

# SYSTEM AND TYPES OF MINORITY RIGHTS

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**Annotation.** *This article deals with the issue of the protection of national minority rights and the system of human rights protection in general. The author reviews the latest research and publications of scholars from Ukraine and abroad. The author describes the regulatory provisions of the current legislation in this area. It is noted that national minorities are an important component of society and have the right to protect their rights and interests. The author also examines the definition of a national minority and its types, as well as the system of protection of national minority rights in the UN and the European Convention for the Protection of Human Rights and Fundamental Freedoms. The author also emphasizes that the topic of minorities, in particular, LGBT people, is very relevant today and is actively discussed in journalism, special scientific literature, political practice and law-making. The article reveals the scientific approaches to systematization of the main issue of this scientific issue. The author identifies the advantages and disadvantages of scholars' approaches to the article's subject matter. Most types of minority rights are analyzed. This topic concerns not only human rights issues but also general stability and peace in society.*

*In general, the article concludes that the protection of national minority rights is an important component of human rights protection in general. Society must take measures to ensure equality and protect the rights of minorities, as this has an impact on the preservation of peace and harmony in society as a whole. Various international and national instruments and bodies exist to ensure the protection of national minority rights, such as the Convention for the Protection of Human Rights and Fundamental Freedoms, the Office of the United Nations High Commissioner for Human Rights, the European Court of Human Rights and others. However, further work is needed to improve the system of protection of national minority rights, as problems of discrimination and rights violations still exist.*

*Understanding and respect for the rights of national minorities is a prerequisite for any progressive society, as it contributes to the preservation of peace and harmony in society as a whole.*

**Keywords:** *minorities, types of minority rights, non-discrimination, indigenous people, a system of minority rights, nation, minority.*

## 1. Analysis of recent research and publications.

Some issues related to the types of minority rights have been considered by both Ukrainian (N. Blitzer, V. Nikitiuk, Y. Tkachenko) and foreign (V. Bowring, R. Yakemchuk) scholars.

**2. The purpose of the article** is to analyze the legislation on national minorities and to determine the types and systems of minority rights.

## 3. The main material is presented.

At the present stage of social development, the protection of minority rights is of particular importance. The culture of minorities is one of the main factors for preserving their identity and developing their distinctiveness. That is why it is an urgent issue to define the types and characterize the system of



minority rights. There are many approaches to defining the types of minority rights. Different researchers use completely opposite principles for such classifications: the basis is the historical peculiarities of the formation of minority groups, differences between objects and subjects of international law, the correlation of the concepts of “minority”, “people”, “nation”, “indigenous people”, geographical features of the existence of minorities on different continents and historical patterns of their emergence. The classification of communities by national, political, racial, linguistic, and religious characteristics cannot be ruled out. Historically, minorities have been viewed from the perspective of the idea of superiority and pressure of the culture of the titular nation, due to the rejection of their culture by minority groups in favor of assimilation with the dominant culture. The aim of this policy was to establish a cultural identity of minorities with the state, which supports their economic needs. For example, human rights experts describe the difficulties of defining the concept of “minority” as one of them, citing the various circumstances that led to the emergence of minorities in different states and distinguishing special types of groups consisting of

- indigenous inhabitants of territories occupied by another nation;
- members of any nation completely absorbed by another state;
- residents of territories that have been transferred from one country to another;
- groups that have preserved their identity, although with changes under the influence of historical events (a compact group of immigrants who have settled down for permanent residence and seek to preserve the traditions of the country from which they came);
- different components of the multinational, multiracial, multi-religious or pluralistic culture of the state.

In addition to the above types, it is also advisable, in my opinion, to identify social minorities. In legal science and practice, age minorities are also distinguished, including children and the elderly; gender (sexual) minorities; minorities based on health status – persons with disabilities and sexual minorities. In recent decades, the topic of LGBT people has not only been actively discussed in journalism and specialized academic literature but is also reflected in political practice and lawmaking in the form of legal provisions protecting their rights, including the establishment of same-sex families.

A specific type of minority (depending on the nature of their relationship with the state) is stateless persons, persons with dual (multiple) citizenships, as well as foreign nationals, special groups of which may include refugees, internally displaced persons, migrant workers, and “zarobichan”.

The fact that political and legal decisions at elections, referendums, and in the activities of collegial bodies of state and local self-government are made by a majority vote allows us to identify political minorities in the electoral or deputy corps. These include, for example, opposition parties, which are a specific structured type of political minority, a form of organization of the opposition part of the population.

Very often, the word “social” is understood to mean only that which relates to social security, i.e., the state system of material support for citizens in old age, as well as in case of illness, temporary disability, and other cases established by law. The people who are covered by this system in one way or another constitute a numerical minority in the population of any state. It can be assumed that under certain specific conditions, the problem of discrimination against these persons may arise. However, in real life, it is hardly reasonable to speak of them as an independent minority group, since it consists of minorities by age (minors, underage children and the elderly), health (persons with disabilities) and survivors. A separate subgroup is made up of refugees and internally displaced persons, who are also allowed to receive benefits.

The implementation of minority rights is a set of mutually agreed political, economic, social and cultural factors that create the necessary conditions for the preservation of national identity and development of a particular national minority as a single organism, as well as legal means aimed at ensuring their actual use and protection. The system of implementation of minority rights consists of general (political, economic, socio-cultural) and special (legal and institutional) types. [1, c. 128]

For example, the researcher of national and ethnic relations O. Bykov believes that the system of minority rights includes: general (political, economic, social and spiritual) and legal rights, which, in turn, according

to the author, are divided into organizational and legal and regulatory. Among the latter, there are general and special (corporate) ones, to which the author refers: statutes of associations of citizens and political parties; decisions of meetings and congresses; regulations; agreements. [2, c. 240]

By analyzing the current legislation, it is possible to determine the system of minority rights and special rights:

- free choice and restoration of nationality;
- free choice of name and patronymic and the right to a national surname;
- preservation of their history and the living environment of their current settlement;
- the creation of national public associations;
- use and study in state and public educational institutions or through national cultural societies of the native language;
- development of national cultural traditions;
- use of national symbols;
- celebrating national holidays;
- practicing one's own religion.

A.A. Eide, Director of the Norwegian Institute for Human Rights, appointed by the Sub-Commission on the Protection of Minorities as Special Rapporteur on minority rights, devoted a special section to the problem of classifying minorities in his interim report [3, p. 21]. In it, he noted that many of the problems of defining minorities are related to the policies of governments and their representatives elected by the majority. The Sub-Commission faced a number of problems in defining the types of minority rights, establishing their characteristics and developing a reasonable definition of a minority. The positions of some governments that do not want certain categories of minorities to be included in the scope of the concept have become known. The Special Rapporteur focused on the problem of considering these categories. From his point of view, the very element of the definition of a minority as a smaller number than the population of a state requires reservations. Firstly, there are situations where the majority is so dispersed and marginalized that it is unable to protect its rights through normal democratic procedures, even where they actually exist. Such groups need to be protected as long as they do not, by virtue of their size, have the ability to significantly influence the democratic decision-making process in society. Secondly, some groups may be a minority in a country's population but constitute a majority in certain parts of it, where they sometimes pursue discriminatory and repressive policies. This problem becomes particularly serious in regions that have a certain degree of autonomy within the state.

The first small groups to be protected in international legal instruments were minorities on religious grounds. Starting from the seventeenth century, more and more documents on the protection of religion appeared. An example is the Treaty of Westphalia of 1648, which approved a new division of Europe after the Thirty Years' War of Religion (1618–1648) and contained a number of provisions on the de facto equality of two Christian churches – Protestant and Roman Catholic. We should also not forget about the Treaty of Vienna of 1607, signed by the King of Hungary and the Prince of Transylvania, which guaranteed freedom of religion to the Protestant minority in the latter's territory.

According to I.L. Cloud, "The system of minority rights could work only if the great powers acted together, but in practice, each of them was concerned only with its own material and political interests and rarely functioned as a mechanism for collective protection of minorities" [4, p. 9].

Analyzing the material, P. Thornberry concluded that the commonality of all the treaties of that time was tolerance, not the binding nature of minority protection. However, it is these treaties that can be considered the primary basis of the system of minority protection in international law [5, p. 32].

The doctrine of international law on this issue has historically been further developed. The system of the treaty and organizational measures of the League of Nations aimed at protecting the rights of minorities

defined the primary goals of such protection: guarantee of equality and non-discrimination, rejection of forced assimilation, granting of equal civil, some political and certain special social rights to preserve the identity of minorities [6, p. 51]. However, the political situation that existed in Europe in the first half of the twentieth century between the two world wars did not contribute to the significant development of this system of protection of national minorities and did not provide truly effective legal mechanisms for its guarantee and implementation. In fact, the system of protection of minority rights that existed within the League of Nations was interrupted by the outbreak of the Second World War.

The principle of protecting the individual rights of persons belonging to minorities, rather than the rights of minorities themselves (collective rights), introduced by the League of Nations, was further developed in the UN's activities in the humanitarian sphere.

During the twentieth century, a system of protection of national minority rights was formed, which began within the League of Nations and gradually gained positive dynamics as a result of its activities: The UN and its subdivisions, the Council of Europe, the 1992 Organization for Security and Cooperation in Europe, the CIS, mixed intergovernmental commissions (commissions established under bilateral agreements and treaties), international judicial bodies and non-governmental organizations.

Thanks to the functioning of these organizations, a system of protection of minority rights has been formed. In the scientific literature, several types of minority rights are distinguished: civil (the right to freely choose and restore nationality; to have a national surname, name, patronymic and, accordingly, to receive a passport; the right to choose to practice religion; and the right to language), political (the right to vote and be elected; to form associations), and cultural (the right to form national, cultural, and educational institutions; to develop their own traditions and national symbols).

It is almost universally recognized that the most successful regional system of international law with an effective form of legal procedure for their guarantee is the European system of protection of human rights and fundamental freedoms, and in particular of persons belonging to national minorities. Only the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, which has been ratified by the vast majority of European states, contains an article that states: "The enjoyment of the rights and freedoms set forth in this Convention shall be guaranteed without discrimination of any kind as to sex, race, color, language, religion, political or other opinions, national or social origin, membership of a national minority, property, birth or another status" (Article 14). For the first time in the practice of regional and universal international human rights treaties, the Convention recognized "belonging to national minorities" as one of the main grounds on which discrimination against persons and restriction of such rights is strictly prohibited. The European system of protection of human rights and fundamental freedoms consists of three main components: 1) the system of the Conference on Security and Co-operation in Europe (CSCE/OSCE); 2) the system of the European Union; and 3) the system of the Council of Europe [7].

A unique legally binding system of human rights protection, including the rights of persons belonging to national minorities, was created by the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. The ECHR, which entered into force on 3 September 1953, not only proclaimed fundamental human rights but also created a special mechanism for their protection. Initially, this mechanism consisted of three bodies responsible for ensuring compliance with the obligations assumed by the state's parties to the Convention: The European Commission of Human Rights, the European Court of Human Rights and the Committee of Ministers of the Council of Europe.

To date, this system has been significantly expanded both at the international and national levels. We will analyze the latest developments in this area in another article, as this topic is too broad for a single publication.

#### **4. Conclusion.**

The system considered and the definition of types of minorities allow us to understand the status of national minorities and ensure their rights. The UN system currently has a comprehensive system of protection of national minority rights. Of course, it is not perfect, but it is of great importance around the

world, because thanks to numerous actions, a large number of interethnic and interethnic conflicts have been prevented and stopped, and a large number of people of different nationalities have been saved.

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