



# INTERNATIONAL SCIENCE REVIEWS



No. 1 (1) 2020

Social Sciences series

# **INTERNATIONAL SCIENCE REVIEWS**

## **Social Sciences series**

*Has been published since 2020*

**№1 (1) 2020**

Nur-Sultan

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**International Science Reviews****Social Sciences series**

Owner: Astana International University

Periodicity: quarterly

Circulation: 500 copies

The cover design is Salikhitdin Aitbayev's "The woman in blue" replica

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## LEGAL ASPECTS OF PROTECTING THE RIGHTS OF MINORITIES: PROTECTING THE RIGHTS OF THE KAZAKH DIASPORA ABROAD

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**Abstract** The article analyzes the international legal aspects of protecting the rights of ethnic and linguistic minorities. International treaties and conventions are discussed, topical problems of ethnocultural and political-legal rights and freedoms of ethnic minorities are studied. And also, analyzed the theoretical and legal problems of protecting the ethnocultural rights of the Kazakh diaspora living abroad.

**Keywords:** minority rights, human rights, Kazakh diaspora, protection of ethnocultural rights.

### Introduction

The protection of ethnic, religious and language groups is one of the oldest concerns of international law. The international protection of minorities has played a decisive role in the development of the entire system of human rights protection in the form in which it exists in modern international law. The particular importance was the problem of minorities in the 20th century, and it remains to this day (G.M. Mendikulova, 1997).

The problems of minorities arise in many states and are usually both domestic and interstate - being a majority in one state; a national group is often a minority in the nearest state. Within the state, the problem of minorities is directly related to the protection of human rights (A.H. Abashidze, 1988).

The subjects of public international law in the field of protection of the rights of ethnic minorities are participants in international legal relations regarding the protection of the rights of ethnic minorities, who have rights and obligations on the basis of international law (Promoting and Protecting Minority Rights: A Guide for Advocates, 2012).

Undoubtedly, the main ones are international organizations, which are divided into international governmental and international non-governmental organizations. International governmental organizations are associations of states on an ongoing basis, which are created on the basis of either a constituent instrument or an international agreement to achieve the following goals - the solution of certain international problems; promoting full cooperation. The specificity of these entities is the fact that their legal personality differs from the legal personality of states, since it does not stem from sovereignty. All international governmental organizations are typologies into two types - global and regional. In the system of world organizations, the United Nations undoubtedly occupies a dominant position. In this regard, the UN was adopted by the General Assembly in resolution 47/135 of December 18, 1992 "Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities" (Deklaraciya o pravah lic, prinadlejaschih k nacional'nyim ili etnicheskim, religioznyim i yazykovym men'shinstvam, 1992).

This article protects the rights of persons belonging to minorities to their national, ethnic, religious or linguistic identities, or to a combination of these features and to preserve those features that they want to preserve and develop. Although this article refers to minority rights in countries where minorities exist, its applicability does not depend on the official recognition of the minority by the state. States that have ratified the Covenant are required to guarantee the enjoyment by all persons under their jurisdiction of their rights; this may require special measures aimed at correcting the conditions of inequality of minorities (Kathleen Newland, 2010).

"Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities" adopted by the General Assembly in resolution 47/135 of December 18, 1992 and general comment No. 23 (1994) of the Human Rights Committee on minority rights of the UN General Assembly are fundamental international legal norms that underlie the activities of

international organizations and intergovernmental ornaments for the effective protection of national minorities, including ethnic Kazakhs, residing in abroad. The Republic of Kazakhstan, represented by the government as well as non-governmental organizations, in their work to protect the rights of ethnic Kazakhs abroad should rely on these international treaties and the institutional mechanisms provided for by them to protect the rights of the Kazakh Diaspora abroad.

General Comment No. 23 (1994) of the Human Rights Committee on minority rights provides an authoritative interpretation of article 27. The Committee noted that “this article establishes and recognizes persons belonging to minorities a right that is clearly distinguishable and granted in addition to all other rights that these persons, along with all other members of society, already enjoy in accordance with the Covenant.” The right provided for in article 27 is autonomous in the structure of the Covenant. The interpretation of its scope by the Human Rights Committee results in the recognition of the existence of various groups within the territory of the state and the fact that the adoption of decisions on such recognition is not the prerogative of the state only and that positive measures on the part of the state “may also be necessary to preserve the identity of any minority and the rights of its members to use their culture and language and develop them, as well as to practice their religion together with other members of the group.” Article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights explicitly states that “the States Parties to this Covenant undertake to guarantee that the rights enshrined in this Covenant will be exercised without discrimination of any kind, in relation to race, color, sex, language, religion, political or other beliefs, national or social origin, property status, birth or other circumstances” (Kommentarii rabochei gruppy po men'shinstvam k deklaracii organizacii ob`edinennyh nacii o pravah lic, prinadlejaschih k nacional'nym ili etnicheskim, religioznym iazykovym men'shinstvam, 2005).

**Methods of a research and ethical questions.** The methodological basis of the study is made up of historical and comparative legal methods, in which scientific works on the issues of international and domestic law were used. At the same time, research methods of logical and systematic analysis, historical-legal and comparative-legal analysis, hermetic analysis, comparative analysis, analysis, synthesis, induction and deduction were used. In addition, the fundamental principles of theoretical and legal science and the modern achievements of other sciences were applied.

**Discussion.** In the past, the relationship between the state and its minorities was built on the basis of the following five different models: destruction, assimilation, tolerance, protection and promotion. According to the norms of modern international law, destruction is clearly an illegal form of relationship. In addition, the Declaration is based on the principle of the inadmissibility of forced assimilation (A. Gamlen, 2006).

Although to some extent integration in any national society is a necessary condition for the state to ensure respect and observance of the human rights of all persons on its territory without any discrimination, measures to protect minorities are designed to ensure that integration does not turn into forced assimilation or did not undermine the identity of the group of persons residing in the territory of the relevant state (A. Gamlen, 2008).

One of the principles of international law, on the basis of which relations between states are built, is the principle of mutual respect and non-interference in the internal affairs of other states. The Republic of Kazakhstan strictly adheres to the principle of mutual respect and non-interference in the internal affairs of other states.

However, when it comes to ethnic Kazakhs living abroad, the Republic of Kazakhstan, taking into account international treaties and conventions for the protection of the rights of national minorities and adhering to one of the main trends in the implementation of these treaties, bases its actions on the principle of the unacceptability of forced assimilation and, to some extent, on the principle of integration, which would not turn into forced assimilation and would not undermine the identity of the Kazakh diaspora living in the territory of the corresponding state arstva. In its

domestic policy, Kazakhstan adheres to the principles of tolerance, protection and promotion of national minorities living in the territory of the Republic of Kazakhstan, which allows Kazakhstan to fully defend the rights of ethnic Kazakhs living in other countries.

Integration differs from assimilation in that, contributing to the development and maintenance of social principles based on the principles of equal treatment and respect for the rule of law, it allows for pluralism. The areas of pluralism envisaged by the Declaration are culture, language and religion (H. De Haas, 2006).

Protecting the identity of minority groups requires not only tolerance, but also a positive attitude of the state and society as a whole towards the principle of cultural pluralism. To ensure identity requires not only recognition, but also respect for the distinctive features and contribution of minorities to the life of national society as a whole. The protection of identity means not only that the state refrains from pursuing a policy whose aim or result is the assimilation of minorities within the framework of a dominant culture, but also that the state protects minorities from the assimilation of the activities of third parties (M. Reis, 2004).

In this regard, the policy pursued by the relevant state in the field of language and education is crucial. Depriving minorities of the opportunity to learn their native language or excluding from the education process of minorities an element of the transfer of their knowledge of their own culture, history, traditions and language constitutes a violation of the obligation to protect their identity (W. Safran, 1991).

The promotion of the identity of minorities requires the application of special measures aimed at promoting the preservation, enhancement and further development of their culture. Culture is not static, so minorities should be given the opportunity to develop their own culture in the context of an ongoing process. This process should include interaction between persons belonging to the minority, between the minority and the state, and between the minority and the entire national society. The measures required to achieve this goal are described in more detail in article 4 of the Declaration.

Article 6 encourages states to cooperate with a view to finding constructive solutions to problems related to minorities. In accordance with the Charter of the United Nations, States should be guided in their bilateral relations by the principle of non-interference. They should refrain from any use of force, as well as from any calls to parties to conflicts in other states affecting relevant populations, use violence and should take all necessary measures to prevent the invasion of any armed groups or mercenaries in other states with the aim of participating in conflicts affecting these populations (S. Vertovec, 2005).

It should be noted that, in cases of extremely aggressive relations in the countries of residence to national minorities, in particular ethnic Kazakhs, the Republic of Kazakhstan should refrain from any use of force, as well as from any calls to countries of conflict, and act in the framework of bilateral relations, Kazakhstan should develop constructive cooperation to help protect equality and promote the identity of ethnic Kazakhs on the basis of reciprocity.

One of the approaches that is actively used in Central and Eastern Europe is the conclusion by states of bilateral treaties or other agreements of neighborly relations based on the principles of the UN Charter and international law in the field of human rights and allowing to combine strict obligations with regard to interference with cooperation standards in promoting the development of conditions for the preservation of the identity of the relevant groups and cross-border contacts between persons belonging to minorities. The content of minority rules provided for in such treaties and other bilateral agreements should be based on universal and regional instruments relating to equality, non-discrimination and minority rights. Such treaties should include provisions for the settlement of disputes regarding their implementation (Prava men'shinstv mejdunarodnyestandarty i rukovodstvopo ih soblyudeniyu, 2012).

The cooperation referred to in article 7 may take place at the regional and subregional levels, as well as at the United Nations level. At the European level, a number of intergovernmental

mechanisms and procedures have been created, which are somehow aimed at promoting minorities in a peaceful way and achieving a constructive solution to problems concerning the respective groups. These mechanisms include the Council of the Baltic Sea States and its Commissioner for Democratic Institutions and Human Rights, including the rights of persons belonging to minorities; The OSCE and its Office of the High Commissioner on National Minorities, as well as the Council of Europe, which has adopted a number of minority agreements. Cooperation within the United Nations can be achieved through the Working Group on Minorities. In this regard, treaty bodies, in particular the Committee on the Elimination of Racial Discrimination and the Human Rights Committee, can also play an important role (Prava men'shinstv izlozhenie faktov, 1992).

The Framework Convention for the Protection of National Minorities of the Council of Europe, the basis for the acquisition of specific rights by individual representatives of minorities or minorities as a whole lays down the principle of free and voluntary attribution by a person of himself to a particular national minority - the principle of national self-identification. The explanatory report of the European Commission on the Legislative Support of Democracy clarifies: "The subjective choice of each individual is associated with an objective criterion relating to a person's personality" (Rukovodstvo OON po problemam men'shinstv, 2019).

**Conclusion.** In the framework of the CIS, it can be said that a historical document was adopted that constituted the legal basis for multilateral cooperation of states in the field of protecting the rights of persons belonging to national minorities. The Republic of Kazakhstan uses this convention to protect the rights of ethnic Kazakhs living in the CIS countries. The Convention on Ensuring the Rights of Persons Belonging to National Minorities is open in nature, which follows from Art. 15, according to which, after its entry into force, other states may join the Convention, sharing its goals and principles. The open character of the Convention is also confirmed by the fact that any of the contracting parties on the basis of Art. 16 of the Convention may declare its withdrawal from it by written notification to the depositary at least six months before the date of withdrawal.

The preamble to the Convention reaffirms the commitment of States parties to the Convention to comply with international human rights standards and protect the rights of persons belonging to national minorities, as enshrined in relevant UN and OSCE documents. The States Parties to the Convention also reaffirm that the rights of persons belonging to national minorities are an integral part of universally recognized human rights.

The mere fact of the participation of the CIS countries in the Convention means that they finally recognized the fact of the existence of national minorities on their territory and the ensuing interests and needs. This conclusion is also confirmed by the preamble of the Convention, which states that its parties take into account that "persons belonging to national minorities live in the territory of each Contracting Party" (Konvenciya ob obespechenii prav lic, prinadlejaschih k nacional'nyh men'shinstvam, 2019).

People, including ethnic Kazakhs living abroad, should not be discriminated against for demonstrating their group identity. Governments or persons belonging to the majority of the population are often tolerant of people of a different national or ethnic origin until they begin to assert their right to identity, language and traditions. In many cases, discrimination or harassment begins precisely after they claim their rights as persons belonging to a particular group.

Summing up, it should be noted that peoples and national minorities are protected by international law and are endowed with a significant amount of fundamental and optional rights that allow them to freely develop, while preserving their ethno cultural identity and identity. However, the exercise of these rights does not primarily depend on the countries participating in the world community, their governments and other state and political institutions, but on the peoples themselves or national minorities, their will to political, social and cultural progress, without which the whole system of international guarantees for them specific rights will remain a stillborn legal mechanism.



The Republic of Kazakhstan, through cooperation with international organizations such as the United Nations High Commissioner for Human Rights, the International Organization for Refugees, the International Organization for Migration, and through diplomatic channels, makes every effort to protect the rights of ethnic Kazakhs living abroad.

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