

THE RIGHTS OF MINORITY IN INTERNATIONAL LAW AND RIGHTS OF MINORITIES IN KAZAKHSTAN

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Abstract

The term minority as used in the United Nations human rights system usually refers to national or ethnic, religious and linguistic minorities, pursuant to the United Nations Minorities Declaration. All States have one or more minority groups within their national territories, characterized by their own national, ethnic, linguistic or religious identity, which differs from that of the majority population. The assurance of minorities is one of the most seasoned worries of international law. The base of the minority issue lies in segregation, abuse, avoidance, and forswearing of personality. These issues relating to minorities have been tended to by states exclusively and as a feature of bigger global society by conceiving diverse frameworks. The security of minority rights has maybe never been as pertinent as today. Kazakhstan's unusually diverse ethnic makeup was partially due to it being a historical transit point for Central Asian groups moving west. More recently it was used by Tsarist Russia and then by the Soviet Union as an area of Russian colonization. The impact of policies means that though they are now the largest ethnic group within Kazakhstan, the Kazakhs were a minority at the time of independence in 1991. They now constitute a majority after millions, mainly Russians and other minorities, left after independence. Minority groups include Russians, Ukrainians, Uzbeks, Germans, Tatars, Uighurs, Belarusians, Koreans.

Keywords: *human rights, identity, international organizations, minority rights, Kazakhstan, United Nations.*

1. Introduction

There are 8,000 dialects joined talked by comparative number of unmistakable ethnic gatherings around the world, while in the meantime the Organization of United Nations contains roughly 200 states. A disparity between various ethnic groups and sovereign political specialists in the global field suggests that numerous ethnic, dialect or religious minority bunches look for acknowledgment and assurance inside states they inhabit. As a piece of

human rights motivation minority rights are ensured at the worldwide level. In spite of the fact that the present worldwide framework shows a vast arrangements of pertinent to the security of minorities, its fundamental shortcoming is the way that greater part of them are not lawfully official. There is not really any nation on the planet that does not include minorities inside its region portrayed by their ethnic, religious or semantic character contrast from that of the lion's share populace. Despite the fact that there are no precise measurements, the United Nations (UN) gauges propose that 10 to 20 percent of the total populace has a place with minority gatherings. By and large minorities are among the most burdened gatherings in the public eye and their individuals are regularly subjected to unfairness and financial separation. Their prohibition from power is frequently joined with the refusal of respect, characters and societies. They are likewise rejected from significant investment in broad daylight and political life

2. Who are minorities?

There is no common consent upon a definition of minority in international instruments. Furthermore, the word is interpreted differently in different societies. A number of contemporary scholars are reluctant to use the term 'minority' claiming this term was closely connected with the League of Nations system and therefore is obsolete. Others, on the contrary, argue that since minority implicates the group of people that is numerically smaller than the dominant group, this leaves out non-dominant groups that are majorities in their countries. The Proposal for an Additional Protocol on the Rights of National Minorities to the European Convention on Human Rights and Fundamental Freedoms contained definition of a "national minority group." According to the proposal expression "national minority" refers to a *"group of persons in a state who reside on the territory of the state and are citizens thereof; mainly longstanding, firm and longlasting ties with a state; display distinctive ethnic, cultural, religious or linguistic characteristics; are sufficiently representative, although smaller in number than the rest of the population of the state or of a region of the state."*

The most extensively cited definition of 'minority' is probably the one proposed by Francesco Capotorti who had carried out the most prestigious study for the UN on the question of minority. He defined 'minority' as *"a group which is numerically inferior to the rest of the population of a state and in a non-dominant position, whose members possess ethnic, religious or linguistic characteristics which differ from those of the rest of the population and who, if only implicitly, maintain a sense of solidarity, directed towards preserving their culture, traditions, religion or language."*

Modern international minority protection was for the first time in the history systematically prescribed in the Treaty of Versailles, after the World

War I. The League of Nations system for the international protection of minorities originates from the Paris Peace Conference held in 1919. Although Pact of the League of Nations contained no provisions regarding human rights, it incorporated two relating systems of mandates and of minorities. The League's failure to establish an effective minorities system reflected the economic, social, and political problems of the inter-war period and contributed to the fall of the Wilsonian vision of 1919 of security system and disarmament, what resulted with the Second World War. The idea of human rights protection emerged stronger after Second World War's extermination peoples that would be considered minorities from today's perspective. Without the exact meaning of the idea of minority in worldwide level, it is up to each state to perceive a specific gathering of their residents as minority and accommodate their assurance, since the condition of greater part populace, not a national 'mother state' bears the duty of minority rights realization. Recognition of minorities inside states is the precondition for their rights. Since the agreement of characterizing national minority has been come to nor in universal nor in household law, numerous issues must be thought about when looking for acknowledgment of a specific gathering as a minority one.

3. The content of minority rights:

1) The right to physical existence

In any thought on the privileges of minorities under global law, the privilege to physical presence is viewed as an essential, and fundamental to every single other all right is just the living who could make a case for different rights. The privilege to presence of minorities was first perceived in the Genocide Convention which forbids the physical or organic obliteration of national, ethnic, religious or racial gathering. The tradition formally perceived the privilege of minority gatherings to exist as gathering by banning such decimation. Although the Genocide Convention speaks of physical and biological genocide, it does not recognize cultural genocide. During drafting of the convention, the issue of cultural genocide did come up but was rejected as it was considered too vague to be accepted. The International Law Commission has also made it clear that in genocide the destruction in question is the material destruction of a group either by physical or by biological means.

2) The right to enjoy one's own culture

Culture is an unpredictable idea. The UNESCO contemplate by Michel Leiris characterizes culture as being totally connected to convention: "[a]s culture, at that point, appreciates all that is acquired or transmitted through society, it takes after that its individual components are proportionately differing. They incorporate convictions, know edge, conclusions and writing, as well as the dialect or different frameworks of images which are their vehicles." According to the UN Committee on Economic, Social and Cultural

Rights (CESCR) the idea of culture "includes, bury alia, lifestyles, dialect, oral and composed writing, music and tunes, non-verbal correspondence, religion or conviction frameworks, rituals and functions, game and amusements, techniques for generation or innovation, common and man-made conditions, nourishment, garments and shield and human expressions, traditions and conventions through which people, gatherings of people and groups express their mankind and the importance they provide for their reality, and construct their reality see speaking to their experience with the outside powers influencing their lives. The UN Human Rights Committee has stated that article 27 of the ICCPR is directed towards

“ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole.”

3) The right to profess and practice religion

Our world history is full of examples of religious intolerance and persecution based on religion, including religious wars. The contemporary response to this has mainly been in recognizing democratic principle of religious freedom granting every individual citizen the right to adopt his or her own religious beliefs without fear of government and neutrality of governments on religious issues. The ICCPR recognized the religious rights without “distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Several provisions of the covenant are relevant to religious rights. Article 18, for example, guarantees the same rights listed in article 18 of the UDHR, further including the right of parents “to ensure the religious and moral education of their children in conformity with their own convictions.”

4) The right to use one’s own language

A noteworthy part of minority rights has been the privilege of minority gatherings to utilize their own particular dialect. In many states minorities talk dialects unique in relation to that of the predominant gathering and they frequently confront challenges in utilizing their dialect in the general population circle. The dialect possesses such a vital place in human life as self-articulation by a person in his or her own particular dialect is considered as a fundamental component to the human identity. The dialect is additionally seen as a basic marker of character which is naturally identified with culture and ethnicity and is likewise viewed as extremely essential for the survival of the minority as a social group. The ideal to utilize one's own particular dialect is maybe the most broadly perceived minority rights in global law. The phonetic privileges of minorities isn't just restricted to utilize one's dialect in everyday standard discussions, however it can stretch out to instruction being offered in the medium of that dialect, and its utilization in broad daylight and authoritative administrations, legal procedures, and the media. By and by, the

security of the semantic privileges of minorities is a long way from plainly obvious and frequently it isn't clear how these rights will be connected to various circumstances of phonetic many-sided quality. Article 27 of the ICCPR is of great importance in protecting the linguistic rights of minorities. It provides that individuals belonging to a linguistic minority may use their language amongst themselves, and that the state must not seek to restrict their affairs because of their status as a linguistic minority. The affairs of minorities involving use of their language remain protected against state interference even if a state may have no obligation to recognize minority languages.

4. Minorities in Kazakhstan

Kazakhstan is a ninth biggest country in the world, which gained its independence after the collapse of the Soviet Union. The Soviet legacy has affected the political and economic development of modern Kazakhstan, as well as the ethnic situation in the republic. The ethnically heterogeneous population was mainly formed by spontaneous and forced migrations, encouraged by the state; frequently rewritten borders that divided ethnic groups; politics of Stalin's regime, when thousands of people were exiled or deported to the territory of contemporary Kazakhstan, seen by Soviet authorities as a "virgin dumping ground for ethnic groups whose loyalties were in doubt". Therefore, the Republic of Kazakhstan has become home to more than one hundred ethnic groups, among which the biggest are Kazakhs 63,1 %, the Russians - 23,7 %, the Uzbeks - 2,9 %, the Ukrainians - 2,1 %, the Uigurs - 1,4 %, the Tatars - 1,3 %, the Germans - 1,1 %, and other ethnic groups - 4,5 %.

Ethnic Russians make up between 23 and 26 percent of the population. Russians are the country's largest minority, while Kazakhs are the majority ethnic group, accounting for 63 percent of the population. Several sources state that Russian minorities are concentrated in the northern and eastern regions of Kazakhstan. Nationalistically minded Kazakhs perceive Russians as conquerors, who repressed their language, culture and religion, and they blame Russians for environmental damage caused by nuclear testing in the Semipalatinsk region. Russians, for their part, consider they have made a positive contribution to the economy and culture of Kazakhstan and feel discriminated against. Kazakh is the state language. While a report by the UN Human Rights Council's independent expert on minorities issues states that Russian is used in government bodies on "an equal footing" with Kazakh, the US Department of State indicates that Russian is used in some bodies of local self-administration.

The report of the UN independent expert indicates that Article 14 of the Constitution prohibits discrimination on the grounds of national origin. The Article states that

“no one shall be subject to any discrimination for reasons of origin, social, property status, occupation, sex, race, nationality, language, attitude towards religion, convictions, place of residence or any other circumstances.”

The report of the UN independent expert indicates that according to the Kazakh government, courts have never received any cases of discrimination on the grounds of ethnicity or nationality. However, the report adds that according to NGOs,

“the absence of court cases regarding racial discrimination reflects not an absence of discrimination, but rather an inadequate legislative framework, a lack of independent and effective mechanisms for individuals to make complaints and a lack of public confidence in the process.”

Conclusion

The nearness of one or more ethnic minority groups in all states is a reality of present day time. It is neither basic nor workable for each state to be ethnically, religiously and phonetically unadulterated. It is additionally a stark certainty that minorities have endured separation, hardship, and constrained assimilation. It is additionally unmistakably perceived that insignificant recognition of balance rights and disallowance of segregation may not be adequate for a sufficient insurance of minorities and to address their worries. It is in the light of these certainties an accord has arrived both at universal and national levels that minority groups require uncommon rights and assurances. Accordingly, states are required to take unique measures to save the presence and personality of minorities. In most popularity based states the insurance of minority rights has risen as an essential and viable lawful and arrangement instrument in obliging ethnic, religious and semantic decent variety. Minority rights are additionally viewed as important to accomplish the objective of substantive balance rather than formal or legitimate fairness. Additionally, it is likewise a fundamental condition for more prominent political and social security and peace inside and crosswise over state borders.

In Kazakhstan there is a problem of underrepresentation of certain ethnic groups, but we can confidently say that the authorities are attempting to make conditions for representation of interests of different minority groups in the political sphere. The question is whether these conditions are enough for full, equal and effective representation of the rights of all ethnic groups in the republic.

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