rights and obligations is different from those of minorities'.

In order to provide the answer to the defined research question, I divided my thesis in three main chapters. The first chapter focuses on the development of minority protection regimes immediately after World War I, analyzes the status of minorities under the minority rights' treaties under the auspices of the League of Nations and examines the relevant jurisprudence

of the Permanent Court of International Justice. The chapter concludes with a brief analysis of the legacy of the minority protection regimes established within the League of Nations.

Second chapter overviews the subsequent development of the educational rights of persons belonging to minorities from the end of World War II until today. It focuses on the transformation of minority rights regime of the League of Nations into the human (individual) rights system established within the United Nations and Council of Europe. Third and final chapter provides analysis of the modern understanding of the educational rights of persons belonging to minority groups.

1. Minority Rights Regime in the League of Nations System

The League of Nations was established following the aftermath of the I World War, "in order to promote international co-operation and to achieve international peace and security".[1] Among the consequences of the Great War, was the dissolution of several major states in Europe (*i.e.*, Austro-Hungarian, Russian, and Ottoman Empires) and the emergence of many new ones in their place, as well as significant changes of borders. This, in turn, led to different peoples residing in states where they had become minorities. Thus, it is no surprise that the issue of 'minority protection' was prominent throughout the existence of the League.[2]

1.1. Establishment of minority rights after the I World War.

The emergence of new states in Europe after the I World War was based on the people's right for self-determination. The main points for the post-War settlement were stipulated by the U.S. President Woodrow Wilson in his famous 14 points speech to the U.S. Congress on 8 January 1918. Later, he clarified and elaborated some of the ideas and declared that "all well-defined national aspirations shall be accorded the utmost satisfaction that can be accorded them without introducing new or perpetuating old elements of discord and antagonism that would be likely in time to break the peace of Europe and consequently of the world"[3]. It soon became clear, however, that it would be impossible to satisfy "all well-defined aspirations" of different peoples, as the no longer existing European empires (i.e., Austro-Hungarian, German, and Ottoman) were comprised of multiple ethnic groups mixed among themselves in different habitual areas. Inevitably, some people would constitute a minority in an area belonging to another state (e.g., Hungarians in Romania, Germans in Poland, etc.).

[1] Covenant of the League of Nations, 1919, available at: https://avalon.law.yale.edu/20th_century/leagcov.asp
[2] See, for instance: Fink, Carole. *The League of Nations and the Minorities Question.* World Affairs 157, no. 4 (1995): pp. 197-205; Fink, Carole. *Minority Rights as an International Question.* Contemporary European History 9, no. 3 (2000): pp. 385-400.
[3] President Wilson's Addendum to the Fourteen Points, 11 February 1918, available at: https://www.firstworldwar.com/source/fourteenpoints_wilson2.htm

The solution was found in providing certain rights to the groups of minorities, or "a large measure of local autonomy, together with adequate guarantees for freedom of communication with neighboring peoples with whom may exist cultural or economic affiliations"[4].

Consequently, the issue of minority rights protection entered the international agenda after the I World War in four forms of arrangements[5]: 1) as special treaties on minorities concluded between the Principal Allied and Associated Powers, on the one hand, and Poland, the Kingdom of Serbs, Croats and Slovenes, Czechoslovakia, Romania, Greece and Armenia on the other; 2) as separate chapters in the peace treaties Austria, Bulgaria, Hungary, and Turkey; 3) as special conventions regarding the Upper Silesia[6] region or Danzig in Poland, the Memel Territory in Lithuania[7], and Aland Islands in Finland; 4) as declarations submitted as a precondition of admission to the League of Nations by Albania, Estonia, Finland, Latvia, Lithuania, and Iraq[8]. Those arrangements did not provide universal guarantees for minorities as they applied only to the specific countries the treaties were concluded with or that issued the declarations. In addition, Denmark voluntarily adopted domestic legislation according certain rights to the German minority. It provided specific guarantees for minority education rights with parents having the right to choose the language of instruction for their children.[9]

Subsequently, several of these arrangements had been analyzed by the Permanent Court of International Justice and its judgments and advisory opinions significantly developed and elaborated the minority rights provisions, including the minority education rights.

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[4] Brown, Philip Marshall. *Self-Determination in Central Europe*. American Journal of International Law 14 no 1-2 (1920): p. 237.

[5] Pentassuglia, Gaetano. *Minorities in International Law : An Introductory Study*. Strassbourg: Council of Europe Publishing, 2002, p. 27.

[6] See more on the legal status of Upper Silesia: Finch, George A. *Upper Silesia*, American Journal of International Law 16, no. 1 (1922): pp. 75-80.

[7] See more on the legal status of the Memel territory: Thorsten Kalijarvi, *The Problem of Memel*, American Journal of International Law 30, no. 2 (1936): pp. 204-215.

[8] See more on the Iraqi declaration to the League of Nations: Jenks, C.W. *The First "Modification" Of The Iraqi Declaration Before the Council of the League of Nations*, American Journal of International Law 31, no. 2 (April 1937): pp. 320-321.

[9] Fenwick, C. G. *Danish Legislation Protecting Minorities*. American Journal of International Law 18, no. 4 (1924): p. 789-790.

While this was undoubtedly a progressive step towards the protection of certain rights of certain groups of people, it was not completely new and unprecedented. Prior to the recognition of independent Poland, representatives of the Principal Allied and Associated Power demanded that Poland undertakes upon itself certain obligations towards minority people that would have resided in its territory. For instance, Georges Clemenceau, then the Prime Minister of France, wrote in his letter to Ignacy Paderewski, then the Prime Minister and Minister of Foreign Affairs of Poland, regarding the negotiated treaty which Poland signed simultaneously with the Peace Treaty with Germany:

> *This treaty does not constitute any fresh departure. It has for long been the established procedure of the public law of Europe that when a state is created, or even when large accessions of territory are made to an established state, the joint and formal recognition by the great Powers should be accompanied by the requirement that such state should, in the form of a binding international convention, undertake to comply with certain principles of government. This principle, for which there are numerous other precedents, received the most explicit sanction when, at the last great assembly of European Powers – the Congress of Berlin – the sovereignty and independence of Serbia, Montenegro, and Romania were recognized*.[10]

Therefore, the recognition of the rights of religious minorities at the Congress of Berlin in 1878 served as a precedent[11] and a foundational argument for the inclusion of the minority rights provisions into the treaty with Poland and all other subsequent agreements for which the treaty with Poland served as a model.

The arrangements, while different in detail, contain some similar general provisions on the rights of persons belonging to racial, religious or linguistic minorities. These provisions

[10] Finch, George A. *The International Rights of Man*, American Journal of International Law 35, no. 4 (1941): p. 662.

[11] Some find even earlier traces of the recognition of religious minorities' rights in the Treaty of Westphalia of 1648. See: Rosting, Helmer. *Protection of Minorities by the League of Nations*, American Journal of International Law 17, no. 4 (1923): p. 642-643.

include the principle of equality of the persons belonging to minorities, the right to use freely their native tongs and to establish freely religious or educational institutions. In addition, in the areas where the minorities constitute a considerable share of the population, the persons belonging to minorities would also have the right for the instruction in primary schools in their native tongs and for the adequate redistribution of the state funds to the minority schools.[12]

The treaties also stipulated some particular provisions granting certain rights to specific minority groups residing in their territories: in case of the Polish treaty – special protection was afforded to the Jews; in Yugoslav and Greek treaties – to the Muslims; in Czecho-Slovak treaty – the autonomy of Ruthenians was guaranteed; in the Romanian treaty – the rights of Saxons and Hungarians were protected.[13]

The treaties consisted of two sets of guarantees – domestic and international. On the domestic level, the signatories undertook the obligation to implement the provisions regarding the protection of minority rights into their legislation. Moreover, the states agreed to include the minority rights provisions into their fundamental laws. For instance, Article 1 of the Polish Minority Treaty stipulated that the guarantees for the minority rights enshrined into the treaty "shall be recognized as fundamental laws, and that no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or any action prevail over them"[14].

On the international level, all the treaties provided the same guarantees. The Council of the League of Nations was entitled to look into the situation in the concerned states. The concerned states agreed that "any Member of the Council of the League of Nations shall have

[12] Rosting, Helmer, *supra note*, p. 649.
[13] *Ibid*, p. 649.
[14] Article 1 of the Minorities Treaty between the Principal Allied and Associated Powers (the British Empire, France, Italy, Japan and the United States) and Poland, signed at Versailles, 28 June 1919, available at http://www.forost.ungarisches-institut.de/pdf/19190628-3.pdf

the right to bring the attention of the Council any infraction, or any danger of infraction"[15] of the Treaty obligation regarding the minority rights and that the Council shall have the right to take any action or give any direction it would deem proper under the circumstances.

The Minorities Section of the Secretariat was established to assist the Members of Council of the League of Nations to deal with the cases involving the rights of minorities. Moreover, the right of the minorities to submit petitions to the Council of the League of Nations, calling the attention of the Council to the violation of their rights by the states-signatories of the minorities' treaties, was provided.[16] The petitions were then examined by the Minorities Section of the Secretariat and, in case there was some merit in them, further transferred to the Council. Within the Council, the Minorities Committees were established, tasked with defining the conditions under which the Council might exercise its powers provided by the Covenant of the League of Nations and the minorities' treaties in order to resolve the alleged violation of the rights of minorities.[17]

Consequently, if the Council of the League of Nations was unable to resolve the conflict between its Member States regarding the protection of minority rights in a concerned State (if, for instance, Member State assess the situation differently and the Council could not come to an agreement), or if there was a disagreement of opinions regarding the questions of law, the situation had been treated as a dispute of an international character, according to the Article 14 of the Covenant of the League of Nations. Therefore, the parties to the dispute had the right to refer it to the Permanent Court of International Justice, which decisions were final.[18] In addition, the Council or the Assembly of the League of Nations had the right to refer the

[15] Article 12 of the Polish Minorities Treaty, *supra note*. Similar provisions were enshrined in all other Minorities Treaties.
[16] Stone, Julius. *Procedure under the Minorities Treaties*. American Journal of International Law, vol. 26, no. 3 (1932), p. 503.
[17] Stone, Julius. *Supra note*, pp. 507-508.
[18] Joseph S. Roucek, *Procedure in Minorities Complaints*, American Journal of International Law, vol. 23, no. 3 (1929): p. 539.

dispute or legal question for the advisory opinion of the Permanent Court of International Justice.

1.2. Minority rights in the jurisprudence of the Permanent Court of International Justice.

The minorities' treaties specifically focused on the linguistic and educational rights of minority groups granting them, among other things, the right for the instruction in primary schools in their native tongs and for the adequate redistribution of the state funds to the minority schools. It is, thus, of no surprise that the majority of minority cases referred to the Permanent Court of International Justice (established under Article 14 of the Covenant of the League of Nations) concerned specifically the issues of minority education. Therefore, since this is also the focus of the thesis, only those judgments and advisory opinions of the PCIJ that are relevant to the minorities' rights would be further analyzed. In particular, the focus will be pointed at those cases that contributed to the development of the education rights of the minorities or broadened the understanding of certain aspects of the minorities' status.

1.2.1. Contentious cases before the PCIJ.

Rights of Minorities in Upper Silesia (Minority Schools), 1928.

The only contentious case, related to the minorities, considered by the Permanent Court of International Justice was lodged by the German Government on 2 January 1928 on the basis of the German-Polish Convention Concerning Upper Silesia[19]. In the aftermath of World War I, some parts of German territories were transferred to the newly independent Polish State. However, in the Upper Silesia, which was an important industrial region with a mixed ethnic population, a plebiscite was organized by the Allied Powers in 1921 to decide on the status of the territories. Some parts of the region voted to belong to Poland, other parts decided to

[19] Geneva Convention Concerning Upper Silesia, Annex 1 to *Rights of Minorities in Upper Silesia (Minority Schools)* (Germany/Poland), Judgment, (26 April 1928), P.C.I.J. (Ser. A), No. 15.

remain German.[20] The German-Polish Convention was concluded in Geneva on 15 May 1922, based in part on the provisions of so-called Polish Minority Treaty concluded in Versailles on 28 June 1919 between Poland on the one side, and the United States, the British Empire, France, Italy and Japan on the other side.[21] In their application, the German Government asked the Court to issue a judgment to the following effect:

> *that Articles 74, 106 and 131 of the German-Polish Convention relating to Upper Silesia of May 15th, 1922, establish the unfettered liberty of an individual to declare according to his own conscience and on his own personal responsibility that he himself does or does not belong to a racial, linguistic or religious minority and to choose the language of instruction and the corresponding school for the pupil or child for whose education he is legally responsible, subject to no verification, dispute, pressure or hindrance in any form whatsoever by the authorities; that any measure singling out the minority schools to their detriment is incompatible with the equal treatment granted by [the Convention]*[22].

The disputed articles provide that the question of belonging to racial, linguistic or religious minority may not be verified or disputed by the state (Art. 74); that a minority school, or minority class if establishment of the school is impossible, shall be established if the "persons legally responsible for the education of at least forty children belonging to a linguistic minority" applied for such a school (Art. 106); that the language of a child is determined by the oral or written statement of the person legally responsible for the child, such statement cannot be verified or disputed, and educational authorities shall abstain from pressure to withdraw request for a minority school (Article 131).[23]

[20] See more on the history of Upper Silesia: Tooley, T. Hunt, *National Identity and Weimar Germany: Upper Silesia and the Eastern Border, 1918-1922*. Lincoln, NE: The University of Nebraska Press, 1997.
[21] Supra note 2.
[22] *Rights of Minorities in Upper Silesia (Minority Schools)* (Germany/Poland), Judgment, (26 April 1928), P.C.I.J. (Ser. A), No. 15, p. 5.
[23] Supra note 2.

The facts of the case and the reasons for dispute are summarized by the Court and stand as follows. In 1926, Polish government conducted an inquiry on whether the applications for minority schools had been submitted by the persons entitled to it, *i.e.* whether those persons belonged to a linguistic minority. As a result, 7 114 pupils were expelled from minority schools on various grounds and forced to attend ordinary schools. Some parents who refused to send their children to ordinary schools were summoned by the police and fined.[24] German People's League of Polish Upper Silesia (*Deutscher Volksbund für Polnisch Oberschlesien*) submitted complaints to the Minorities Office, the Voivode (i.e., the Governor) of Silesia, and the President of the Mixed Commission established by the German-Polish Convention. The President of the Mixed Commission issued an opinion where he stated that the expulsion of pupils from German minority schools was unjustified and the pupils should be allowed to return to classes. Voivode of Silesia responded that he would not be able to comply with the recommendation.[25] Consequently, the German government submitted the case to the Permanent Court of International Justice.

The main disagreement between the governments of Germany and Poland respectively referred to the question of belonging to racial, linguistic or religious minority. German government contended that this question should be left to the "subjective expression of intention of the persons concerned" and such expression must be respected by the authorities even if it contradicts the factual situation. Polish government, on the other hand, argued that the question of belonging to the minorities is "a question of fact, not one of intention"[26]. The declaration of belonging to one of the said minorities by the persons concerned should correspond with the factual situation; otherwise, it would be an abuse of protected rights. The Court in this respect took a somewhat compromising position by stating that the question of

[24] Supra note 5, p. 10.
[25] Ibid, p. 12.
[26] Ibid, p. 32.

belonging to the minorities, and consequently being entitled to the protection provided by the Geneva Convention, "is a question of fact and not solely of the intention". The Court further continues that the purpose of the Convention was to provide protection for the persons who *de facto* belong to the racial, linguistic or religious minorities.[27]

However, the Court also added that the prohibition of verification or disputes regarding the question of belonging to the minorities was introduced to the Convention with the purpose of avoiding disadvantages for the persons whose status might be uncertain (e.g., children from mixed marriages, children who do not speak their native languages, etc.) and tensions that might arise in the region should the governments engage into the disputes regarding the questions of belonging to the minorities.[28] Therefore, the persons declaring their belonging to the minorities should do so according to the factual situation but the governments should abstain from verifying or disputing such declarations.

The second disagreement considered by the Court concerned the right of the persons legally responsible for the pupil to select freely the language of the education and the school for the child to attend, as was argued by the German government. Germany in its submission relied on the provisions of Article 106 of the Geneva Convention, providing the right to establish a minority school if at least forty children are belonging to a linguistic minority.[29] Additionally, Article 131 of the Geneva Convention states that the language of a child is determined by the declaration of the person legally responsible for his/her education, which cannot be verified or disputed by the authorities, and the educational administration is prohibited from influencing in any way the decision of the persons legally responsible for the education of the children regarding the request to establish a minority school.[30]

[27] Ibid, p. 32-33.
[28] Ibid, p. 34.
[29] Supra note 2.
[30] Ibid.

Poland in its submission contended, on the other hand, that "the persons legally responsible for the education of the child are free to declare what is the language of the child", which does not necessarily correspond with the freedom to select the language of education or request the establishment of a minority school[31]. In addition, Poland did not accept unreservedly that the verification or dispute by the authorities regarding the declaration of belonging to the minorities is fully prohibited. Polish Government also contemplated that the minority schools, classes or courses (as provide by Article 105 of the Geneva Convention) are intended for the children with native language other than Polish whose parents also use that other language as native; consequently, the declaration provided in Article 131 of the Geneva Convention regarding the determination of the language of the child refers to the ascertainment of the fact (i.e., which language is native for the child) and not to the expression of a wish or intention of the persons legally responsible for the education of the child for their child to be educated in the minority school or class.[32]

The Court in its analysis agreed with the position of the Polish Government regarding the nature of the declaration provided in Article 131 of the Geneva Convention as ascertaining the facts and not the intentions or wishes of the persons legally responsible for the education of the child. The Court, however, did not fully exclude the necessity of taking subjective element into account, since it is not always easy to establish a native language of a person, especially in the region of Upper Silesia where parents often practice another language to satisfy their cultural needs and consider that language as their native one.[33]

The Court further analyzed the differences between the right to request the establishment of the minority school and the right to request the child to be admitted to the already existing one. The German Government during the oral hearings argued that the right to be admitted to

[31] Supra note 5, p. 38.
[32] Ibid, p. 38-39.
[33] Ibid, p. 40-41.

the minority school for the children who do not belong to the minority should not be restricted for it would violate the principle of equal treatment provided by Article 68 of the Geneva Convention. Germany stated that no special declaration is required for the children to be admitted to the 'majority' school, hence, by virtue of the equal treatment principle, no declaration should be required for the admission to minority schools. The Court, however, disagreed with such reasoning and stated that the restriction of the access to the minority schools for the persons belonging to the racial, linguistic or religious minorities is fully compatible with the principle of equal treatment as provided by Article 68 of the Geneva Convention.[34] The Court emphasized that the persons belonging to the racial, linguistic or religious minorities are bestowed with certain advantages regarding their education, depending on a certain condition, i.e. the condition is the fact of belonging to the said minorities. If such a condition is not fulfilled, the advantage in not obtainable and that does not violate the principle of equal treatment as provided by Article 68 of the Geneva Convention.[35]

The last issue raised by the German Government related to the "singling out the minority schools to their detriment", or application of the "measures which constitute a treatment of minority schools less favourable or more unfavourable than the treatment accorded to other schools, and a treatment which is at the same time of a more or less arbitrary character".[36] Germany also presented a range of examples of arbitrary interferences from the Polish authorities in the affairs of the minority schools, their hostile attitude towards the said schools, and the opinion of the President of the Mixed Commission regarding the attempts of the Polish authorities to attempt pressure on the persons legally responsible for the children's education. The Court stated in this regard that the hostile attitude towards the minority

[34] Ibid, p. 42-43.
[35] Ibid, p. 43.
[36] Ibid, p. 44.

schools would be incompatible with Article 68 of the Geneva Convention. However, the Court did not express the opinion whether the actions of the Polish Government had indeed been discriminatory towards the minority schools since "it has not been asked for a decision in regard to any concrete measure alleged to be of this character".[37]

The main conclusions of the Court's judgment in the *Rights of Minorities in Upper Silesia (Minority Schools)* case are, therefore, as follows. Every person has the right to declare freely, based on his conscience and responsibility, whether he belongs to racial, linguistic or religious minority and what is the native language of the child for whose education he is legally responsible. Such declaration shall not be subject to any verification or dispute by the authorities; however, it should represent the factual situation, i.e. reflect the true racial, linguistic or religious origin of the person. Finally, the person legally responsible for the education of the child, while having the right to declare freely what is the native language of the child, does not have the unrestricted right to select the language of education (i.e. this right is restricted to the persons belonging to racial, linguistic or religious minority). The Court also confirmed the principle of equal treatment as prescribed in Article 68 of the Geneva Convention but refused to opine whether the actions of the Polish authorities towards the minority schools constituted discrimination since it was not asked to do so in the Parties' submissions.

1.2.2. Advisory opinions of the PCIJ.

German Settlers in Poland, 1923

The first advisory opinion regarding the minority issues was delivered by the PCIJ in 1923 and concerned the land rights of German settlers. After the I World War, Germany lost part of its territories and some of its former nationals found themselves residing in newly established independent Poland. Those former nationals referred to in the advisory opinion as 'colonists'

[37] Ibid, p. 44-46.

or 'settlers' received Polish citizenship on the basis of Article 91 of the Treaty of Versailles. These colonists had concluded contracts with the German government, prior to the end of World War I on 11 November 1918, granting them rights to certain holdings (*i.e.,* land, buildings, etc.) by the German Colonization Commission. The Polish Government considered itself to be the legal owner of these holdings under Article 256[38] of the Treaty of Versailles and undertook certain measures to cancel the above contracts and expelled the colonists from the occupied holdings (fact "a").[39] In addition, Poland refused to recognize leases concluded before the end of the I World War (11 November 1918) between Germany and German nationals over the state properties which had been then transferred to Poland on the basis of Article 256 of the Treaty of Versailles (fact "b").[40]

Accordingly, the League of Nations adopted the resolution on 3 February 1923, requesting the Permanent Court of International Justice to provide advisory opinion regarding the following questions: "the Council requests the Court to give an advisory opinion on the question whether the position adopted by the Polish Government, is in conformity with its international obligations".[41]

On 14 July 1920, Polish Parliament adopted the law recognizing the former properties of the German state as belonging to the Polish treasury and denouncing any contracts (leases, mortgages, rents, etc.) concerning those properties as invalid. Subsequently, the Polish Government attempted, by bringing legal claims to courts, to oust the occupants of those

[38] Article 156 of the Treaty of Versailles reads as follows: "Powers to which German territory is ceded shall acquire all property and possessions situated therein belonging to the German Empire or to the German States, and the value of such acquisitions shall be fixed by the Reparation Commission, and paid by the State acquiring the territory to the Reparation Commission for the credit of the German Government on account of the sums due for reparation.
For the purposes of this Article the property and possessions of the German Empire and States shall be deemed to include all the property of the Crown, the Empire or the States, the private property of the former German Emperor and other Royal personages".
[39] Certain Questions Relating to Settlers of German Origin in the Territory Ceded by Germany to Poland, Advisory Opinion, (10 September 1923), PCIJ (Ser. B), No. 6, p. 6-7.
[40] Ibid, p. 7.
[41] Ibid, p. 7.

properties. The occupants, in turn, complained of the violation of the Polish Minorities Treaty.[42]

The Court recognized its competence over the case in question on the basis of the Polish Minorities Treaty[43]. According to Article 7 of that Treaty, all Polish nationals, regardless of their race, language or religion shall be equal before the law and shall enjoy the same civil and political rights. The Court interpreted that the term, 'civil rights' used in the Treaty "must include rights acquired under a contract for the possession or use of property, whether such property be immoveable or moveable"[44]. Hence, already in 1923, the PCIJ has expanded the sphere of civil rights to some economic and social ones, namely to the right to property.

The Court also emphasized that equal treatment, regardless of race, language or religion, shall be applied 'in law and in fact'. The fact that the Polish legislation did not contain a specific provision on the transfer of the properties from the possession of German minorities to the Polish state and that the law was in a few instances applied to non-German Polish nationals made no substantial difference in the view of the Court. The principle of equal treatment of minorities must go beyond the words of the legislation and provide a real ("in fact") protection during the application of the seemingly non-discriminative law.[45] While the Polish law did not single out the owners of the German origin, it is clear from the systemic reading of the law, as well as from its application in practice, that the law was intended to strip the Polish nationals of German ethnic origins of their possessions over the properties acquired from the German state before the end of the I World War. It might be argued, that in this

[42] Ibid, p. 15.
[43] Treaty of Peace between the United States of America, the British Empire, France, Italy and Japan and Poland. Signed on 28 June 1919.
[44] Supra note 32, p. 23.
[45] Ibid, p. 24.

advisory opinion the PCIJ had for the first time in history recognized the prohibition of *indirect* discrimination, although without explicitly mentioning the concept itself.[46]

The Court concluded that by adopting the law of 14 July 1920, the Polish state virtually annulled the rights of the settlers of German origin that they had previously acquired by concluding contracts with the German state. In doing so, Poland violated its obligations regarding the civil rights of the settlers and the principle of equal treatment by subjecting "the settlers to a discriminating and injurious treatment to which other citizens holding contracts of sale or lease are not subject"[47].

Acquisition of Polish Nationality, 1923

Second advisory opinion related to minority rights was delivered by the Court the same year as the previous one and concerned the rejection by the Polish Government to recognize certain persons of German origin, living at the time on the territory of Poland, as Polish citizens. Under the Treaty of Versailles, these persons were *ipso facto* Polish citizens since their parents had resided at the date of their birth on the territories which became part of Poland after the I World War. Thus, these persons should have received Polish citizenship and enjoy the rights protected by the Polish Minority Treaty. However, the Polish Government granted citizenship only to those persons of German origin whose parents had resided in the abovementioned territory both on the dates of those persons birth and the entry into force of the Treaty of Versailles.[48] The Council of the League of Nations had, therefore, requested the PCIJ to deliver its advisory opinion on the following: "… does Article 4 of the above-

[46] It has been generally accepted that the first case concerning indirect discrimination is *Griggs v. Duke Power Co.* (1971), decided by the US Supreme Court. See more: Hugh Collins, Tarunabh Khaitan (eds.), *Foundations of Indirect Discrimination Law*, Hart Publishing 2018; Christa Tobler, *Indirect Discrimination: A Case Study into the Development of the Legal Concept of Indirect Discrimination under EC Law*, Intersentia, Antwerp-Oxford, 2005.

[47] Supra note 32, p. 37.

[48] *Question concerning the Acquisition of Polish Nationality*, Advisory Opinion, (15 September 1923), PCIJ (Ser. B), No. 7, p. 6-7.

mentioned treaty refer solely to the habitual residence of the parents at the date of birth of the persons concerned, or does it also require the parents to have been habitually resident at the moment when the treaty came into force?[49]

The Court contended that the Polish Minorities Treaty provides two grounds for the acquisition of Polish citizenship by the persons of German origin. Firstly, under Article 3 of the Treaty, all persons of German origin "habitually resident in the territories incorporated in Poland" have the right to acquire citizenship. Secondly, the same rights belong to the persons born in the above mentioned territories whose parents habitually resided there at the time of their birth.[50]

In such, the Court provided a wider interpretation of the Treaty than the Polish Government argued for. In the Court's opinion, demanding from the persons of German origin to fulfill both conditions simultaneously (*i.e.,* habitual residence of the parents in the territory at the time of entrance into force of the Treaty of Versailles and the fact of birth in the territory from the parents who habitually resided there at the time of birth) would significantly limit the rights of the persons belonging to German minorities, comparing to the provisions of the Polish Minorities Treaty. Therefore, the Court concluded that the provisions of the Polish Minorities Treaty "refer to residence of the parents at the time of the birth of the child and at this time only"[51].

Greco-Bulgarian Communities, 1930.

The case concerned the interpretation of the Convention between Greece and Bulgaria Respecting Reciprocal Emigration of the nationals of those states, signed on 27 November 1919. Under the Convention, the Mixed Emigration Commission was established in 1920

[49] Ibid, p. 7.
[50] Ibid, p. 18.
[51] Ibid, p. 20.

tasked with overseeing the implementation of the Convention and the process of reciprocal emigration. The Commission had encountered some difficulties when interpreting the Convention and, together with the Governments of Greece and Bulgaria, submitted several questions to the Permanent Court of International Justice. The questions concerned the nature of the communities under the Convention, the connections between the communities under the Convention and minorities or racial groups, the conditions for the dissolution of the communities, and some procedural questions regarding the interpretation of the Convention.[52]

The Court was of the opinion that in order to determine the existence of a community, according to the provisions of the Greco-Bulgarian Convention, a set of criteria should be applied. It should be a group of people "*living in a given country or locality, having a race, religion, language and traditions of their own, and united by the identity of such race, religion, language and traditions in a sentiment of solidarity, with a view to 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*"[53]. Accordingly, the dissolution of the community takes place upon the emigration of the members of the community and "*must involve the disappearance OS the community or render it impossible for it to carry out its mission or fulfil its object*"[54].

Access to German Minority Schools in Upper Silesia, 1931.

This case was similar to the one considered by the Court two years earlier.[55] The Court was asked to examine whether the denial by the Polish government for the admission of the children of German origin to the minority schools was compliant with the Geneva Convention

[52] Interpretation of the Convention Between Greece and Bulgaria Respecting Reciprocal Emigration, Signed at Neuilly-Sur-Seine on November 27th, 1919 (Greco-Bulgarian Communities) (Advisory Opinion), [1930] PCIJ, Ser. B, No. 17
[53] Supra note, p. 33.
[54] Ibid, p. 34.
[55] See: Rights of Minorities in Upper Silesia (Minority Schools) (Judgment), [1928] PCIJ, Ser. A, No 15.

between Poland and Germany.[56] The denial was based upon the language tests conducted in 1927, although the representatives of German minorities had argued that the language of the instruction is to be selected by the persons legally responsible for the education of the child (i.e., parents, guardians, etc.). Also, under the Geneva Convention, the declaration of belonging to the minority group could not be verified or disputed. The Court opined, similarly to its previous judgment regarding the minority schools in Upper Silesia, that language tests cannot be used to refuse access to minority schools to the children belonging to the said minorities.[57]

Minority Schools in Albania, 1935.

As was mentioned above, upon joining the League of Nations Albania submitted a declaration guaranteeing equal rights to its citizens regardless of their nationality, language or religion. Moreover, Albania guaranteed to minorities the right to use their own language as the language of instruction in public school and to establish their own educational institutions. However, the Albanian Constitution of 1933 contained a provision restricting education to state schools only and prohibiting the operation of all private schools. As this was a general measure applicable to all private schools, both majority and minority, the Albanian government argued that this constitutional provision does not violate the requirements set out in the Declaration regarding the rights of minorities, submitted to the League of Nations. Consequently, Spain submitted a report to the Council of the League of Nations asking to transmit a request for an advisory opinion to the Permanent Court of International Justice. Spain requested to answer, whether such actions and an excuse of the Albanian Government (general character of the measure applicable to both majority and minority schools) are in

[56] Geneva Convention Concerning Upper Silesia, Annex 1 to Rights of Minorities in Upper Silesia (Minority Schools) (Germany/Poland), Judgment, (26 April 1928), P.C.I.J. (Ser. A), No. 15.
[57] Access to German Minority Schools in Upper Silesia (Advisory Opinion), [1931] PCIJ, Ser. A/B, No 40.

compliance with the Declaration on minority rights, submitted by Albania to the League of Nations in 1921.[58]

The Court noted from the outset that the guarantees provided in the Albanian Declaration are virtually identical to those in the minorities' treaties. Moreover, Article 1 of the Declaration stipulated that no act of the State shall prevail over the minority clauses, "now or in the future". The Albanian Government, on the other hand, argued that the Declaration did not bestow any more rights on the minorities comparing to the rights of the majority. Thus, when the latter lost the right to establish and operate private schools, the same rule shall apply to the minorities.[59]

The Court, when delivering its arguments, essentially set out the underlying principles for the whole minority rights regime established after the I World War. The Court emphasized that the underlying idea for the minority rights regime was to secure for certain elements of a State, which differed from the majority by their race, religion or language, a possibility for peaceful coexistence within the said State that would allow them to preserve their distinguishing characteristics. The Court further elaborated that, in order to achieve this goal, two sets of guarantees are of paramount importance. The first one ensures to the minority groups that they will have an equal position in all respects to the members of the majority. The second one provides additional guarantees to the minority groups providing them with "suitable means for the preservation of their racial peculiarities, their traditions and their national characteristics"[60].

The Court then follows to an argument that these two sets of guarantees are interlocked and for there to be the true equality "in law and in fact", in certain cases the minority groups ought to have certain additional guarantees to their rights. The Court deliberates that to achieve

[58] Minority Schools in Albania (Advisory Opinion), [1935] PCIJ, Ser. A/B, No 64.
[59] Ibid, pp. 9, 15.
[60] Ibid, p. 17.

"equality in fact" a different treatment might be required, the one preferential to the minorities and providing them with additional guarantees. Since it is quite easy to think of a situation "in which equality of treatment, of the majority and of the minority, whose situation and requirements are different, would result in inequality in fact".[61] The Court, hence, came to the conclusion, that the abolition of all private schools, including the ones of the minorities, would lead to unequal treatment of the minorities. The minorities, therefore, ought to have the right to establish their own educational institutions in order to preserve their identities and transfer them to the future generations.

1.3. Legacy of the minority rights regime of the League of Nations.

History had known several different approaches to resolve categorically the problems of minorities. Some states attempted to exterminate physically the members of minority groups residing within their territory (e.g., Armenians in the Ottoman Empire, Assyrian minority in Iraq, Jews in Nazi Germany) or to assimilate or denationalize them forcefully (e.g., Czarist Russia, Hungary within the Austro-Hungarian Empire, or Fascist Italy towards its German and Slavic minorities). There were also attempts to annex the territories populated by the national minority group by the "parent" state (e.g., Germany and Sudeten region, etc.) or to transfer or exchange the populations between different states, either voluntary (Greco-Bulgarian Treaty of 1919) or forced (Greco-Turkish Convention of 1923, or Soviet-Polish transfer of populations immediately after the II World War).[62]

The minority rights regimes, introduced under the auspices of the League of Nations, were undoubtedly progressive in their nature. While it was not the first time when certain minority rights got some degree of protection on international level (i.e., rights of religious minorities

[61] Ibid, p. 19.
[62] See more: Kunz, Josef L. *The Future of the International Law for the Protection of National Minorities,* American Journal of International Law, Vol. 39, no. 1 (1945): pp. 92-93.

in the Treaty of Westphalia of 1648 or the Congress of Berlin in 1878), the level and scope of protection provided by the minorities' treaties or states' unilateral declarations were much higher. Contemporary scholars pointed out that "the greatest development, from the point of view of the evolution of international law, was that certain states were bound by international obligations *vis-a-vis* certain of their own citizens"[63] (those belonging to certain minority groups). Minorities were protected from their physical extermination or assimilation and were granted certain additional rights guaranteeing the further development of their specific characteristics. Among the most important guarantees for the minorities were the rights to have their native tong as the language of instruction in schools, to establish their own educational institutions, and to have a proportional amount of state funds distributed to the minority schools.

The minority rights regime was also beneficial from a political point of view, to a degree, to those states that undertook certain international obligations to respect the rights of their nationals belonging to minority groups. While it is often perceived that binding international obligations imposed some restrictions on state sovereignty, it might be argued that the opposite was true. The minority rights regime and the possibility to refer the case to the Permanent Court of International Justice allowed the states to move eventual conflict over the minority issues from the political sphere to the legal one. Joseph S. Roucek argued that the minority rights regime provided better protection to the states from external interference comparing to the pre-War arrangements. He claimed that while in the nineteenth century the protection of minorities was left to the guarantees of Great Powers, which allowed them the possibility to interfere into the internal affairs of newly-established states.[64] Hence,

[63] Kunz, Josef L. *The Present Status of the International Law for the Protection of Minorities,* American Journal of International Law, Vol. 48, no. 2 (1954): pp. 282-283.
[64] Joseph S. Roucek, *Procedure in Minorities Complaints*, American Journal of International Law, vol. 23, no. 3 (1929): p. 551.

transferring the question of minorities' protection from the sphere of politics to the legal one provided both a better protection for the minorities and for the concerned states from external interference.

This gave more authority to the jurisprudence of the Permanent Court of International Justice, which grounded its decisions in law, not in the political interests of the states. The Court articulated some important principles regarding the protection of the persons belonging to minority groups, which are still relevant today. Those include the principle of 'equal treatment in law and in fact', which sometimes requires differential treatment to guarantee real equality, not merely a formal one. The Court also emphasized that in order to guarantee the preservation and further development of the minorities they ought to have additional guarantees, among which the educational rights are essential to the survival of the group. Such educational rights include the rights to have their native tong as the language of instruction in schools, to establish their own educational institutions, and to have proportioned amount of state funds distributed to the minority schools.

The largest weakness, though, of the minority rights regime was its limited geographical application. The minority rights regime was restricted to Europe, with the only exception of Iraq and its declaration to the League of Nations. Moreover, the regime did not cover all of Europe where there were some minority groups but only a limited number of states. As was noted in contemporary scholarship:

> *The dividing line was not drawn, as in the case of "mandates," between victors and vanquished, but between big and small states. Hence such obligations were imposed on defeated Austria, Hungary, Bulgaria, but not on Germany; on the technically "victorious" new states Czechoslovakia, Poland, on the aggrandized states of Greece and Rumania,*

but not on Italy; likewise, on the new states of Albania, Finland and the Baltic Republics.[65]

Thus, the minority rights regime was a great development of international law towards providing the guarantees for the rights of persons belonging to minority groups, including their educational rights. The minority rights regime, though, did not survive the great conflict of the II World War and has eventually been substituted by the United Nations 'human rights' approach.

[65] Kunz, Josef L. *The Present Status of the International Law for the Protection of Minorities,* American Journal of International Law, Vol. 48, no. 2 (1954): p. 283.

2. Development of the Minority Rights after the II World War

As was shown in the previous chapter, the end of World War I resulted in the establishment of the minority protection regimes as substitutes for the aspirations of certain minority groups for self-determination, in cases when it was impossible or undesired, and as a guarantee for their – minority groups – preservation and development. After the World War II and all the atrocities and crimes that followed it, the paradigm shifted. As contemporary scholars commented at the time: "*At the end of the World War I, «international protection of minorities» was the great fashion: treaties in abundance, conferences, League of Nations activities, an enormous literature. Recently this fashion has become nearly obsolete. Today the well-dressed international lawyer wears human rights*."[66]

However, although the paradigm shifted and the main focus was directed towards "human rights", the rights of the minorities were not abandoned or rejected completely and remained on the agenda of the international community.

2.1. United Nations system of the minority rights protection.

It has been argued in the literature that the founding states of the newly established international organization – the United Nations, were hesitant whether the minority rights should be included into their normative framework. Neither the UN Charter nor the Universal Declaration of Human Rights contains any provisions whatsoever regarding the protection of minority rights. The UN Charter only mentions the self-determination of peoples in its Article 1 para. 2 (providing as one of the purposes of the UN the development of *friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples*) and Article 55 (providing that *conditions of stability and well-being are necessary for peaceful and friendly relations among nations based on respect for the principle of equal*

[66] Ibid, p. 282.

rights and self-determination of peoples).[67] Similarly, the only provision of the Universal Declaration of Human Rights that might be interpreted as, at the very least, coming close to conferring any protection to the minority groups is Article 7, which stipulates that *all are equal before the law* and *entitled to equal protection against any discrimination* or *incitement to such discrimination.*[68] In addition, the Universal Declaration also contained the provision on the right to education in Article 26, specifying that education "shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace" and providing specific right to the parents "to choose the kind of education that shall be given to their children".[69]

Asbjorn Eide emphasizes when describing the UN activities towards the minority rights during its initial stage, that the founding states were reluctant to the minority rights. There were several reasons for that, including the fears that granting additional protection to the minority groups might lead to internal tensions or conflicts, or that it would hinder the efforts to provide equal protection to all individuals on an individual basis without any regard given to the ethnic, religious or linguistic differences. The general belief was that the rights of minority groups could as well be protected through individual rights.[70]

Despite that, the problem of minorities was still present on the international stage after the end of the II World War and around the time when the UN Charter and Universal Declaration of Human Rights were drafted and adopted. There was the Austro-Italian agreement from 1946 regarding the status of South Tyrol, the conflict between Italy and Yugoslavia over the future status of Trieste, issues with minorities in Hungary and Czechoslovakia, as well as Turkey

[67] United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI.
[68] UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).
[69] Ibid.
[70] Asbjorn Eide, *Introduction: Mechanisms for Supervision and Remedial Action*, Universal Minority Rights: A Commentary on the Jurisprudence of International Courts and Treaty Bodies. Edited by M. Weller, Oxford University Press, 2007, p. 6.

and several places outside of Europe – Jews and Arabs in the Middle East, Muslims and Hindus in India and Pakistan, Indian minorities in Sri-Lanka (Ceylon) and South Africa, etc.[71]

Therefore, despite the initial hesitation of the UN founding states, it was decided to establish a special expert body within the Commission on Human Rights – the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The Sub-Commission was established in 1947 and comprised of 12 experts. While the Commission on Human Rights' initial task was to act as a forum where the universal human rights standard would have been drafted (the task the Commission completed after finishing the draft of the Universal Declaration of Human Rights and two subsequent human rights covenants), Sub-Commission had two different tasks: prevention of discrimination and protection of minorities. Prevention of discrimination was grounded in the above mentioned provisions of the UN Charter and the Universal Declaration of Human Rights providing equal protection to all humans, including those belonging to the minority groups. However, as Josef Kunz had argued at the time, "prevention of discrimination is no part of the international law for the protection of minorities; for the latter must give more than mere equality and prevention of discrimination; it must give specific minority rights, special privileges and services."[72]

Thus, the second task of the Sub-Commission was the protection of minorities. Already prior to the adoption of the Universal Declaration of Human Rights, the Sub-Commission had proposed to include a provision on minority rights into the final text of the Declaration. The proposed provision had stipulated that persons belonging to minority groups "shall have the right as far as compatible with public order to establish and maintain their schools and cultural or religious institutions and to use their language in the Press, in public assembly and

[71] See more: Kunz, Josef L. The Present Status of the International Law for the Protection of Minorities, American Journal of International Law, Vol. 48, no. 2 (1954): p. 283.
[72] Kunz, Josef L., supra note 65, p. 286.

before the Courts and other authorities".[73] This text specifically provided for the education rights of minorities as one of the most important elements of minority rights. The problem with such formulation, however, was two-fold. First, it put the rights of persons belonging to minorities in direct dependence and compliance with the requirements of public order. Second, it did not provide corresponding obligations for the member states to protect and guarantee these rights of persons belonging to minorities.

Nevertheless, even such moderate provision on minority rights was not accepted into the final text of the Universal Declaration of Human Rights. However, the UN General Assembly adopted a resolution stipulating that "it cannot remain indifferent to the fate of minorities". In the same resolution, it was specified that "it is difficult to adopt a uniform solution of this complex and delicate question, which has special aspects in each State" [74]. Therefore, the UN General Assembly had decided not to deal with the issue of minorities at that moment and referred it to the Sub-Commission. After the proposal was rejected by the UN General Assembly, the Sub-Commission put forward some other mechanisms to provide remedies for the minorities, such as the right of petition for the minorities and individuals. Those initiatives were also ignored by the UN General Assembly and the Commission on Human Rights.[75]

In general, the Sub-Commission was not a particularly effective body due to some inherent flaws in its design and the overall attitude of the UN towards minority rights. Its members were neither delegates of states nor independent experts. They were nominated by the member states and often followed their states' policies. Additionally, members of the Sub-Commission did not meet systematically and only for short sessions, they had different, often even opposite, views on the minorities and approaches to be taken. Also, the West-East split

[73] John P. Humphrey, *The United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities*, American Journal of International Law 62, no. 4 (1968), pp. 872.
[74] UN General Assembly, Resolution 217 C (III), 10 December 1948.
[75] See more on the activities of the Sub Commission on Prevention of Discrimination and Protection of Minorities: Kunz, Josef L., supra note 65, pp. 285-287; John P. Humphrey, supra note 73, pp. 869-888.

in the UN had already started which had its effects on the work of the Sub-Commission. As was mentioned earlier, the UN member states were quite hesitant and reluctant towards minority rights at that period of time and the proposals of the Sub-Commission were mostly rejected by the UN General Assembly, the Economic and Social Council, and the Commission on Human Rights.

By 1954, the final drafts of the two human rights covenants were prepared by the Commission on Human Rights and it took another 12 years for them to be finally adopted, due to various political problems at the time. Probably the greatest success of the Sub-Commission was that the provision on minority rights was, in the end, included into the text of the Draft International Covenant on Human Rights. Later, the Covenant was split into two documents and adopted as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.[76]

2.2. Minority education rights in the United Nations documents.

There were several reasons behind the decision to split the proposed Draft International Covenant on Human Rights into two separate treaties. First, it would enable certain states, which otherwise would have been reluctant towards the Covenant, to ratify one of the documents, either on civil and political rights or on economic, social and cultural rights. It was perceived that the ratification of one of the covenants containing parts of the human rights provisions would be better than non-ratification at all. Plus, it left the possibility for such states to ratify another document at a later stage.

Second, there is a slight difference in the character of rights provided by the Covenants. The Covenant on Civil and Political Rights stipulates that "each State Party to the present

[76] See more on the history of the drafting: Simsarian, James. *Draft International Covenant on Human Rights Revised at Fifth Session of United Nations Commission on Human Rights*, American Journal of International Law 43, no. 4 (1949): pp. 779-786; Simsarian, James. *Draft International Covenant on Human Rights Revised at 1950 Session of the United Nations Commission on Human Rights*, American Journal of International Law 45, no. 1 (1951): pp. 170-178;

Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant"[77], *i.e.*, the rights are to be protected and guaranteed at the moment of the entry into force of the Covenant. On the other hand, the Covenant on Economic, Social and Cultural Rights stipulates that "each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant".[78] Thus, the rights provided by the Covenant on Economic, Social and Cultural Rights do not have the full effect immediately after the entry into force of the Covenant, they are to be achieved progressively. In addition, the complaint procedure was different under the two Covenants.[79]

The biggest achievement of the Sub-Commission on Prevention of Discrimination and Protection of Minorities was the inclusion of the minority rights provision into the text of the International Covenant on Civil and Political Rights. As a result, Article 27 of the Covenant stipulates the following:

> *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 practise their own religion, or to use their own language.*[80]

In its General Comment no. 23 on the rights of minorities provided by Article 27 of the International Covenant on Civil and Political Rights, the Human Rights Committee specified

[77] UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.
[78] UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.
[79] See more on the adoption of two covenants: Simsarian, James. *Progress in Drafting Two Covenants on Human Rights in the United Nations,* American Journal of International Law 46, no. 4 (1952): pp. 710-718.
[80] UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

that Article 27 of the Covenant "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".[81] Human Rights Committee also provided a distinction between the rights of persons, belonging to the minorities, protected by Article 27 and the right for self-determination and equal protection and non-discrimination. According to the Human Rights Committee, "the right for self-determination belongs to peoples and is protected by Part I of the Covenant. Article 27, on the other hand, relates to rights conferred on individuals as such and is included, like the articles relating to other personal rights conferred on individuals".[82] In a similar fashion, the Committee emphasizes that there is a distinction between the rights of persons, belonging to minorities, as protected under Article 27 and the guarantees provided under Articles 2(1) and 26. In the Committee's opinion, "the entitlement, under Article 2(1), to enjoy the rights under the Covenant without discrimination applies to all individuals within the territory or under the jurisdiction of the State whether or not those persons belong to a minority". As to the right stipulated in Article 26 providing for the principle of equality (before the law, equal protection of the law, and non-discrimination), the Committee opined that this principle applies to all rights and obligations conferred by the State on all individuals under its jurisdiction, whether they belong to minorities or not.[83]

Another major UN human rights treaty that is relevant for the minorities' education rights is the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), adopted on 21 December 1965 even before the two Covenants. The Convention in its Article 1 (1) interprets the term "racial discrimination" as:

[81] Human Rights Committee, General Comment No. 23, CCPR/C/21/Rev.1/Add.5.
[82] Ibidem.
[83] Ibid.

> *"any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".*[84]

Article 5 provides the list of rights, the free enjoyment of which States undertake to ensure under the Convention. It includes the right to education and training, meaning that the States that ratified the Convention shall abstain from any form of discrimination based on race, color, descent, or national or ethnic origin in the area of education. While, as specified above, the rights of persons belonging to minorities are broader than mere non-discrimination principle, this provision is still relevant and provides some basis for the protection of the minorities' education rights. In addition, Article 7 provides the obligation of States Parties "to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups".[85]

CERD provides two mechanisms for the protection of the rights enshrined in it. First, the Committee on the Elimination of Racial Discrimination shall be established under the treaty. The States provide reports to the Committee on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention (Article 9). The Committee may make general recommendations based on the examination of the reports and information received from the States Parties. One of the recommendations is of particular relevance for the present analysis. In its 57th session, the Committee issued General Recommendation XXVII on discrimination against Roma, which

[84] UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195.
[85] Ibid.

included a chapter on discrimination of Roma people in the education sphere. As a result, the Committee recommended to the Member States a range of measures on eliminating discrimination against Roma in education. These measure include, among others: cooperation with Roma parents and communities to support the inclusion of Roma children in schools; prevention of the segregation of Roma students, while keeping open the possibility for bilingual or mother tongue tuition; elimination of discrimination or racial harassment of Roma students; ensuring basic education for Roma children of travelling communities, including by admitting them temporarily to local schools, by temporary classes in their places of encampment, or by using new technologies for distance education; training of teachers, educators and assistants from among Roma students; inclusion in textbooks chapters about the history and culture of Roma, and many others[86].

Therefore, brief references to education in the Convention produced a considerable range of recommendations. Patrick Thornberry emphasizes that "these limited provisions have nonetheless spawned a considerable array of recommendations on bilingual education and many other aspects of minority-relevant education".[87] He lists as examples of such recommendations already mentioned above General Recommendation XXVII on discrimination against Roma, as well as General Recommendation XXIII on discrimination against indigenous peoples.[88]

The Convention also provides for the communications from individuals and groups, as well as the other Member States, to the Committee. In addition, Article 22 of the Convention stipulates that "any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the

[86] UN Committee on the Elimination of Racial Discrimination (CERD), General Recommendation XXVII on Discrimination Against Roma, A/55/18, Annex V C, 16 August 2000.
[87] See: Thornberry, Patrick. *Confronting Racial Discrimination: A CERD Perspective*, Human Rights Law Review, 5 (2005), pp. 239-269.
[88] UN Committee on the Elimination of Racial Discrimination (CERD), General Recommendation XXIII: Indigenous Peoples, UN Doc./52/18, Annex II V (1997).

procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement"[89].

In 2017, Ukraine instituted proceedings before the International Court of Justice claiming that the Russian Federation has violated its obligations under the Convention on the Elimination of All Forms of Racial Discrimination regarding the Ukrainian nationals and Crimean Tatars in the occupied Crimea. Among the examples of such violations, Ukraine listed discrimination in the area of education. While there is no judgment on the merits as of now, the Court agreed that it has jurisdiction over the Ukrainian claims and will proceed to the consideration of the case on the merit.[90]

Another provision relevant for this analysis is enshrined in the International Covenant on Economic, Social and Cultural Rights. Article 13 of the said Covenant provides the right for education, which "shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace". In addition, Article 13 (3) provides that "for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions".[91]

[89] UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195.
[90] See: International Court of Justice, *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination* (Ukraine v Russian Federation), Judgment on preliminary objections, 8 November 2019.
[91] UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

While this Article 13 (3) does not specify on the minorities' rights to education, it nevertheless provides certain guarantees from which the minorities might benefit as well. Promotion of "understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups" as one of the primary goals of education is certainly beneficial to the minorities. Similarly beneficial is the right of the parents or legal guardians to choose the form of education for their children, including other forms than those provided by public authorities. In addition, Article 13 had been drafted in a way that ensures the right for religious education, including for the persons belonging to minorities.

In 1992, the UN General Assembly has adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. To date, this is the most comprehensive UN document, albeit non-binding, on the issue of the rights of persons belonging to minorities. Following the logic and wording of Article 27 of the International Covenant on Civil and Political Rights, the Declaration proclaims that the States shall protect the rights of persons belonging to three types of minorities: 1) national or ethnic, 2) religious, and 3) linguistic. Moreover, the Declaration proclaims that the States shall protect not only "the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories" but shall also "encourage conditions for the promotion of that identity".[92] The Declaration further provides that persons belonging to minorities shall "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". Furthermore, the Declaration makes specific reference to the minorities' education rights stipulating that the "States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the

[92] UN General Assembly, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, GA Res. 47/135 of 18 December 1992.

history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of society as a whole".[93] However, as is also the case with all UN General Assembly's declarations, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities is non-binding and is a 'soft-law' document. The Provisions of the Declaration are justiciable and do not impose binding obligations upon the UN Member States. On the other hand, one might argue that it reflects existing customary law and international standards for the rights of persons belonging to minorities. At the very least, it could be argued that the Declaration reflects the *opinio iuris* of those States that voted in favor of its adoption.

Therefore, the UN normative framework regarding the minorities' education rights consists of the following: general education rights provisions in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights; provisions of the Convention on the Elimination of All Forms of Racial Discrimination prohibiting racial discrimination in, among others, the area of education; general provision ensuring the rights of persons belonging to minorities in Article 27 of the International Covenant on Civil and Political Rights; and non-binding UN General Assembly Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

In addition, several special procedures mechanisms have been established focusing on the rights of persons belonging to minorities. Among the most important ones for this study are the UN Special Rapporteur on minority issues and the UN Forum on minority issues. The mandate of the Special Rapporteur on minority issues was established by the Resolution 2005/79 of the Commission on Human Rights and has been renewed subsequently by the UN Human Rights Council. The Resolution 2005/79 provides the Rapporteur with the mandate to

[93] Ibid.

promote the implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, including through consultations with Governments, taking into account existing international standards and national legislation concerning minorities; to identify best practices and possibilities for technical cooperation; to cooperate closely, while avoiding duplication, with existing relevant United Nations bodies, mandates, mechanisms as well as regional organizations; and to take into account the views of non-governmental organizations on matters pertaining to his or her mandate.[94]

On the other hand, the UN Forum on minority issues was established by the Resolution 6/15 of the UN Human Rights Council (and renewed subsequently) to provide a platform for promoting dialogue and cooperation on issues pertaining to persons belonging to minorities, which shall provide thematic contributions and expertise to the work of the independent expert on minority issues, to identify and analyze best practices, challenges, opportunities and initiatives for the further implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and shall be open to the participation of all interested stakeholders (i.e., States, UN mechanisms and bodies, as well as international and national non-governmental organizations).[95]

Minorities' education rights are very much in the focus of the UN Forum on minority issues. For instance, the 12th session of the Forum took place on 28-29 November 2019 and was devoted to the topic "Education, Language and the Human Rights of Minorities". The session was divided into the following items: Human rights and minority language education; Public policy objectives for education in, and the teaching of, minority languages; Effective practices

[94] UN Commission on Human Rights, *Resolution 2005/79 on Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, 21 April 2005, E/CN.4/RES/2005/79.
[95] UN Human Rights Council, *Resolution 6/15. Forum on minority issues*, 28 September 2007, A/HRC/RES/6/15.

for education in, and the teaching of, minority languages; Language, education and the empowerment of minority women and girls.[96]

2.3. Minority education rights in the Council of Europe.

Besides the universal regulation on the UN level, the educational rights of minorities have also been provided within the Council of Europe. The European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the European Convention) and its protocols do not specifically provide for the protection of their rights of persons belonging to minorities. They do contain, however, a prohibition of discrimination in *the enjoyment of the rights and freedoms set forth in the Convention* on the ground of, among others, *race, language, religion, national or social origin, association with a national minority* (Article 14 of the European Convention).[97] Hence, the prohibition of discrimination is limited only to those rights that are guaranteed by the Convention. Additionally, Article 1 of Protocol No. 12 provides general prohibition of discrimination in the *enjoyment of any right set forth by law,* including the discrimination on the ground of race, language, religion, national or social origin, association with a national minority, or another status.[98]

Article 2 of Protocol 1 to the European Convention specifically protects the right to education stipulating as follows:

> *No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.*[99]

[96] See more: Education, Language and the Human Rights of Minorities. Twelfth Session of the Forum on Minority Issues, available at: https://www.ohchr.org/EN/HRBodies/HRC/Minority/Pages/Session12.aspx
[97] Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5.
[98] Ibid.
[99] Ibid.

The provision provides the right to education to everyone (*no person shall be denied the right*) irrespective of their belonging to the minority or majority group or any other characteristic. In addition, it specifically provides for the rights of parents to ensure the education for their children according to their religious or philosophical beliefs. Thus, this provision on the right to education taken in conjunction with Article 14 of the European Convention prohibiting the discrimination on the grounds of race, language, religion, national or social origin, association with a national minority, provides a legal guarantee for the educational rights of persons belonging to national or ethnic, religious and linguistic minorities.

The first such case considered by the European Court of Human Rights (hereinafter – the European Court or the Court) is the *Case "Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium"* (*Belgian Linguistic* case) of 1968. The case was brought by the Belgian French-speaking parents residing in Dutch-speaking areas of Belgium who wished for their children to be educated in the French language. The Court famously pronounced in its judgment that although "*the first sentence of Article 2 (P1-2) does not specify the language in which education must be conducted in order that the right to education should be respected, ... the right to education would be meaningless if it did not imply in favour of its beneficiaries, the right to be educated in the national language or in one of the national languages, as the case may be*".[100] The Court found a violation in this case in so far as "*certain children were prevented, solely on the basis of the residence of their parents, from having access to the French-language schools existing in the six communes".*[101] The Court, despite finding the violation in the present case, provided very much limiting

[100] Case "relating to certain aspects of the laws on the use of languages in education in Belgium" (merits), 23 July 1968, pp. 30-31 § 3, Series A no. 6.
[101] Ibid.

interpretation of the educational rights of persons belonging to linguistic minorities. The Court famously noted:

> *… that Article 14, even when read in conjunction with Article 2 of the Protocol, does not have the effect of guaranteeing to a child or to his parent the right to obtain instruction in a language of his choice. The object of these two Articles is more limited: it is to ensure that the right to education shall be secured by each Contracting Party to everyone within its jurisdiction without discrimination on the ground, for instance, of language. This is the natural and ordinary meaning of Article 14 read in conjunction with Article 2. Furthermore, to interpret the two provisions as conferring on everyone within the jurisdiction of a State a right to obtain education in the language of his own choice would lead to absurd results, for it would be open to anyone to claim any language of instruction in any of the territories of the Contracting Parties*.[102]

The Case showed the willingness of the Court to let the states certain freedom to determine the languages of instruction in public schools and recognized that cultural diversity and language arrangements are better left to domestic authorities.[103] The Court's judgment was widely criticized by most scholars for its reluctance to take the special needs of persons belonging to minorities into account and failure to provide real and meaningful equality (equality in fact).[104] On the other hand, there were less critical views of the judgment arguing that those accusatory interpretations of the Court's judgment had been incorrect reading and the Court simply states that:

> *given the social and political context at the time in Belgium, the overall linguistic regime which mainly included mono-lingual Dutch (and French)-language territories for*

[102] Case "relating to certain aspects of the laws on the use of languages in education in Belgium" (merits), 23 July 1968, § 11, Series A no. 6.
[103] See: Williams, K. and Rainey, B., *Language, Education and the European Convention on Human Rights in the 21st Century*, Legal Studies, Vol.22, No. 4 (2002), p.63.
[104] See more on the overview of the critic of the judgment: Ulasiuk, I., *Comparative Analysis of Educational Rights of National Minorities and Migrants in Europe*, EUI Working Paper RSCAS2013/80, p. 9.

> *purposes of public schooling was not arbitrary, and therefore was not discriminatory. This meant that had some aspects been arbitrary, even if it involved an official language, then it would have constituted discrimination under Article 14 applied to Article 2 of the First Protocol.*[105]

The court further provided some evidence to such a progressive interpretation of its *Belgian Linguistic* case judgment in the judgment in *Cyprus v. Turkey* of 2001. The Court analyzed the situation in Northern Cyprus, where primary education was available in the Greek language. However, upon reaching the age of 12, children had a choice to either continue their education in Northern Cyprus in Turkish or English languages or transfer to the south to Greek language schools. The Court reaffirmed its position from the *Belgian Linguistic* case that in the strict sense, there is no "*denial of the right to education*" since the Convention "*does not specify the language in which education must be conducted*". Nevertheless, in the present case, the Court concluded that "*having assumed responsibility for the provision of Greek-language primary schooling, the failure of the Turkish Republic of Northern Cyprus authorities to make continuing provision for it at the secondary-school level must be considered in effect to be a denial of the substance of the right at issue*".[106]

In addition to the provisions of the European Convention, the rights of persons belonging to minorities, including specific education rights, are provided by other Council of Europe documents. As is stated in the explanatory report to the Framework Convention for the Protection of National Minorities, the Council of Europe has closely followed the problem of minorities and examined the situation on a number of occasions. Already in 1949, "the problem of wider protection of the rights of national minorities"[107] was recognized by the

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[105] De Varennes, F., *The Right to Education and Minority Language* (2004), available at: http://www.eumap.org/journal/features/2004/minority_education/edminlang

[106] Cyprus v. Turkey [GC], no. 25781/94, § 277-280, ECHR 2001-IV

[107] Council of Europe, *Explanatory report to the Framework Convention for the Protection of National Minorities*, Strasbourg (1995), p. 10, available at: https://rm.coe.int/16800c10cf

Parliamentary Assembly in a report of its Committee on Legal and Administrative Questions. The Council of Europe intensified its work on the 'minorities' issue' at the beginning of the 1990s. Possibility of adoption of several documents was widely debated at the time, including such as the Draft Convention on the Fundamental Rights of Ethnic Groups in Europe (Additional Protocol to the European Convention on Human Rights), Additional Protocol on the Rights of Minorities to the European Convention on Human Rights, and Explanatory Memorandum by Mr. Worms (Worms Additional Protocol), Austrian Draft Protocol to the European Convention on Human Rights Guaranteeing the Protection of Ethnic Groups (Austrian Draft Protocol), etc.[108] While these documents have not been adopted in the end, the activities of the Council of Europe have resulted in the adoption of two treaties relevant to the protection of the educational rights of persons belonging to minorities – the Framework Convention for the Protection of National Minorities, adopted on 10 November 1994, and the European Charter for Regional or Minority Languages, adopted on 5 November 1992.

Article 1 of the Framework Convention for the Protection of National Minorities (hereinafter – the Framework Convention) stipulates that "the protection of national minorities and of the rights 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".[109] The Framework Convention is generally viewed in the scholarship as "the most notable convention dedicated solely to minority rights".[110] At the same, it has been pointed out that despite its detail elaboration of the rights of persons belonging to minorities the Framework Convention does not impose an obligation for the states parties "to ensure the

[108] Rosalyn Higgins, *Minority Rights: Discrepancies and Divergencies Between the International Covenant and the Council of Europe System*, Themes and Theories, Oxford University Press (2009), p. 562.
[109] Council of Europe, Framework Convention for the Protection of National Minorities, 1 February 1995, ETS 157.
[110] Lauri Hannikainen, *Legal Nature of Minority Rights as Part of Human Rights, Limitation, Derogations, Reservations, and Interpretative Statements*, Universal Minority Rights: A Commentary on the Jurisprudence of International Courts and Treaty Bodies. Edited by M. Weller, Oxford University Press, 2007, p. 28.

direct applicability of the substantive provisions of the [Framework] Convention before their administrative and judicial authorities".[111] The Framework Convention puts an emphasis on the protection of minority rights by the states parties and in Article 19 specifies that the states parties "undertake to respect and implement the principles enshrined in the present framework Convention".[112]

The Framework Convention contains several provisions relevant to the education rights of minorities, starting from the general principle on the encouragement and promotion of "mutual respect and understanding …, in particular in the fields of education" in Article 6, to more specific provisions on the equal access to education and fostering the "knowledge of the culture, history, language and religion of their national minorities" in Article 12, the right of minorities "to set up and to manage their own private educational and training establishments" in Article 13 and the right for "being taught the minority language or for receiving instruction in this language" in Article 14.[113] The Advisory Committee on the Framework Convention in its commentary on education examined the aims of the children's education with the special emphasis on the aims of minorities' education. The Advisory Committee concluded:

> *Some of these aims, such as the development of the linguistic capabilities of a child, are understood as primarily instrumental. In these cases education is seen as a tool for the achievement of other goals (e.g. finding employment, or participating in decision-making). Other aims of education are perceived as primordial in that they are felt as important per se even if there is no other rational or economic justification for this. This is the case with the development of respect for the child's identity*.[114]

[111] Lauri Hannikainen, ibid., p. 28.
[112] Council of Europe, Framework Convention for the Protection of National Minorities, 1 February 1995, ETS 157.
[113] Ibid.
[114] Advisory Committee on the Framework Convention for the Protection of National Minorities, Commentary on Education under the Framework Convention for the Protection of National Minorities, Strasbourg, 2 March 2006, ACFC/25DOC(2006)002.

Another important for the educational rights of minorities treaty, concluded under the auspices of the Council of Europe, is the European Charter for Regional or Minority Languages (hereinafter – the Charter). Under the Charter, regional or minority language is the language "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"[115] (Article 1). Article 8 of the Charter provides detailed regulations of the use of regional or minority languages in the area of education. In particular, the Parties undertake to make available pre-school, primary, secondary, and technical and vocational education (or substantial part of it) in the relevant regional or minority languages, or to provide for the teaching of the relevant regional or minority languages as integral part of the curriculum within primary, secondary, and technical and vocational education. The Parties also undertake to provide university or other higher education in the regional or minority languages, or provide facilities to study such languages as university subjects; to provide adult and continuing education in such languages or have the regional or minority languages taught as a course of adult and continuing education.[116]

It is worth mentioning that the requirements for the use of regional or minority languages in education are alternative, not cumulative. Hence, the concerned state would fulfill its obligations under the Charter regarding, for instance, primary education if it either provides it in the relevant regional or minority language or has at least a substantial part of primary education provided in the relevant language.

[115] Council of Europe, European Charter for Regional or Minority Languages, 4 November 1992, ETS 148.
[116] Ibid.

3. Modern Understanding of the Educational Rights of Minorities.

Previous two chapters were devoted more to the historical analysis of the evolution of the educational rights of persons belonging to minorities. It is worth, however, to take a deeper look into the modern understanding of the said rights. While the minority protection regime established under the League of Nations was progressive for, and certain elements developed at that time remain relevant and up-to-date with current challenges, the paradigm shift towards human rights after the II World War has undoubtedly altered the way we perceive minority rights nowadays.

3.1. Minority education rights as human rights.

As was previously mentioned in Chapter 1, within the League of Nations, the minority protection regimes had been established as substitutes for the aspirations of certain minority groups for self-determination, in cases when it was impossible or undesired, and as a guarantee for their – minority groups – preservation and development system of minority protection. Thus, minority rights were perceived as group rights and individuals did not have legal rights on the international level. Members of the minority groups could, however, submit petitions to the Council of the League of Nations, who examined the alleged violation of the minorities' treaties and could, if applicable, refer the legal question arising from the alleged violation for the advisory opinion of the Permanent Court of International Justice. The only contentious case regarding the minorities' problem ever considered by the PCIJ (Rights of Minorities in Upper Silesia – Minority Schools, 1928) was brought before the Court by Germany, who acted as an advocate for the rights of the German minority in Poland.

After the end of the II World War and establishment of the United Nations, the human rights law has been developed and the whole approach towards minority rights was changed. Minority rights now became the rights of persons belonging to minority groups, shifting the

focus from the protection of group rights to the protection of the rights of individuals belonging to said groups.

Hurst Hannum argues that the whole debate over the individual *versus* group rights of minorities "may be of theoretical interest, but the practical implications of the debate are more difficult to discern".[117] Article 27 of the International Covenant on Civil and Political Rights protects the rights of persons belonging to ethnic, religious or linguistic minorities. It is specified, however, that they should not be denied the enjoyment of their rights "in community with the other members of their group".[118] Similarly, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, despite putting an emphasis on the individual character of the rights already in its title, in Article 1 stipulates on the states' obligations to "protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories".[119]

Within the Council of Europe system, the European Convention on Human Rights ensures the rights of individuals and does not provide for the group rights. On the other hand, the Framework Convention for the Protection of National Minorities provides in Article 1 that both "the protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights".[120] It further specifies in Article 3 that persons belonging to the national minorities "have the right freely to choose to be treated or not to be treated as such" and "may exercise

[117] Hurst Hannum, *The Concept and Definition of* Minorities, Universal Minority Rights: A Commentary on the Jurisprudence of International Courts and Treaty Bodies. Edited by M. Weller, Oxford University Press, 2007, p. 69.
[118] UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.
[119] UN General Assembly, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, GA Res. 47/135 of 18 December 1992.
[120] Council of Europe, Framework Convention for the Protection of National Minorities, 1 February 1995, ETS 157.

the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others".[121]

Hence, all main international documents recognize the specific character of the rights of minorities as individual rights that are often enjoyed in community with others. Hurst Hannum notes that "the very concept of a 'minority' implies a community or group, and the reference … to the rights of 'persons' should be understood primarily as a jurisdictional rather than a substantive limitation".[122] He then contends that if only minority groups were the right-holders, it would be problematic to decide who might represent such minority groups and who belongs to said groups. Thus, "the individually oriented approach" is much simpler and practical.[123]

Another issue that might arise relates to the question of what is a minority and who belongs to it. One of the most authoritative definitions of a minority belongs to F. Capotorti, former Special Rapporteur of the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities. According to him, minorities are:

> *A group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members – being nationals of the state – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.*[124]

The most controversial part of Capotorti's definition of minorities is that he limits membership in a minority group only to the nationals of a given state. Manfred Nowak disagrees with such approach and claims that the only reason why many scholars or

[121] Ibid.
[122] Hurst Hannum, *supra note 117*, p. 70.
[123] Ibid.
[124] Capotorti, F. *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, New York: United Nations (1979), E/CN.4/Sub.2/384/Rev.1, para. 568.

governments assumed that membership in a minority group was limited only to the nationals of a given state is due to the fact that it had been so understood during the League of Nations era.[125] Nowak's position might be supported by the textual interpretation of Article 27 of the International Covenant on Civil and Political Rights, which grants the rights "to enjoy their own culture, to profess and practise their own religion, or to use their own language" to *persons* belonging to the minorities, not to the nationals. Such a position was also upheld by the UN Human Rights Committee in their General Comment No. 23 on the rights of minorities, where they claim that "the individuals designed to be protected need not be citizens of the State party".[126] They further strengthen their argument by referring to Article 2 (1) of the Covenant, which imposes obligations on States Parties "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized by the Covenant", except certain rights specifically restricted to the citizens.[127]

In the sphere of education, however, the subjective scope of the rights of minorities might be slightly different. As to the application of the rights of minorities to aliens or non-residents of the state, it is generally accepted nowadays that they might also enjoy their minority rights. For instance, nothing should prevent the tourists, visiting a foreign state, from celebrating their culture or manifesting their religion.[128] It would be more complicated, however, to provide education to the children of such tourists, especially in their native language. However, would such aliens relocate to the state in question for a longer period of time, their children should have equal access to education, albeit there might not be a possibility to provide education in a native language.

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[125] Nowak, M., *U.N. Covenant on Civil and Political Rights. CCPR Commentary*, 2nd revise edition, N.P. Engel Publisher (2005), p. 645.
[126] Human Rights Committee, General Comment No. 23, CCPR/C/21/Rev.1/Add.5, para. 5.1.
[127] Ibid.
[128] See for instance: Rosalyn Higgins, Minority Rights: Discrepancies and Divergencies Between the International Covenant and the Council of Europe System, Themes and Theories, Oxford University Press (2009), p. 563.

The right of parents to ensure the religious and moral education of their children in conformity with their own convictions is firmly established in international law. Both International Covenant on Civil and Political Rights (Article 18 (4)[129]) and International Covenant on Economic, Social and Cultural Rights (Article 13 (3)[130]) provide for it. The European Convention on Human Rights uses slightly different wording, guaranteeing the rights of parents to ensure the education of their children in conformity with their own religious and philosophical convictions (Article 2 Protocol 1)[131].

It might be argued, therefore, that in the area of educational rights of minorities, primary right-holders are not the children but their parents. Since it is much more important for the parents to transfer their cultural, religious or linguistic identity onto their children than it is for the children themselves to be educated according to the convictions of their parents. In many cases, the best interests of a child would suggest providing education for such a child according to the majoritarian views and values prevailing in a given state, as it might provide better opportunities for future professional development. [132] It might be equally beneficial for the children to receive bilingual education and upbringing. However, the rights of parents to have their children educated according to their own convictions prevail as there also is a value in having a different cultural, religious or linguistic environment within a state. Similar consideration would apply to the rights of persons belonging to minorities to establish their own educational institutions, as it would mostly refer to the parents-members of the said minority groups.

[129] UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.
[130] UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.
[131] Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5.
[132] See, for instance: Peleg, Noam. *Marginalisation by the Court: The Case of Roma Children and the European Court of Human Rights*, Human Rights Law Review, Volume 18, Issue 1, March 2018, pp. 111-131.

Thus, nowadays, the term "educational rights of minorities" is primarily understood as the educational rights of persons belonging to minority groups and their parents. While every individual person belonging to the minority group has a legal claim for these rights, they are often enjoyed in community with other minority members.

3.2. Content of the educational rights of minorities.

The UN Human Rights Committee's General Comment No. 23 on the rights of minorities stipulates that Article 27 of the International Covenant on Civil and Political Rights "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".[133] The question, thus, might arise whether the rights of minorities constitute a separate category from general human rights (i.e., distinct from and additional to other rights) or are a sub-category of general human rights. Martin Scheinin noted in this respect that "minority rights as a sub-category of human rights should be seen as a form of added protection to universal human rights, deemed necessary in order to secure human rights to persons in a minority situation".[134]

Classifying minority rights as a category different from and beyond general human rights might actually weaken their protection. Certain states might argue that they respect human rights but since the minority rights are not part of human rights they do not see themselves bound by it. In addition, if one classifies minority rights as different from and additional to general human rights that might be interpreted as granting persons belonging to minorities more human rights than other persons have.[135]

In contrast, as Lauri Hannikainen correctly argues, minority rights should be understood as a specific sub-category of general human rights, necessary to ensure real and true equality, in

[133] Human Rights Committee, General Comment No. 23, CCPR/C/21/Rev.1/Add.5, para. 1.
[134] Scheinin, Martin, *Minority Rights: Additional or Added Protection?,* Human Rights and Criminal Justice for the Downtrodden: Essays in Honour of Asbjorn Eide, edited by M. Bergsmo, Leiden: Boston (2003), pp. 503-504.
[135] See more: Scheinin, ibid, pp. 489-494.

law and in fact, of persons belonging to minorities with the members of the majority and survival and development of the said minority group.[136] Therefore, the minorities' education rights are a sub-category of the right to education provided to the persons belonging to national or ethnic, religious or linguistic minorities due to their specific (minor) position in a state and are necessary to ensure true equality in the area of education of the persons belonging to minorities with the members of the majority and survival of the minority group through teaching the language, culture and/or history of the minority group.

International treaties, both on the UN and Council of Europe levels, do not provide a detailed account of the specific elements of the minorities' education rights. However, systemic analysis of the existing normative framework on the matter and examination of the case-law of the UN Human Rights Committee and the European Court of Human Rights do allow distinguishing specific minority education rights. As was already mentioned above, the aims of education are understood both as instrumental for achieving other goals (e.g., professional development, participation in decision-making, etc.) and primordial or important *per se* (survival and development of the identity of minorities).

Hence, the following elements of the minorities' education rights could be distinguished:

1) Language of education.

The use of minority languages in education is one of the most important elements of the minorities' education rights. It is also among the most controversial as it often leads to heated discussions within the states that try to balance between guaranteeing the rights of minorities and providing uniformed education to ensure equal access of all to the job-market and full participation of the persons belonging to minorities in social life.

[136] Lauri Hannikainen, *Legal Nature of Minority Rights as Part of Human Rights, Limitation, Derogations, Reservations, and Interpretative Statements*, Universal Minority Rights: A Commentary on the Jurisprudence of International Courts and Treaty Bodies. Edited by M. Weller, Oxford University Press, 2007, p. 31.

The most detailed account of the linguistic rights of minorities in education is provided by the European Charter for Regional or Minority Languages. Article 8 of the Charter stipulates that pre-school, primary, secondary, and technical and vocational education (or substantial part of it) should be available in the relevant regional or minority languages, or to provide for the teaching of the relevant regional or minority languages as integral part of the curriculum within primary, secondary, and technical and vocational education. It also contains provisions on the use of regional or minority languages in university education and adult and continuing education.[137]

The European Court of Human Rights has considered the issue of the language of education in already mentioned *Belgian linguistic case* and *Cyprus v. Turkey.* Additionally, in *Catan and Others v. the Republic of Moldova and Russia*, the Court reiterated the right for education in the native language. The case concerned the closure of schools that provided education in Moldavian (Romanian) language by the *de facto* authorities of Transnistria. The Court concluded that such closure did not pursue any legitimate aim and found a violation by Moldova and the Russian Federation as the state exercising effective control over the *de facto* authorities of Transnistria.[138] In other cases (*İrfan Temel and Others v. Turkey*[139]*;* *and Others v. Turkey*[140]), the Court found a violation of Article 2 of Protocol 1 regarding the students who were excluded from the university because they demanded the introduction of optional courses in the Kurdish language.

The issue of the linguistic rights of minorities in education has recently got more attention and led to escalated tensions between Ukraine and Hungary. The Law of Ukraine "On Education" was adopted in 2017 and in Article 7 stipulates that the language of education in Ukraine is

[137] Council of Europe, European Charter for Regional or Minority Languages, 4 November 1992, ETS 148.
[138] Catan and Others v. the Republic of Moldova and Russia [GC], nos. 43370/04 and 2 others, § 141-150, ECHR 2012.
[139] İrfan Temel and Others v. Turkey, no. 36458/02, 3 March 2009.
[140] Çölgeçen and Others v. Turkey, nos. 50124/07 and 7 others, 12 December 2017.

the state language, *i.e.* Ukrainian language. At the same time, the Law guarantees to the persons belonging to national minorities the right to education at pre-school and primary level in their minority language and in the state language.[141]

Hungary expressed deep concerns and protested against the adoption of the Law. Hungarian Ministry of Foreign Affairs stated that the Law "represents an unprecedented legal regression even in comparison with the standards of the Soviet era" since it abolished the right to education in native minority language from 5th grade onwards with the possible exception of one or a few subjects that might be taught in the minority language.[142] The Law was submitted by Ukraine to the European Commission for Democracy through Law (the Venice Commission) to receive its expert opinion. In its submission, Ukraine argued that "children who wish to study in minority languages can exercise their right in kindergartens and elementary schools (grades 1-4), studying all subjects in their own language. At the same time, they will study the Ukrainian language as a subject that will help them to learn the state language at the basic level, even in a completely different language environment, in which the Hungarian and Romanian communities, in particular, live in Ukraine".[143]

While it may be claimed that formally Ukraine has not violated its international obligations since the European Charter for Regional or Minority Languages imposes the obligation on the member states to ensure education or a substantial part of it in the respective regional or minority language. Ukraine does guarantee that part of the subjects would be taught in the minority languages even from the 5th grade onwards. However, upon the full implementation of the provisions of the Law into the educational process, some parents might, upon exhausting domestic remedies, lodge complaints to the European Court claiming the violation

[141] Law of Ukraine 'On Education', adopted on 5 September 2017, No 2145-VIII, available in Ukrainian: https://zakon.rada.gov.ua/laws/show/2145-19

[142] See the declaration of Hungarian MFA: Protest against the New Ukrainian Law on Education, available at: https://kijev.mfa.gov.hu/eng/news/tiltakozas-az-uj-ukran-oktatasi-toerveny-ellen

[143] See: Ukraine's submission to the Venice Commission, available at: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2017)051-e

of Article 14 in conjunction with Article 2 Protocol 1 of the Convention. This situation might lead to the further development of the linguistic rights of minorities in the area of education by the European Court.

Another element of the educational rights of minorities, related to linguistic rights in education, is the right of minority communities to establish their private educational institutions stipulating already by the Permanent Court of International Justice in *Minority Schools in Albania* advisory opinion of 1935.

2. Religious rights in education.

Another element of minority rights in education is the rights of members of religious minorities. This refers mainly to the rights of members of religious communities (both belonging to minorities or majority) to manifest their religious beliefs at educational institutions. For instance, in *Hudoyberganova v. Uzbekistan*,[144] the UN Human Rights Committee examined the situation when Uzbek girl was barred from wearing hijab in state educational institution. The Committee found a violation of Article 18 (freedom of religion) of the International Covenant on Civil and Political Rights. Although this communication does not refer specifically to the rights of minorities, it is also relevant for their enjoyment of religious rights in education. A similar situation was considered by the European Court of Human Rights in *Leyla Sahin v. Turkey*.[145] However, the Court did not found a violation in this case as there was a general prohibition established by Turkish authorities on wearing religious symbols at the universities.

In addition, both the International Covenant on Civil and Political Rights and the European Convention on Human Rights contain provisions ensuring the rights of parents to educate their children in conformity with their religious beliefs.

[144] UN Human Rights Committee, *Hudoyberganova v. Uzbekistan*, Communication No. 931/2000, UN Doc. CCPR/C/82/D/931/2000 (2005).
[145] Leyla Şahin v. Turkey [GC], no. 44774/98, ECHR 2005-XI.

3. Equal access to education and non-discrimination.

Another major element of the minority education rights (besides linguistic) is the obligation of states to provide them with equal access to education and ensure the right for education to the persons belonging to minorities without discrimination. This element is of paramount importance for all minority rights, not only in education. So much so, that the rights of minorities are often confused with the non-discrimination principle. Equal access and non-discrimination principle are provided in all major international documents, from the International Covenant on Civil and Political Rights and Convention on the Elimination of All Forms of Racial Discrimination to the European Convention on Human Rights.

One of the most pressing issues in this respect is the access of Roma children to education, which has been examined by the European Court of Human Rights on several occasions. For instance, in *D.H. and Others v. the Czech Republic*, many Roma children were placed in schools for children with mental disabilities and with a simplified curriculum comparing to the ordinary schools. The Court noted that as a result "they received an education which compounded their difficulties and compromised their subsequent personal development instead of tackling their real problems or helping them to integrate into the ordinary schools and develop the skills that would facilitate life among the majority population".[146]

In *Sampanis v. Greece*, the Court emphasized that in certain cases Article 14 of the Convention not only allows but requires differential treatment in order to ensure true equality. The Court further concluded that "the competent authorities should have recognized the particularity of the case and facilitated the registration of children of Romani origin, even in the case where some of the required administrative documents were missing".[147]

[146] D.H. and Others v. the Czech Republic [GC], no. 57325/00, § 207, ECHR 2007-IV.
[147] Sampanis and Others v. Greece, no. 32526/05, § 85, 5 June 2008.

The Court examined several other cases[148] pertaining to the access of Roma children to education and in all cases highlighted the positive obligations of state authorities to ensure true equality and non-discrimination of a particularly vulnerable group.

4. Special curriculum content.

Special curriculum content as an element of minority education rights refers to two aspects. The first one refers to the inclusion in the curriculum topics on the cultural identity and history of the minority groups. This is provided in, e.g., Article 4 (4) of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which stipulates that "states should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory".[149]

The second aspect concerns respect to the rights of parents to have their children educated in conformity with their religious and philosophical convictions. It was considered by the European Court of Human Rights in *Kjeldsen, Busk Madsen and Pedersen v. Denmark.* The Court argued that the second sentence of Article 2 Protocol 1 (ensuring the rights of parents in education) does not prevent states from conveying on children any information of religious or philosophical character. However, the states "must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner" and should not "pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions".[150]

[148] See, e.g.: Oršuš and Others v. Croatia [GC], no. 15766/03, ECHR 2010; Horváth and Kiss v. Hungary, no. 11146/11, 29 January 2013; Lavida and Others v. Greece, no. 7973/10, 30 May 2013.
[149] UN General Assembly, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, GA Res. 47/135 of 18 December 1992.
[150] Kjeldsen, Busk Madsen and Pedersen v. Denmark, 7 December 1976, § 53, Series A no. 23.

Conclusion

Establishment of minority protection regimes under the League of Nations was not a first attempt to provide certain level of international protection to the minorities. Scholars provide examples of the protection of the rights of religious minorities in the Treaty of Westphalia of 1648 or the Congress of Berlin in 1878 as much earlier cases of minority rights protection. However, the minority protection regimes developed under the League of Nations were the most comprehensive at the time and quite progressive in their nature. It was a positive development of international law towards providing certain international guarantees for the rights of persons belonging to minority groups, including their educational rights.

Education was among the most developed aspects of the minority protection regimes. Most of the minority rights' jurisprudence of the Permanent Court of International Justice is dedicated specifically to the educational rights of minorities, including the judgment in Rights of Minorities in Upper Silesia (Minority Schools) and advisory opinions in Access to German Minority Schools in Upper Silesia and Minority Schools in Albania. In its jurisprudence, the Permanent Court of International Justice set up some important principles for further development of minorities' education rights. The Court argued, for instance, that minorities have the right to establish their own educational institutions in order to preserve their identities and transfer them to the future generations. This was perceived by the Court as a necessary step to achieve true equality "in law and in fact".

The Court emphasized that the underlying idea for the minority rights regime was to secure for certain elements of a State, which differed from the majority by their race, religion or language, a possibility for peaceful coexistence within the said State that would allow them to preserve their distinguishing characteristics. The Court also opined in Rights of Minorities in Upper Silesia (Minority Schools) that it is up to the members of minority communities to decide whether they belong to a minority and whether they wish to enjoy their rights as

members of a minority. The Court concluded that state authorities cannot verify whether such individuals truly belong to the minorities.

After the end of World War II the paradigm shifted and minority protection regimes were put aside. International human rights law was developed with the rights of persons belonging to minorities as integral part of it. Within the United Nations, several major human rights treaties were eventually adopted containing provisions regarding the rights of persons belonging to minorities and the right to education. There are very few provisions dedicated specifically to the rights of minorities, apart from Article 27 of the International Covenant on Civil and Political Rights and UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. However, there are provisions in several treaties ensuring the right to education and ensuring equal protection to all without any discrimination on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Within the Council of Europe, the educational rights of persons belonging to minorities are ensured by Article 2 Protocol 1 to the European Convention on Human Rights, which stipulates the right to education, taken in conjunction with Article 14 of the Convention, which prohibits the discrimination in the enjoyment of the rights provided in the Convention. On this basis, the European Court of Human Rights has built a considerable case-law on the educational rights of minorities. Apart from the European Convention on Human Rights and the Strasbourg's Court case-law, the right of minorities, including in the area of education, are enshrined in two more Council of Europe' documents – the Framework Convention for the Protection of National Minorities and the European Charter for Regional and Minority Languages.

Nowadays, it is perceived that primary right-holder of the educational rights of minorities are individual members of minority groups. Although, it is recognized that in many cases, these

rights are enjoyed in community with other members of the group. Nevertheless, the individual character of the rights is firmly established as it reflects the general approach to human rights as primarily individual. Also, it is understood, that individual character of the rights of persons belonging to minorities makes it much easier to establish the jurisdiction over the alleged violation, since every member of the victim-group might claim a violation of his or her rights. Otherwise, it might hard to decide who has the legal right to represent the group which rights were violated.

The educational rights of persons belonging to minorities include several separate elements:

1) Linguistic rights of minorities or the right to be educated in their native language;

2) Religious rights in education containing, in turn, the right to educated according to personal (and his or her parents') religious or philosophical convictions and the right to manifest one's religious convictions in educational facilities;

3) Equal access to education without discrimination, which is particularly relevant for Roma children; and

4) Special curriculum content, which includes, apart from specific language course, special subjects devoted to history and culture of the persons belonging to minority groups.

To sum up, the minority rights established under the League of Nations were quite progressive for their historical period and many important elements of the educational rights of minorities had been developed at that time. After the development of international human rights law, the minority rights were transformed conceptually but many structural elements of it have survived. Such principles as true equality "in law and in fact" had been articulated by the Permanent Court of International Justice, as well as the necessity to grant to minorities certain additional guarantees for their rights, in order to ensure true equality. The main ideas and principles established and developed within the League of Nations system remain relevant even today.

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