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**THE NEED FOR SPECIFIC APPROACH TOWARDS INFORMING
MEMBERS OF MARGINALISED GROUPS OF THEIR RIGHTS:
PRACTITIONER'S REFLECTIONS**

Key words: *Raising awareness, information campaigns, marginalized groups, conventional rights.*

A famous maxim of human rights philosophy is that we are all somehow a minority. The entire idea of human rights is largely about protection of particular minorities from despotism of an abstract and undefined majority. While the rights of «average» members of the «majority» are well-defined in the practice of the European Court of Human Rights (hereinafter ECtHR), the specific rights of minority groups attract greater attention of the Strasbourg jurisprudence. According to Al Tamimi [1], between 1959 and 1999 there were 16 ECtHR judgements concerning specific rights of vulnerable minority groups, compared to 80 in 2011, 82 in 2012 and 70 in 2013. Such cases are now making about 7% of Court's jurisprudence, and it appears that these numbers are on the increase.

The notion of «vulnerable group» was first introduced in *Chapman v. the United Kingdom* [2], where the Court found that special consideration must be given to the needs of the Roma community due to their special lifestyle. Since then, the concept of vulnerability is being developed both in the scholarly works and in practice [7].

The United Nations uses a similar concept of marginalised groups. Here the author joins the opinion of Maina Kiai, the UN Special Rapporteur on the rights to freedom of peaceful assembly and association, in her observation that the term «marginalised» is preferable, as the word «vulnerable» points at helplessness and victimhood, while the term «marginalised» means personal situation created by actions of omissions by States and non-State actors. Members of marginalised groups are pressed into certain conditions by actions of the others, and this term is more accurate to description of situation of individuals who became marginalised because of external

influence [4]. Further, this paper will use the term «marginalised» to describe individuals and groups who are referred to as «vulnerable» by the ECtHR.

Kiai lists persons with disabilities, youth, women, LGBTI, indigenous people, internally displaced persons and non-nationals, including refugees, asylum seekers and migrant workers among those who are most frequently subjected to marginalisation. Sometimes these features overlap (like refugees with disabilities, or LGBTI asylum seekers), and this increases their marginalisation.

Marginalised groups and communities find themselves excluded from public life. Such exclusion has two major consequences in terms of human rights protection. Firstly, individuals belonging to such groups suffer a greater deal of discrimination and persecution (alongside with other forms of human rights violations). Secondly, such individuals have less protection of law and public institutions in practice, and are frequently subjected to various forms of institutionalized discrimination and restrictions in exercise of their rights. Combined with their specific needs, that imply specific forms of exercising the rights, this makes marginalised groups and communities common victims of systematic human rights violations. As a result, individuals belonging to marginalised groups get into a vicious circle, where violations of their rights result from exclusion, and exclusion gets deeper with every new violation.

The circle ruins belief in law and institutions, they attempt to avoid contacting the authorities and look for marginal solutions of their problems. Due to lack of belief, members of marginalised groups lack information on legal opportunities for protection of their rights, including in the international institutions. An obvious consequence is that they do not apply to such institutions and their grievances are largely overseen. Less obvious is that the lack of information creates unrealistic expectations if they still decide to apply. They may miss the elements determining the success of the application, like the personal documents, evidence of violation, etc.

The practical barriers faced by the individuals belonging to marginalised groups in applying to the ECtHR are the following: 1. One must be aware that they are a victim of a human rights violation; 2. One must be aware of an opportunity to apply to the courts, including to the ECtHR and understand the importance and effectiveness of such application (as opposed to resolution of individual problems by marginal or illegal means); 3. One must be, at least at the minimum level, aware of the procedure of application, including the need to collect evidence; 4. One must know of the right to have legal aid and be able to utilize this right by claiming assistance from public free legal aid institutions, human rights NGOs, international organizations, etc. [6].

These obstacles result from poor information of the members of marginalised groups, stemming from low literacy levels, lack of formal education and poor understanding of law and often from unwillingness to know more about law, resulting from lack of trust. On the other hand, members of marginalised groups are often active users of digital products that bring them the information of the world in a convenient form.

The idea that the Internet must contribute to legal education of members of marginalised groups on their rights is not new. Just to name an example, Mehra, Merken and Bishop [2] in 2004 suggested that Internet and other digital technologies must contribute to social inclusion and equation of access to information on individual rights. At present, international institutions run entire information campaigns aimed at legal education of particular vulnerable groups in specific situations or regions [3].

The European Court is apparently in line with these developments. With abundant information booklets on its website, presence in the social media, and a number of experts running their own informational channels on the Convention and Court, it seems that the digital information distribution is sufficient. Yet the on-field experience leads to less optimistic conclusion that each of the abovementioned barriers remains problematic for members of marginalised groups.

The author's personal experience is limited to work with refugees, asylum-seekers and stateless persons in Ukraine. The conclusions made may be partial and incomplete. Therefore, the author seeks rather to define the existence of a problem that is subject to further research. Further, the conclusions are made based on personal communication with seven asylum seekers. These problems are the following.

Coming to the first barrier, members of marginalised groups often do not understand that a certain action, event or practice constitutes a violation of their rights. Thus, several Muslim asylum-seekers detained at the Migrant's custody center reported that they are not allowed to eat and drink at night during the Ramadan due to existing regimen. They perceived it as a punishment. Many asylum-seekers, believed that their arbitrary administrative detention was a form of punishment.

Speaking of the second barrier, the concerned individuals were aware of the application option, but were often reluctant due to fears that the application may lead to worsening of their situation in Ukraine or in the country of origin. They balanced the practical value of application against the associated risks and considered the ECtHR to be a measure of last resort in face of inevitable consequences of violation of their individual rights (for example, deportation to home countries exposing their lives to risk). At that, in their balancing the risks of application appear to overly heavy, while the benefits of the application are underestimated.

The third and the fourth barrier are easier for asylum-seekers since they, as a group, attract attention of local human rights NGOs and the UN Refugee Agency. The problem lies rather in communication with the authorities in order to meet the persons of concern and obtain documents from their files. Although the asylum-seekers as a group benefit from greater international support in protection of their rights, an additional language and cultural barrier may prevent them from properly advancing their cases.

The current approach towards distribution of information on the European human rights protection system by digital means offers only a partial solution, as it is not designed to meet the specific needs of individuals belonging to marginalised groups. For sure, the case law of the Court,

accompanied by various information documents (like admissibility guides) contains information on various aspects of protection of rights of members of vulnerable groups, but these documents are written for lawyers and are hardly understandable for average persons.

Some local solutions are now implemented in Ukraine, most notably WikiLegalAid – a project of the Government of Ukraine run by the Coordination Center for Legal Aid Provision. This web site designed after Wikipedia offers easy-to-understand explanations on practical legal problems, including application to the European Court. However, even this project is not detailed enough to meet the specific needs of marginalised groups. It is also in Ukrainian only.

In view of the increasing number of applications and raising concern of the specific needs of members of marginalised groups, the need for development of special approach to informing such individuals of their rights and procedure of application to the Strasbourg Court is pressing. Such approach must take into account the barriers that such individuals encounter in protecting their rights. Implementation of such approach will facilitate the overcoming of social isolation and bringing the violations out of shadow.

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