



**European Centre for Minority Issues, in partnership with the Secretariat of the Ukrainian Parliament Commissioner for Human Rights in the framework of the ECMI Eastern Partnership Programme 'National minorities and ethno-political issues: Belarus-Moldova-Ukraine'**

**MINORITY PARTICIPATION IN PUBLIC LIFE – GENERAL DEFINITION  
AND INTERNATIONAL STANDARDS**

**Minority protection and its main  
components**

**Bill Bowring**



European Human Rights  
Advocacy Centre

# Securing justice, challenging impunity

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# ELDH European Association of Lawyers for Democracy & World Human Rights

WITH LAWYERS  
IN 18 COUNTRIES

**EJDM** Europäische Vereinigung von Juristinnen & Juristen für Demokratie und Menschenrechte in der Welt  
**EJDH** Asociacion Europea de los Juristas por la Democracia y los Derechos Humanos en el Mundo  
**EJDH** Association Européenne des Juristes pour la Démocratie & les Droits de l'Homme  
**EGDU** Associazione Europea delle Giuriste e dei Giuristi per la Democrazia e i diritti dell'Uomo nel Mondo

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## About ELDH

ELDH is a non-profit progressive organization which presently unites lawyers in 18 European countries, who struggle together

for

- human rights and civil liberties,
- social and economic rights,
- democracy,
- the rights of migrants and refugees,
- the right to development of all countries,
- peace,
- equal rights for women and men,
- minority rights,
- the right of peoples to self-determination, and
- the prosecution of war-criminals and perpetrators of human rights violations

against

- dictatorships,
- oppression of the people,
- discrimination,
- racism, war, and
- all violations of human rights

To fulfil its objectives ELDH

## Finances

ELDH is financed by membership fees and donations. From time to time it receives grants from the European Union. ELDH is independent of any political party. All members of the Executive Committee, including the President and Secretary General, work voluntarily, and do not receive any payment from ELDH for their work.

## Officers

The President of ELDH is **Professor Bill Bowring**, barrister in London. He teaches International Law and Human Rights at Birkbeck College, University of London.

The Secretary General is **Thomas Schmidt**, trade union lawyer in Düsseldorf



a GlassHouse book

## Law, Rights and Ideology in Russia

Landmarks in the Destiny of a Great Power

Bill Bowring

ROUTLEDGE  




## About me

- Professor of Law, Birkbeck College, University of London (student who work during the day and study part-time 6-9pm in the evening);
- Barrister since 1975 at Field Court Chambers, Gray's Inn, London - I represent applicants against Armenia, Azerbaijan, Estonia, Georgia, Latvia, Russia, Spain
- Executive Committee and founding member, Bar Human Rights Committee of England and Wales;
- Founder on 2003 and Chair of European Human Rights Advocacy Centre (EHRAC); we have several hundred cases against Georgia and Russia – staff lawyers in Chechnya, Moscow and Russian regions



## About me

- My work in Ukrainian!
- “Movna politika v Ukraini. Mizhnarodni normi ta zobov'yazannya i ukrainsii zakon ta zakonodavstvo”
- in Juliane Besters-Dilgers (ed) *Movna Politika ta Movna Situatsiya v Ukraini: Analiz i Rekomendatsii* (Language Policy and Language Situation in Ukraine: Analysis and Recommendations) (Kyiv: Kyiv Mohyla Academy, 2008) pp. 55-95



## Two key questions

- There is no definition of “minority”, much less “national minority” – for lawyers the absence of a definition in legal documents is an outrage – but does it really undermine the effectiveness of minority rights?
- the international community’s “allergy” to group or community rights – it will be noted that with the exception of the ILO’s indigenous peoples’ convention, last in this presentation, all instruments refer to the rights of “persons belonging to” a minority – that is, individual rights only

Please consider why a tennis club, or indeed our group here, cannot constitute a “minority” for the purposes of human rights law.

What is it about a “minority” which makes it special?



## A pendulum







## A pendulum

- Swing to the left
- The system established after the First World War, of group rights
- The collapse of three great Empires
  - Austro-Hungarian
  - Ottoman
  - Russian
- Many new states – Hungary, Czechoslovakia, Romania, Poland, Finland etc – each with a large minority with a nearby “kin-state” for example the large German populations in Poland and Czechoslovakia.
- This system of protection took the form mainly of bi-lateral treaties – Germany promised to look after the Poles in Germany, Poland in return promised to look after the Germans in Poland.
- Discredited when it was used by Hitler to justify his aggression.



## A pendulum

- Swing to the right
- This therefore followed the Second World War, when the international community as a whole rejected anything to do with minority rights
- No minority rights in the UN Charter or the Universal Declaration of Human Rights 1948
- Only in ICCPR, 1966
- Minority rights are rights of individuals belonging to a minority



## A pendulum

- Swing to the left again
- The pendulum has swung back with the collapse of the former Yugoslavia and the former USSR (in 1991)
- This has again, as after WWII, led to the birth of a number of new states, each with substantial minorities, especially of Russians – 25 million Russians now live outside Russia
- My case *Zhdanoka v Latvia*





## The UN Background

- Please note that the UN did not engage with minority rights as such until 1992.
- International Covenant on Civil and Political Rights
- Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966; entry into force 23 March 1976
- Article 27
- "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 practise their own religion, or to use their own language."
- This is the first time minorities were specifically mentioned – in 1966! Please consider carefully the language used in Art 27.



## General comment by the UN Human Rights Committee

- HRC General Comment 23, of 8 April 1994 -
- 5.1 "... the individuals designed to be protected need not be citizens of the State party."
- 5.2 "...just as they need not be nationals or citizens, they need not be permanent residents. Thus, migrant workers or even visitors in a State party constituting such minorities are entitled not to be denied the exercise of these rights..."
- 6.2 "Although the rights protected under article 27 are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language or religion. Accordingly, positive measures by States may also be necessary to protect the identity of a minority..."



## General comment by the UN Human Rights Committee

- HRC General Comment 23, of 8 April 1994 -
- Thus, in 1994, the Human Rights Committee laid down some very important rulings:
  - it is not necessary to be a citizen to have minority rights
  - even migrants or tourists may have minority rights
  - minorities do have collective rights, whose protection may require expenditure by the state



## **General comment by the UN Human Rights Committee on participation**

- HRC General Comment No. 25, of 27 August 1996
- The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25);
- Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected.
- Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty or impediments to freedom of movements which prevent persons entitled to vote from exercising their rights effectively.
- Information and materials about voting should be available in minority languages. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice.



## Some cases heard by the UN Human Rights Committee

- Lovelace v Canada (1981)



- Kitok v Sweden (1988)
- Bernard Ominayak and Lubikon Lake Band v Canada (1990)
- Guesdon v France (1990)
- Ballantyne & others v Canada (1991)





## UN Declarations

- Soft law!
- UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
- General Assembly Resolution 47/153, 18 December 1992
- UN Declaration on the Rights of Indigenous Peoples
- Adopted by the General Assembly on Thursday, 13 September 2007,
- By a majority of 144 states in favour, 4 votes against (Australia, Canada, New Zealand and the United States) and 11 abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa and Ukraine).



## The OSCE

- This body is “political” – it is not based on binding treaties like the UN or Council of Europe
- It is mainly concerned with maintaining state security and preventing conflict
- The “Copenhagen Document” is the key foundation for all minority rights law following the collapse of the former Yugoslavia and former USSR
- Document of the Copenhagen meeting of the Conference on the Human Dimension of the CSCE, 1990
- One year after the fall of the Berlin Wall, one year before the collapse of the USSR



## The OSCE's High Commissioner on National Minorities

- The “High Commissioner on National Minorities” is not designed to represent minorities, but to prevent conflict
- Helsinki Document 1992 “The Challenges of Change”
  - (2) The High Commissioner will act under the aegis of the CSO and will thus be an instrument of conflict prevention at the earliest possible stage.
  - (3) The High Commissioner will provide "early warning" and, as appropriate, "early action" at the earliest possible stage in regard to tensions involving national minority issues which have not yet developed beyond an early warning stage, but, in the judgement of the High Commissioner, have the potential to develop into a conflict





## The OSCE's High Commissioner on National Minorities

- I visited Ukraine as expert for the HCNM on two occasions
- 2000 with Max van der Stoep – Kyiv, Kharkiv, Lviv, Simferopol



Murder of Ihor Bilozir

- 2010 with Knut Vollebaek – Kyiv, Donetsk, Lviv, Simferopol
- Also visited Russia to examine the situation of Ukrainians



## **Work of the Foundation on Inter-Ethnic Relations – thematic recommendations**

- October 1996 – The Hague Recommendations Regarding the Education Rights of National Minorities
- February 1998 – The Oslo Recommendations Regarding the Linguistic Rights of National Minorities
- June 1999 - The Lund Recommendations on the Effective Participation of National Minorities in Public Life
- October 2003 – Guidelines on the use of Minority Languages in the Broadcast Media
- October 2008 - The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations
  
- Soft law – but state of the art



## The Council of Europe

- Belgian Linguistics cases concerning the language used in education (European Court of Human Rights. Judgment of 27 July 1968)
- The European Charter for Regional or Minority Languages, concluded and opened for signature in 1992, into force 1 March 1998
  - Bill Bowring with Prof Myroslava Antonovych, Faculty of Law, National University of Kyiv-Mohyla Academy) “Ukraine’s long and winding road to the European Charter for Regional or Minority Languages” in Robert Dunbar, (ed) *The European Charter for Regional or Minority Languages: Legal Challenges and Opportunities* (Strasbourg: Council of Europe, 2008), pp.157-182
- The Framework Convention for the Protection of National Minorities, 8 November 1994, into force 1 February 1998.





## International Labour Organisation

- Convention concerning Indigenous and Tribal Peoples in Independent Countries 1989 (ILO No. 169) entered into force Sept. 5, 1991.
- 22 states have ratified: the Crimean Tatars have campaigned for ratification by Ukraine



- This convention protects group rights – especially the right to land
- There is a definition!



## International Labour Organisation

- 1. This Convention applies to:
- (a) Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
- (b) Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.
- 2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention.