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› CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION AND PROTECTION OF MINORITIES.

Ladies and gentlemen. Dear colleagues. Dear Mr. President.

Thank you very much for invitation to celebrate the 10th anniversary of the Constitutional Court of the Principality of Andorra and for the opportunity to represent you some considerations on such complex subject-matter like the protection of the national minorities.

Indeed, it is very difficult problem and on the formal ground because we haven't officially recognized the definition "minority" till present time. To my mind, this is utter importance to know and to understand: "Who is a minority?" and only after the answer on this question it will be easier to answer to another question: "What are the rights of minorities?" You know very much about different views on the problem of the definition "minority". Some officials, experts, scholars argue - it is unnecessary to define the term, another - that the term is "self-evident" that "the assertive elements of the concepts of minority are well known", and "precise definition" is not necessary; some prefer simply to ignore it.

On this foil the history of the "definition fight" bears dramatic features, therefore I'd like to represent some remarks, not reporting, what has been said by my colleague Mr. Bossuyt. Because I'd like to stress close connection between international and national level of protection Human Rights and Rights of Minorities.

For example, it was utter surprise to find that the drafters of the United Nations Charter essentially ignored the minority issue, save for creating (by Article 68) the Commission on Human Rights which was intended to attend to the protection of minorities. On the absence a definition or clear objective, the Commission on Human Rights promptly moved in its first session to charge a Subcommission with the task of definition of principles regarding protection of minorities. Since that time, the United Nations has endured an endless history of failed attempts to adequately define the notion.

For example, the early attempts to classify minorities have been including such terms like "backward people" and "splinter groups (e.g. speakers of dialects)" (see UN Doc. E/CN.4/Sub.2/69 of 21 June 1949).

In 1949 the memorandum has been submitted to UN Subcommission and was entitled "The Definition and the Classification of Minorities" (UN Doc. E/CN.4/Sub.2/85). Since that time, under witty remark

J. Parker, efforts have focused on deciphering the terms of such classification and dividing up humanity along such mythical lines (The Protection of Ethnic and Linguistic Minorities in Europe edited by John Parker and Kristian Myntti; Institute for Human Rights, Abo Academy University, 1993).

While there have been several contributions (ranging from the Secretary-General in 1949 (see UN Doc. E/CN.4/Sub.2/85 of 27 December 1949) to those of individual experts of the Subcommission, offered towards the determination of an acceptable definition, three variations have been submitted here below. In chronological order, the 1950 Subcommission version (see UN Doc. E/CN.4/358 of 30 January 1950) provided as follows:

(4)(a) The term minority includes only those non-dominant groups in a population which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population;

(b) Such minorities should properly include a number of persons sufficient by themselves to develop such characteristics;

(c) The members of such minorities must be loyal to the State of which they are nationals.

While the effort to find a definition was going on, the United Nations articulated rights for minorities in the provisions of Article 27 of the 1996 International Covenant on Civil and Political Rights (ICCPR), which defines:

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 practice their own religion, or to use their own language.

Not surprisingly, the conventional obligation is not accompanied by a definition of the subject.

After that in 1979 Francesco Capotorti defined the term "minority" (see UN Doc. E/CN.4/Sub.2/384/Rev.1 at para.568) as referring to:

A group numerically smaller to the rest of the population of the 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.

Despite the fact that the Commission on Human Rights found Capotorti's definition acceptable (see Commission resolution 14 (XXXIV)), continuing unease led to a last attempt in the Subcommission was rendered by Jules Deschênes (see UN Doc. E/CN.4/Sub.2/1985/31 of 14 May 1985 at para. 181) in 1985:

A group of citizens of a State, constituting a numerical minority and in a non-dominant position in the State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law.

In connection with other stipulations in international law, reference should also be made to the provisions of Article 14 of the European convention for the Protection of Human Rights and Fundamental Freedoms (ECHR - which proscribes discrimination on the ground of "association with a national minority").

The question of minority protection was given central attention in the Copenhagen meeting of the Conference on Security and Co-operation in Europe (CSCE), June 1990, in which detailed provisions were included concerning minority rights. The Council of Europe, having established a European Commission for Democracy through Law, has received a Proposal for a European convention for the protection of minorities, adopted by the European Commission for Democracy through Law on 8 February 1991.

Article 2 the term "minority" means a group which is smaller in number than the rest of the population of a State, whose members, who are nationals of that State, have ethnical, religious or linguistic features different from those of the population, and are guided by the will to their culture, traditions, religion or language (1). Any group coming within the terms of this definition shall be treated as an ethnic, religious or linguistic minority (2). To belong to a national minority shall be a matter of individual choice and disadvantage may arise from the exercise of such choice (3).

After that 8.11.1994, "Framework Convention of National Minorities" was adopted, but unfortunately we shall not be able to find the definition we can read only 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" (art.1); "The provisions of this framework Convention shall be applied in good faith, in a spirit of understanding and tolerance and in conformity with the principles of good neighborliness, friendly relations and co-operations between States" (art.2); "In the exercise of the rights and freedoms flowing from the principles enshrined in the present framework Convention, any person belonging to a national minority shall respect the national legislation and the rights of others, in particular, those of persons belonging to the majority or to the national minorities" (art.20); "Nothing in the present framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of State" (art.21).

To my mind we need in the international level to have some definition at least in general terms, because we shall be able more effectively to protect minorities rights through the legislature and

judiciary by case-law. On this account I agree with standpoint of Asbjorn Eide-Norwegian scholar - that the responsibility of the state for human rights has three aspects of obligations: to respect, protect and fulfil human rights.

The obligation to respect, taken to its maximum extend, requires the state, and thereby all its agents, to abstain from doing anything that violates the integrity of the individual or infringes on her or his freedom, including the freedom to use the material resources available to that individual in the way she or he finds best to satisfy her or his needs.

The obligation to protect requires from the state and its agents the measures necessary to prevent other individuals or groups from violating the integrity, freedom of action, or other human rights of the individual - including the infringement of the enjoyment of her or his material resources.

The obligation to fulfil requires the state to take the necessary measures to insure for each person within its jurisdiction opportunities to abstain satisfaction of those needs, recognized in the human rights instruments, which cannot be secured be personal efforts.

To my mind, it is universal approach to settle some problems of minorities.

There by we come to first conclusion that Human Rights Protection instruments as whole and Human Rights Protection of the Minority has close connection, the second, such unification of these instruments allows me to come to another conclusion that these instruments are accepted legal grounds for settle the disputes irrespective of some different situations with rights of minorities in any states.

II. The Constitution of the Russian Federation declares that the Russian Federation - Russia is a democratic federative law-governed state with a republican form of government (art.1). At present time in the Russian Federation it's accounted 176 nationalities. Russians have 82% from of population of the state. Another ethnic nations and groups - 18% and they are divided:

- on nations, which have their own republic (state) - 27, autonomous oblast and okrugs.
- Indigenous small nations as special ethnic community and ethnic groups.

In compliance with generally recognized principles and norms of international law as well as international agreements the Constitution of Russian Federation set forth that a republic (state) shall have its own constitution and legislation. A kray, oblasts, cities of federal significance, an autonomous oblast and autonomous district shall have its own charter and legislation. The federal structure of the Russian Federation shall be based on its State integrity, the unity of the system of State authority, the division of matters of authority and powers between State government bodies of constituent entities of the Russian Federation, equality and self-determination of peoples in the Russian Federation (sec.2, 3 art.5). Every citizen of the Russian Federation shall enjoy all rights and freedoms on its territory and shall bear equal responsibilities as envisage in the Constitution of the Russian Federation

(sec.2 art.6). Accordingly the article 19 all persons shall be equal before the law and the court (sec.1).

Although the Russian language is the State language on the entire territory of the Russian Federation, republics shall have the right to establish their own State languages. In State government bodies, local government bodies and State institutions of republics they shall be used together with the State language of the Russian Federation. The Russian Federation shall guarantee all of its peoples the right to preserve their native language and to create conditions for its study and development (art.68).

And the article 69 the Russian Federation shall guarantee the rights of indigenous small peoples in accordance with the universally recognized principles and norms of international law and international treaties of the Russian Federation.

It is very important to stress that Russian Federation as proper has jurisdiction over regulation and protection of human and civil rights and freedoms; citizenship in the Russian Federation, regulation and protection of the rights of national minorities (p. "c" art.71) and joined jurisdiction of the Russian Federation and constituent entities of the Russian Federation on the protection of human and civil rights and freedoms, protection of the rights of national minorities, protection of the traditional habitat and the traditional way of life of small ethnic communities (p. "b", "i" art.72).

As you noticed that we have not any definition of "minority" of "national minority" in our Constitution.

But the Constitution set forth the unclosed list of the non-discrimination features or characteristics. The State guarantees the equality of rights and freedoms regardless of sex, race, nationality, language, origin, material and official status, place of residence, attitude to religion, convictions, membership of public association, or of the another circum-stances. All forms of limitation of human rights on social, racial, national, language or religious grounds shall be prohibited. Men and women shall enjoy equal rights and freedoms and equal opportunities to exercise them (sec.2, 3 art.19).

There by the totality of noticed provisions of the Constitution, in their mutual connections allows us to conclude that the Constitution of the Russian Federation as proper keeps the balance of interests of The State as whole and interests of the minorities, realize the idea of the conformity of the unity and the diversity.

The Constitution provisions are realized and developed in the decisions of the Constitution Court of the Russian Federation.

I'd like to illustrate the characteristic cases, naturally I shall be simplify ones.

In 1993 the Supreme Council of Republic North Osetia have past the decision about the impossibility to reside together the citizens of different nationalities: ingush and osetin. The constitutional Court held: it was the violation of the Constitution, Universal Declaration on Human Rights (art.2) and

ICCPR (sec. 1 art.2), because it was the violation of the principle of the equality of nations (decision 17.09.1993).

In another case the Constitution of Republic Altay had the provisions that all natural resources on its territory is the property of the republic. The Constitutional Court held: such provisions are unconstitutional because violate the sovereignty of the Russian Federation and rights the multinational people of the Russian Federation as restrict possibility to use natural resources in behave of all nations of the Russian Federation. This conclusion is grounded on the article 3 of the Constitution: the bearer of the sovereignty and the sole of power in the Russian Federation shall be its multinational people. The sovereignty of the Russian Federation shall extend to the entirety of its territory (art. 4).

I'd like represent next case which has not habitual link with the nationalities, but it was, under my opinion, violation of rights of the minorities, some another type of the minority may be for this reason's like more one of first version of the definition by subcommission in 1950.

In particular, such position is within framework of the definition of 1950 which I consider is more universal definition.

In 1993 the Parliament passed the Federal Law "On victims of the political repression", which established some modest compensation for the people who had been in concentration camps, and exile under the Stalin totalitarian regime. They said law and compensation were like some form on the redemption of the new democratic state for those citizens but the lawmakers forgot about the children who were together with their parents, for example, in exile and like their parents starved, experienced needs and restriction of rights and freedoms.

Mrs. Aleshnikova, who was a child at that time and was with her parents in exile in 1930s, brought the case before the Constitutional Court that such provisions of law violet her constitutional right to equality under article 19 of the Constitution of the Russian Federation.

The Constitution Court satisfied her complaint and held that such provisions of impugned law are incompatible with the Constitution of the Russian Federation because she is the same victim of political repression as her parents. This decision had a big effect, esp. as *erga omnes* effect, because it adverted hundreds of thousands of citizens.

Consequently, the Constitutional Court implements in its practice the protection of the minorities under constitution and universally recognized principles and norms of international law.