

International Control Mechanisms of Protection of Human Rights

Jana Tvarožková

Faculty of social-and-economic relations
Trenčín University of Alexander Dubček in Trenčín
Študentská Street 2, 911 06 Trenčín, Slovakia.

Abstract

Diversity of cultures and mainly the European history helped in establishing a current system of human rights. The human rights and freedoms based on respect of dignity of human being, life, freedom and property of an individual in a civil society have been formed under an influence by various social, political, philosophical and legal phenomena, up to a state of current international legal documents, which become even greater indicator of a warranty in an area of adhering human rights worldwide.

Key words: discrimination, human rights, national minorities, controlling mechanisms, basic freedoms, racial discrimination.

Introduction

In a history of the mankind they have been no civilization that had not contributed by its cultural need and its legal awareness to an establishment of visions about rights and freedoms of an individual. Contemporary international law and national legal systems provide a compact system of guarantee for a protection of human rights, which the individuals exercise regardless their citizenship neither origin, including a protection against any act of discrimination in a large sense of this term of international law [14].

Character of international norms and discrimination

A term of discrimination is not used in the Charter of the United Nations Organization, neither in a General Declaration of Human Rights – a basic legal document on human rights, which was approved in 1948.

Aiming to define its mandate, a Sub commission for prevention from discrimination and protection of minorities stated, that „a prevention from discrimination means precluding any action, by which an individual or a group of persons are denied an equality in treatment that he asks for.“ Memorandum of the UN General Secretary on major kinds and cases of discrimination dated from 1949 year, developing this concept, distinguishes a moral and a legal equality from a material one (in terms of a fairly-minded remuneration), however a differentiation based on color of skin, on an adherence to a race or sex, language etc. is strictly and unequivocally precluded. [14].

In UN international contractual documents there is the first definition of a discrimination contained in a Convention of the International Labor Organization Nr. 111 on discrimination in the area of employment and profession dated from 1958. ² In line with this convention the discrimination includes:

- a) any discrimination, elimination or preference based on color of skin, sex, religion, political opinion, on a national or a social origin, which results in restraint or violation of equality of occasions or treatment at work or in profession;
- b) any other discrimination, elimination or preference, which results in restraint or violation of equality of occasions or treatment at work or in profession, which can be defined by a participating country after having been discussed with representative organizations of employers and employees, if such organizations exist, with other respective authorities (article 1 of the convention).

However the convention specifies in its article 2, that as a discrimination is not considered „any differentiation, elimination or preference based on qualification requested for a certain employment“. The Convention against discrimination in education, approved by the UNESCO general conference in 1960 year, as a discrimination is considered „every differentiation, elimination, restriction or preference based on race, color, sex, language, religion, political or other opinions, national or social origin, economic condition or a family line, whose aim or consequence is elimination or violation of a principal of equal treatment in area of education, particularly:

- a) A restraint, that a certain person or a group of persons have an Access to various kinds or levels of education;
- b) To bring a certain person or a group of persons into a situation incompatible with human dignity“.

The Convention against discrimination in area of education defines a legal limit and in an exhaustive way it defines measures, which are not considered as discrimination in sense of provisions of the Convention.

UN International Convention on elimination of all forms of discrimination dated 1965 defines a term of a racial discrimination in its clause 1 (as contrasted to a previous thematically identically focused UN Declaration of the General Assembly dated 1963 where such interpretation of a considered term is missing). A term of a racial discrimination in an above mentioned Convention means any differentiation, elimination, restriction or preference based on a race, color of skin, family line, national or an ethnical origin, whose aim or result is in elimination or limitation of recognition, application or implementation of human rights and basic freedoms based on an equality in political, economical, social, cultural or any other area of public life. However the same article of a considered international standard in its following provisions defines certain limits of a given definition. The first, the Convention does not refer to a differentiation, elimination, restriction or preference implemented by a government, being a contractual part to the Convention, among own or foreign citizens (article 1, paragraph 2). The second, no provision of the Convention can be interpreted so that relates in any way to legal regulations of contractual states on nationality, state citizenship or naturalization, unless these provisions discriminate any nationality. And finally, special measures are not considered to be a racial discrimination, performed purely aiming to provide an adequate development of some racial or ethnical groups or individuals, who need such protection. It can be necessary so to provide them with an equal use or execution of human rights and basic freedoms unless they lead to a preservation of different rights for different racial groups and unless they remain valid after having obtained the goal, they had been approved for (affirmative actions).

Despite some provisions about discrimination, the International Pact on civil and political rights dated 1966 does not define this term nor defines its contents. Therefore in 1989 year the Commission for Human Rights adopted a General recommendation Nr. 18 (non-discrimination), in which for the Pact purposes defines an interpretation of a term of discrimination as „any differentiation, elimination, restriction or preference, which is based on an adherence to a race, color, sex, language, religion, political or other strong belief, to a nationality or a social origin, property, family line or a status a whose purpose or result leads to discredit or to impair a recognition, application or an execution of all rights and freedoms of all persons based on equality.“ UN Convention on elimination of all forms of women discrimination dated 1979 states in the article 1 that for purposes of this Convention the term „women discrimination means any differentiation, elimination or restriction executed based on sex, which results or aims at violation or annulations of recognition, execution or implementation from a part of women regardless their marital status, based on an equality of men and women, human rights and basic freedoms in political, economical, social, cultural, civic or other area.“ However if the states pass temporary special measure focused on real acceleration emancipation of women and men, it will not be considered as a discrimination in a sense as it is defined in the Convention.

The mentioned so-called quota system is directly limited by the second phrase of the article 4, paragraph 1 of the Convention, by which these measures must not in any case per consequence result in retention of underprivileged or separate rules. After this brief discursion it is obvious, that particular conventions on human rights are aiming to define (with a certain variability specified by a scope of a particular standard) a term of a discrimination. It is needed to take into consideration that a system of international documents on human rights form an integral whole, which consists of individual conventions.

Discrimination and international control mechanisms

UN International Convention on elimination of all forms of discrimination represents a general instrument in combat against a racial discrimination. It establishes an obligation (in relation to states, being its parties) to perform measures leading to elimination of racial discrimination in all its forms and to a development of understanding among races (article 2), it defines a ban of racial segregation and apartheid, prevention, ban and elimination of all practices of this kind (article 3), ban of a promotion and organizations based on ideas or theories of a racial dominance and an elimination of any encouraging to a racial discrimination (article 4), ban and elimination of a racial discrimination in using rights (article 5), provides a protection against all acts of a racial discrimination (article 6) and obliges to perform measure realized in area of teaching, education, culture and information for a combat against prejudices leading to a racial discrimination (article 7).

The Convention guarantees an execution of civic, political, economical, social and cultural rights with no differentiation of race, color of a skin, national or ethnical origin. Therefore a list of protected rights has not a limited character, as the article 8 states in wording „especially“their demonstrative lineup.

The Convention has created a proper mechanism to control an execution of obligations having been accepted by particular states. A commission has been formed aiming to eliminate a racial discrimination (CERD), which fulfils the following basic tasks:

1. It reviews the reports by contractual states on legislative, juridical, administrative or other measures, which had been implemented aiming to execute the provisions of the Convention, so called implementation reports submitted in accordance with an article 9, paragraph 1 of the Convention (the Slovak Republic submitted the above mentioned report in August 1999). In line with an assessment of the CERD members, the reports, being presented by the states (contractual parties) show diversity in an issue of an approach, a pluralism of national policies, prevention of a racial discrimination and various concepts in area of human rights.
2. It reviews the notices of a contractual state made in accordance with an article 11 and a following Convention relating with notifications, that the other state does not execute provisions of an international Convention in question.
3. It accepts and discusses notifications submitted by particular persons or groups of persons subjected to jurisdiction of a state (a contractual party), which are complaining, that they have become a victim of a violation of any right declared by the Convention, a so called communication procedure and individual complaints supposed by an article 14 of the Convention. This authority of the Committee relates only with states that have acknowledged this competence by a special declaration. The Slovak Republic made this declaration on 17 March 1995.
4. It reviews issues of a racial discrimination on entrusted and non-municipal territories or other territories (article 15 of the Convention).

At the same time it is needed to note a fact, that from 1993 year (events in former Yugoslavia, Somalia and Rwanda) the Committee is granted a new type of a procedure – a preventive measure called a preventive appeal and an urgent intervention („d’allerte rapide et d’intervention d’urgence“) resulted from principles of a preventive diplomacy in area of human rights. The above mentioned procedure has been applied from its establishment in two forms: in a form of a mission of Commission members (e.g. in a former Yugoslavia, Kosovo, Croatia and Guatemala) or in a form of an invitation for representatives of countries where there have been reported more extensive and more serious expressions of a racial or an ethnical discrimination.

UN Convention on an elimination of all forms of women’s discrimination deprecates a discrimination of women in all forms. The states (parties to contract) have commit themselves to execute a policy of elimination of discrimination with all suitable means and for this purpose they will pass and execute relevant measures in areas defined by the Convention.

A committee for an elimination of women ´s discrimination was established aiming to assess a progress achieved in meeting the Convention. When comparing actual competences of the UN Committee for elimination of a racial discrimination and the Committee for an elimination of women ´s discrimination, we conclude that a Committee being reviewed has more limited competences in terms of provisions of the Convention there is stated only an authority to review the implementation reports. An initial report by the Slovak Republic on the Convention was discussed on 19-23 June 1997 in New York.

The Convention in its wording does not grant any authority to the Committee in range of a so called communication procedure and individual complaints. For that reason there was developed an Option protocol to Convention, which was approved on 10 December 1999 in New York and open for signing. By closing an option protocol the state (a party to contract) acknowledges an authority of the committee for an elimination of women ´s discrimination, having been created based on the article 17 of the Convention, to receive and to review notifications of individuals and groups on the facts, that they had become victims of violation of some of rights set in the Convention.

The UN Convention on a protection of human rights and basic freedoms dated 1950 in wording of Protocols 1-8 state in the article 14 an antidiscrimination stipulation stating that „execution of rights and freedoms granted by it must be provided with no discrimination based on any reason as sex, race, color of skin, religion, political or other strong belief, national or social origin, an adherence to a national minority, the on 26 June 2000 in Strasbourg there was a protocol signed over to the European Convention, which eliminates a restrictiveness of the article Nr. 14 on a discrimination by specifying a general ban of a discrimination in exercising any right. The Protocol Nr.12 was open for signing on the meeting of European ministers of human rights in Roma on 4 November 2000 and the Slovak Republic has become one of twenty-five signatories.

The European Convention established the European Court for Human Rights, whose authorities include all issued relating with interpretation and implementation of the Convention and its Protocols, which are submitted in accordance with provisions of articles 33, 34 and 47 (the article 32 of the European Convention).

The competences of the Court can be divided in terms of the Convention and procedural rules valid from the 4th November 1998 into these areas:

- In terms of the article 33 each top party to contract can submit to the Court any violation of the provisions of the Convention and its Protocol to be reviewed, for which the responsibility is by its opinion is borne by other top party to contract (so called international conflicts).
- The court can accept complaints submitted by any individual, by a non-governmental organization or by a group of persons, which are considered as aggrieved as for violation of their rights granted by the Convention or by its Protocols through one of top parties to contract. The top parties to contract commit themselves that they will not prevent from an effective execution of these rights (article 34 – individual claims). In this relation it is needed to point at provision of the article 46 of the Convention, which ensures a binding force and enforceability of the court’s sentences. („The top parties to contract commit themselves, that they will follow a rightful sentence of the court in all law-suits they are parties to). A rightful judgment of the court is delivered to the Committee of ministers, who supervises over its execution. The above mentioned measure ensures not only a legal but also a political responsibility of the state for an execution of the decision made by a Strasbourg court authority.
- The court can issue the judgments on legal issues related with an interpretation of the Convention and its Protocols (article 47 – judgments) on request of the Committee of ministers. Additionally it is needed to state, that such judgments can not relate to the issues concerning contents of a scale of rights a freedoms stated in the Chapter 1 of the Convention (rights and freedoms) and its Protocols or other issues, which the Court or a Commission could deal with in range of a proceeding begun based on provisions of the Convention.

The European Court for Human Rights has accepted several decisions concerning the violation of the article 14 of the Convention. The cases being judged were related with a right for a family life, the right to acquire and to make use of property, a right for equality of sex etc.

The existence of international control mechanisms ensures the possibility of international protection of human right in case when all national recourses had been used and it is an effective instrument for a rehabilitation of a state accrued due to a violation of human rights. By a comparison of two basic control mechanisms CERD (a part of UN Treaty bodies) and the European Court for Human Rights, we can make the following conclusions:

1. The UN Control mechanism has a political character; the European Court is a judicial body with relevant competences (proved by a number of petitions submitted to both control bodies).
2. The judgment of plaints submitted to the UN Committee for elimination of racial discrimination results in assumption of recommendations assigned to the state (a party to contract) whose jurisdiction covers the claimant. So the Committee (in contrast to the European Court) has no authority to decide about an indemnification (about a fair satisfaction).
3. The both control systems can be used in a cumulative way, with reference to their complementary character in meeting the condition of ban of duplicity (in terms of a current hearing) of cases being judged.

The above mentioned information about control bodies about international organizations would not be complete, if we had not note a provision of article 2, paragraph 1 of the UN International Treaty on civic and political rights in terms of which each state commits itself to respect the rights granted by the Treaty and it ensure all these right to all individuals with no differentiation by a race, color, sex, religion, political or other opinion, national or social origin, property, family line or other status. The Treaty guarantees an execution of rights in a non-discriminatory way without a direct definition. In a case, that any person under a state's jurisdiction suspects that his rights granted by a Treaty have been violated and he satisfied the defined conditions, he is entitled to submit a claim to the UN Commission for Human Rights.

The rights of persons pertaining to national minorities

The Frame Convention of The European Council for a protection of national minorities regulates special Human rights, particularly the rights of persons pertaining to national minorities. Protection of persons pertaining to national minorities is based on three basic requirements: non-elimination, non-assimilation and non-discrimination of persons pertaining to national minorities of the society. As far for the issue of non-discrimination the Frame Convention considers mainly a discrimination which could result from a differentness of an ethnical origin, culture or a language of the persons pertaining to national minorities comparing with the other ones. By recognition of special rights to these persons it grants for them the equal legislative possibility to assert them in the society and to preserve their ethnical and cultural identity. The Slovak Republic signed the Frame Convention of the European Council for a protection of national minorities the 1 February 1995 and consequently it ratified it on 14 September 1995. In line with the article 28 the Convention came into force on 1 February 1998.

Conclusion

Finally we can point out that the above mentioned documents are significant contribution of the international law to the combat against discrimination as an unwanted social phenomenon in modern democratic states. Their significance is much greater as they focus on a protection of special groups of population in particular states. One of basic messages, which are inherent for all catalogues of human rights, is an awareness of a need of a multicultural coexistence of nations in spirit of mutual tolerance, which is a source of integration and a factor enriching every society.

References

- Dok. E/CN.4/Sub.2/40/rev. 1/1949, str.16, para 87-89.
- Dohovor Medzinárodnej organizácie práce č. 111. In: Zbierka zákonov pod č. 465 z roku 1990.
- Medzinárodný dohovor OSN o odstránení všetkých foriem diskriminácie. In: Zbierka zákonov č. 95 z roku 1974, str. 321 a nasledujúce.
- Medzinárodný pakt OSN o občianskych a politických právach. In: Zbierka zákonov 120 z roku 1976, str. 570 a nasledujúce.
- Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, doc HRI/GEN/1/Rev.3 of 15 August 1997, str. 28, para 7.
- Dohovor OSN o odstránení všetkých foriem diskriminácie žien. In: Zbierka zákonov č. 62 z roku 1987, str. 382 a nasledujúce.
- Medzinárodný dohovor OSN o odstránení všetkých foriem diskriminácie. In: Zbierka zákonov č. 95 z roku 1974.
- Všeobecné odporúčanie CERD-u č. 20 z r.1996.
- Bližšie document č. E/CN.4/1999/WG.1/BP.11, Ženeva, 1999.
- Dohovor o odstránení všetkých foriem diskriminácie žien. In: Zbierka zákonov č. 62 z roku 1987, str. 382 a nasledujúce.
- Bližšie document A/53/38/Rev.1, New York, 1998, str.55-58.
- V súlade so svojím článkom 16, Protokol nadobudne všeobecnú platnosť tri mesiace po uložení desiatej ratifikačnej listiny alebo listiny o prístupe. K 10. Decembru 1999 protokol podpísalo 22 krajín v nasledovnom poradí: Chile, Bolívia, Mexiko, Senegal, Holandsko, Ekvádor, Nórsko, Fínsko, Rakúsko, Dánsko, Nemecko, Francúzsko, Lichtenštajnsko, Taliansko, Island, Česká republika, Kostarika, Švédsko, Grécko, Belgicko, Luxembursko a Kolumbia. Dňa 28.2.2000 podpísalo Opčný protokol Írsko.
- Rámcový dohovor na ochranu národnostných menšín. In: Zbierka zákonov č. 160 z roku 1998.
- Illková B, Belanský D.: Medzinárodná úprava predchádzania diskriminácii a medzinárodné kontrolné mechanizmy ochrany ľudských práv v tejto oblasti., Samo 3/2000, Bratislava 2000, str.25 a nasledujúce.