MINORITY PROTECTIONS IN GERMANY

INTRODUCTION

As a first, very broad definition, a minority — of any kind whatsoever — may be defined as a group which is in some way different from and smaller as the majority. This definition also applies with respect to minorities within a state, but must be specified, as it is not possible to afford protection to any minority so defined. Therefore, further specification is necessary: In a democratic state, a minority may be a political minority, i.e. a political party which has not carried the last elections, but might win the next.

Groups may also be distinguishable by other features such as religion, language, culture or ethnic origin that make them permanent minorities. Such groups may pose more serious problems concerning the organization of a state (1) and concerning their effective representation in a democracy (2). They are a topic of discussion in international public and constitutional law, especially in Germany, where some minorities live.

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A. MINORITIES AND THE STATE

1 DEFINITIONS

1.1 Minority

The definition of ‘minority’ in a state is based on the general definition given above. However, there are further criteria to be discussed to specify the groups who need to be protected. According to the general definition, everybody would be a member of some minority. According to the commonly acknowledged international law definition by Capotorti a minority is a group which is smaller in number than the rest of the population of the state, whose members, who are nationals of the state, have ethnical, religious or linguistic features different from those of the rest of the population, and are guided by the will to safeguard their culture, traditions, religion or language; another criterion is the non-dominant position of the minority within the state. Dominant minorities do not need to be protected. The group is also expected to show a feeling of

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1 Art. 2 (1) of the Proposal for a European Convention for the Protection of Minorities by the European Commission for Democracy through Law (Venice Commission).


3 Therefore, dominant or dissident status in a state does not indicate minority status, but can be used to differentiate between minorities in need of protection and minorities who can protect themselves.