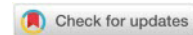


# TENDENCIES IN IMPROVING THE APPLICATION OF LEGAL RULES OF NATIONAL MINORITIES AND ETHNIC GROUPS

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**Abstract:** In the paper, the authors discuss the tendencies of development and improvement of legal guarantees of international and national regulations of individual countries and definitions of the term national minority and ethnic groups. We start from the hypothesis that international and national legal rules are well established, with the aim of improvement, but in practical application at the local level, the provisions of the Council of Europe Convention on the Protection of National Minorities, which represents the first comprehensive regional international agreement and legally binding international instrument, are bypassed or omitted, dedicated to the protection of national minorities. The definition of new and special rights and freedoms of man and citizen, that is, the scope and application of human rights and freedoms can be classified into different groups. The work will deal with the analysis of the rights and freedoms of ethnic groups and national minorities, the rights and freedoms of foreigners and stateless persons, the position of law in the field of governance, the constitutional duties of man and citizen in accordance with the criteria of the mutual relationship between the individual, that is, the citizen and the state. Researching the right to education, freedom of scientific and artistic creation represents freedom of thought as one of the spiritual freedoms. The Constitution of the Republic of Serbia guarantees the freedom of scientific and artistic creativity, the publication of scientific and artistic works, guarantees moral and material rights to authors, and more. The essential part of the analysis refers to the research and strict application of the rights of members of national minorities, that is, the detailed elaboration and respect of minority rights, the prohibition of discrimination of national minorities, equality in the management of public affairs, the prohibition of forced assimilation, the right to preserve uniqueness and develop the spirit of tolerance, as well as the right to association and cooperation with compatriots. The Framework Convention of the Council of Europe on the Protection of National Minorities - represents the first comprehensive regional international agreement and the first legally binding international instrument, which is entirely dedicated to the protection of national minorities.

**Keywords:** National minorities, ethnic groups, scientific research, hypothesis, social reality.

**Field:** Social and Humanities Sciences

## 1. INTRODUCTION

The paper examines the setting of legal regulation and the possibility of its application, i.e. the relationship of the majority population to national minorities and ethnic groups in certain countries.

A large number of countries with a multi-ethnic composition of the population guarantee numerous rights to national minorities and ethnic groups that should contribute to improving their position and equalizing them with the rights enjoyed by the majority population of the country. Positive legal regulations provide guarantees in the form of constitutional, legal, bylaws of the state (regulations, ordinances, notices, etc.) which guarantee numerous special rights to members of ethnic and national groups, i.e. minorities, in order to preserve their identity.

Adopted legal rules in the form of the International Covenant on Civil and Political Rights, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities from 1992 and other international legal regulations (Šipka, 2010) guarantee and establish, by their legal documents adopted, the international standards of special rights of the population that declares itself as a national minority.

The Ministry of State Administration and Local Self-Government of the Republic of Serbia is responsible for maintaining the Register of National Councils of National Minorities, announcing and conducting elections for members of national councils, maintaining a special voter registry of national minorities, as well as supervising the legality of the work and acts of national councils of national minorities.

## 2. THE RIGHT TO FREEDOM OF MOVEMENT AND RESIDENCE

The issue of the protection of ethnic groups and national minorities is not guaranteed with constitutional provisions by many states, but there are international legal norms such as the right to

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freedom of movement and residence, so that freedom of movement and residence makes even single-national states, after the arrival of new residents, who declare themselves as national and ethnic minority or group and settle there, are no longer single-national character and they lose the property of a single nationality.

Human rights and freedoms should not be limited in practice; they can be limited in certain cases by legal provisions, if this is necessary for the purpose of conducting criminal proceedings, protecting public order and peace, preventing the spread of infectious diseases or defending the Republic of Serbia (Constitution of the Republic of Serbia, 2006.). Constitutional provisions guarantee the right to freedom of movement of the population, so that everyone has the right, regardless of nation or national minority, to move freely and reside in the Republic of Serbia, to leave it and to return to it as needed or desired.

The entry of foreigners into the Republic of Serbia and their stay in the country is regulated by law. A foreigner can be expelled from the country based on the decision of the competent authority, in a procedure defined by law. A foreigner should be guaranteed the right to appeal and to enter the countries where they are not threatened with persecution because of their race, gender, religion, national affiliation, citizenship, membership of a certain social group, political opinion (Čupić, 2021) or to countries where they are not threatened with serious violations of the rights guaranteed by the constitution.

The rights and freedoms of foreigners and stateless persons (Bataveljić, Logarušić., & Šipovac, 2019) are included in special rights that are exercised in accordance with the constitution, laws and international agreements.

Citizenship represents a special legal relationship between the state and an individual, that is, citizenship represents a legal relationship between an individual and the state.

According to the number of citizenships, we distinguish persons with one, two, or several citizenships as well as stateless persons – ones without any citizenship.

The prohibition of discrimination against national minorities is guaranteed by the provisions of the constitution as a general norm in basic principles and any form of discrimination on any basis, especially on the basis of national affiliation, is expressly prohibited.

The Constitution guarantees, under the same conditions as other citizens, the right to participate in and manage public affairs and to hold public office.

### 3. NATIONAL CONFLICTS BETWEEN DIFFERENT COUNTRIES

National conflicts are conflicts between different nations. In countries whose citizens belong to one nation and in which there are no national minorities or different ethnic communities, there are no national conflicts either. However, in countries with two or more nations, national minorities or ethnic communities, national conflicts, or inter-ethnic conflicts, are always possible. In recent decades, such conflicts have attracted a lot of public attention (Kulić, Logarušić, 2023).

The actual state of the ethnic composition of countries is continuously changing; migrations and other ways of movement and settlement change the numerical, national and other characteristics of countries, i.e. often the forced influence of the environment (war conditions, etc.) or more favorable conditions for settlement contribute to the change of the ethnic composition of the population. Inter-ethnic conflicts and conflicts of modern countries, the connection of minority and territorial problems, significantly affect relations between countries and the preservation of peace and security at the global level. National problems and ethnic confrontations occur in all parts of the world, as well as in developed European countries, despite high standards of respect for human rights. Large politically and financially strong states are allowed to resolve conflict issues within the country, while less influential countries such as countries in the region are the subject of interest or even the application of interventions by the international community.

There is no universal model for solving conflicting inter-ethnic issues in the world, but relations, respect, cooperation, respect for basic human rights, protection of national minorities and ethnic groups, represent the basic elements of stability, democratic and socio-economic development of both large and small (underdeveloped) countries.

### 4. ETHNIC GROUPS AND NATIONAL MINORITIES

The prevailing opinion is that the definition of ethnic groups represents a cultural form of manifesting their differences in relation to the majority population of the state. Members of ethnic groups should be clearly distinguished from others; on other words, they should possess different characteristics based on racial, national, linguistic, religious and other sources. The members of the group possess and cultivate

awareness of their ethnic origin and language, of tradition, culture, historical events in which members of the group participated or religious festivals held in a specific way.

An ethnic group is defined as a part of a nation, but it does not have its own state. Clearly defining and highlighting the specific characteristics of an ethnic group is important in order to distinguish an ethnic group from an ordinary group of individuals who gather on the basis of some common characteristic (origin or nation).

National minorities, according to the definition, include a part of a nation or a people that does not live in its home state but in another one, together with other nations.

A national minority, as a community, should have its own established home state, but with a part of the people not living in it but on the territory of another state. The distinction between civil and national states from the aspect of the existence of national minorities is made in two ways. In civil states, there is a division into ethnic communities within the state, i.e. all citizens are considered one nation, in the formal sense, and as such their rights are guaranteed.

National minorities and other minority communities are defined as communities that enjoy the rights guaranteed by the constitution primarily in the realm of culture. Members of national minorities enjoy additional rights, which are not enjoyed by members of the majority nation, that are manifested in individual realization as well as collective rights that are realized in a collective community with others. In multi-ethnic countries it is significant in recent times that due to the exercise of the right to self-government in these realms, members of minorities are given the opportunity to elect their own national councils (Law on National Councils of National Minorities, Official Gazette of the Republic of Serbia, no. 72/2009).

International acts and national legislation guarantee numerous rights to national minorities, such as the right to preserve and express ethnic, cultural, linguistic and other peculiarities, the use of their symbols in public places, etc., the freedom to express national affiliation, the protection of national linguistic and cultural identity, the prohibition of discrimination, the right to education and the use of one's language and alphabet (Nikčević, I., Krulj, J., Krulj-Mladenović, M., & Jokanović, V. (2021). ), the prohibition of forced assimilation, the right to association and cooperation with compatriots, the development of the spirit of tolerance, dialogue and more.

In the organizational form for national minorities, the level of local self-governments is significant. In the local environment, the needs, problems and ways of realization of national minorities in their efforts to realize their rights and to integrate can best be recognized.

Programs of local public policies should be harmonized with legal regulations and efforts should be made to improve the existing normative framework, to establish good cooperation with the non-governmental sector and to, including the media and other means of information, constantly work on raising awareness and building an environment that will be the basis and incentive for national minorities take advantage of opportunities and be internationally and nationally recognized, while preserving their national identity.

The essential part of the analysis refers to the research of the rights of members of national minorities, i.e. the detailed elaboration and respect of minority rights, the prohibition of discrimination against national minorities, equality in the management of public affairs, the prohibition of forced assimilation, the right to preserve uniqueness and developing the spirit of tolerance, as well as the right to association and cooperation with compatriots.

The introduction of the Romani language in schools (Vojvodina in Serbia) is a historic moment for all Roma, as this act recognized and restored the national identity of the Romani people after three centuries (The project "Language and religious map of Vojvodina").

During the reign of Maria Theresa, Roma were forbidden to use their mother tongue. Roma had the right to cultivate agricultural land, Roma children to be educated, with the fact that they were forcibly taken from their parents not to live with them, in order to carry out the assimilation procedure (Maria Theresia Walburga Amalia Christina, 1717- 1780).

The Framework Convention of the Council of Europe on the Protection of National Minorities represents the first comprehensive regional international agreement and the first legally binding international instrument, as a means to achieve the goal, which is entirely dedicated to the protection of national minorities. The framework convention was adopted in 1994 by the Committee of Ministers of the Council of Europe, and the convention entered into force in 1998.

## 5. TYPES OF LOCAL SELF-GOVERNMENT

The level of local self-governments represents a significant area divided according to types and types of local self-government areas. At this level of application, the needs and problems of national

minorities can be recognized in their efforts to realize their rights and to integrate.

From the perspective of the position and general characteristics of the bodies that perform self-governing functions, local self-government can be divided into local self-government in the original sense and local self-government as a result of the decentralization process.

The set tasks of local public policies should be manifested in the improvement of the existing normative framework, cooperation with the non-governmental sector, national and foreign media, continuous work on raising awareness and building an environment that will encourage national minorities to apply and positively use the provided opportunities, recognized legal norms, with the intention of applying international and national rules as well as efforts to preserve the national identity of a group or minority.

Local communities should develop a culture of tolerance, dialogue and daily efforts to build a society that fights against discrimination, respects and accepts differences. The elimination of prejudices should be constant with the aim of pointing out the rights and difficulties of members of national minorities, which can be realized at the local level, but also the weaknesses of certain legal solutions.

The realization of the rights of national minorities requires the existence of approved plans and programs applicable in practice, as well as the existence of sufficient financial resources. The question of financial resources was dealt with by Elinor Ostrom, an American economist, winner of the 2009 Nobel Prize in Economics. The topic she studied refers to the "analysis of the economic management of common goods, that is, the total financial resources should come from local taxes and fees in accordance with the provisions of the statute." The principles of public administration rely on EU legal regulations, the rules of the Charter of Fundamental Rights as well as the benchmarks of good practice of OECD member states (OECD/SIGMA, 2015).

The Council of Europe is an international organization of special importance for the Republic of Serbia. It represents a parliamentary body that has its own founding goals and political mechanisms of action. The international and political character of the Council of Europe grew during the transition period of the former socialist bloc countries.

A national or ethnic minority is defined as a minority community whose members are characterized by a special national-ethnic identity, different from the identity of the national-ethnic majority in the common state. The position of minorities is regulated by international and constitutional law, i.e. legal norms that differ according to the specifics of each individual state.

In international law, national minorities are divided into those who belong to a certain nation, that is, a people who have their own home state (Czechs) and minorities who do not have such a state (Roma).

Civil and national states are different, i.e. in civil states there is no division into ethnic communities within the state, but all citizens are formally considered one nation and as such their rights are guaranteed. It is considered that the solution is political, legal, cultural and the social position of minorities in a society is a measure of democratization and modernization of society.

According to the provisions of its constitution, the Republic of Serbia is defined as the state of the Serbian people, i.e. civil state. There are authors who advocate the thesis that civil states do not exist anywhere in the world, that Serbia is a "state of the Serbian people", that France, Italy, Denmark and other countries formed by old ethnic nations were named after the nation that formed them (Jeftić, 2019).

If we put the analysis more broadly, the USA and Brazil are called political nations, created from many ethnic groups with dominant features of the ethnic nation that created them: the USA was created by England and Brazil by Portugal.

## 6. NATIONAL COUNCILS

According to the provisions of the Constitution of the Republic of Serbia, the concept of national minority is defined in a special part that determines the various freedoms and rights of national minorities.

The prohibition of forced assimilation is defined by the provisions of the Constitution and the law. The provisions of the constitution guarantee double protection – as a general constitutional prohibition of forced assimilation and the protection of members of national minorities, which is regulated by a separate law.

In order to raise the level of collective rights to a higher level, the capacity of the educational system should be increased by developing a program for the professional training of teachers of the languages of national minorities, which would ensure competent teaching staff. At the same time, textbooks and other teaching aids for learning minority languages should be improved in accordance with modern pedagogical methods.

The education of ethnic minorities in the Republic of Serbia, Croacija (Pehar, L., Čorkalo-

Birupeharški, D., & Jelić, M., (2022) and other countries brings into question the method of implementation, that is, whether the method of education of national minorities should be applied in the mother tongue. An important question for the field of intergroup relations is whether education should be part of regular education? In practice, two options are implemented: education entirely in Serbian or education entirely in one's minority language. In some parts of the country, school buildings are also segregated, so contact with students from other ethnic groups is rare or accidental. The importance of contacts between students of different national minorities and ethnic groups is significant for determining social distance and ethnic identity in cases of discrimination against members of another group or minority.

The existence of awareness of the scale of ethnic identity and the evaluation of ethnic superiority and ethnic pride, that is, the application of comparison instruments: the social distance scale and the scale for measuring the tendency for discrimination in the daily life of children.

In further research, measurements were made of the frequency of contact with children from the majority group compared to children from the minority group. It was concluded that in schools that educate children in their (native) language and in the minority language, the tendency towards discrimination is determined in many cases by negative attitudes towards another ethnic group, but also by a stronger attachment to one's own group, regardless of belonging to the minority or the majority group.

## 7. CONCLUSIONS

The paper discusses the right to preserve the distinctiveness of members of national minorities, where the constitution guarantees a wide range of rights from the expression, preservation and nurturing of national, cultural and religious distinctiveness to the application of full, timely and impartial information in their own language and more.

The right to association and cooperation with compatriots contributes to the preservation of the principle of uniqueness and own identity, and the provisions of the constitution guarantee the right of national minorities to association and cooperation.

The Constitution of the Republic of Serbia guarantees the spirit of tolerance as a basic goal in the relations of the majority of national minorities, that is, in the fields of education, culture and information, the spirit of tolerance and intercultural dialogue is encouraged.

The rule of law should have a democratic essence, based on democracy, which is defined as a form of government where power is exercised by the people, where adult citizens have the right to vote in elections in order to make decisions on how to govern the state, in which representatives of minority communities should be represented.

From the financial aspect, state authorities and organizations at all levels should, in the spirit of a good businessman, responsibly manage approved funds, especially local authorities, since they have plans and records and are familiar with the situation in detail, that is, they have an insight into the amount of funds they need and which areas are priority. In other words, the local authorities know best the situation regarding needs, amount of financial resources and their distribution.

Based on the results of the research, it can be concluded that the hypothesis is well established, i.e. the legal regulation in the form of the Framework Convention of the Council of Europe on the Protection of National Minorities, the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), which guarantees the prohibition of the expulsion of one's own citizens and the prohibition of the expulsion of foreigners and other international and national regulations of the countries adopted and comprehensive. The problem arises in cases where individual countries, under the guise of protecting the population or in some other way, do not apply the adopted legal regulations, that is, they abuse the adopted rules, which is contrary to the provisions of the UN Convention on the Rights of the Child, where the contracting parties have undertaken to undertake appropriate legal, administrative, social and educational measures that also apply to children of national minorities.

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