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The Framework Convention for the Protection of National Minorities is the most comprehensive international law source designed to protect the rights of persons belonging to national minorities. It was adopted by the Council of Europe in 1995 and entered into force in 1998. The Framework Convention has been relevant in the past 25 years for addressing challenges related to realization of rights of persons belonging to national minorities. The principles contained and rights prescribed in this instrument of minority rights continue to guide member states in protecting and promoting the rights and freedoms of persons belonging to national minorities, promoting their identity, and ensuring their rights. The Convention prohibits discrimination against national minorities in various aspects of life, including in the areas of education, culture, language, and access to public services. It recognizes the importance of preserving and developing the culture, language, religion, and traditions of national minorities. States are encouraged to support minority languages and cultural diversity. The Convention promotes the participation of national minorities in public life, allowing them to express their views and participate in decision-making processes that affect them. The Convention is requiring that States provide education in the minority languages and to promote the study of minority cultures and histories.

Prof. Antonija Petričušić

The post-Yugoslav area, like other post-socialist countries, had to meet specific criteria for regulating the position of national minorities and still faces challenges related to ethnicity. Democratic processes in these areas have not been fully realized, and inter-ethnic relations and the rights of national minorities represent a challenge for the peoples of these areas, their governments and the international community. This thematic compendium highlights the achievements of multiculturalism policy in each country, successful solutions, as well as current issues that continue to complicate inter-ethnic relations and hinder the protection of the rights of national minorities.

Prof. Ana Čupeska

The thematically organized book fulfilled the goal of an academic overview of multiculturalism policies in the post-Yugoslav area in the context of the implementation of the Framework Convention for the Protection of National Minorities of the Council of Europe. The comparative method and argumentation based on quantitative data significantly contribute to the improvement of the scientific relevance of the text and its impact on the study of theories and practices of multiculturalism.

Prof. em. Silvo Devetak

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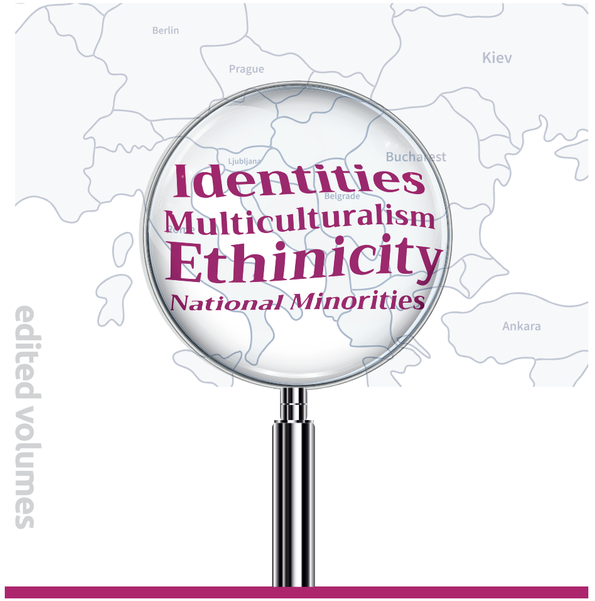

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In the countries that formed on the territory of Yugoslavia, multiculturalism is a phenomenon that few people are truly happy about. Ethno-cultural differences were often the cause of conflicts, xenophobia and nationalism. The peoples in this area aspire to a life based on a monocultural outlook, on ethnically homogeneous territories populated by culturally, ethnically, linguistically and religiously close compatriots. In the last three decades, on the legacy of the conflicts that followed the breakup of Yugoslavia, but also on the experiences of the multiculturalism policy developed during its history and, in particular, on the standards for the protection of national minorities contained in the Framework Convention for the Protection of National Minorities of the Council of Europe and the recommendations of the High Commissioner on National Minorities of the Organisation for Security and Co-operation in Europe, the post-Yugoslav states have developed their own multiculturalism policies whose goals are the coexistence and security of people and the protection and preservation of the identity of national (ethnic) minorities.

For this purpose, national instruments and mechanisms have been established, funds are allocated in national budgets to support multiculturalism policies, and successful ones are awarded recognitions and awards. However, the persistence of pronounced social distance between ethnic communities and demographic changes that indicate intensive voluntary emigration of members of national minorities indicate that something is still not right with multiculturalism in the area from "Vardar to Triglav". It is to be expected that after three decades of applying the "most liberal", as the politicians from this area were prone to saying, policies, multiculturalism, coexistence and tolerance of differences have become part of regional and national societies. However, that ideal has not been reached neither in the countries from this area that have become European Union members nor in those that are pejoratively singled out in the geopolitical construction of the Western Balkans and are striving to become so.

Goran Bašić

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TWENTY-FIVE YEARS OF IMPLEMENTATION OF THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

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CONTENTS

Editor's Foreword

In the countries that formed on the territory of Yugoslavia, multiculturalism is a phenomenon that few people are truly happy about. Ethno-cultural differences were often the cause of conflicts, xenophobia and nationalism. The peoples in this area aspire to a life based on a monocultural outlook, on ethnically homogeneous territories populated by culturally, ethnically, linguistically and religiously close compatriots. In the last three decades, on the legacy of the conflicts that followed the breakup of Yugoslavia, but also on the experiences of the multiculturalism policy developed during its history and, in particular, on the standards for the protection of national minorities contained in the Framework Convention for the Protection of National Minorities of the Council of Europe and the recommendations of the High Commissioner on National Minorities of the Organisation for Security and Co-operation in Europe, the post-Yugoslav states have developed their own multiculturalism policies whose goals are the coexistence and security of people and the protection and preservation of the identity of national (ethnic) minorities.

For this purpose, national instruments and mechanisms have been established, funds are allocated in national budgets to support multiculturalism policies, and successful ones are awarded recognitions and awards. However, the persistence of pronounced social distance between ethnic communities and demographic changes that indicate intensive voluntary emigration of members of national minorities indicate that something is still not right with multiculturalism in the area from "Vardar to Triglav". It is to be expected that after three decades of applying the "most liberal", as the politicians from this area were prone to saying, policies, multiculturalism, coexistence and tolerance of differences have become part of regional and national societies. However, that ideal has not been reached neither in the countries from this area that have become European Union members nor in those that are pejoratively singled out in the geopolitical construction of the Western Balkans and are striving to become so.

Meanwhile, changes have taken place in Europe and around the world, in the course of which xenophobic populism, atavisms and fear of diversity are increasingly expressed. We once again live in a world that does not favour a multicultural outlook. More and more people believe that life in culturally, linguistically and religiously homogenous communities is the safest. Social atavisms are manifested more and more often, and hoping for populism and crises, they lead ethnic groups into *déjà vu* processes of ethnic homogenisation and xenophobia.

It is clear that the golden age of multiculturalism has passed, but it is also clear that multi-ethnicity is a condition that inexorably permeates modern societies and that it requires appropriate policies that will respect cultural and other differences and ensure stability. In the European context, the policies of multiculturalism are entrusted to the states to regulate them in accordance with established international standards and according to the peculiarities of their own multi-ethnicities. The supervision of that process is carried out by the Council of Europe, and the strongest pillar of the process of monitoring the protection of national minorities in Europe is the Framework Convention For The Protection Of National Minorities. This multilateral document entered into force a quarter of a century ago has largely influenced the development of

national multiculturalism policies. Experiences related to multiculturalism policies are different and their reach is evidenced by over 170 reports of the Advisory Committee on the Framework Convention sent to 39 countries that are expected and required to apply international standards for the protection of national minorities and to design multiculturalism policies appropriate to their own circumstances and peculiarities of multi-ethnicity.

The initiative to review the changes that occurred in the post-Yugoslav area during the implementation of the Framework Convention standards and the recommendations of the Advisory Committee and the resolutions of the Committee of Ministers was launched at the meeting of the Academic Network for Cooperation in Southeast Europe (https://ancsee.org/) held at the beginning of May 2023 in Ulcinj (Montenegro). At that time, the debate about what the existing system of protection of national minorities in the region lacks was renewed, recommenced many times and never ended. In all states, the protection of national minorities is established in their constitutions, and in four states there are laws that ensure the protection of individual and collective rights of members of national minorities, cultural autonomy and "minority" self-government, participation in political decision-making, affirmative measures, and more. However, despite the acknowledgement of the argument that the social heritage in which these policies are developed is burdened with narratives about "historical" injustices and victims, memories of dark events from the distant and recent past and that the political culture in the region is rooted in the ethnicisation of social relations, the participants in the conversation, which lasted two days, agreed on the opinion that the efforts made in multiculturalism policies are not conducive to the desired goals. The fear of ethnic conflicts in the region continues to hover, the social distance between ethnic groups is not subsiding, populist rhetoric is receptive to people in the region, ethnic prejudices are alive... On the other hand, it is also a fact that people from these areas seek each other out. The existence and work of the Academic Network, whose founders are six academic institutions from post-Yugoslav states, is confirmation that there is a need for dialogue and cooperation. There are many other initiatives and collaborations that indicate that in addition to personal ties, cultural,

economic and other forms of cooperation are strongly pulsating along the former space that was connected by the cosmopolitan slogan of brotherhood and unity.
So what are the policies of multiculturalism lacking in these areas? Why, despite the implementation of various measures, is there social resistance to the diversity of the peoples who make up the national majority in the region, as well as to members of ethnic minorities? Are the consequences of conflicts in the past so rooted in the collective identities of ethnic groups that they do not allow for closer social ties? Or are multiculturalism policies based on narrower political interests and, depending on political goals and circumstances, serve as Potemkin villages for hiding failures, and if necessary they are used for mobilisation and political engineering of ethnic communities?
The papers in this Collection try to answer the mentioned and other questions. In them, you will also read about the contents of successful multicultural policies, especially about legal solutions that, in accordance with international standards, almost ideally regulate the position of national minorities, but you will also find examples that indicate that the main feature of multiculturalism policies in the region is social segregation, i.e. that connective tissues are broken among ethnic communities, that neighbouring ethnic groups are undesirable, and that ethnic borders are pronounced, tough, hardly permeable for cultural exchange. But, let's remember, fifteen years ago, a group of Council of Europe experts prepared, and the ministers of foreign affairs in the Council of Europe, adopted the "White Paper on Intercultural Dialogue" which had the slogan "living together as equals in dignity" in its subtitle. In the "White Paper", based on the brightest ideas of the European enlightenment and liberal theory, the future of Europe based on an intercultural model for managing cultural diversity is advocated. The ideas in this inspiring document for *multiculturalists* spring from the human dignity of the individual and the humanity and life of all. Intercultural dialogue was designed as a set of active European, national, regional and local policies that were supposed to establish common basic values: respecting the common heritage and cultural diversity and respecting the dignity of each individual with the aim of overcoming the social conditions of ethnic,

religious, linguistic and cultural divisions. The basic tools aimed at those goals are the democratic management of cultural diversity, strengthening of democratic citizenship, adoption of intercultural knowledge and creation and expansion of a space for intercultural dialogue. What happened to the ideas from the "White Paper" is not known, they disappeared in the increasingly turbulent political reality. But it still remembered that a few years after this document was published, it was announced that multiculturalism was dead and that muscular liberalism would regulate the issues of inter-ethnic relations in Europe. From then until today, not much has been intercultural in the European area, yielding to populist stabilocracies is slowly turning into autocracy, and history teaches us the subsequent outcome.

Finally, I would not like it to be left unsaid that this collection lacks a contribution that deals with the application of the Framework Convention and international standards for the protection of national minorities in Kosovo, no matter how you interpret the status of this European area. For the majority of citizens of Serbia, despite the knowledge that the Republic of Serbia does not exercise sovereign power on the territory of Kosovo, this area is part of Serbia. For the ethnic Albanians who make up the majority in Kosovo, it is an independent state. The conflict of historical and ethnic principles in Kosovo has not been overcome and is a source of instability in the region. The explanation of this problem and the interpretation of the status of ethnic communities in that area requires a deeper analysis, and we will certainly consider it in the future activities of the Academic Network. What makes us uneasy is the fact that until the final political solution to the status of Kosovo, people in that area should live safely, with dignity, and without consequences for personal happiness, which is not the case now.

As an editor, I did not have a difficult task, with minimal suggestions I accepted the works in, more or less, their original form because I believe that for this topic, in addition to the authors' expertise, their honesty and autonomy are also important. I did not want to jeopardize those principles, which does not mean that I agree with all the views. To tell the truth, there was not even time for thorough reflection on the works because less than half a year passed from the idea to write them to their publication in this collection.

In that short time, a collection of papers was prepared dedicated to the idea of multiculturalism in retrospect to the application of the Framework Convention for the Protection of National Minorities of the Council of Europe. I would like to thank the colleagues who paid attention to this idea and prepared the papers, the reviewers who carefully read them and gave useful suggestions, and finally, the colleagues in the institutes in Belgrade and Ljubljana who accepted to publish the reading.

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Minority Rights in the International Law and the Framework Convention for the Protection of National Minorities

Abstract

The paper provides an overview of the sources regulating minority rights protection in international law and makes an effort to evaluate in this context the manner in which the FCNM contributes the advancement in the field. Notably, the paper analyses the personal and substantive scope of application of the FCNM, in particular with regards to the development of the principle of positive discrimination. It also evaluates the added value that the hard law obligations bring to the protection of minority rights. Namely, the FCNM keeps the middle ground: compared to the soft law instruments of the UN and the OSCE, it provides legally binding obligations; however, these obligations are not justiciable in front of the ECtHR. This situation is by no means a disadvantage. The paper argues that the real contribution of the FCNM to the development of the minority rights protection lies in its multi-layered approach. The AC's continuous interpretation of various FCNM principles serves as a source for the development of minority rights legislation and policies. At the same time, the sophisticated evaluation system encourages a dialogue on the challenges related to the minority rights within each State and it contributes toward better understanding among the States with regards to specific issues related to minorities. This process enables a continuous international cooperation whose essential objective is promoting the concept of minority rights protection as a stability factor. Importantly, apart from the political support provided by the involvement of the Committee of Ministers in the procedure, in practice, the implementation of the FCNM is, in many cases underpinned by the diplomatic pressure exercised by other international organizations.

Keywords: Minority rights, Framework Convention on the Protection of National Minorities, Advisory Committee

1. Introduction

The paper provides an overview of the sources regulating minority rights protection in international law and makes an effort to evaluate in this context the manner in which the FCNM contributes the advancement in the field. Notably, the paper analyses the personal and substantive scope of application of the FCNM, in particular with regards to the development of the principle of positive discrimination. It also evaluates the added value that the hard law obligations bring to the protection of minority rights. Namely, the FCNM keeps the middle ground: compared to the soft law instruments of the UN and the OSCE, it provides legally binding obligations; however, these obligations are not justiciable in front of the ECtHR.

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The structure of the paper is as follows: after an overview of the historical context of development of international law in the field of minority rights protection, the paper proceeds with an overview of the key international legal sources regulating the field and, lastly, it focuses upon the FCNM, notably on what is considered to be the multifold contribution of the AC to the development of the minority rights protection.

2. Emergence of the International Law Regulating Minority Rights

Despite the success they achieved in creating a uniform national culture, language or religion, the nation state building policies equally exposed the need to consider minority identities.[1] Various states have taken different approaches toward the issue – while some granted considerable protection of minority rights, others have completely refused to recognise them and regulate the field. Currently, the minority rights form an important and, probably, the most controversial aspect of the corpus of human rights protection.

At an international level, the field gained a considerable attention in the aftermath of the Great War when, following the proclamation of the principle of self-determination of nations, it became clear that it was infeasible to expect for each nation to establish its own state. Therefore, vast pre-war empires were replaced by nation states, obliged by peace treaties to grant guarantees for the protection of minority rights (Smith, 2018: 143–179). However, this framework of international law protection revealed considerable weaknesses, serving as a pretext for an international destabilization and the WWII. The credibility of the concept was undermined and, in the afterwar period, the regulation of minority rights was largely sidelined. Instead, the UN turned toward the protection of various strands of universal individual human rights (Claude, 1955: 211; Shaw, 2017: 226–227).

At the beginning of the 1990's, the communist regimes collapsed, followed by interethnic tensions and conflicts. These developments provoked many changes in international relations, including a renewed consideration of the potentials of the concept of minority rights protection in contributing to the stability. As a result, the field was gradually regulated by all major international law frameworks. The promoters of this change were, however, careful to make a distinction from the post-WWI settlement. Instead of perceiving them as a source of political tensions, the international legal instruments still in force today, have reflected the

[1] The emergence and development of the modern nations have been a subject of vast academic interest. See, for example, C. A. Macartney, C. A. (1934); Rex, J. (1996).

contemporary approach. They explicitly declared that the minority rights served as a source of interethnic and interstate cooperation and, even more, as an instrument of conflict prevention.[2]

This worthwhile approach is far from being universally endorsed. Although it has elaborated many principles and clarified some sensitive aspects of the minority rights, the international law does not have a capacity to eradicate the inherently political nature of the problem. It should also be emphasized that the group identities are, by definition, very complex. The contested nature of the concept is best illustrated by the fact that, even today, a consensus with regards to the definition of a minority is lacking, albeit some of the elements are generally recognized – notably, the attempts to define minorities emphasize that their numbers are smaller than those of the majority populations and that they live in a non-dominant position. The importance of the objective characteristics of the minorities are also cited, such as the race, ethnicity, language, or religion. Finally, the minorities' wish to maintain these individual characteristics is also relevant (Council of Europe Assembly Recommendation 1255, 1955: 88; Ballantyne, et al. v. Canada: 171; Capotorti Report on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities, 1979: 96; M. N. Shaw, 2011).

3. Protection of Minority Rights in the International Law

It is the UN that shaped the development of the international human rights law and, as it was mentioned above, this framework is rather reticent with regards to the rights of minorities. The Convention on the Prevention and Punishment of Genocide from 1948,

[2] See, for example, the preamble of the UN Declaration:
"Considering that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live. Emphasizing that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities, as an integral part of the development of society as a whole and within a democratic framework based on the rule of law, would contribute to the strengthening of friendship and cooperation among peoples and States…", UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992) preamble. See also the preamble of the FCNM below.

(General Assembly resolution, A/RES/3/260) provided a prohibition of the essential crime against minorities, although it failed to define precisely the standards on what constituted a genocide. Also, in the decades after the war, numerous early warning mechanisms were designed to monitor specific regions and prevent conflicts – a solution which was of a paramount importance for the minorities, as their status was frequently at the heart of the tensions (Clive Baldwin and others, 2007: 28).

The crucial early contribution to the field is, however, the inclusion of Article 27 in the International Covenant on Civil and Political Rights (ICCPR) of 1966 (General Assembly resolution 2200A/XXI) which reads as follows: "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."

Although the UN Human Rights Committee made a clear distinction between the guarantees provided by Article 27 and the politically sensitive issues related to the right to self-determination (General Comment, No. 23, 1994, point 3), it interpreted this provision in a manner which was extensive enough to ensure the further development of the field. Importantly, it declared that: "(t)he existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria" (General Comment, No. 23, 1994, point 5.2). With regard to the personal scope of application, the Human Rights Committee held that the migrants were to receive the same protection as the nationals (General Comment No. 23, 1994, point 5.2). Also, it made a distinction between the rights of minorities and the general principles of equality. Therefore, the States were expected to introduce positive measures in favour of the minorities (General Comment, No. 23, 1994, points 6–7 and 9).

A key development in the field was the 1992 adoption of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (General Assembly resolution, 47/135) which regulated a wide scope of minority rights which were also incorporated in the FCNM: culture, religion, the use of minority languages in the public and private sphere

(Article 2.1), the right of association (Article 2.5) and, in particular, the rights of effective participation in the cultural, religious, social, economic and public life (Article 2.2), including at the level of decision-making (Article 2.3). The Declaration guarantees free exercise of these rights individually or in community with other members of the group (Article 3). Further, it regulates the principle of equality and non-discrimination, including positive discrimination (Article 4). The Declaration supports cross-border contacts of the minorities with their kin-states (Article 2.5), as well as wide cooperation among the States in this field (Articles 5, 6 and 7). The large substantive scope of the rights is, nevertheless, strongly undermined by the non-binding character of the document.

Apart from the adoption of these legal instruments, in order to ensure the implementation of the minority rights in practice, the UN has established a considerable institutional structure responsible for the field – notably the post of a Special Rapporteur on Minorities.[3] In addition to the general efforts invested in the protection of minority rights, the UN has also dedicated considerable attention to a specific category of minorities – the indigenous peoples. Notably, in 2007, the UN Declaration on the Rights of Indigenous Peoples was adopted (General Assembly resolution, 61/295; Shaw, 2017: 229–230).

Apart from that of the UN, other international legal frameworks also focus on the protection of minority rights. The OSCE assumed a substantive responsibility in the field of minority rights and monitoring of interethnic relations with a potential to lead to destabilisation and conflict. The record of this organization in the development of human rights issues goes well back to the post-WWII period.[4] In the Copenhagen Document from 1990 and

[3] The Special Rapporteur on minority issues was established by the Commission on Human Rights in the resolution 2005/79 of 21 April 2005. The mandate was extended by subsequent resolutions 7/6 of 27 March 2008, 16/6 of 24 March 2011, 25/5 of 28 March 2014, 34/6 of 23 March 2017 and, most recently, 43/8 of 19 June 2020. See also the official website: https://www.ohchr.org/en/special-procedures/sr-minority-issues (accessed 30 August 2023).

[4] Already in 1975, the Final Act of the Conference on Security and Co-operation in Europe, adopted in Helsinki, elaborated on some standards for the protection of national minority rights. For a full list of documents adopted by the CSCE/OSCE, see: *National minority standards of the OSCE and the High Commissioner on National*

the Geneva Document from 1991, the OSCE officially declared its concerns over the protection of minority rights. Soon, it established the post of the Commissioner on National Minorities, later renamed High Commissioner on National Minorities, responsible for monitoring the situation of minorities and providing an early warning on potential conflicts (Bloed, 2013: 15–24). The HCNM is authorised to issue recommendations to the States and, notably, his office has prepared several general recommendations related to the minority rights.[5] These recommendations promote the measure of positive discrimination in favour of minorities in numerous fields – the linguistic rights, including in the media, educational rights, effective participation in public life, policing in multiethnic societies, interstate relations, integration in diverse societies and access to justice.[6]

The European Union (EU) law also regulates some aspects of the field. The minority rights were cited among the foundational values of the EU in the draft Constitution of 2004, as well as in the Lisbon Treaty which is currently in force. The EU Equality directives include race as a prohibited ground for discrimination. In addition, albeit with a limited scope of application, the provisions of the EU Charter of Fundamental Rights also regulate the field.[7] A considerable asymmetry exists between the level of regulation in the EU internal law and the field of EU external policy (Kochenov, 2008: 1–51; Sasse, 2005: 1–21). The respect and protection of minority rights are cited among the political criteria for accession in the context of the enlargement policy – an issue which is particularly

Minorities, available at: https://www.coe.int/en/web/minorities/osce-national-minority-standards (accessed on 30 August 2023).

[5] On the mandate of the OSCE HCNM, see the official website: https://www.osce.org/hcnm (accessed 30 August 2023). On the establishing of the mandate, see, in particular: Helsinki Document 1992: the Challenges of Change. See Helsinki decisions, II: CSCE High Commissioner on National Minorities, Third CSCE Summit of Heads of State or Government, 9–10/7/1992.

[6] For a full list and links to the documents, see: https://www.osce.org/hcnm/thematic-recommendations-and-guidelines (accessed 30 August 203).

[7] The lack of coherent approach towards the protection of minority rights in the EU law provoked much criticism. For a general overview on the regulation on the rights of minorities in the EU legal framework, see: Ahmed, T. (2011). *The Impact of EU Law on Minority Rights.* Oxford: Hart Publishing.

relevant for the ex-communist states involved in the potential enlargement (Grizo, 2022: 1–22).

Despite of the ethnic, linguistic and religious diversity of its Member states, the Council of Europe maintained, during several decades, a reticent attitude toward the issue of minorities. The Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) of 1950 (ETS, No. 005) prevents discrimination on several grounds in the enjoying of the rights guaranteed by its provisions.[8] This scope of protection was considerably widened since 2005, with the entry into force of its Protocol 12 providing guarantees that no-one shall be discriminated against on any ground by the public authorities in the State parties of the ECHR (ETS, No. 177).[9] Importantly, the European Court of Human Rights (ECtHR) has pronounced several decisions in favour of minorities' rights. Some of its well-known cases with regards to minority rights concern the freedom of assembly and association (United Macedonian Organisation Ilinden and Others v. Bulgaria of 2006), the right of free elections (Sejdić and Finci v. Bosnia and Herzegovina of 2009) and the right to education (Elmazova and Others v. North Macedonia of 2022).[10]

When, at the beginning of the 1990's, the ex-communist states began joining the Council of Europe, the treatment of minority rights became particularly relevant. Many among these States had considerable proportions of minority populations and their political fragility created conditions for interethnic tensions. The Council of Europe responded to these challenges with several important developments. In 1992, the Committee of Ministers adopted the European Charter for Regional or Minority Languages (ETS, No. 148). This instrument has an objective to permit the State

[8] "… ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." ECHR, Article 14.

[9] Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms. Nevertheless, the scope of application of the provision is non unlimited, as it concerns only the "right set forth by law" of the State Parties. See: Explanatory Report to the Protocol, No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

[10] For an overview of the jurisprudence of the ECtHR with regard to the minority rights, see: Anagnostou, D. & Psychogiopoulou, E. (eds.) (2009).

Parties' flexibility with regard to the decision which regional and minority languages they protect, as well as the scope of protection of each language – in the fields of education, court proceedings and public services, culture, media, economic and social life. An expert committee was established to exercise regular monitoring of the implementation in each State.[11] In addition to this, in 1993, the Council of Europe established the European Commission against Racism and Intolerance (ECRI) with a mandate to monitor the combat against racism, xenophobia, antisemitism, intolerance, as well as discrimination on several grounds, including the "race", ethnic and national origin, colour, citizenship, religion and language.[12] Finally, in 1995, the Framework Convention on the Protection of National Minorities was adopted (FCNM) (ETS, No. 147).[13]

4. Framework Convention on the Protection of National Minorities

Currently, the FCNM is the only legally binding multilateral instrument regulating the protection of national minorities. It came into force in 1998 and, during a short period, almost all of the Council of Europe Member States joined it.[14] The FCNM defines several essential legal principles of minority protection and, considering the high number of State parties, it obtained a considerable influence on the shaping of minority rights policies in the vast area of Council of Europe Member States.

[11] Committee of Experts of the European Charter for the Regional or Minority Languages. See the official website, available at: https://www.coe.int/en/web/european-charter-regional-or-minority-languages/committee-of-experts (accessed on 30 August 2023).

[12] The European Commission against Racism and Intolerance was established by the Council of Europe First Summit of Heads of State and Government of the member States of the Council of Europe, Vienna Declaration and Plan of Action, Vienna, 9 September 1993, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680536c83 (accessed on 30 August 2023). See also the official website, available at: https://www.coe.int/en/web/european-commission-against-racism-and-intolerance (accessed on 30 August 2023).

[13] Council of Europe, Framework Convention on the Protection of National Minorities, 1 February 1995, ETS, No. 147.

[14] France, Turkey, Monaco and Andorra never signed the FCNM. Belgium, Greece, Iceland and Luxembourg signed, but did not ratify it.

The Committee of Ministers entrusted the drafting of a document outlining the legal standards on minority rights protection to an ad-hoc Committee for the Protection of National Minorities (CAHMIN) (Explanatory Report to the FCNM, point 4).[15] This body was supposed to draw on the existing international guarantees of minority rights, in particular those deriving from the framework of the OSCE, thereby transforming these soft law obligations into legally binding ones. However, the original plan to formulate the draft into a protocol attached to the ECHR failed, due to the scepticism of the Council of Europe's Member States (Explanatory report, points 2–4). Therefore, a separate legal instrument was drafted. It gained a form of a framework convention, relying on programmatic provisions, during whose implementation the State Parties could retain considerable discretion (Explanatory report, point 11).

The FCNM reflects the new attitudes toward the minority protection. Its preamble explicitly declares that: "… the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent". A separate provision encourages the interstate cooperation in the field (Article 18) and the contacts of the minorities with their "kin-States" (Article 17). Indeed, the spirit of international cooperation in what concerns the minority rights is evident in the sole idea of monitoring the protection of minority rights on a multilateral level (see also Articles 1 and 2).

The FCNM guarantees that the persons belonging to minorities have a right to self-identification and that they can exercise their minority rights individually as well as in community with others (Article 3). The Explanatory report underlines in particular that the FCNM does not imply the recognition of the collective rights and that "(t)he emphasis is placed on the protection of persons belonging to national minorities, who may exercise their rights individually and in community with others (see Article 3, paragraph 2)" (Explanatory report, point 13).

Further, the FCNM guarantees the freedom of assembly, association, expression and religion (Articles 7–8) and the free use of

[15] The Explanatory report provides an overview in the drafting and adoption of the FCNM (points 1–10).

minority languages in private and in public (Article 10.1). The right to private educational establishments is also regulated, with the caveat that it does not entail any financial obligations from the State (Article 13). The prohibition of assimilationist policies is underlined in particular (Article 5.2).

Many provisions explicitly lay down the positive obligations of the State Parties to ensure the rights of minorities. It included an obligation to adopt adequate measures in order to promote full and effective equality in all areas of economic, social, political and cultural life (Article 4), as well as to promote conditions for development of the minority culture and "to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage" (Article 5.1). Also, they are obliged to adopt measures intended to promote mutual respect and tolerance, as well as the protection of the persons belonging to minorities from any act of discrimination, hostility or violence resulting from their minority identity (Article 6). An important principle is laid down in Article 15 which obliges the State Parties to create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs.

Several provisions regulate linguistic rights, including adequate measures facilitating the access to media (Article 9), access to education (Article 12.3), fostering knowledge of the minorities' culture, history, language and religion in the field of education (Article 12.1) and the use of minority languages in cases of arrest and accusation (Article 10.3). In areas inhabited by national minorities, the State Parties are obliged to ensure the use of the minority languages in relations to the administrative authorities (Article 10.2), as well as adequate opportunities for being taught their minority language or receiving instruction in it (Article 14).

Evidently, the legal principles developed in the FCNM enlarge the substantive scope of the rights envisaged by the OSCE documents and the UN Declaration. However, being a result of a compromise with several reluctant states, the final wording of the FCNM is on many points reticent or insufficiently clear.[16]

[16] Several provisions which impose upon the State Parties to take positive measures use very laxist formulations. See in particular Article 4.1, Article 12.1 and Article 14.2.

Article 10.2 is particularly illustrative: "In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions…" Another drawback derives from the fact that many State parties enclosed declarations and reservations defining which minorities would receive protection, a practice which actually left many other minorities without protection.[17] In addition, the non-nationals are excluded from its personal scope of application (below).

The monitoring of the implementation of FCNM by the State Parties is entrusted to an Advisory Committee (ACFC) – a body composed of members which are nominated by the State Parties, but act independently from their Governments. Apart from the country-opinions prepared during each five-years monitoring circle, the ACFC has adopted four thematic opinions which systematise its interpretation of some essential principles of minority rights protection – education, participation, language rights and the personal scope of application of the FCNM.[18]

Throughout its practice of interpretation, the ACFC has continuously provided clarification of the principles regulated by the FCNM and it has strongly developed the envisaged substantive obligations by the States. Its approach toward the important question of the personal scope of application of the FCNM is both far-reaching and illustrative. Namely, the definition of the term "national minority" is omitted from the FCNM as, due to a lack of consensus, a "pragmatic approach" was adopted (Explanatory report, point 12). Throughout its practice, the ACFC uses this term extensively, referring to all categories of minorities, nationalities or communities, regardless the official terminology of the State in which they live (Thematic Commentary No. 4, 2016, para. 20).[19] In addition,

[17] A list of State parties, their declarations and reservation with links is available at: https://www.coe.int/en/web/minorities/etats-partie (accessed on 30 August 2023). For an ACFC analysis, see: Thematic commentary, no. 4, Part III, para 19–38.

[18] All documents are available at the official website of the ACFC: https://www.coe.int/en/web/minorities/home (accessed on 7 September 2023).

[19] Elsewhere, the ACFC explains that " (r)ather than asking "who" should be protected, it asks "what" is required to manage diversity most effectively through the

it recalls the wording of the Explanatory Report that the objective criteria "… must only be reviewed *vis-à-vis* the individual's subjective choice" (ACFC Thematic Commentary, No. 4, 2016, para. 10). Therefore, the ACFC consciously restrains from interpreting the objective criteria on what constitutes a minority, as "they do not constitute elements of a definition"[20] and relies on the free choice of self-identification.

The ACFC has also significantly enhanced the status of non-nationals. As it was mentioned above, the FCNM excludes the non-nationals from the personal scope of application. Notable, this approach was confirmed by the Parliamentary Assembly.[21] Despite of this, the ACFC considers that: "…the inclusion of the citizenship requirement may have a restrictive and discriminatory effect…" (ACFC Thematic Commentary, No. 4, para. 29). Therefore, rather than excluding the non-nationals from the evaluations, it recommends the States a "more consistent application of minority rights to non-citizens" (ACFC Thematic Commentary, no. 4, para. 30).[22]

This approach builds upon the premise that the FCNM is a living instrument – therefore, it needs to be interpreted in a flexible manner: "… the Framework Convention was conceived as a pragmatic instrument, to be implemented in very diverse social, cultural and economic contexts and to adapt to evolving situations…" (Spain, 4th, 2014, para. 10). The ACFC's interpretations of the FCNM consistently reflect the political, social, economic and demographic changes which have taken place in the last 25 years. Some examples are particularly interesting. Namely, the technologic changes, such as digitalisation have considerably changed the circumstances in which the hate speech occurs, notably in what concerns social media on the internet. Article 6 regulating the integration policies

protection of minority rights. It is for this reason that the Convention does not contain a definition of the term "person belonging to a national minority." Thematic commentary, no. 4, Executive summery, p. 3.

[20] This attitude was expressed on several occasions. See, for example the Opinion on Hungary, 5th, 2020, para. 37–38.

[21] Council of Europe, Parliamentary Assembly, Recommendation 1201 (1993), reaffirmed by the Recommendation 1255 (1995) and Recommendation 1492 (2001).

[22] Notably, the Venice Commission shares this broad view. See: Report on non-citizens and minority rights, adopted by the Venice Commission at its 69th plenary session (Venice, 15–16 December 2006), para. 84.

does not envisage the challenges arising from the digital society and the social platforms. The wording of Article 9 concerning the traditional media is equally silent on new forms of technology. The ACFC nevertheless regularly provides extended analysis of the challenges related to the hate speech in these contexts.[23] Another example concerns the more general issue of integration policies. As the FCNM is dedicated toward the protection of the minority identities through an array of special rights, it is becoming increasingly obvious that in many societies this approach needs to be complemented with significant integrationist policies, in order to avoid the development of divided societies.[24] The ACFC is regularly getting to grips with these challenges and develops new approaches to enhance a culture of dialogue.[25]

Particularly illustrative for the work of the ACFC is the approach toward the Roma minority. Namely, the FCNM was drafted with a view to facilitate the minority challenges with a potential to disrupt the interstate relations or internal stability of states, and it aims primarily to protect the minority identities. This approach does not correspond fully to the needs of Roma who traditionally live marginalized throughout the Council of Europe area and whose primary area of concern are the integration policies – notably, the effective participation in the social-economic life. Across several cycles of monitoring, in the context of its interpretations of Article 15, the ACFC has strongly built on the requirement for the participation of minorities in the social and economic life. It systematically evaluates a broad array of questions related to Roma housing, access to healthcare, including for Romani women, and employment opportunities.[26]

[23] Commentaries of these challenges are regularly included in the analysis under Article 6. See, for example: United Kingdom, 4th, 2016, para. 94; Russian Federation, 4th, 2018, para. 84.

[24] The OSCE High Commissioner on National Minorities has also dedicated efforts with regards to this challenge. OSCE HCNM (2012), The Ljubljana Guidelines on Integration of Diverse Societies.

[25] See, for example, the evaluations of the situation in the following opinions: Kosovo*, 2nd, 2009, para. 127; Bosnia and Herzegovina, 4th, 2017, para. 105; Netherlands, 3rd, 2019, para. 57.

[26] The commentaries are numerous. For example, on the challenges related to an inadequate housing, see: Thematic Commentary, No. 2, 2008, para. 57. The access

5. The Impact of the Framework Convention

Probably the most interesting feature of the FCNM concern the ways in which it promotes the concept of minority rights protection. As it was mentioned above, although the FCNM has a legally binding character, judicial scrutiny is not envisaged. Although there is much to say in favour of the original idea to attach a corpus of minorities' special rights as a protocol to ECHR and make the rights justiciable in front of the ECtHR, it seems that it is exactly the fact that the obligations are not justiciable which ensured the wide acceptance of this instrument. Therefore, for the time being, the weight of the obligations deriving from the FCNM stands between the justiciable nature of the ECHR and the soft law instruments of the OSCE and the UN Declaration.[27]

There is, however, yet another interesting aspect to the FCNM. Throughout the last five circles of monitoring, the FCNM State parties have developed substantive legal and institutional frameworks for minority protection, modelled after the FCNM principles, although the full implementation remained a challenge. The entry into force of Protocol 12 in 2005 introduced a prohibition of violations of the anti-discrimination framework by the public authorities in the States parties. Therefore, in a circular manner, the violations of many principles and rights deriving from the FCNM are justiciable in front of the ECtHR.

However, the success of the FCNM in the promotion of the concept of minority rights protection is also due to other factors. It concerns the work of the ACFC itself but, also, the synergistic efforts with several other international organizations.

of Romani women to the labour market is addressed in: Ireland, 4th, 2018, para. 82. The right of Roma to participate effectively in all decision-making about the social-economic sphere is addressed in: Spain, 2nd, 2007, para. 148–149. The access of Roma to the healthcare is addressed in: Hungary, 5th, 2020, para. 191. The challenges related to the access to public employment are addressed in: North Macedonia, 3rd, 2011, para. 171.

[27] There is a vast scholarship on the effectiveness of implementation of international law. See, for example: Arnold Pronto, N. (2021), Understanding the Hard/Soft Distinction in International Law, 48 Vanderbilt Law Review 941, available at: https://scholarship.law.vanderbilt.edu/vjtl/vol48/iss4/2 (accessed on 25 August 2023).

The dynamics of the preparation of ACFC reports deserves a particular mention. Namely, during each monitoring cycle, the State Parties' governments are obliged to submit a report which serves as a basis for the AC's evaluations. In order to prepare its opinion, apart from the state reports, the AC collects a large number of additional information deriving from diverse sources. Notably, it relies on the input of the minorities themselves, the equality bodies, reports by other international organizations, civil society and the academia. The ACFC opinions end with a set of recommendations for the State Party. The adoption of the opinion in the ACFC is followed by a confidential dialogue and the State's comments, after which the opinion is submitted to the Committee of Ministers. After this body adopts a resolution, a follow up meeting is organized in the State Party itself in order to achieve greater dissemination of the results for the general public, in particular the minorities themselves.[28]

It is this circle where the value of the FCNM lies in particular. The process of collection of information aims to encompass the voice of the minorities, including the least numerous and visible. Therefore, the notoriously cumbersome relationship between the Governments and the minorities or, even more generally, the majorities and minorities is replaced by process of collecting information, coherent analysis of the challenges and comprehensive recommendations. On many occasions, the ACFC refrains from recommending a certain course of action and advises establishing a procedure or dialogue between the stakeholders.

Therefore, the ACFC ensures the implementation of the FCNM in several ways: firstly, through its credible efforts to provide objective, expert analysis of various minority rights challenges and examine the possible solutions; secondly, through its efforts to act as a facilitator of dialogue and, lastly, through its efforts to enhance the visibility of the FCNM among the minorities and the general public. In this manner, particularly in the countries without well-developed traditions of minority rights protection, its work amounts to that of an educator and vehicle of spreading good

[28] Rules of Procedure of the Advisory Committee on the Framework Convention for the Protection of National Minorities, adopted by the Advisory Committee on 29 October 1998, amended on 21 February 2020, available at: https://www.coe.int/en/web/minorities/rules-of-procedure (accessed 7 September 2023).

practices. This complex approach considerably compensates for this body's lack of mandate to deal with individual complaints and, arguably, for the lack of involvement of the ECtHR in the implementation of the FCNM.

In addition, the impact of the FCNM is largely augmented through the agency of other international organizations whose mandates concern parts of the Council of Europe area. Notably, during the last three decades, the European Commission has been performing a detailed evaluation of the progress of the ex-communist states involved in the EU enlargement policy, in the field of minority rights protection. As mentioned above, it filled the gap caused by the lack of EU standards in its internal legal system through borrowing from the frameworks of the Council of Europe and the OSCE. The EU relationship with the acceding states is complex. The fulfilment of the EU accession criteria is rewarded by greater availability of EU technical and financial support, as well as to the decisions on the formal progress of the acceding states toward membership.[29] As many as thirteen new members of the EU have been encompassed by this process, with other ten currently being at a certain point of the accession procedure.[30] Therefore, the very strong influence and power exerted by the EU has strongly influenced the ensuring of the implementation of the FCNM in a vast number of states within the Council of Europe area.

The relationship of the ACFC with other Council of Europe monitoring bodies and international organizations also deserves a mention. For example, there is a partial overlapping with the competences of the ECRI, whose reports are equally accessible to the public. This overlapping is particularly evident with regards to the monitoring of the discrimination (Article 4 FCNM), as well as the level of tolerance, including instances of hate speech, hate crime and police conduct (Article 6). The same can be said about several FCNM provisions regulating language rights which are well-covered

[29] For access to the Enlargement Strategies and country progress reports, see: https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/strategy-and-reports_en (accessed on 8 September 2023).

[30] For a full list of potential candidates, candidates and their progress, see the official website of the European Commission: https://commission.europa.eu/strategy-and-policy/policies/eu-enlargement_en (accessed on 7 September 2023).

by the provisions of the European Language Charter. Outside the Council of Europe area, some overlapping is evident with the mandate of the ICCPR. In addition, monitoring and prevention of the interethnic tensions are among the key priorities of the OSCE. In essence, the HCNM and the ACFC have a similar mandate, with the difference that the ACFC's opinions are also intended for the public, while the HCNM is more concerned with the security dimension and communicates confidentially with the governments.

The existence of the multiple frameworks has many disadvantages. Notably, the fragmentation of international law prevents coherency of the system of rights and obligations. The situation is evident even among the Council of Europe members and the FCNM. While the legal obligations are equal for all State Parties, not all states implement them sufficiently or with regards to all minorities. In addition, States like France, Turkey or Greece are not State Parties of the FCNM at all. In countries where the European Commission or the OSCE are involved, their political pressure is very influential in ensuring implementation. On the contrary, their absence means that the State Parties do not implement the FCNM principles.

6. Conclusion

Considering the fact that the existence of minorities challenges the essential premise of the modern nation state, the fact that the minority rights protection has been regulated on international level is certainly a success. That is even more true in Europe, considering the history of the continent. The FCNM catalogues many rights which have already been regulated by various international law sources, but it enlarges their scope and provides them a legally binding character. Throughout its practice, the ACFC has enlarged this scope even more, both in the substantive and personal sense. In addition to it, the ACFC has an aim to cooperate with the minorities and facilitate the dialogue between them and the governments with regards to the implementation of their rights. This system has been strongly supported by other international organisations, notably the OSCE and the EU, a synergy of which created a powerful leverage to influence the government policies in

many states. This approach compensates for the fact that the rights protected by the FCNM are not justiciable. The progress of the minority rights protection remains uneven in various states (some Council of Europe Member States have not even signed the FCNM). Nevertheless, the ACFC relies on a range of legal and diplomatic tools to promote the minority rights' respect – an approach which is both innovative and relevant for the stabilisation of the continent.

BIBLIOGRAPHY

Ahmed, T. (2011). *The Impact of EU Law on Minority Rights*. Oxford: Hart Publishing.

Anagnostou, D. & Psychogiopoulou, E. (eds.) (2010). *The European Court of Human Rights and the Rights of Marginalised Individuals and Minorities in National Context*. Leiden: Brill.

Baldwin, C., Chapman, Ch. & Gray, Z. (2007). *Minority Rights: The Key to Conflict Prevention*. UK: Minority Rights Group International.

Bloed, A. (2013). The High Commissioner on National Minorities: Origins and Background. *Journal on Ethnopolitics and Minority Issues in Europe*, 12(3), pp. 15–24.

Claude, I. (1955). *National Minorities: An International Problem*. Cambridge: Harvard University Press.

Council of Europe (2002). The protection of national minorities by their kin-state. *Science and Technique of Democracy*, No. 32.

Grizo, M. (2022). Evolution of the SAP Conditionality in the Field of Minority Rights – Case of the Republic of North Macedonia. *Iustinianus Primus Law Review*, June, pp. 1–21.

Kochenov, D. (2008). A Summary of Contradictions: An Outline of the EU's Main Internal and External Approaches to Ethnic Minority Protection. *Boston College International and Comparative Law Review*, vol. 31(1), pp. 1–51.

Macartney, C. A. (1934). *National States and National Minorities*. New York: OUP.

Pronto, A. N. (2021). Understanding the Hard/Soft Distinction in International Law. *Vanderbilt Law Review*, 48/941, (available at: https://scholarship.law.vanderbilt.edu/vjtl/vol48/iss4/2).

Rex, J. (1996). *Ethnic Minorities in the Modern Nation State*. Working Papers in the Theory of Multiculturalism and Political Integration. London: Palgrave Macmillan.

Smith, L. V. (2018). *Sovereignty at the Paris Peace Conference of 1919*. Oxford: OUP.

Sasse, G. (2005). EU Conditionality and Minority Rights: Translating the Copenhagen Criterion into Policy. *EUI Working papers*, RSCAS, no. 16, pp. 1–21.

Shaw, M. N. (2017). *International Law (eighth edition)*. Cambridge: CUP.

Shaw, M. (2011). The Definition of Minorities in International Law. In: Dinstein, Y. & Domb, F. (eds.) *The Progression of International Law. Four Decades of the Israel Yearbook on Human Rights – An Anniversary Volume* (pp. 45–72). Leiden: Brill.

Table of *Travaux Préparatoires* to the FCNM. *National Minority Rights in Europe* (2005). Oxford, online edition available at: https://doi.org/10.1093/acprof:oso/9780199274437.002.0010

INTERNATIONAL LAW SOURCES

I.

UN International Covenant on Civil and Political Rights, General Assembly Resolution, 2200A/XXI (16 December 1966).

UN General Assembly Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, General Assembly Resolution 47/135 (18 December 1992).

UN Convention on the Prevention and Punishment of Genocide, General Assembly Resolution A/RES/3/260 (9 December 1948).

UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, General Assembly Resolution 47/135 (18 December 1992).

UN Declaration on the Rights of Indigenous Peoples, General Assembly Resolution 61/295 (13 September 2007).

UN Human Rights Committee CCPR General Comment, No. 23: Article 27 (Rights of Minorities), Fiftieth Session of the Human Rights Committee, CCPR/C/21/Rev.1/Add. 5 (8 April 1994).

UN Human Rights Committee, Ballantyne et al. v. Canada (31 March 1993).

Commission on Human Rights resolutions: 2005/79 (21 April 2005); 7/6 (27 March 2008); 16/6 (24 March 2011); 25/5 (28 March 2014); 34/6 (23 March 2017) and 43/8 (19 June 2020).

Capotorti F. (1979). Study on the rights of persons belonging to ethnic, religious and linguistic minorities / by Francesco Capotorti, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN. 4/Sub. 2/384/Rev. 1.

II.

Helsinki Document 1992: the Challenges of Change. See: Helsinki decisions, II: CSCE High Commissioner on National Minorities; Third CSCE Summit of Heads of State or Government (9–10 July 1992).

OSCE HCNM (2012). The Ljubljana Guidelines on Integration of Diverse Societies.

III.

Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms adopted on ETS, No. 005 (4 November 1950).

Council of Europe, European Charter for Regional or Minority Languages, ETS, No. 148 (5 November 1992).

Council of Europe, Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, ETS, No. 177 (4 November 2000).

Council of Europe First Summit of Heads of State and Government of the member States of the Council of Europe, Vienna Declaration and Plan of Action, Vienna (9 October 1993).

Council of Europe Assembly Recommendation 1255, H/Inf (95) 3 (1955).

Council of Europe, Parliamentary Assembly, Recommendation 1201 (1993).

Council of Europe, Parliamentary Assembly, Recommendation 1255 (1995).

Council of Europe, Parliamentary Assembly, Recommendation 1492 (2001).

Venice Commission, Report on non-citizens and minority rights, 69th plenary session (Venice, 15–16 December 2006).

United Macedonian Organisation Ilinden and Others v. Bulgaria, 59491/00, ECtHR, judgement (19 January 2006).

Sejdić and Finci v. Bosnia and Herzegovina, 27996/06 and 34836/06, ECtHR (22 December 2009).

Elmazova and Others v. North Macedonia, 11811/20 and 13550/20, ECtHR (Second Section) judgement (13 December 2022).

IV.

Rules of Procedure of the Advisory Committee on the Framework Convention for the Protection of National Minorities, adopted by the Advisory Committee on 29 October 1998, amended on 21 February 2020. Available at: https://www.coe.int/en/web/minorities/rules-of-procedure

ACFC. Commentary on the Effective Participation of Persons belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs, ACFC/31DOC(2008)001, Adopted on 27 February 2008.

ACFC. The Framework Convention: a key tool to managing diversity through minority rights. Thematic Commentary, No. 4. The Scope of Application of the Framework Convention for the protection of national minorities, ACFC/56DOC(2016)001, Adopted on 25 May 2016.

ACFC: Second Opinion on Spain, ACFC/OP/II(2007)001, Adopted on 22 February 2007.

ACFC: Second Opinion on Kosovo*, ACFC/OP/II(2009)004, Adopted on 5 November 2009.

ACFC: Third Opinion on "the former Yugoslav Republic of Macedonia", Public ACFC/OP/III(2011)001, Adopted on 30 March 2011.

ACFC: Fourth Opinion on the United Kingdom, ACFC/OP/IV(2016)005, Adopted on 25 May 2016.

ACFC: Forth Opinion on Bosnia and Herzegovina, ACFC/OP/IV(2017)007, Adopted on 9 November 2017.

ACFC: Fourth Opinion on the Russian Federation, ACFC/OP/IV(2018)001, Adopted on 20 February 2018.

ACFC: Fourth Opinion on Ireland, ACFC/OP/IV(2018)005, Adopted on 10 October 2018.

ACFC: Third Opinion on Netherlands, ACFC/OP/III(2019)003, Adopted on 6 March 2019.

ACFC: Fifth Opinion on Hungary, ACFC/OP/V(2020)002Final, Adopted on 26 May 2020.

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Implementation of the Framework Convention Standards in Protecting National Minorities in Serbia: Lessons (Not) Learned

Abstract

The Framework Convention for the Protection of National Minorities is a multilateral document of the Council of Europe dedicated to issues concerning the status and protection of individuals belonging to national minorities. The implementation of the Framework Convention in Serbia has an interesting and unique history. At the beginning of the millennium, it was expected that the implementation of FCNM and the adoption of the Law on the Protection of the Rights and Freedoms of National Minorities would resolve issues related to the status and realization of the individual and collective rights of minority communities, as well as those concerning interethnic relations. Two decades of implementing FCNM in Serbia indicate the application of international standards in national legislation. However, many problems remain unresolved: there is a significant social distance between ethnic communities; issues related to the recognition of multiple ethnic affiliations hinder the full expression of citizens' ethnocultural identity; ethnic desegregated data is missing for planning public policies of multiculturalism and inclusion; concepts of minority autonomy and self-government are undermined by a centralized model and the predominance of party politics within the bodies of cultural autonomy institutions. Lastly, numerical censuses are a requirement for the institutional recognition of minority identities. All of the above points to a tension between, more or less, "good" laws and "poor" policies of multiculturalism.
Keywords: Framework Convention, Serbia, multiculturalism, ethnic segregation

1. Introduction

Application of the Framework Convention for the Protection of National Minorities in the Republic of Serbia has been a continuation of the practice established in the Federal Republic of

Yugoslavia (1992–2003) and State Union of Serbia and Montenegro (2003–2006). The Law on Ratification of the Framework Convention[1] was adopted on 3 December 1998 by the Federal Assembly of the FRY. However, the Federal Republic of Yugoslavia joined the Framework Convention only upon the Council of Europe's official invitation, on 11 May 2011, while the Convention came into force on 1 September of that year.

The history of the protection of national minorities' rights is inter alia marked with the fact that more than two years passed between the Framework Convention's ratification and its coming into effect. The reason for this was that the ratification occurred in the situation where Yugoslavia, and especially Serbia as its member, was not recognised as a state where the rule of law, protection of human rights and fundamental freedoms were secured. Majority of the EU members and members of the Council of Europe perceived what was then a Yugoslav state as a residue of the authoritarian communist paradigm, where freedoms and rights of the citizens were instrumentalised in favour of solving state and national issues, i.e. a country that had failed in building a regulated society and establishing responsible institutions (Bašić, 2002: 8). On the other hand, Yugoslav authorities supported by both member states, aimed to demonstrate, through the ratification of the Framework Convention, that "In spite of the state's international isolation, protection of the rights of national minorities in Yugoslavia exceeded European standards", and thus neutralise dissatisfaction of citizens belonging to national minorities with their position and the realization of "minority" rights.

The problem was solved in 2000, i.e. with the fall of the authoritarian regime, and establishment of political foundation for the development of democracy in what was then the FR Yugoslavia. To establish a democratic state assumed not only the change of power after the Yugoslav Presidential Elections of 24 September 2000 and confirmation of the election's results after the mass protests on 5 October of the same year, but also the process of democratic changes which, inter alia, involved creation of a legislative and social foundation for the recognition of national minorities'

[1] *Official Gazette FRY – International Treaties*, no. 6/98.

identities and rights. The discussion concerning this issue was ongoing within the coalition of political parties, which had won the election, but also within the civil society and academic community that had been advocating for the protection of national minorities' position and rights since the 1990s. As early as November 2000, Belgrade's Ethnicity Research Centre[2] in cooperation with the Institute of Ethnic and Regional Studies from Maribor, Slovenia, organised a roundtable discussion participated in by representatives of national minorities from Serbia and Montenegro, representatives of recently established democratic government, as well as of the organisations that advocated for the rights of national minorities. The roundtable involved adoption of the Declaration in which, inter alia, the government was recommended, and indeed expected, to become a member of "the instruments of the Council of Europe, such as the Framework Convention for the Protection of National Minorities (1995), and European Charter for Regional or Minority Languages (1992)". The civil society activists' belief that adoption of "European" standards of national minorities' protection would contribute to the establishment of legal security and social atmosphere where dialogues would be conducted, on different levels and among different people and groups, on overcoming ethnic stereotypes and renewing trust in the severely divided Yugoslav multicultural community, was also confirmed with the publication of a study, upon the initiative by the Centre for Anti-War Action, dedicated to the development of the Council of Europe's standards concerning the protection of national minorities in the Federal Republic of Yugoslavia.[3]

However, the strongest impact on the acceptance of these standards, but also on the development of the policies to protect the rights and recognise the identities of national minorities, was that of the Board for Studying of National Minorities and Human Rights of the Serbian Academy of Sciences and Arts (SANU), which gathered a significant number of experts who advocated for regulation of the Yugoslav (Serbian and Montenegrin) social and

[2] Centar za istraživanje etniciteta, http://ercbgd.org.rs/

[3] Bašić, Goran (2002). *Zaštita prava nacionalnih manjina u SRJ prema standardima Okvirne konvencije za zaštitu nacionalnih manjina Saveta Evrope* (*Protection of the Rights of National Minorities in the FRY according to the Standards of the CE Framework Convention on the Protection of National Minorities*), Beograd: Centar za antiratnu akciju.

political space in line with the principles of multiculturalism, tolerance, protection of ethno-cultural identities and recognition of cultural autonomies and self-governments to the national minorities. In late 1995, the Board organised a scientific conference which involved discussions concerning the issues of minority self-government and personal autonomy (Bošnjak, 1996: 447–459), current minority self-governments based on three-degree autonomy (Šandor, 1996: 437–447), but also many other aspects relevant for the political and social position of national minorities, their participation in social and political life, protection of their ethnic and linguistic identity, social equality, regional and international cooperation and many other issues still relevant to this very day for the protection of national minorities' identities.[4]

To emphasise the attempts to regulate the position of national minorities, we also remind of an attempt by the Yugoslav Government to propose for adoption the Law on the Protection of the Rights of National Minorities. The work on preparing this Law started in 1993, while the Work Group for the development of the Law comprised different experts and representatives of state administration responsible for human and minority rights. The ideas for development of the text for the Draft Law were presented in the *Theses for the Constitutional Law of the Republic of Serbia on Freedoms and Rights of Minority Communities* prepared by the experts of the Ethnic Relations Forum which had been founded and led by Dušan Janjić, principal research fellow of the Institute of Social Sciences in Belgrade. The ideas that were considered then, which were not shaped into an official draft due to the outbreak of the war, concerned still important issues of defining the term of national minority, recognition and self-identification of identity, cultural autonomy and self-government of national minorities, effective participation in political life and many others. At the time, the Council of Europe was developing the infrastructure and logistics for the adoption of the Framework Convention, and only three years later (1996), the Organization for Security and Co-operation in Europe

[4] See: Macura, Miloš & Stanovčić, Vojislav (1995), *Položaj nacionalnih manjina u SR Jugoslaviji* (*Position of National Minorities in FR Yugoslavia*), Beograd: Srpska akademija nauka i umetnosti.

would issue the Recommendations on the Education Rights of National Minorities (The Hague), followed by the Recommendations Regarding the Linguistic Rights of National Minorities (Oslo, 1998) and on participation in public life (Lund, 1999). At the same time, the Republic of Hungary adopted the Law LXXVII on the rights of national and ethnic minorities, thus establishing the right of minority self-government and cultural autonomy, vehemently advocated for in Serbia by activists of the minority Hungarian political parties, especially, of the Democratic Union of Vojvodina Hungarians, which was quite expansive at the time (Varadi, 1996: 77–85).

However, it needs to be stressed that most of the rights considered at the time by international organisations and the states of Central and Eastern Europe which, one by one, were adopting laws to protect national minorities in line with the Copenhagen criteria (Lithuania, 1989; Latvia, 1991; Estonia and Ukraine, 1992; Hungary, 1993; Slovenia, 1994), had indeed been contained in the constitutional system of the Socialist Federal Republic of Yugoslavia, which recognised the identities and rights of national minorities and facilitated their participation in political life (Fira, 1995: 49–61).

2. Implementation of the Framework Convention in the Republic of Serbia

The first report on implementing the Framework Convention for the Protection of National Minorities in Serbia, was submitted by the Government of the Federal Republic of Yugoslavia in 2002, and this was followed by four reports more, in 2008, 2012, 2017 and 2022, submitted by the Government of the Republic of Serbia.

After the First Report had been submitted and members of the Advisory Committee paid their visit, a report was prepared (29 April 2004) based on which the Committee of Ministers adopted the Resolution (17 November 2004) where the indicated a progress made by the Federal Republic of Yugoslavia and its members Serbia and Montenegro had made concerning implementation of the Framework Convention, yet some concerns were expressed regarding further development of the policies to recognise national minority identities, condition of interethnic relations, implementation of the law, discrimination and social exclusion of Roma.

It should be highlighted that the first monitoring cycle was realised in specific social and political conditions. Namely, Serbia had just exited the decade of hard and frustrating changes. The conflicts led on the Yugoslav territory had striking ethnic and religious components and they caused crimes motivated by national and religious hatred, as well as waves of forced migrations. Finally, the ethnic tension in Serbian southern province of Kosovo, turned into an open conflict between Serbs and Albanians, and led to the NATO intervention in the FRY and signing of the Resolution 1244 which concluded this conflict. However, numerous unsolved issues persisted and they still burden the relations in the region, being the greatest obstacle for integration of Serbia into the European Union. Serbia became a member of the Council of Europe in 2003, shortly after the assassination of Serbian Prime Minister Zoran Đinđić. The Law on the Protection of Rights and Freedoms of National Minorities was adopted in February 2002,[5] while the persistent pressure concerning disintegration of FR Yugoslavia burdened the relations between the member states and made any agreement difficult when it comes to the political future of the country. For example, the Federal Ministry of National and Ethnic Communities and Vojvodina Secretariat for Administration, Regulation and National Minorities were de-facto responsible for the issues concerning the recognition, status and rights of national minorities in Serbia, while Montenegro had already established the Ministry for National and Ethnic Groups and Council for the Protection of the Rights of National Minorities' Members. Cooperation between these bodies did exist, yet the specific characteristics of multi-ethnicity in both these states required specific solutions and multicultural policies. Immediately before the Referendum in which it acquired its independence (21 May 2006), Montenegro adopted the Law on Minority Rights and Freedoms (12 May 2006). The Republic of Serbia has never adopted a national minorities' act that corresponded to the nature of Serbian multi-ethnicity, but instead made amendments to the aforementioned federal law in 2018, integrating it into the legal system of the Republic of Serbia.

[5] *Official Gazette FRY*, no. 11/2002, *Official Gazette USM*, no. 1/2003 – Constitutional Charter and *Official Gazette RS*, no. 72/2009 – other laws, 97/2013 – decision CC and 47/2018.

However, the Law on the Protection of Rights and Freedoms of National Minorities had a particularly significant role in the constitutional and political development of Serbia. It established within the national legal system the categories of minority self-government and autonomy of national minorities, introduced the principle of affirmative action into the social life, and more substantially founded antidiscrimination policies. "Cultural rights" contained within the autonomy of national minorities as a part of the protection of their ethno-cultural identities, were indeed placed at the core of the policy of multiculturalism, while channels of multilateral and bilateral cooperation in relation to the protection of the rights of minorities were established. The Law also influenced the adoption of the Charter of Human and Minority Rights and Citizen Freedoms, which was a part of the constitutional system of the State Union of Serbia and Montenegro,[6] provisions of which were transferred to the 2006 Constitution of the Republic of Serbia, which contains the part which constitutionalises the spirit and values of the Law, as well as the institutes established therein (minority self-government, cultural autonomy, affirmative measures, etc.).[7]

The Law on the Protection of Rights and Freedoms of National Minorities follows the structure and logic of the Framework Convention, yet some of its solutions have had a lasting impact on the national minority policies in Serbia in a manner that is unrelated to the spirit of the Convention and essentially does not contribute to democratic processes and stability. The main problem with the contents and spirit of the law is that it is not harmonised with the complex nature of the Serbian multi-ethnic society, composed of many autochthonous and alochthonous ethnic communities and groups where the protection of their identities requires specific legal protection which assumes different flexible solutions within the policy of multiculturalism. Such a policy has not been clearly defined, or strategically oriented in Serbia. The solutions that should be conducive to an integrative, citizen-based policy of multiculturalism are rare, as legislation, political culture and system of social

[6] *Official Gazette USM*, no. 6 of 28 February 2003.
[7] *Official Gazette RS*, no. 98/2006 and 115/2021. Constitution of the Republic of Serbia, Part II, Item 3, Arts. 75–81.

values stimulate exaggerated tolerance of difference, which contributes to social segregation of ethnic communities. A research project realised by the Institute of Social Sciences in 2020 indicates mutual distance between ethnic communities and exclusivist perception of one's own ethnic space.

Figure 1. SERBS – Closeness to others and Personal and Perceived Attitudes

	Albanians PA	Albanians PCA	Bosniaks PA	Bosniaks PC	Croats PA	Croats PCA	Hungarians PA	Hungarians PCA	Roma PA	Roma PCA	Romanians PA	Romanians PCA	Slovaks PA	Slovaks PCA
Cohabitation	63.9	25	80.2	50.1	79.2	42.6	85.7	61.2	79.5	44.4	85.6	60	88.8	66.1
Neghborhood	62.5	21.7	80	48.6	79.5	41.8	86.2	60.7	65.5	25.1	85.5	59.2	88.8	65.3
Acquaintances	67.6	24.1	83.2	51.1	82.4	44.7	88.6	63.2	75.6	31.2	87.6	59.9	90.8	65.8
Co-workers	67.2	24.5	83.1	51.7	81.9	46	87.4	63.1	76.1	30.5	86.8	60.5	90.3	65.8
Friends	62.4	19.1	80.1	43.1	80.2	37.2	86.7	56.9	70.1	24.4	85.6	55.1	88.9	62.1
Marriage	31.1	6.8	46.5	19.7	54.9	21.7	55.3	36	28.5	7	55.8	22.6	61.1	41.2

PA: Personal attitudes
PCA: Perceived community attitudes
Source: Institute of Social Sciences, 2020

The data indicate a high percentage of social distance between the majority population and individuals of the Albanian, Roma, Bosniak and Croatian nationality, and somewhat stronger, yet not integrative ties to members of the Hungarian, Romanian and Slovak nationality. Mistrust and social distance are visible, based on the opinions by the respondents belonging to national minorities toward Serbs, as well as between different national minorities.[8]

[8] Results of the research available at: https://idn.org.rs/wp-content/uploads/2020/10/Social-Distance-of-Ethnic-Communities.pdf

3. Lessons not learned

A reasonable question which the citizens, but also experts that monitor the processes of ethnic convergence in Serbia, should ask is: why, in spite of the developed constitutional and legal system of national minorities' protection,[9] which is more or less harmonised with the standards of national minorities' protection contained in the Framework Convention, the social distance is still so pronounced? As ethnically segregated data are quite rare in administrative, statistical and scientific databases (Bašić & Lutovac, 2020: 31–40), and the Advisory Committee warned of this fact in its Fourth Opinion on Serbia,[10] this question can hardly be answered. However, it can be assumed with much certainty that the existing condition has been caused by the aforementioned lack of harmonisation between the policy of multiculturalism and the nature of Serbian society's multi-ethnicity.

I will try to indicate the key problems that confirm this assumption. Some of the justifications that will ensue have been considered by the Advisory Committee in their opinions on Serbia, some of them have been addressed by the Committee of Ministers in their resolutions, where they suggested concrete actions and

[9] In addition to the aforementioned Law, national minorities' rights have been founded in the Constitution of the Republic of Serbia, Law on National Councils of National Minorities (*Official Gazette RS*, no. 72/2009, 20/2014 – decision CC, 55/2014 & 47/2018), Law on Official Use of Languages and Scripts (*Official Gazette RS*, no. 45/91, 53/93, 67/93, 48/94, 101/2005 – other law, 30/2010, 47/2018 & 48/2018 – correction), Law on Fundaments of Education System (*Official Gazette RS*, no. 88/2017, 27/2018 – other law, 10/2019, 27/2018 – other law, 6/2020 & 129/2021), Law on Local Self-Government (*Official Gazette RS*, no. 129/2007, 83/2014 – other law, 101/2016 – other law, 47/2018 & 111/2021 – other law) and solutions contained in a number of different acts. Additionally, protection and realisation of minority rights are taken care of by the Ministry of Human and Minority Rights and Social Dialogue (https://www.minljmpdd.gov.rs/), Vojvodina Secretariat for Education, Regulation and National Minorities – National Communities (http://www.puma.vojvodina.gov.rs/), while other state, provincial and local administrative bodies have established units that take care of different aspects of the position of national minorities. Finally, the state system also includes monitoring bodies, Protector of Citizens – Ombudsman (https://www.ombudsman.rs/) and Commissioner for the Protection of Equality (https://ravnopravnost.gov.rs/), which should serve as support to public administration, but primarily to citizens, when it comes to realisation and protection of human and minority rights.

[10] Fourth Opinion on Serbia adopted on 26 June 2019. https://rm.coe.int/4th-op-serbia-en/16809943b6

activities, yet according to the findings quoted in the ISS research, the condition has remained unchanged.

3.1. *Citizenship and the Number of Persons Belonging to National Minorities Predominantly Influence Realisation of Their Rights*

A part of the problem arises from determination (definition) of the term of national minority. Namely, article 2, paragraph 1 of the Law on the Protection of Rights and Freedoms of National Minorities stipulates that national minority is "any group of citizens of the Republic of Serbia that is *representative in terms of its size*, although it represents a minority in the territory of the Republic of Serbia, belongs to some of the population groups that *have lasting and firm ties with the territory of the Republic of Serbia and the characteristics of which, such as those relating to language, culture, national or ethnic affiliation, descent or religion,* make them different from the majority population, and the members of which are characterised by concern for the collective preservation of their common identity, including culture, traditions, language or religion".

A part of professional public believes that this legal determination of the term of national minority has an open, "liberal" character, as it allows free national self-determination to citizens belonging to different ethnic groups, and that it is fully harmonised with the spirit and the text of the Framework Convention. The experts who prepared the Law had certainly made efforts to make their solutions harmonised with the spirit of the Framework Convention, yet the definition above largely deviates from this good intention, which has also been indicated by the Advisory Committee, as is the case of the national minorities' policies founded upon the quoted legal definition.

In the First[11] and Second[12] Opinion on Serbia, Advisory Committee indicates that determining citizenship as a condition for

[11] Opinion on Serbia and Montenegro adopted on 27 November 2003. https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008bd0e

[12] Second Opinion on Serbia adopted on 19 March 2009. https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008c2ec

institutional recognition of the status of national minority may also "have a negative impact on those persons whose citizenship status, following the break-up of Yugoslavia and the conflict in Kosovo, has not been clarified". The Advisory Committee primarily had in mind the problems of the Roma displaced from Kosovo, who were facing problems as they tried to obtain certificates of citizenship, yet the 2006 Report of the Venice Commission on Non-citizens and Minority Rights indicates that "the universal character of human rights, of which minority rights form part and parcel, does not exclude the legitimate existence of certain conditions placed on the access to specific minority rights. Citizenship should therefore not be regarded as an element of the definition of the term "minority", but it is more appropriate for the States to regard it as a condition of access to certain minority rights".[13] In the Fourth Opinion on Serbia,[14] the Advisory Committee once again reiterated the call to Serbian authorities to consider abolishment of the potentially limiting criterion of citizenship contained in the Law on the Protection of the Rights and Freedoms of National Minorities. In the Fifth Report by the Republic of Serbia concerning implementation of the Framework Convention[15] Serbian authorities reiterate that there are no justifiable reasons for the initiative contained in the Advisory Committee's recommendation, and emphasise that "in the legal system of the Republic of Serbia, the status of a national minority cannot be recognised for groups of persons who possess features such as language, culture, national or ethnic affiliation, origin or religion, by which they differ from the majority of the population, but who do not have citizenship and are not in a long-term and strong relationship with the territory of the Republic of Serbia" (refugees, migrants and persons living in Serbia based on economic activities).

In relation to the scope of application of the Framework Convention, one should bear in mind the problems that in time

[13] Report of the Venice Commission on Non-citizens and Minority Rights, CDL-AD (2007) 001, paragraph 144, January 2007.

[14] Fourth Opinion on Serbia adopted on 26 June 2019. https://rm.coe.int/4th-op-serbia-en/16809943b6

[15] Fifth Report submitted by Serbia Pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities – received on 1 September 2022. https://rm.coe.int/5th-sr-serbia-en/1680a87637

occurred in relation with interpretation of the criteria from Article 2 of the Law on the Protection of Rights and Freedoms of National Minorities, concerning the sufficient size necessary for a national minority status to be recognised and certain rights to be realised. The criterion of size is quite sensitive and in the context of interpretation of the Framework Convention's scope of application, it should be assumed that in determining the size as a criterion for recognition of a minority identity one should take into account: a) subjective willingness of any person belonging to a national minority to declare such identity, or not; b) freedom of choice of declaring one's minority identity, depending on the most favourable situation according to one's own assessment; c) possibility of declaring affiliation to multiple ethnic identities. The total number of a national minority largely depends on respecting these criteria within the policy of multiculturalism. In this context, the Advisory Committee which monitors realisation of the Framework Convention, believes that such numerical thresholds defined as a precondition for implementation of certain minority rights must be interpreted flexibly, since the contrary would imply obligatory self-identification as a precondition in national minorities' "members" realisation of certain minority rights. Simultaneously, the decision of an individual to identify, or not with certain national minority must be respected by those who identify themselves as belonging to this group, and they must not exert pressure on such individual in no way.[16]

The Republic of Serbia adopted determination "sufficient numerical representation" and opted for a seemingly open approach to the recognition of national minority identities. However, in practice, numerical threshold often appears as a precondition in realisation of certain rights. Article 44, paragraph 1 of the Law on National Councils of National Minorities regulates that a separate electoral roll of national minority, is made for the purpose of election of minority self-government (national council of a national minority) by the competent Ministry, upon the request for compiling a separate electoral roll, which needs to be supported by at least 5% of

[16] Council of Europe (2016). Thematic commentary No. 4: The scope of application of the Framework Convention for the Protection of National Minorities, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a8fe8

the adult individuals belonging to the national minority according to the latest population census, provided that their number is no less than 300. So, the minimal number of the persons belonging to a national minority that can establish minority self-government, become institutionally recognised and thus realise the full scope of their rights, is 300 adults. Such a solution is a direct obstacle to citizens belonging to numerically small minorities, such as the autochthonous Tsintsari ethnic community (Aromanians), in having their national minority status institutionally recognised, and the rights arising from such recognition realised.

It is important to know that the Aromanians played a significant role in creating citizenry in Serbia, development of economy and trade, and that many historically important persons, writers, industrialists, university professors, academicians, prime ministers and ministers, belonged to the Aromanian community (Popović, 1989: 289). In time, the Aromanians assimilated into the Serbian society, yet in both tangible and intangible heritage, traces of the Aromanian culture are still distinctive. However, when the citizens of the Aromanian community, of whom there were 243 according to the 2011 Population Census, wished to establish their National Council (LSG) and thus acquire formal recognition of their national minority status in Serbia, which would make available institutional, material and financial resources so that they could take care of their minority culture and heritage, they encountered the obstacle from the aforementioned Article 44 of the Law on National Councils. The Ministry of Justice and State Administration competent to decide on applications for the establishment of separate electoral rolls of national minorities, rejected the initiative made by the Aromanian community via its proxy, attorney Dragoš Đorđević, explaining that due to the small number of "members", the Aromanian community failed to fulfil the conditions stipulated in Article 2, paragraph 1 of the Law on the Protection of Rights and Freedoms of National Minorities. The application was renewed in 2014, with the signatures of 329 persons belonging to the Aromanian community to support it, only to be rejected once more with the explanation that application for the establishment of a separate electoral roll of a national minority must be supported by at least 5% of the adult citizens of the national minority, where their number must not be smaller than 300 (Bašić, 2018: 202–204).

The Administrative Court and the Court of Cassation processed appeals filed by the Aromanian community and they interpreted the situation. First the Administrative Court overturned the decision by the Ministry, stressing that "number is not a characteristic of a national minority" and that the Aromanians (Tsintsari) have been thoroughly incorporated in the Serbian society, Serbian state and its statehood, as many of them participated in the establishment of the Serbian civil society and culture, as well as the state. Contrary to the Administrative Court's interpretation of the essence of the protection of a national minority's cultural identity, the Court of Cassation returned "The Tsintsari Case" for re-trial, pointing out that the Administrative Court, when deciding in this case, introduced into the legal system purposefulness as a criterion in realisation of the rights of national minorities, which has not been envisaged in any substantive regulation. The Court of Cassation also established discrimination, since it argued that, according to the Recommendation 1333 of the Council of Europe's Parliamentary Assembly, Serbia was a home country of Aromanians. The Protector of Citizens of the Republic of Serbia attempted to solve thus created confusion concerning the right of protecting identity, which lies in the essence of any multicultural policy, with his Opinion[17] of 21 May 2015, where he clearly indicated that: "The number of persons in an ethnic community, should not and must not be the sole criterion when it comes to recognition of the collective right to establish national council, and when these numbers are indeed taken into account, one must also consider the fact that smaller communities have a more intense need or their identity being protected and survival secured. It is justified to take small number of "members" as the key criterion for not recognising the collective right only when the members of such community are so few that the demand for recognition of their collective right is deemed to be absurd, i.e. this is not a community, but rather a group of people counted in dozens. In all other cases (hundreds of people, or more), the numbers should not be the only criterion in recognising their collective right to establish their national council, nor qualitative difference should be

[17] Protector of Citizens, Opinion no. 16-4370/13.

made, based on the numbers, between the communities having 300–400 persons and those having 200–300. It can be regulated by law for the manner of electing national councils to differ from one case to another, depending on the size of the community, yet to deny the right based on the numbers, as described above, is not justified."[18]

3.2. *Official Use of Language and Script*

The next example of the importance of the number of a national minority for realisation of "minority" rights is the Law on the Official Use of Languages and Scripts which in its Article 11, Paragraph 2 stipulates that local self-government unit is obliged, by means of its statute, to introduce equal official use of the language and script of a national minority, in case the share of persons belonging to a certain national minority in the total population of its territory reaches 15% according to the results of the latest population census. Paragraphs 9 and 10 of the same article stipulate the right of the national minorities whose share in the total population of the Republic of Serbia amounts to at least 2% according to the latest population census, to address state authorities in their own language, and the right to receive an answer in that language, while citizens who belong to those national minorities whose share does not reach 2% of the total population of the Republic of Serbia according to the latest population census have the right to address state authorities and receive answer in their own language via the local self-government unit in which the language is in official use, where the LSGU provides translation and bears costs of translation of such communication, as well as of the answer received from state authorities.

The Advisory Committee in their First and Second opinions on Serbia had a generally positive attitude towards the relatively low census (15%) that national minority must reach in a local self-government unit in order for their language to be in official

[18] This paragraph is taken from the *Multikulturalizam i etnicitet* (*Multiculturalism and Ethnicity*, pp. 203–204) monograph that published for the Institute of Social Sciences in 2018.

use.[19] What was especially emphasised is the legally stipulated possibility for this census to be even lower in certain situations. In the Second Opinion on Serbia, the Advisory Committee issued a recommendation to the authorities to invest additional efforts in order to secure more consistent application of the existing legal framework which concerns use of minority languages in interaction with local self-government authorities. The recommendation primarily concerned introduction of Bosnian language in Novi Pazar and the municipalities of Sjenica and Tutin, but also dealt with amending the problems in implementation of the legislation on official use of minority languages and scripts in Vojvodina. The recommendation was implemented and has been in official use since in the Republic of Serbia; eleven languages spoken by national minorities have been in official use in 55 local self-government units (45 in Vojvodina).

However, what is interesting for this research is the example of the municipality of Priboj, which illustrates the way in which the number of persons belonging to a national minority and their self-determination by nationality can affect the realization of the right to official use of language and script, as well as other rights of national minorities that are dependent on numbers.

Namely, according to the 2002 Population Census[20] there were just above 15% of Bosniaks living in the municipality of Priboj, which is according to the law, the minimum required for the introduction of a national minority language in official use. The municipal authorities, i.e. members of the LSGU's Assembly refused for more than a decade to amend the Statute of this LSGU and introduce official use of the Bosnian Language, while state authorities failed to undertake the stipulated measures in order to stimulate the recognition and official use of Bosnian. Since the number of Bosniaks had fallen below 15% by the time of the following population census in 2011,[21] the legal obligation of introducing Bosnian in

[19] See the opinion of the Advisory Committee on implementation of Article 10 in the Opinion on Serbia and Montenegro of 2003 (paragraphs 76–77) and Opinion on Serbia of 2009 (paragraphs 168–174).

[20] *Stanovništvo* (2003), Nacionalna ili etnička pripadnost (National or Ethnic Affiliation), Beograd: Republički zavod za statistiku, p. 108.

[21] *Republički zavod za statistiku* (2011). Stanovništvo prema nacionalnoj pripadnosti i polu, po opštinama i gradovima (Population according to Nationality and Sex in

official use ceased to exist (Bašić, 2018: 188). Simultaneously with the decrease in the number (share) of Bosniaks in the municipality of Priboj, the process of short-term revitalisation of Muslim population occurred, since the number of ethnic Muslims increased from 1,427 in 2002 to 1,944 in 2011. Truth be told, to suggest that the increase in the number of citizens who declared as being ethnic Muslims influenced the decrease in the number of Bosniaks in Priboj would not be proper, as everyone has the right and liberty to declare his/her ethnic identity or identities, should he/she feel that his/her identity has been rooted in more than one ethnic culture and heritage. Yet the fact that fractions of a percent kept the Bosnian language from introduction in official use and full realisation of the rights of the Bosnian minority in Priboj, while this was strongly opposed by the citizens of Serbian nationality testify of the complex problems in the Serbian policy of multiculturalism. This attitude is supported by the fact that in the 2023 Population Census[22] in the municipality of Priboj, 4,144 stated that they belonged to the Bosniak national (ethnic) minority, which is much more than 15% of the population, but the number of ethnic Muslims fell to 914. After the results of the 2023 Population Census had been published, the legally stipulated conditions for the introduction of the Bosnian language in the official use were once again fulfilled.

3.3. *Central Organisation of National Minority Self-Governments and the Manner of their Financing Predominantly Depend on the Number of the National Minority Members*

That the number of the members of a national minority has a significant impact on realisation of the national minority's rights in Serbia, is also evident in financing of national minority councils. According to the Law on National Councils of National Minorities in the Republic of Serbia, members of the national minorities have the right to elect their own national minority self-governments

Municipalities and Cities), Linija 727 (https://www.stat.gov.rs/sr-Latn/oblasti/popis/popis-2011/popisni-podaci-eksel-tabele).

[22] *Republički zavod za statistiku* (2023). Nacionalna pripadnost – podaci po opštinama i gradovima (National Affiliation – Data for Municipalities and Cities).

(national councils of the national minority) that are "legally entrusted certain public competences to participate in decision making or to independently make decision about certain issues in the area of culture, education, information, and official use of languages and scripts in order to achieve the collective right of a national minority to self-government in those areas".[23] These are central minority self-governments that should take care of the national minorities' preservation of identity in the Republic of Serbia. After the 2022 elections for the members of the national councils of national minorities, the total of 23 national minority self-governments were established in the Republic of Serbia.[24] The manner of financing of their operation and activity has been regulated by Chapter VII of the Law on National Councils of National Minorities, where in Article 114, it is stipulated that "funds for the activities of national councils shall be provided from the budget of the Republic of Serbia, the budget of the autonomous province and the budget of local self-government units, donations and other sources". The next article of the same law more clearly determines that "The funds referred to in paragraph 1 of this Article to be provided from the budget of the Republic of Serbia shall be allocated in the following manner: 30% of the funds shall be allocated among all registered national councils in the Republic of Serbia in equal shares and the remaining value (70%) shall be allocated *proportionally to the number of members of a national minority represented by a national council according, to the last census* and according to the total number of institutions, foundations and undertakings founded or co-founded by a national council or whose founding rights are in part or entirely transferred to the national council." The final paragraph of this article stipulates that the funds "provided from the budget of local self-government unit shall be allocated pursuant to the decision rendered by a competent authority of local self-government unit to national councils" which, among other criteria, need to be representing "national minorities whose members make up for *at least 10% of the total population of the local self-government unit*".

[23] Law on National Councils of National Minorities, Article 1a.

[24] Vlada Republike Srbije, Ministarstvo za ljudska i manjinska prava i društveni dijalog, https://www.minljmpdd.gov.rs/nacionalni-saveti-nacionalnih-manjina.php

The above-described examples, but also many others, indicate and prove that the number of members of national minorities indeed has major impact on the national minorities' institutional recognition of identity and realisation of rights, and this fact should also be observed in the context of the centralised organisation of national councils of national minorities. Namely, in line with the Constitution of the Republic of Serbia, members of national minorities "may elect their national councils in order to exercise the right to self-governance in the field of culture, education, information and official use of their language and script, in accordance with the law".[25] This right has been regulated in detail in the Law on National Councils of National Minorities, which stipulates that national minority self-government is elected on the national (state) level only. The Law does not enable election of minority self-governments on provincial (regional), city, municipal, or community levels. Experts (Janjić, 2017: 205; Lošonc, 2009: 92; Bašić, 2018a: 73),[26] as well as civil society organisations have been indicating for years that the nature of Serbian multi-ethnicity is more inclined to a decentralised model of organisation of minority self-governments. This essentially means that the rights of cultural autonomy that are within the purview of minority self-governments would also be available to those members of national minorities living far from the centres in which the national minorities live in significant numbers. For example, members of the Bosnian national minority are mainly concentrated in the five neighbouring local self-government units in the region that Bosniaks call Sanjak, while members of the Serbian people connect with the two administrative counties – those of Raška and Zlatibor. In three of the five LSGUs, Bosniaks are the majority population. According to the 2022 Population Census, Novi Pazar has 85,204 citizens of Bosnian nationality, followed by Sjenica and Tutin with 17,655 and 30,413 respectively. The municipality of Prijepolje has 12,842 Bosniaks according to the census, while the aforementioned municipality of Priboj has 4,144. The rights of cultural autonomy have been fully available in the first three LSGUs, while in Prijepolje and Priboj, these rights are

[25] Constitution of the Republic of Serbia, Article 75.
[26] Janjić, Lošonc, Bašić.

realised with more problems and on a smaller scale. In other LSGUs in Serbia, the rights concerning protection and preservation of the national (ethno-cultural) identity have not in reality been available to Bosniaks, while there are as many as 1,515 Bosniaks living in Belgrade only. Bosniaks also live in the municipalities of Pančevo (419), Nova Varoš (673), Krupanj (86), the cities of Novi Sad (162), Subotica (180), Loznica (123), Mali Zvornik (55) and other.

Out of 35 members of the National Council of the Bosniak national minority in Serbia (Bosniak National Council), 22 are from Novi Pazar, 5 from Tutin, 4 from Prijepolje, 3 from Sjenica and 1 from Priboj, which indicates a centralised organisation of the minority self-government. There are no data concerning the relationship of the Bosniak National Council with the members of the Bosniak national minority living far from the traditional centres of Bosniak culture, yet in the documents publicly available on the internet page of the Bosniak National Council, it is strongly emphasised that the aims and activities have been focused on the Bosniaks living in Sanjak.[27]

The case is similar when it comes to the members of other national minorities. Hungarians in Serbia traditionally and in significant numbers inhabit northern parts of the Autonomous Province of Vojvodina, i.e. LSGUs on the border, or in the vicinity of the border with the Republic of Hungary. Via their representatives and political parties, and finally their National Council, they have actively participated in the creation of the policy of multiculturalism in Serbia, aiming primarily to adjust it to the needs and interests of the part of the Hungarian national minority living homogeneously and in substantial numbers in the north of two Vojvodina counties.

Out of 184,442 Hungarians living in Serbia, according to the results of the 2022 Population Census, 182,321 live in Vojvodina, out of which around 110,000 citizens of Hungarian nationality live in the LSGUs of the border counties of Northern Bačka and Northern Banat.[28] However, Hungarians also live in significant numbers in other Serbian cities and towns, such as: Novi Sad (9,792), Apatin (1,870),

[27] Bošnjačko nacionalno vijeće, https://www.bnv.org.rs/dokument/Strate%C5%A1ki_dokumenti

[28] The City of Subotica and municipalities of Mali Iđoš and Bačka Topola (Administrative County of Northern Banat); municipalities of Kanjiža, Senta, Ada, Čoka, Novi Kneževac and Kikinda.

Bačka Palanka (1,450), Bečej (12,482), Kovačica (1,597), Novi Bečej (2,915), Nova Crnja (1,247), Sečanj (1,143), Sombor (6,539), Srbobran (2,609), Temerin (5,607), Vrbas (1,949), Zrenjanin (8,174), Žitište (2,286), Belgrade (1,386), Niš (54), Požarevac (48), Sremska Mitrovica (531), Inđija (692), Irig (564), Ruma (918), Stara Pazova (101), etc.

The twenty-two members of the Hungarian national minority's National Council were elected in 2022 in the seven LSGUs belonging to the two aforementioned administrative counties where members of the Hungarian national minority are the most numerous. Fourteen members of the minority self-government were elected in 13 LSGUs, two form Novi Sad and Bečej each and one from each of the remaining LSGUs. From the territory of the Southern Banat County, where 8,782 citizens of Hungarian nationality live, only one member of the National Council was delegated, while the County of Srem with 2,965 Hungarians living there, has no elected representative in the Council.[29]

Finally, the problem of the central organisation of minority self-governments, which is not conducive to application of the principles of inclusivity and participative democracy that are integrated in Article 15 of the Framework Convention, is most strikingly indicated by the composition of the National Council of the Roma minority. According to the 2022 Population Census, there are 131,936 citizens of Roma nationality, which makes Roma the third largest minority community in Serbia. Roma traditionally inhabit more than one hundred LSGUs (Bašić & Jakšić, 2005: 37). The Roma minority self-government also has thirty-five members, where 4 are from Belgrade, 3 form Novi Sad, 2 from Leskovac and Požarevac each, while the remaining members originate from additional 21 LSGUs.[30] A more comprehensive analysis would point to deeper problems when it comes to representation of Roma from

[29] Decision on Assigning Mandates to the Members of the National Council of the Hungarian National Minority, National Electoral Commission, 18 November 2022. https://www.rik.parlament.gov.rs/extfile/sr/files/additionalDocuments/338/347/RESENJE%20O%20DODELI%20MANDATA%20MADJARI.pdf

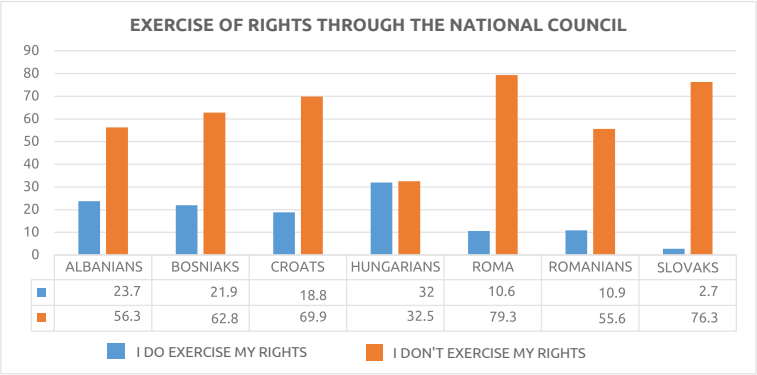
[30] Decision on Assigning Mandates to the Members of the National Council of the Roma National Minority, National Electoral Commission, 18 November 2022. https://www.rik.parlament.gov.rs/extfile/sr/files/additionalDocuments/338/353/RESENJE%20O%20DODELI%20MANDATA%20ROMI.pdf

the territory of Southern Serbia in the composition of the minority self-government. For example, in the region of Šumadija and Western Serbia there is 17,167 citizens of Roma nationality according to the Census, while there is 50,167 of them living in the region of South and East Serbia. Their interests pertaining to education, culture, information and official use of the language are represented by a couple of Roma elected in the National Council. All this indicates that a great number of Roma in Serbia are not represented in the minority self-government and are unable to participate in realisation of the rights of cultural autonomy institutionally and effectively. When this is put in the context of the poverty and discrimination that the majority of Roma encounter daily, which the minority self-government is supposed to find solution to, the problem of centralised (self-)administration of cultural autonomy becomes even more pronounced.

In the aforementioned research by the Institute of Social Sciences concerning the social distance of ethnic communities, dissatisfaction among national minorities' members has been detected concerning the realisation of rights via the institution of national minority council, while expectations have been expressed for the organisation of minority self-governments to become decentralised.

The sample included representatives of the Albanian, Bosniak, Croatian, Hungarian, Roma, Romanian and Slovak national minorities. Majority of the respondents, except those belonging to the Hungarian national minority, indicated that they were not realising their rights of cultural autonomy vie their minority self-government units: 79.3% Roma, 76.3% Slovaks, 69.9% Croats, 62.8% Bosniaks, 56.3% Albanians and 55.6% Romanians. Among the members of the Hungarian national minority, one third (32.5%) declared that they did realise their cultural autonomy rights via the minority self-government, one third (32%) that they did not realise them, while there was a significant share of the respondents who did not want to answer this question (40%).

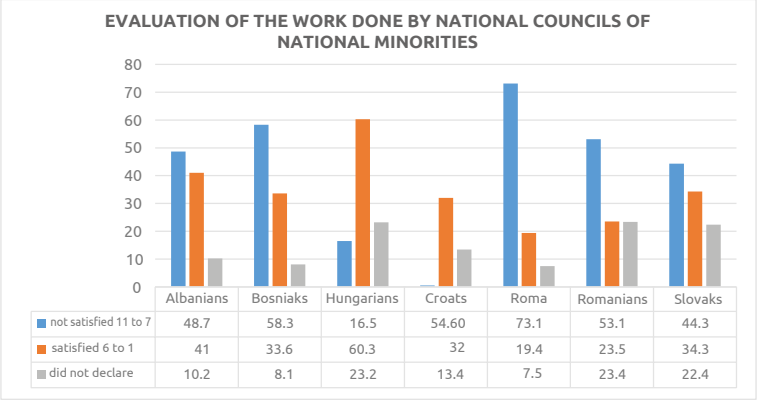
Figure 2. Exercise of Rights through the National Council



Source: Institute of Social Sciences, 2020

Satisfaction with the minority self-government's operation was expressed by the members of the Hungarian national minority, i.e. by 60.3% of them. The respondents belonging to other minority communities predominantly expressed dissatisfaction with their minority self-government's operation. The greatest dissatisfaction was expressed by Roma (73.1%), Bosniaks (58.3%) and Romanians (53.1%), while the dissatisfaction was sometimes lower among Croats (54.6%), Albanians (48.7%) and Slovaks (44.3%).

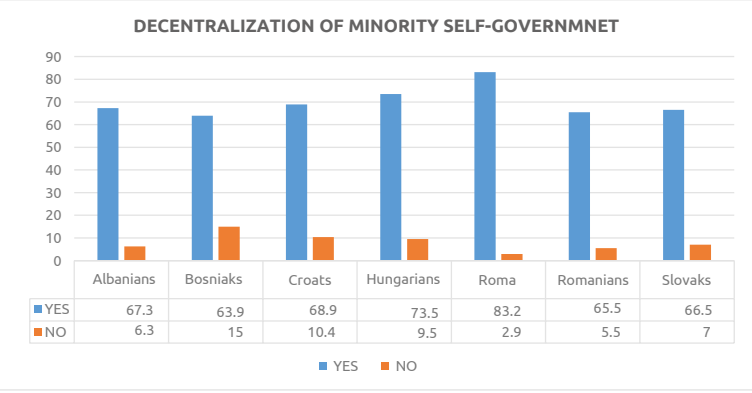
Figure 3. Evaluation of the Work done by National Councils of National Minorities



Source: Institute of Social Sciences, 2020

A decentralised model which would enable direct participation of national minorities' members in operation and activities of minority self-governments on the local level (province, municipality, local community) was most frequently sought by the members of the Roma national minority (83.2%) and Hungarian national minority (73.5%), while among the members of the other national minorities included in the sample (Albanians, Bosniaks, Croats, Romanians and Slovaks) the share of the respondents that deemed decentralisation of minority self-governments to be necessary ranged from 65.5% (Romanians) to 68.9% (Croats).

Figure 4. Decentralisation of Minority Self-Government



Source: Institute of Social Sciences, 2020

The current situation, where the number of national minority's members is one of the decisive conditions for high-quality realisation of the recognised rights, should be perceived in the context of the strong influence of political parties on the election and operation of minority self-governments. The Law on National Councils of National Minorities in its Article 71, Paragraph 1 expressly enables political parties of national minorities to propose electoral list when members of the national minority's national council are elected. Thus far, political parties have not directly proposed lists of candidates, rather doing this indirectly, via citizens' groups and associations that are also enabled by the Law to do so. The mimicry that national minority parties have resorted to, has enabled even the political parties that did not fulfil the conditions stipulated by

Article 2 of the Law on the Political Parties that Are Granted the Status of National Minority Political Parties, to propose their own lists of candidates, either independently via citizens' associations, or in coalitions with national minority parties. Such electoral manoeuvres have strengthened mutual ties between national minority parties and, conditionally speaking, the majority parties, and thus enabled indirect participation of the members of national minorities in the policy of multiculturalism in Serbia. Elections for national councils of national minorities have become the field of regrouping of the national minorities' voters in supporting different parties at the local, provincial and parliamentary elections.

3.4. *Declaring Affiliation with Two or More Ethno-Cultural Identities is not Recognised or Enabled*

The right of free identification is, according to Article 3 of the Framework Convention, "a cornerstone of minority rights".[31] This right implies free will of every person to identify as a member of certain national (ethnic) group, and not endure any harm due to this decision. Institutional recognition of a subjectively selected identity is usually tied to objective criteria. The essence of self-identification is each person's free will, not only to opt for one, but indeed a number of ethnic identities and without being exposed to any kind of force, including numerical thresholds, decide on when he/she may declare him/herself as a person belonging to this identity, and when not. Through his/her decision of affiliation with certain national minority identity, the person must not do harm to other persons who identify with this minority by jeopardising their access or realisation of minority rights. Related to this is a person's freedom of identifying freely with two or more national and ethnic identities. One of the aims of the Framework convention is the integration of minorities into society and thereby, complex identities are in the very essence of a multicultural society.

In 2008, the Council of Europe published the "White Paper on Intercultural Dialogue – Living together as equals in dignity",

[31] Council of Europe (2016). Thematic Comment no. 4 on the scope of application of the Framework Convention for the Protection of National Minorities.

which clearly explains the idea of integrative multiculturalism (interculturalism). "Freedom to choose one's own culture is fundamental; it is a central aspect of human rights. Simultaneously or at various stages in their lives, everyone may adopt different cultural affiliations. Whilst every individual, to a certain extent, is a product of his or her heritage and social background, in contemporary modern democracies everyone can enrich his or her own identity by integrating different cultural affiliations. No one should be confined against their will within a particular group, community, thought-system or worldview, but should be free to renounce past choices and make new ones – as long as they are consistent with the universal values of human rights, democracy and the rule of law. Mutual openness and sharing are twin aspects of multiple cultural affiliation. Both are rules of coexistence applying to individuals and groups, who are free to practise their cultures, subject only to respect for others."[32]

In the legal system of the Republic of Serbia in which the position of national minorities is regulated does not contain the option for multiple identities to be recognised, regardless of the fact that there are social reasons to support this, arising from the social heritage and the nature of the Serbian multi-ethnicity. The persons whose parents or ancestors are of different nationalities, numerous limitrophe ethnic groups, concealed minorities and the Yugoslav identity are among the sources of these feelings of belonging to two or more ethnic (national) identities. However, in a multicultural society in which "rules of the game" are defined by monoculturalists, as is the case of Serbia, there is little space for integration and progress towards an intercultural society.

The policy of multiculturalism in Serbia clearly and steadily promotes segregated multiculturalism in which application of the Framework Convention's standards is not put into question. What indeed is questionable concerns what is stimulated through these standards in a multiethnic society. Many emphasise that it has been discouraging for the integrative multiculturalism in the country that Serbia is determined as "a state of Serbian people and all citizens

[32] White Paper on Intercultural Dialogue: "Living together as equals in dignity ". Council of Europe, 2008, p. 19.

who live in it".[33] Bilingualism and multilingualism are undesirable, since schools that organise bilingual or multilingual classes are rare, while many pupils of the final year of primary school that belong to Hungarian, or Albanian national minority finish their primary education with their knowledge of Serbian language being insufficient for social integration.

In the 2022 Population Census, there was 479,854 nationally undeclared persons, other persons and persons of unknown nationality, while 11,929 persons more declared that they tied their ethnic (national) identity to the region in which they had been born, or were connected to via their identity. Finally, the number of Yugoslavs, for whom one may assume that they are of a limitrophe ethnic identity, was 27,143. The ethnic mimicry of Roma in Serbia has been proven, as well as the disputes concerning the number of Roma evident from censuses, literature and reports by expert and non-governmental organisations. The questions concerning the Bunjevac, Vlach, Boyash and other identities have remained open, with a great number of citizens whose identities have been rooted both in the majority and minority identities, yet there have not even been arguments in the society and expert bodies concerning complex identities. The origin of such a situation should be sought in the social distance of ethnic communities, the phenomenon that the Institute of Social Sciences has been emphasising, but also in the perception that the essence of multicultural policies is in regulating the relationship between the majority and minorities and tolerance of difference. Finally, one should not neglect the populist strength of ethnicity which has been a traditionally strong lever in getting and maintaining power (Bašić, 2017: 147–160).

4. The Lack of Data

Social statistics and the data concerning the position of national minorities in Serbia do not indicate either the real position of the national minorities, or the condition and problems in the policies of multiculturalism. In recent years, the demands that the European Commission and Council of Europe have been issuing to

[33] Article 1, Constitution of the Republic of Serbia.

Serbian authorities have to a certain degree contributed to collecting some data, a portion of which has been classified in terms of sex, age, nationality, ethnicity and other categories. However, verified data, collected in a methodologically correct manner are still missing. This is indicated by the conclusion of the Resolution CM/ResCMN (2021)11, of the Committee of Ministers of the Council of Europe, concerning the application of the Framework Convention on the Protection of National Minorities by the Republic of Serbia of 15 April 2021, based on a recommendation made by the Framework Convention Counselling Board from the Fourth Opinion on Serbia: "Set up and operate, as soon as possible and at the latest by the due date of the fifth State report, a sustainable and human rights-based data collection framework on issues pertaining to the access to rights of persons belonging to national minorities as well as promote complementary qualitative and quantitative research in order to assess the situation of persons belonging to national minorities; taking into account such data and research, set up, implement, monitor and periodically review minority policies with the effective participation of persons belonging to national minorities ".[34]

Based on the Fifth Report submitted by the Republic of Serbia concerning the application of the Framework Convention[35] one cannot detect that the conclusion made by the Committee of Ministers has been implemented i.e. that ethnically desegregated data on realisation of the rights and the position of national minorities are being obtained. Based on the text on the pages 38–40 of the state report, one may conclude that there has been a vague intention to collect such data, yet not that the data were collected within the stipulated deadline. The data in the Report indicating realisation of the rights of national minorities do not largely differ from the data from the earlier reports that the Republic of Serbia submitted to the Council of Europe and other international organisations concerning realisation of the rights of national minorities.

[34] Resolution CM/ResCMN(2021)11 on the implementation of the Framework Convention for the Protection of National Minorities by Serbia, (Adopted by the Committee of Ministers on 15 April 2021 at the 1401st meeting of the Ministers' Deputies)

[35] Fifth Report submitted by Serbia, 1 September 2022. https://rm.coe.int/5th-sr-serbia-en/1680a87637.

When it comes to the social inclusion of Roma, the data based on which the state authorities have been managing this process and reporting on its course should take into account that these have been based on administrative records, but also that, considering the manner in which these data were collected for years, the majority of the contents of these data is not valid. In 2019, the Institute of Social Sciences, with the support by the German Organisation for International Cooperation (GIZ) and for the benefit of the Government of Serbia's Coordinating Body for monitoring realisation of the Strategy of Social Inclusion of Roma Men and Women in the Republic of Serbia for 2016–2025, made research on the quality of the data based on which the measures of social inclusion on the national and local level were planned and policies of social inclusion implemented. In addition to the ISS experts who had developed the methodology, the research was participated in by the civil society organisations who advocate for Roma rights. Based on the research which was founded on quantitative and qualitative methods, it was established that the data collected by local self-government units concerning the measures of Roma inclusion were not valid and thus were not a good basis for research, and even less for planning of Roma social inclusion measures. The Coordinating Body of the Government of the Republic of Serbia was offered a couple of solutions in order to improve the condition concerning collection of valid data and the Strategy management with the aim to establish an asymmetrical, decentralised mode of monitoring realisation of the strategic goals based on verified data and regular reporting founded on facts and respect for human rights (HRBA). The Fifth State Report contains no information about this.

By October 2022, the Institute of Social Sciences had developed a sustainable methodology for collecting the data necessary for monitoring of the Strategy of Social Inclusion of Roma. The main monitoring system is an electronic database where information is collected concerning every strategic measure which is realised in the state, provincial and local authorities, bodies and organisations. Every piece of data is supplied together with a proof of its validity. Protection of personal data and the data stored in the database are harmonised with the GDPR, while administrative associates are selected in LSGUs, who receive access passwords

that allow them to access the database and enter data. Full access to the database, i.e. insight into all the data contained therein, is allowed to the experts in the Coordinating Body responsible for the Strategy Management. As of August 2023, the programme and database have not been claimed from the GIZ by the Ministry of Human and Minority Rights and Social Dialogue, which supports the Coordinating Body.

Establishment of a methodology to monitor the social inclusion of Roma, providing that the software is improved and changes to the matrices made, could be used in collecting the data of relevance for realisation of the rights of national minorities, but also the rights of different social and cultural groups that are in the state of economic, social, or cultural deprivation. The Institute of Social Sciences which is accredited as an institute of national importance for the Republic of Serbia, is a public institution which has developed the capacities to research problems of multiculturalism and social inclusion, and has for that purpose developed tools and methodologies of data collection to obtain the facts necessary for decision-making in public policies. The institute was selected, based on a public call, by the Fundamental Rights Agency (FRA) as their partner in Serbia, which can collect data in line with current standards and technologies and via the European Sociological Survey (ESS), and within the ERIC programme of the European Commission, it biannually makes a survey of the citizens' opinions on social values based on which this institution and states individually plan and implement public policies.[36]

However, the attitude of the public policies towards the idea that their activity should be based on facts is not open, since regardless of the knowledge that appropriate data, as well as analytical reports based on such data have not been secured, there is no intention to change this situation. What is more, it appears that the high standards attained in normative protection of national minorities are collapsing before social obstacles that the public policies have no adequate answer to.

[36] European Social Survey, https://www.europeansocialsurvey.org/about/country/serbia/

The problem of validity of the data based on which the Republic of Serbia reports to international organisations, including the Council of Europe, concerning the position of national minorities, arises from the fact that these are not collected, or are collected in a methodologically irregular manner. The administrative data collected by public administration with respect to realisation of certain rights, as well as the statistical data derived from social statics, are more or less reliable, but they are not sufficient for fully overviewing the condition and changes in the policies of multiculturalism. This requires longitudinal and transverse research studies based on precise methodologies, which produce data that are public and verifiable, and with participation of national minorities (Bašić & Lutovac, 2017: 25–45).

5. Instead of a Conclusion

The aforementioned examples do not comprise the definitive list of the challenges that need to be addressed concerning the policies of multiculturalism. For example, it could be argued that Article 3 of the Law on Political Parties which stipulates that a national minority party may represent interests of only one national minority significantly reduces the chances of the political parties in the political arena. This and other problems I intend to address elsewhere.

Exactly due to the complexity of the problem of the discrepancy between the legislative regulation of national minorities' protection and the goals of the minorities' integration, writing a conclusion of this paper is equally hard as preparing a report on policies of multiculturalism without proper data. It is a fact that application of the Framework Convention's standards has not contributed to the development of integrative multiculturalism in Serbia. The social distance between ethnic communities is big, social ties are hard to establish, while populism and frequent ethnification of the social space in Serbia and the region, are conducive to segregation.

The adopted policies, measures and activities favour the national minorities with many members, "traditionally" living in ethnically homogeneous territories. The negotiating position of national minorities is strengthened by political organisation and cooperation

with the political parties in power. Minority self-governments are centrally organised and most of them do not possess resources to manage cultural autonomy. Recognition of certain autochthonous ethnic communities' identity is burdened with conditions that are not in line with the principles of human and minority rights, while the state's refusal to acknowledge complex ethnic identities is not conducive to integrative/inclusive society. What is more, segregation of ethnicity is promoted by making institutional obstacles to bilingualism and multilingualism. All this is conducive to enclosing national minorities within the borders of ethnic areas, where they are easily controlled via political parties and related minority self-governments.

The constitutional and legislative foundation which is essentially satisfying and largely harmonised with the standards contained in the Framework Convention, does not correspond to the nature of Serbian multi-ethnicity, and enhances social segregation. This problem has been blurred since the year 2000 with coalitions and coalition agreements between national minority parties and political parties in power. Coalitions are desirable and good solutions, since they serve to attain stability and open the possibility of solving problems by means of mutual agreements. However, the circumstances that we emphasised as being present in the multi-ethnic society of Serbia, confirm that chances have been missed year in, year out to identify solution in the interest of citizens, which serve the main goal of multicultural policies – integration of minorities and preservation of their ethno-cultural identities.

BIBLIOGRAPHY

Bašić, G. & Lutovac, Z. (2020). The lack of ethnically sensitive data in Serbia's multiculturalism policy. *Stanovništvo*, 58(1). pp. 25–45.

Bašić, G. (2018). *Multikulturalizam i etnicitet*. Beograd: Institut društvenih nauka.

Bašić, G. (2018a). Policy of Multiculturalism in Serbia: Between Legal Confusion and Social Segregation. In: G. Bašić, S. Tatalović & M. Žagar (eds.) *Multicultiuralism in Public Policies*. Belgrade: Institute of Social Sciences.

Bašić, G. (2017). Multietnička društva i reakcionarni populizam. U: *Populizam*. Beograd: Institut društvenih nauka.

Bašić, G. & Lutovac, Z. (2020). The lack of ethnically sensitive data in Serbia's multiculturalism policy. *Stanovništvo*, 58(1).

Bašić, G. & Jakšić, B. (2005). *Umetnost preživljavanja – gde i kako žive Romi u Srbiji*. Beograd: Institut za filozofiju i društvenu teoriju.

Bašić, G. (2002). *Zaštita prava nacionalnih manjina u SRJ prema standardima Okvirne konvencije za zaštitu nacionalnih manjina Saveta Evrope*. Beograd: Centar za antiratnu akciju.

Janjić, D. (2017). *Kontekst manjinske politike u Srbiji*. Vol. 1, No. 1. Zagreb: Forum za sigurnosne studije.

Lošonc, A. (2009). Political Representation as an Expression of the Relationship between Majority and Minority. In: D. Vujadinović, & V. Goati (eds.) *Between Authoritarianism and Democracy*. Vol. III. Beograd: CEDET, FES.

Бошњак, И. (1996). Могућности и проблеми успостављања мањинске локалне самоуправе и персоналне аутономије у Војводини. У: М. Мацура & В. Становчић (уред.) *Положај мањина у Савезној Републици Југославији*. Београд: Српска академија наука и уметности.

Варади, Т. (1996). Осврт на колективна већинска и мањинска права. У: М. Мацура & В. Становчић (уред.) *Положај мањина у Савезној Републици Југославији*. Београд: Српска академија наука и уметности.

Фира, А. (1995). *Уставно право Републике Србије и Републике Црне Горе*. Београд: Агенција „МИР".

Поповић, Ј. Д. (1998). *О Цинцарима прилози питању постанка нашег грађанског друштва*. Београд: Прометеј.

Шандор, П. (1996). Концепт мањинске самоуправе Демократске заједнице војвођанских Мађара. У: М. Мацура, & В. Становчић (уред.) *Положај мањина у Савезној Републици Југославији*. Београд: Српска академија наука и уметности.

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Framework Convention and the Right to Use Minority Languages – The Case of Slovenia

Abstract

The paper discusses the right to the official use of minority languages in Slovenia in relation to the standards of the Framework Convention for the Protection of National Minorities. The authors point to examples of the application of this right in Slovenia and to the problems arising in the national policy of multiculturalism, in which multilingualism should play an integrative role. Taking into account experiences, and on the basis of arguments, the authors take a certain scepticism regarding the effectiveness of the system for the protection of the rights of national minorities.
Key words: minority languages, FCNM, national minorities, bilingualism

1. Introduction

1.1.

Numerous mechanisms are in place to protect national minority identities, shield these communities from discrimination, and ensure the preservation of their special rights. These protective mechanisms exist on various levels, spanning not just the multilateral arena, but also bilateral and national spheres. As a comprehensive analysis of all such mechanisms lies beyond the scope of this study, the article will focus its attention on the Council of Europe's Framework Convention for the Protection of National Minorities.

Slovenia signed the Framework Convention on 1 February 1995. The document was ratified on 23 March 1998[1] and took effect on 1 July 1998. At the time of depositing the instrument of

[1] Framework Convention for the Protection of National Minorities. *Official Gazette of the Republic of Slovenia*, 20 (1998), 13 March 1998.

ratification (28 March 1998), Slovenia issued a *note verbale*, which reads as follows:

> Considering that the Framework Convention for the Protection of National Minorities does not contain a definition of the notion of national minorities and it is therefore up to the individual Contracting Party to determine the groups which it shall consider as national minorities, the Government of the Republic of Slovenia, in accordance with the Constitution and internal legislation of the Republic of Slovenia, declares that these are the autochthonous Italian and Hungarian National Minorities. In accordance with the Constitution and internal legislation of the Republic of Slovenia, the provisions of the Framework Convention shall apply also to the members of the Roma community, who live in the Republic of Slovenia.[2]

To provide targeted safeguarding for minority languages, the Council of Europe (CoE) also adopted the European Charter for Regional or Minority Languages, stipulating a comprehensive set of additional obligations.

Slovenia signed the European Charter on 3 July 1997, ratified it on 19 July 2000, and published it in its official journal on 4 August 2000. Upon depositing the instrument of ratification, on 4 October 2000, Slovenia announced that the adopted provisions would start to apply on 1 January 2001. On that same occasion, Slovenia handed a *note verbale* to the CoE Secretary General, declaring that the Italian and Hungarian languages were considered as regional or minority languages in the territory of the Republic of Slovenia. Moreover, it stated that the provisions of Article 7, paragraphs 1 to 4, would apply mutatis mutandis also to the Romani language.

Romani, however, did not remain long on the list of languages protected by Slovenia under the provisions of the Charter. In fact, in 2007, the Slovene Parliament amended the Act Ratifying the European Charter for Regional or Minority Languages and set aside the provision on the Romani language.[3]

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[2] Accessible at: https://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=157&codeNature=0 (accessed 13 September 2023).

[3] Act Amending the Act Ratifying the European Charter for Regional or Minority Languages. *Official Gazette of the Republic of Slovenia*, 7 (2007).

When Slovenia's model of minority protection was being shaped, the Framework Convention was not taken into account. This is because, at the time, the two CoE documents had not yet been adopted. Hence, it appears that Slovenia used the two CoE acts as a means to promote its minority protection model on the international stage, rather than perceiving them as a catalyst for re-evaluating and enhancing the existing model, or as a foundation for extending the status of autochthonous national minorities to other similar groups expressing a desire for such recognition.

1.2.

The article delves into the use of minority languages in terms of fulfilment of the specific commitments outlined in the Framework Convention, exploring the practical implementation of the right to use minority languages in various domains such as education, culture, media, visible bilingualism, public institutions, and interactions with authorities. Each of these spheres would require a separate, comprehensive expert scrutiny[4] of both *de jure* – i.e., the legal provisions – and *de facto* implementation of these legal provisions in everyday life. Various sources, including the perspectives of national minority organisations and research project findings, highlight the significant gap between the idealised legal framework and the insufficient execution of the provisions governing the use of minority languages in daily interactions. Among the many approaches to narrowing this gap, the article highlights a distinctive facet of affirmative language policy, an aspect that has thus far received limited scholarly attention – the allowance for bilingual operation known as the bilingualism bonus. The research question could thus be framed as follows: To what extent does the bilingualism bonus influence the effective implementation of institutional bilingualism?

[4] Cf: Komac, M. (2000). Evropska listina o regionalnih ali manjšinskih jezikih v luči ohranjanja manjšinskih jezikov v Sloveniji. In: I. Štrukelj (Ed.) *Kultura, identiteta in jezik v procesih evropske integracije*. Ljubljana: Slovene Association of Applied Linguistics, pp. 50–77; Komac, M., Zupančič, J. & Winkler, P. (1999) *Varstvo narodnih skupnosti v Republiki Sloveniji : vademecum*. Ljubljana: Institute for Ethnic Studies, p. 71.

The scope of our consideration will be limited to the provisions of Article 10 of the Framework Convention, which read as follows:

> 1. The Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing.
>
> 2. In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.
>
> 3. The Parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.

1.3.

Our analysis centres on the Framework Convention, specifically focusing on the implementation of the right to use minority languages. Worth mentioning in such regard is that Slovenia is also a signatory to the European Charter for Regional or Minority Languages. When ratifying the European Charter, the National Assembly stipulated that:

> at the time of deposit of its instrument of ratification of the European Charter for Regional or Minority Languages, the Republic of Slovenia shall notify the Secretary General of the Council of Europe that Italian and Hungarian are considered as regional or minority languages in the territory of the Republic of Slovenia within the meaning of this Charter.[5]

[5] Act Ratifying the European Charter for Regional or Minority Languages. *Official Gazette of the Republic of Slovenia*, 69 (2000), Article 4.

The same Article also provides that the provisions of the Charter will apply mutatis mutandis to the Romani language. Unfortunately, this provision was deleted with the Act amending the Act Ratifying the European Charter for Regional or Minority Languages, adopted by the National Assembly in 2007.[6]

We start our analysis of the implementation of commitments concerning the use of minority languages in interactions with authorities, as outlined in Article 10 of the Framework Convention, with an examination of the legal provisions pertaining to the specific aspects of institutional bilingualism. This section is designated as "Commitments regarding the use of minority languages – *de jure*".

2. Commitments Regarding the Use of Minority Languages – *de jure*

The foundation for the debate on the use of minority languages is provided by Article 11 of the Constitution of the Republic of Slovenia:

> The official language in Slovenia is Slovene. In those municipalities where Italian or Hungarian national communities reside, Italian or Hungarian shall also be official languages.[7]

The use of minority languages is also regulated by the Public Use of the Slovene Language Act:

> Article 1 (Introductory provisions)
>
> (1) The Slovene Language (hereinafter: Slovene) shall be the official language of the Republic of Slovenia. It shall be the language of oral and written communication in all spheres of public life in the Republic of Slovenia, except when, in accordance with the Constitution of the Republic of Slovenia, Italian and Hungarian, in addition to Slovene, are also official languages, and when the provisions of international treaties

[6] Act Amending the Act Ratifying the European Charter for Regional or Minority Languages. *Official Gazette of the Republic of Slovenia*, 44 (2007).

[7] Constitution of the Republic of Slovenia. *Official Gazette of the Republic of Slovenia*, 33 (1991), p. 1374. Accessible at: http://www.uradni-list.si/_pdf/1991/Ur/u1991033.pdf#!/u1991033-pdf

> that are binding on the Republic of Slovenia specifically also allow the use of other languages.[8]
>
> Article 3 (Language of national communities)
>
> In the territory of municipalities where the Italian or Hungarian national community resides the public use of Italian or Hungarian as official languages shall be guaranteed in the manner regulated by this Act for the public use of Slovene and in accordance with the provisions of individual sectoral Acts.[9]

The compliance of the above provision with Articles 11 and 64 of the Constitution was brought into question by representatives of national minorities. However, the Constitutional Court held a contrary opinion, contending that:

> In the geographic areas where the national communities live, the challenged provision ensures the public use of their languages in the same manner as prescribed by this act for Slovene and in accordance with the laws regulating different fields. It can be understood from the text of the challenged provision alone that precisely this provision gives the languages of the national communities a special position and does not treat them as foreign languages. This also clearly follows from the comparison with Article 17 of the Public Use of the Slovene Language Act (PUSLA), which determines the naming of persons under private law and which regulates the use of the name in a foreign language. The importance of such differentiation for the constitutional position of the languages of the national communities also follows from the further reasoning of this decision. The Constitutional Court has jurisdiction to separately review the consistency of particular regulations in the laws regulating different fields with the Constitution, taking into consideration the circumstances of each individual case. The possible unconstitutionality of a specific field regulation cannot, therefore, have an influence on the challenged provision. Finally, also the petitioner is of the opinion that the challenged provision of the PUSLA is in itself not disputable from

[8] Public Use of the Slovene Language Act. *Official Gazette of the Republic of Slovenia*, 86 (2004) and 8 (2010).

[9] Ibid.

the constitutional point of view. As regards the above-mentioned, the Constitutional Court dismissed the petitioner's allegations regarding the unconstitutionality of Article 3 of the PUSLA as manifestly unfounded.[10]

The right to use minority languages is further regulated in the Exercising of the Public Interest in Culture Act:

> Article 6 (Respect for the language)
>
> Cultural events must be announced, advertised and explained in the Slovene language. Cultural events in the areas defined as ethnically mixed areas must also be announced (posters, official invitations and similar) in Italian or Hungarian.
>
> (…)[11]

The use of minority languages in ethnically mixed areas is regulated by municipal statutes:

Italian

Municipality	Provisions from the Statutes	Source
Koper/ Capodistria	Article 1 In the ethnically mixed area of the municipality inhabited by members of the autochthonous Italian national community and comprising the settlements of Ankaran/Ancarano, Barizoni/Barisoni, Bertoki/Bertocchi, Bošamarin/Bossamarino, Cerej/Cerei, Hrvatini/Crevatini, Kampel/Campel, Kolomban/Colombano, Koper/Capodistria, Prade, Premančan/ Premanzano, part of Spodnje Škofije (Valmarin), Šalara/Salara and Škocjan/San Canziano, the official languages shall be Slovene and Italian.	Statutes of the Municipality of Koper, p. 2. Accessible at: http://www.koper.si/index.php?page=documents&item=71

[10] Constitutional Court of the Republic of Slovenia, 2008. Decision establishing that Article 10 of the Societies Act is inconsistent with the Constitution No. U-I-380/06-11 of 11 September 2008. *Official Gazette of the Republic of Slovenia*, 91 (2008), 26 September 2008, p. 12411. Accessible at: http://www.uradni-list.si/_pdf/2008/Ur/u2008091.pdf#!/u2008091-pdf

[11] Exercising of the Public Interest in Culture Act. *Official Gazette of the Republic of Slovenia*, 77 (2007).

Municipality	Provisions from the Statutes	Source
Izola/Isola	Article 2, paragraph 3: In public and social life in the ethnically mixed area (bilingual area), which comprises the town of Izola and the settlements of Dobrava and Jagodje, Slovene and Italian shall be equal.	Statutes of the Municipality of Izola, p. 2. Accessible at: .si/obcina-izola/statut-obcine/
Piran/Pirano	Article 3 The municipality is inhabited by the autochthonous Italian national community. The municipality shall provide and protect the rights of the Italian national community and its members in the ethnically mixed area in accordance with the Constitution and law. In public life in the ethnically mixed area of the municipality where members of the Italian nationality reside and which comprises the settlements of Piran, Portorož, Lucija, Strunjan, Seča, Sečovlje, Parecag in Dragonja (bilingual area), Italian shall be equal to Slovene.	Statutes of the Municipality of Piran. *Official Gazette of the Republic of Slovenia*, 5 (2014), pp. 382–383.
Ankaran/Ancarano	Article 5 (Language) In the area of the municipality, the official languages shall be Slovene and Italian.	Statutes of the Municipality of Ankaran. *Official Gazette of the Republic of Slovenia*, 17 (2015)

Hungarian

Municipality	Provisions from the Statutes	Source
Hodoš/Hodos	Article 65, paragraph 2 In the ethnically mixed area of the municipality, the official languages shall be Slovene and Hungarian. The two languages shall be equal.	Statutes of the Municipality of Hodoš. *Official Gazette of the Republic of Slovenia*, 84 (2011), p. 10860.
Moravske Toplice	Article 95, paragraph 2 In the ethnically mixed area, the official languages shall be Slovene and Hungarian. The two languages shall be equal. Members of the Hungarian national community shall be guaranteed the right to use their mother tongue in public and social life.	Statutes of the Municipality of Moravske Toplice. *Official Gazette of the Republic of Slovenia*, 35 (2014), p. 3951.

Municipality	Provisions from the Statutes	Source
Šalovci	Article 66, paragraph 2 In the ethnically mixed area of the municipality, the official languages shall be Slovene and Hungarian. The two languages shall be equal.	Statutes of the Municipality of Šalovci. *Official Gazette of the Republic of Slovenia*, 38 (2006), p. 4065.
Lendava/ Lendva	Article 69, paragraph 2 In the ethnically mixed area of the municipality, the official languages shall be Slovene and Hungarian. The two languages shall be equal. Members of the Hungarian national community shall be guaranteed the right to use their mother tongue in public and social life.	Statutes of the Municipality of Lendava. *Official Gazette of the Republic of Slovenia*, 75 (2010), p. 10959.
Dobrovnik/ Dobronak	Article 82, paragraph 2 In the ethnically mixed area of the municipality, the official languages shall be Slovene and Hungarian. The two languages shall be equal.	Statutes of the Municipality of Dobrovnik. *Official Gazette of the Republic of Slovenia*, 35 (2007), p. 5069.

Toponymy (Bilingual Signs)

The first and immediately apparent expression of the right to freely use a minority language becomes evident through the provisions related to the bilingual marking of settlements and streets, bilingual signboards, announcements, notices, warnings, etc. In ethnically mixed areas, the provisions concerning visible bilingualism are implemented without imposing specific numerical quotas. Bilingual marking of settlements and streets is regulated by the Act Regulating the Determination of Territories and the Naming and Marking of Settlements, Streets and Buildings:

> Article 9 (Naming a settlement and recording the name of a settlement)
>
> (3) The name of a settlement shall be in the Slovenian language. In the territories of municipalities where, in addition to Slovenian, Italian or Hungarian is also an official language,

> the settlements shall be named in Slovenian and Italian or Hungarian.[12]

The above Act gives minority members, through their self-governing national communities, the possibility to actively participate in the marking of settlements and streets in ethnically mixed areas:

> Article 17 (Decree on the determination of the territory of a settlement and the decree on the determination of the name of a settlement):
>
> (4) Prior to deciding on a decree determining the name of a settlement in ethnically mixed areas, the municipalities involved shall obtain the consent of the competent self-governing national community. The competent self-governing national community shall give consent through the members of the municipal council who are representatives of the national community.[13]

The Act also regulates the use of minority language in naming streets:

> Article 20 (Naming a street)
>
> (5) Street names shall be in the Slovenian language. In the territories of municipalities where, in addition to Slovenian, also Italian or Hungarian is an official language, streets shall be named in Slovenian and Italian or Hungarian.[14]

More detailed guidance on the marking of streets and buildings is provided by the Rules regulating the delimitation of the territory of a settlement, assignment of house numbers, determination of the course of streets, and marking of streets and buildings:

> Article 6 (Content, size, form and colour of signboards)
>
> (2) Where the name of a street is given in both Slovene and Italian or Hungarian, the street name must appear on the signboards in both languages. The name of the street in

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[12] Act Regulating the Determination of Territories and the Naming and Marking of Settlements, Streets and Buildings. *Official Gazette of the Republic of Slovenia*, 25 (2008).

[13] *Ibid.*

[14] *Ibid.*

> Slovene shall be written above the name of the street in Italian or Hungarian. Both names shall be of the same size.[15]
>
> Article 10 (Content and form of house number signs):
>
> (3) Where the name of a settlement or street is given in both Slovene and Italian or Hungarian, the name of the settlement or street must appear on the house number sign in both languages. The name of the settlement or street in Slovene shall be written above the name of the settlement or street in Italian or Hungarian. Both names shall be of the same size.[16]

Regrettably, real-world practice often diverges from the ideal outlined in legal acts.

The inconsistent use of minority languages in toponymy has been repeatedly pointed out by the two national communities. In one of many letters addressed to the parliamentary Commission for the National Communities, members of the Pomurje Hungarian Self-Governing National Community wrote:

> There are also many inconsistencies in the use of placenames and other geographical terms. There are cases where authorities simply 'forget' to add the name in Hungarian (such omissions are still recorded, for example, when naming streams in the area of the former Lendava bypass, which is now part of the motorway network), or spell the name in Hungarian incorrectly. This causes considerable unease within national communities and is likely to be misleading for foreigners (especially Hungarians from Hungary).[17]

Use of Minority Languages in the National Assembly and the National Council

The two deputies representing the national communities have the right to use their mother tongue in their work in the

[15] Rules regulating the delimitation of the territory of a settlement, assignment of house numbers, determination of the course of streets, and marking of streets and buildings. *Official Gazette of the Republic of Slovenia*, 76 (2008).

[16] *Ibid*.

[17] List of inconsistencies regarding the exercise of rights of the autochthonous Hungarian national community. Pomurje Hungarian Self-Governing National Community, 5 February 2009. Archives of the Commission for the National Communities, National Assembly of the Republic of Slovenia.

National Assembly. The Rules of Procedure of the National Assembly provide:

> Article 4
>
> (1) The National Assembly conducts its proceedings in Slovene.
>
> (2) The deputies of the Italian and Hungarian national communities have the right to speak and table motions, initiatives, questions, and other submissions in Italian or Hungarian. Their speeches and submissions are translated into Slovene.[18]

Use of Minority Languages in the State Administration

The State Administration Act provides:

> Article 4 (Official language of the Administration)
>
> Slovenian shall be the official language of the Administration.
>
> In the territories of municipalities inhabited by the autochthonous Italian or Hungarian ethnic communities, the official language of the Administration shall also be the Italian or Hungarian language. In these areas, the Administration shall perform its work also in the language of the respective ethnic community. When a party in a procedure uses the language of an ethnic community, the Administration shall conduct the procedure in the language of the ethnic community and issue legal and other acts in the procedure in Slovenian and the language of the respective ethnic community. Prior to the commencement of the procedure, the authority shall acquaint the party with this right.
>
> If administrative authorities at the first instance conduct the procedure in Italian or Hungarian, second instance acts shall be issued in the same language.[19]

[18] Rules of Procedure of the National Assembly. *Official Gazette of the Republic of Slovenia*, 92 (2007) – official consolidated text, 105/10, 80/13, 38/17, 46/20, 105/21 – CC dec., 111/21 and 58/23.

[19] State Administration Act. *Official Gazette of the Republic of Slovenia*, 113 (2005) – official consolidated text, 89/07 – CC dec., 126/07 – ZUP-E, 48/09, 8/10 – ZUP-G, 8/12 – ZVRS-F, 21/12, 47/13, 12/14, 90/14, 51/16, 36/21, 82/21, 189/21, 153/22 and 18/23).

The Public Employees Act provides:

> Article 79
>
> (2) In the case of the posts of officials in authorities for which an Act requires the use of the language of an ethnic community as the official language, proficiency in such language shall also be set as a condition for holding such posts.[20]

Proficiency in minority languages is financially rewarded. The Decree on the quotient applied in fixing basic salary and salary supplements of the persons employed by the Government of the Republic of Slovenia and by administrative bodies provides:

> Article 12
>
> In the territories of local communities where the Italian or Hungarian national communities reside, an allowance shall be granted for posts for which knowledge of the language of the national community is required under the Act on the internal organisation and job classification, and shall amount to:
>
> • 6 % of the basic salary for active vocabulary in the language of the national community,
>
> • 3 % of the basic salary for passive vocabulary in the language of the national community.[21]

The use of minority languages is also regulated by the Decree on administrative operations:

> Article 5 (Operations in the languages of the Italian and Hungarian national communities)
>
> In the territories of self-governing local communities where in addition to the Slovenian language, the Italian or Hungarian language is also considered an official language, the elements of the documents, the stamps of the authority and

[20] Public Employees Act. *Official Gazette of the Republic of Slovenia*, 63 (2007) – official consolidated text, 65/08, 69/08 – ZTFI-A, 69/08 – ZZavar-E, 40/12 – ZUJF, 158/20 – ZIntPK-C, 203/20 – ZIUPOPDVE, 202/21 – CC dec. and 3/22 – ZDeb).

[21] Decree on the quotient applied in fixing basic salary and salary supplements of the persons employed by the Government of the Republic of Slovenia and by administrative bodies. *Official Gazette of the Republic of Slovenia*, 35/96, 5/98, 33/00, 1/01, 63/01, 37/02, 60/02 – CC dec., 61/02 and 105/02 – CC dec.

the forms shall also be available in the Italian or Hungarian language.[22]

Bilingual Documents

The right to use minority languages is further guaranteed by other relevant laws, such as the Register of Deaths, Births and Marriages Act:

> Article 23 (Extracts and certificates from the Register)
>
> (…)
>
> In the areas defined by law, where the autochthonous Italian or Hungarian national communities live, extracts and certificates from the Register shall be issued in Slovenian and in the language of the national community.
>
> (…).[23]

The Identity Card Act provides:

> Article 7 (Identity card forms)
>
> (1) An identity card shall be issued in the form to be printed in Slovenian and English.
>
> (2) Notwithstanding the provision of the preceding paragraph, an identity card shall be issued in the form to be printed in Slovenian, English and Italian or in Slovenian, English and Hungarian to a citizen with registered permanent residence in an area where the autochthonous Italian or Hungarian national communities live, as defined by law.
>
> (3) An identity card in the form referred to in the preceding paragraph shall also be issued to a citizen with a registered temporary residence in the area referred to in the preceding paragraph who has no registered permanent residence in the Republic of Slovenia or abroad, and to a citizen with no residence if he or she files an application with the administrative unit operating in that area.

[22] Decree on administrative operations. *Official Gazette of the Republic of Slovenia*, 9/18, 14/20, 167/20, 172/21, 68/22, 89/22, 135/22 and 77/23.

[23] Register of Deaths, Births and Marriages Act. *Official Gazette of the Republic of Slovenia*, 11 (2011) – official consolidated text and 67/19).

> (4) An identity card referred to in paragraphs two and three of this Article shall be issued by the administrative unit that operates in the area where the autochthonous Italian or Hungarian national communities live, as defined by law.[24]

An application for the issuance of an identity card can be filed at any administrative unit in Slovenia, regardless of the applicant's place of permanent residence. This option was skilfully used by many Slovene citizens residing in ethnically mixed areas who did not want to have their data written also in the minority language (Italian or Hungarian). Thus, they applied for an identity card at an administrative unit outside the ethnically mixed area and received it in Slovene and English. Members of the two national communities considered the legal provision contained in Article 7(4) unconstitutional and presented a petition to the Constitutional Court to assess its constitutionality:

> 1. The petitioners challenge Article 7(4) of the Identity Card Act, according to which an identity card in the form to be printed in Slovenian, English and Italian or in Slovenian, English and Hungarian shall be issued by the administrative unit that operates in the area where the autochthonous Italian or Hungarian national communities live. The petitioners claim that such provision is incompatible with Articles 2, 5, 8, 11, 14 and 64 of the Constitution. They believe that an Act should provide that citizens with registered permanent residence in an area defined by law as an area in which the autochthonous Italian and Hungarian national communities live may be issued an identity card in the form to be printed in Slovene, English, and Italian or Hungarian even if they apply for it at an administrative unit that operates outside the bilingual area.[25]

Regrettably, the Constitutional Court rejected the petition with a flimsy argument, asserting that the petitioners had failed to demonstrate a valid legal interest in initiating the procedure to review the constitutionality of the contested provision. In taking

[24] Identity Card Act. *Official Gazette of the Republic of Slovenia*, 35/11, 41/21 and 199/21.

[25] Constitutional Court of the Republic of Slovenia, 2012. Decision No. U-I-147/11-8 of 26 June 2012. Accessible at: http://odlocitve.us-rs.si/documents/5c/4e/u-i-147-11.pdf

this stance, they may have been merely appeasing local nationalists who had long sought to limit the application of the provisions on special minority rights exclusively to national minority members.

Furthermore, the Travel Documents Act provides:

> Article 13
>
> (1) Travel document forms shall be printed in Slovenian, English and French; in areas defined by an Act where members of the Italian or Hungarian nationality traditionally reside together with members of the Slovenian nation, they shall also be printed in Italian or Hungarian. [26]

Bilingual documents are compulsory for all inhabitants of ethnically mixed areas, regardless of their national affiliation. In addition to identity cards and travel documents (which are trilingual: Slovene, English, and Italian or Hungarian), driving licences, vehicle registration certificates, health insurance cards, and army service booklets are also bilingual. A rather controversial debate arose in the process of adoption of the new Identity Card Act, which initially replaced the previous provision on mandatory bilingual forms with the possibility of choosing between monolingual (Slovene) and bilingual forms. Motions supporting the freedom of choice mainly came from the local majority population.[27] But the Identity Card Act, as seen above, did not take such requests into account. The legislature took the view that the possibility of free choice was limited by the concept of positive discrimination. The decision to make bilingual documents compulsory for all inhabitants of a specific bilingual area was seen to make sense also because a provision allowing to choose between monolingual and multilingual documents might constitute a special form of permanent counting of members of national communities, which in turn might be seen as assimilation pressure on minority members. The provision that any written record in the minority language must consider the script of the Hungarian or Italian writing seems like a natural rounding up of the rights of members of national communities to use their mother tongue.

[26] Travel Documents Act. *Official Gazette of the Republic of Slovenia*, 29 (2011).

[27] In a special petition to the minister of the interior, 1500 citizens of Slovene national affiliation demanded the possibility to choose between bilingual and monolingual identity card forms.

Another aspect to be considered within the context of the right to use a minority language is the retaining of personal names and surnames in their original form, thus upholding the commitment to preserve the minorities' national characteristics. In such regard, the Personal Name Act provides:

> Article 5 (Personal names of members of national communities)
>
> The personal names of members of the Italian or Hungarian national communities shall be entered in the Register of Deaths, Births and Marriages in accordance with the Italian or Hungarian alphabet and form, unless the member of the national community determines otherwise.[28]

Provisions on the use of the names and surnames of members of national minorities in their original form are also included in some municipal statutes.

Bilingualism within the Judiciary

Bilingualism is also prescribed for the operations of judicial institutions. The Courts Act provides:

> Article 5
>
> Courts shall operate in the Slovene language.
>
> In the areas where the autochthonous Italian and Hungarian national communities live, courts shall also operate in the Italian or Hungarian language if a party who lives in that area uses the Italian or Hungarian language.
>
> If a court of higher instance decides on legal remedies in matters in which a court of lower instance also conducted the proceedings in the Italian or Hungarian language, the decision shall also be issued in translation into the Italian or Hungarian language.
>
> If, when deciding pursuant to the preceding paragraph, a court of higher instance holds a hearing or a session of a panel at which the parties are present, the provisions of paragraph two of this Article shall apply.

[28] Personal Name Act. *Official Gazette of the Republic of Slovenia*, 20 (2006) and 43 (2019).

> The Republic of Slovenia shall cover the costs incurred by the use of the language of members of the Italian and Hungarian national communities in courts.[29]

Furthermore, the use of minority languages is regulated by the Notarial Act:

> Article 13
>
> Notaries shall draw up notarial documents in the Slovenian language.
>
> In the area where Italian or Hungarian is also the official language, notaries shall draw up notarial documents in either of these languages, if the party uses Italian or Hungarian.[30]

In the State Prosecution Service Act, the language of operations is defined in Article 15:

> Article 15
>
> (1) State prosecutors' offices shall operate in the Slovenian language.
>
> (2) In the areas inhabited by the autochthonous Italian and Hungarian national communities, state prosecutors' offices shall also operate in the Italian or Hungarian language if a party living in such area uses either of these two languages.
>
> (3) The costs incurred by the use of the language of the members of the Italian and Hungarian national communities in the operations of state prosecutors' offices shall be paid from the funds allocated for the work of state prosecutors' offices.[31]

Finally, there are the provisions on the operations of the Judiciary in the ethnically mixed areas. This is regulated by Articles 61–69 of the Court Rules:

[29] Courts Act. *Official Gazette of the Republic of Slovenia*, 94 (2007) – official consolidated text, 45/08, 96/09, 86/10 – ZJNepS, 33/11, 75/12 – ZSPDSLS-A, 63/13, 17/15, 23/17 – ZSSve, 22/18 – ZSICT, 16/19 – ZNP-1, 104/20.

[30] Notariat Act. *Official Gazette of the Republic of Slovenia*, 2 (2007) – official consolidated text, 33/07 – ZSReg-B, 45/08, 91/13, 189/20 – ZFRO, 130/22 and 49/23 – ZUS-1C).

[31] State Prosecution Service Act. *Official Gazette of the Republic of Slovenia*, No. 58/11, 21/12 – ZDU-1F, 47/12, 15/13 – ZODPol, 47/13 – ZDU-1G, 48/13 – ZSKZDČEU-1, 19/15, 23/17 – ZSSve, 36/19, 139/20, 54/21 and 105/22 – ZZNŠPP).

5. Operation of the courts in areas where the national communities reside

Article 61 (Use of the language of the national community)

In an area where the autochthonous Italian and Hungarian national community live, the court must also operate in the language of the national community, if a party residing in this area uses the Italian or Hungarian languages.[32]

Bilingualism within Municipal Administrations

The use of national community languages on the municipal level may be discussed from various perspectives. It may be discussed as an issue of bilingual signs; from the viewpoint of bilingual operations of the municipal administration in ethnically mixed municipalities; further, as the right of elected deputies of national minorities to use their own language in municipal councils, committees and boards; and last but not least, as the right of members of national minorities to use their mother tongue in bodies of the local community. Provisions on the use of national community languages in the abovementioned areas may be found in all municipal statutes.

Bilingual operations require additional financial resources, which are provided by the state budget. The Financing of Municipalities Act, for instance, stipulates:

Article 20 (Co-financing the implementation of the rights of the autochthonous Italian and Hungarian national communities)

(1) The municipalities in which the Italian or Hungarian national communities live shall be provided with funds from the state budget for the co-financing of bilingualism and the implementation of the constitutional rights of the autochthonous Italian and Hungarian national communities. Financing of activities and programmes of municipal self-governing national communities can be direct or indirect.

(2) Direct financing of a municipal self-governing national community from the state budget shall be carried out upon the request of the municipal self-governing national

[32] Court Rules. *Official Gazette of the Republic of Slovenia*, 87 (2016) and 127 (2021).

community, which shall be submitted no later than by 30 June of the current year for the following fiscal year to the state authority responsible for national minorities, and the municipality's consent for direct financing. A municipal self-governing national community that does not submit a request for direct financing shall be financed indirectly through the municipal budget.

(3) Funds referred to in paragraph one of this Article shall be provided to the listed municipalities or municipal self-governing national communities for each fiscal year in the amount of 0.15 % of the total eligible expenditure of the municipalities.

(4) Funds for the co-financing of the tasks referred to in paragraph one of this Article shall be calculated as average costs per municipality or municipal self-governing national community for the past fiscal year, taking into account labour costs, service costs and material costs for the implementation of bilingualism and the exercise of the constitutional rights of the autochthonous Italian and Hungarian national communities. Detailed spending purposes and criteria for calculating the amount of funds allocated to municipalities or municipal self-governing national communities shall be determined by the government by way of a decree.

(5) On the basis of such a decree, the Government, on the proposal of the state authority responsible for national minorities, shall issue a decision each year on the amount of funds that belong to a particular municipality or a particular municipal self-governing national community.[33]

Let us conclude this overview of the provisions on the use of minority languages with a provision on the obligation of the Police to use the language of the two constitutionally recognised minorities. Article 33 of the Police Act reads as follows:

(…)

(2) In communications forming part of the actions referred to in the preceding paragraph, police officers shall be bound by the provisions governing the status of Slovene as the

[33] Financing of Municipalities Act. *Official Gazette of the Republic of Slovenia*, 123 (2006), 57/08, 36/11, 14/15 – ZUUJFO, 71/17, 21/18 – corr., 80/20 – ZIUOOPE, 189/20 – ZFRO, 207/21 and 44/22 – ZVO-2).

> official language and on the use of Italian and Hungarian as additional official languages in the territory of municipalities in which the autochthonous Italian and Hungarian national communities reside; in verbal communications with foreign natural persons who do not speak Slovene, police officers may, in urgent cases, also use another language that the foreign person understands.[34]

3. Commitments Regarding the Use of Minority Languages – *de facto*

Slovenia has, in a sense, established an exemplary framework of rights for national minorities to use their mother tongues in various life situations. It could be argued that the principles outlined in Article 10 of the Framework Convention are impeccably executed – on paper! However, in the realm of everyday life, the implementation of the provisions concerning the use of minority languages is lacklustre, inconsistent, and deficient. And this is not only the case today: even during the era of the former mono-party system, similar challenges were encountered. The Report on the Exercise of the Special Rights of Members of the Italian and Hungarian Nationalities in the Socialist Republic of Slovenia in 1981–1985, for example, states:

> (...) an unwanted feature is coming to the fore, namely the gap between legal solutions and everyday practice. This applies in particular to bilingualism, i.e., the establishment of true and integral bilingualism as a way of life in ethnically mixed areas. (...). Many of the problems of the nationalities will never be solved unless the majority nation realises that it is not enough to wish nationalities to feel at home, but that they are at home here, among us, as equal ethnic communities, and not as some sort of folkloric curiosity in need of protection.[35]

[34] Police Act (official consolidated text). *Official Gazette of RS*, No. 66/09, p. 9322. Accessible at: http://www.uradni-list.si/_pdf/2009/Ur/u2009066.pdf#!/u2009066-pdf

[35] Report on the Exercise of the Special Rights of Members of the Italian and Hungarian Nationalities in the Socialist Republic of Slovenia in 1981–1985. *Assembly of the Socialist Republic of Slovenia*, Ljubljana, 1986, p. 9.

The nonchalant attitude towards the implementation of the rights of national minorities has persisted into the new societal framework, as well. Consequently, the (non-)implementation of the provisions pertaining to the use of minority languages frequently leads to grievances voiced by national minority organisations. Disregard for bilingualism is noticed by members of national minorities across various levels. In 2012, the Coastal Self-Governing Community of the Italian Nationality drew up a comprehensive record of the discrepancies in enforcing the provisions related to the use of the Italian language in public.[36] Numerous complaints also arise from representatives of the Hungarian minority. In its letter[37] to the National Assembly's Commission for the National Communities, the Hungarian Self-Governing National Community of Pomurje wrote:

> According to regulations, the Hungarian language should be equally used in all proceedings before state or municipal authorities. However, in practice, only a small number of authorities actually operate in the language of the minority. As a result, proceedings are conducted in the minority language only upon explicit request by a party, but most members of the minority choose not to exercise this option due to the potential lengthening of the proceedings. While most of the officials meet the formal requirement of knowing the Hungarian language, they may not possess the necessary qualifications to conduct the proceedings effectively in that language. The problem is that individuals who have graduated from bilingual schools meet the formal criteria for employment in public administration but might not be sufficiently proficient in the minority language. This concern could potentially be resolved by specifying the level of Hungarian language proficiency on school certificates and setting the level of language proficiency required for employment in public administration. However, according to our information, there are instances where, despite suitable candidates

[36] Coastal Self-Governing Community of the Italian Nationality. Letter 60 (2012) of 10 July 2012. Accessible at: http://www.dz-rs.si/wps/portal/Home/deloDZ/seje/evidenca?mandat=VI&type=magdt&uid=968D1C39BC86BF94C1257CA70025D5C6

[37] Hungarian Self-Governing National Community of Pomurje. Letter No. 204/12 of 29 August 2012. Accessible at: http://www.dz-rs.si/wps/portal/Home/deloDZ/seje/evidenca?mandat=VI&type=magdt&uid=968D1C39BC86BF94C1257CA70025D5C6 (4 October 2014).

being available, the heads recruit people who do not meet the minority language requirement.

(…)

Most of the time, staff (except perhaps those at the court and in administrative units) do not even inform the parties that the procedure can be conducted in Hungarian. Consequently, proceedings are only conducted in the minority language when there is a personal acquaintance between the employee and the party, with both being aware of their ability to communicate in the minority language. This practice is not ideal; members of the minority should have the assurance that proceedings will be conducted in their mother tongue without automatically defaulting to the majority language when dealing with state or municipal authorities. This mindset can only be fostered among members of the minority if they consistently receive services in both languages. To address this issue, we suggest placing a sign at the desks of employees proficient in both official languages, indicating "I speak Slovene and Hungarian". We believe this would encourage minority members to initiate their proceedings in their mother tongue.

(…)

Another issue concerning bilingual operations is the frequent absence of bilingual forms. In this regard, we believe that solely having monolingual forms in either Slovene or Hungarian is inadequate. In such instances, staff tend to automatically provide the party with a form in Slovene. With bilingual forms, the party would have the immediate option to select their preferred language for the procedure.

Furthermore, we have observed that despite the shortage of staff proficient in both official languages, certain authorities disregard requests from employees who are also members of the national minority seeking transfers to bilingual areas (e.g. the Police).

The significant disparity between the legal provisions regarding the rights of national minorities to use their minority languages in various life situations and the actual everyday practice is reported in numerous research reports.[38]

[38] See, for example: Multiannual, longitudinal project (1991–2000) *Ethnic Identity and Interethnic Relations in the Slovene Ethnic Territory*, project leader: Albina Nećak Lük,

Finally, it is worth noting that also all the reports[39] of the Advisory Committee on the implementation of the Framework Convention in Slovenia indicate allegations of inconsistencies, deficiencies, and violations of the commitments related to the use of minority languages.

4. Bridging the Gap between *de jure* and *de facto* – the Bilingualism Bonus

The State, to put it somewhat conventionally, approaches this issue through two distinct methods: a repressive and an affirmative one. Regrettably, the State rarely, if ever, opts to penalise those who violate the provisions related to the use of minority languages. or those who fail to implement them altogether. It is almost as if the State feels hesitant or uncomfortable when it comes to championing the implementation of minority rights in everyday life before the majority public.

Instead, it has chosen an affirmative approach, incentivising public employees to use minority languages by offering financial rewards to those able to communicate and operate in the languages of national minorities – a reward known as the bilingualism bonus. This bonus serves as a specific mechanism employed by the State to

Institute for Ethnic Studies, Ljubljana (Randomised sample, longitudinal, structured questionnaire); Research project (2004–2006) *Perception of Linguistic and Cultural Diversity in Border Towns*, project leader Sonja Novak Lukanovič, Institute for Ethnic Studies, Ljubljana (selected schools: pupils (14–15), parents, structured questionnaire, N=347); Research project (2006–2007) *Bilingualism in Slovenia*, project leader Sonja Novak Lukanovič, Institute for Ethnic Studies, Ljubljana (Randomised sample, structured questionnaire, N=291); CRP (2006–2008) *Effectiveness of Bilingual Education Models in Ethnically Mixed Areas – A Challenge and an Asset for a Europe of Languages and Cultures*, project leader Lucija Čok et al., implemented by IES, FF UL, ZRC UP, SLORI (Selected sample, 8th-grade pupils, N=527, structured questionnaire, testing L1, L2, FL); Basic research project of the Slovenian Research Agency J6-9373 (2018–2022) *Institutional Bilingualism in Ethnically Mixed Areas in Slovenia: Evaluation of Bilingualism Bonus Programme*, project leader: prof. dr. Sonja Novak Lukanović, implemented by IES, FF UL, FHŠ UP.

[39] Advisory Committee on the Framework Convention for the Protection of National Minorities. Opinion on Slovenia. Adopted on 12 September 2002; Second Opinion on Slovenia. Adopted on 26 May 2005; Third Opinion on Slovenia. Adopted on 31 March 2011; Fourth Opinion on Slovenia. Adopted on 21 June 2017; Fifth opinion on Slovenia. Adopted on 18 May 2022.

create additional incentives for promoting the use of minority languages in public communication. The criteria for recipients and the amount of the bilingualism bonus are specified in several laws, as detailed in the previous sections.

The frequent grievances voiced by representatives of national minorities regarding the limited implementation of provisions concerning the use of minority languages in everyday life raise questions about the rationality and effectiveness of the bilingualism bonus. Does this bonus effectively bridge the gap between what is legally mandated and everyday practice? Research conducted as part of the Institutional Bilingualism in Ethnically Mixed Areas in Slovenia: Evaluation of Bilingualism Bonus Programme project (Novak Lukanovič. 2020) reveals both positive attitudes and reservations concerning this financial instrument.

In Prekmurje, when asked about the suitability of the bilingualism bonus as a mechanism for promoting the use of minority languages in the workplace, the respondents found the bonus to be suitable (selected responses):

> This is because, in most cases, we start conversations with parties in Slovene, and even Hungarian-speaking parties tend to respond in Slovene. The bilingualism bonus serves as an effective mechanism because it encourages us to employ Hungarian instead of Slovene to facilitate communication with the parties.
>
> It is a good motivator (...) after all, everyone appreciates a higher salary.
>
> The bonus is particularly encouraging for those who may have a lesser command of the language; the monetary reward acts as a motivation for them to improve their language skills more quickly. In any case, proficiency in the Hungarian language is a prerequisite for anyone seeking employment in a bilingual area.
>
> The bilingualism bonus is a suitable mechanism because it further motivates and encourages the public employee to use a second language in their workplace. This, in turn, contributes to the broader and more active use of the language within institutions in bilingual areas.

Given that I am remunerated for my bilingualism, I have a responsibility to use both languages as required and as per preferences of the users.

Similar arguments in favour of the bilingualism bonus were presented in the Slovene part of Istria (selected responses):

I believe the bonus motivates public employees to put in more effort when communicating with parties. Receiving the bonus makes them feel obligated to do so. On the other hand, I have a colleague who does not receive the bonus, and even if he understands the other language, he does not make any effort to use it in his communication with parties. He told another colleague that he was not paid for it and made the party go away.

Because everyone appreciates being compensated for their work.

Financial incentives are powerful motivators.

It encourages the use of a foreign language. Since it is not my mother tongue, it is much more challenging to express thoughts, facts, and instructions. Translation cannot be simultaneous but depends on the situation or the specific case of the party. I believe that offering a financial incentive to employees is the most effective way to encourage the use of a foreign language because the satisfaction of the party when they leave the office is not recorded at any level of decision-making. However, it definitely feels good for the individual employee to see the party leave satisfied. This is something the superiors cannot always perceive since they do not sit in the office with their subordinates.

In our daily work, we interact with parties who speak another language. Knowledge of a second language is therefore necessary for the normal day-to-day performance of duties, and we are entitled to a bilingualism bonus.

I know that I live in a bilingual area. Since I reside in a place where both Slovene and Italian are spoken, it is only natural for me to speak Italian and Slovene with my fellow citizens, even outside of work (...) Since Slovenia has the unique feature or privilege of having an Italian and a Hungarian minority, I think it is understandable that colleagues who possess knowledge of these languages are rewarded.

> Because the bonus motivates employees to independently learn the professional terminology related to their field of work (which the school system does not teach). Otherwise, we would need to provide a translator even for the shortest and simplest correspondence and explanations to the parties.
>
> I believe it is right for employees to be financially rewarded for using their knowledge, especially when it comes to serving parties who speak another language. This actively encourages the younger generation to learn the language. I agree, however, that language skills should be actively tested. I do not think it is fair for people who hold a language proficiency certificate but do not even know the basics to receive the bonus.

Although our respondents receive the bilingualism bonus, they express criticism of it in both ethnically mixed areas. A relatively significant proportion of them, with a slightly higher percentage in Prekmurje, deem this mechanism to be inadequate. To justify this viewpoint, employees in both Prekmurje and Slovene Istria present similar arguments. These, in a way, shed light on why the use of two languages is not effectively implemented at the institutional level, a trend reported in various studies (Medvešek & Bešter, 2016; Novak Lukanovič & Mulec, 2014). Some deficiencies in the implementation of bilingualism are also documented in reports from public institutions or bodies operating in ethnically mixed areas (Medvešek et al., 2020).

The responses provided can be classified under three main conclusions: (a) the bonus amount is inadequate, (b) the bonus is too low, and (c) the bonus itself does not guarantee bilingual operations.

Below are some of the responses provided. In Prekmurje:

> (...) the bilingualism bonus is not an effective mechanism due to the small amounts; I use the language primarily because of the parties (...)
>
> (...) because the bonus is too low to serve as a motivating factor (...)
>
> The bilingualism bonus fails to encourage the use of a second language in the workplace. Those of us proficient in

the other language will use it anyway, while others will not. It also seems unfair that some individuals receiving the bonus cannot speak a single word of the language they are paid to use. I believe that the actual use of minority language in the workplace should be verified.

The range of the amount of the bilingualism bonus is too narrow to provide adequate motivation (for example, a minimum of 12 % and a maximum of 15 %). The distribution of the bonus in certain workplaces is also inadequate.

As one cannot be employed without demonstrating language proficiency (...)

In Slovene Istria:

Living in a bilingual area, we are practically compelled to use the other language with certain parties. Interaction with an Italian-speaking party is definitely better if we know and use their language. However, the current bonus arrangement does not encourage the use of the second language; it largely depends on our own discretion, resourcefulness, and initiative to use it in the workplace.

The current bonus system is inadequate because it does not serve as a significant incentive for using the second language. Using the second language is necessary but challenging, especially in administrative procedures. Therefore, it is right to receive the bonus. It is a legally guaranteed right rather than an incentive.

The bilingualism bonus does not guarantee that a public employee will use the minority language.

It would be better if the employer organised courses to learn and improve the language, focusing on the specific vocabulary.

The bonus is extremely low in comparison to the level of (Italian) language proficiency required. Not all employees have knowledge of Italian, yet still receive the bonus (which is unfair).

The second language is instilled from an early age. We use it because we know it, not because of the bonus.

How to address the question raised at the outset of our discussion: To what extent does the bilingualism bonus influence the

effective implementation of institutional bilingualism? The findings from the aforementioned studies indicate that the answer is not a straightforward one. While the bilingualism bonus can indeed serve as a catalyst for the use of minority languages, it is important to recognise that this instrument/mechanism is just one element within the broader framework supporting national minority language policies. To make the system work, it is imperative to supplement it with opportunities, competences, and attitudes towards the use of minority languages.

Individuals must be provided with *opportunities* to use their language – these include legal provisions and social contexts encouraging or enabling the language use. Having covered a broad spectrum of legal provisions on previous pages, we can conclude that members of minority communities indeed have these opportunities.

Moreover, individuals must possess the necessary linguistic *competences* and be capable of employing the language in various contexts. We assume that members of national minorities possess sufficient linguistic competences to use their minority language in diverse life situations. The foundation for this lies in the use of the minority language within the family and, naturally, in education conducted in the language of the national minority. However, it remains a question whether counterparts are also proficient in communicating in the minority language. Empirical data from an earlier survey[40] indicate that respondents are aware that, in order to achieve language equality and implement institutional bilingualism, it is essential for the majority, with whom they coexist, to also be proficient in the second, minority language. A bilingual/bicultural society and environment also necessitate an engaged majority that knows and employs the minority language in public communication. This is crucial because the minority does not exist in isolation; they interact with the broader society. Undoubtedly, this presents a challenge, given the demographic structure where the minority constitutes a small percentage. This demographic reality makes the

[40] Research project (2006–2007) *Bilingualism in Slovenia*, project leader Sonja Novak Lukanovič, Institute for Ethnic Studies, Ljubljana (Randomised sample, structured questionnaire, N=291).

comprehensive implementation of bilingualism across all levels and domains more complex.

While having the opportunity and competence to use one's mother tongue in all aspects of life is vital for the identity of a community, it alone is not sufficient for the establishment of a truly bilingual/bicultural society. In addition to these factors, individuals must also possess a favourable *attitude* towards the language and bilingualism for them to willingly choose to use a minority language.

The analysis of the legal foundations suggests that Slovenia's language policy offers specific incentives for the use and acquisition of minority languages within the public sector. Some positions in the public sector necessitate proficiency in the minority language, and there are financial incentives for bilingualism in the form of a bonus. However, the actual implementation of this policy has proven to be less effective than anticipated. Ethnographic surveys conducted among both majority and minority populations as early as 1991 and 1997 revealed that, in practice, majority and minority languages were not equally used. The use of both languages in the workplace is more prevalent among members of minority groups, while employees of Slovene nationality predominantly use Slovene exclusively (Nećak Lük, 1993; 2000). This situation remains largely unchanged today. A recent report on the state of linguistic minorities published by the Council of Europe indicates that national minorities generally do not dispute the quality of the constitutional and legal framework. However, there are gaps in practical implementation. For example, issues persist regarding the use of minority languages in public spaces at the local level and the quality of education available in minority languages (Advisory Committee to the Framework Convention for the Protection of National Minorities, 2018: 4; see also Lantschner et al., 2012). Research conducted by the Institute for Ethnic Studies has shown that public employees from the majority group often lack fluency in the minority language, even when it is a job requirement, and they are entitled to a bilingualism bonus (Medvešek & Bešter, 2016). The use of both languages for internal communication within public administration is more common among minority members, while members of the majority predominantly use only Slovene.

We also find that the reduced effectiveness of language policy in public administration is not attributable to a lack of popular support (Novak Lukanovič, 2003) or inadequate legislation. The Bilingualism in Slovenia survey, conducted between 2005 and 2007 by the Institute for Ethnic Studies on a representative sample of the population of Slovene Istria and Prekmurje, reveals that the vast majority of respondents endorse the idea that knowledge of both languages should be a prerequisite for employment in the area, regardless of the specific job. The survey results demonstrate that most respondents believe that financial or other penalties should be applied if bilingual communication is not ensured. This includes the recruitment of qualified staff and the provision of information in both languages. Remarkably, 90 % of respondents support the bonus for bilingualism in the workplace. In essence, respondents in principle favour a language policy that encourages bilingualism among public employees. In practice, however, communication tends to be primarily in Slovene, especially among young people (Medvešek & Bešter, 2016). The findings suggest that the ineffectiveness of institutional bilingualism, and more specifically the bilingualism bonus programme, is not due to a lack of support from members of the minority community, or strong negative attitudes from members of the majority. Instead, it is primarily a result of an inadequate design and implementation.

Empirical research has also identified a shortcoming in achieving functional bilingualism within the public sector. Although legislation precisely defines the required level of language proficiency (see Novak Lukanovič, 2003; Medvešek & Bešter, 2016: 177–178), individuals occupying specific positions often do not possess the necessary proficiency in the minority language as mandated by their job classification. Consequently, they lack confidence in using it. As a result, members of minority communities often opt to communicate with public employees in Slovene, especially when those employees are members of the majority community and typically do not have a strong command of Italian or Hungarian. However, it is worth noting that the language proficiency of public employees is a variable that can be influenced by language policy. Another influencing factor is the composition of the local population. The migration of Serbian, Croatian, Bosnian, Montenegrin, Macedonian

and Albanian communities to Slovene Istria and Prekmurje is altering the social and cultural makeup of the local population and is likely to change the area's demographic structure and reduce the proportion of minority language speakers.

While some research on language policies has aimed to support minority languages in various European countries (Grin et al., 2003; Gazzola et al., 2016; Laakso et al., 2016), none has examined Italian and Hungarian in Slovenia from a comparative perspective. Furthermore, most of the existing research focuses on ex-post evaluations rather than delving into the challenges of policy design and implementation. Research on language policy in Slovenia typically centres on the context in which language policy is implemented. Burra and Debeljuh (2013), for example, describe the vitality of Italian using UNESCO's nine parameters of language vitality (UNESCO, 2003). However, this research does not explore the internal dynamics of the policymaking process and its impact on language vitality.

5. Conclusion

To what extent has the Framework Convention contributed to improving the lives of minorities? The answer lies in the analysis of the minority protection model, specifically the special rights of national minorities and the use of minority languages in dealings with authorities. Regrettably the answer is – not at all!

Slovenia has used the two Council of Europe documents on the protection of national minorities to showcase the existing model of minority protection on the international stage, rather than using them as a framework for encouraging a revision of that model. This approach is consistently mentioned in all of Slovenia's reports on the implementation of the Framework Convention and the European Charter for Regional or Minority Languages.

Could the Framework Convention, 25 years after its entry into force in Slovenia, be a valuable foundation for building upon? Could it help in finding alternative solutions to improve the current model of minority protection? Could it serve in recognising the status and significance of other autochthonous national minorities

that have thus far been overlooked, such as the Germans, Serbs in Bela Krajina, Croats along the Slovene-Croatian border, and Jews?

Considering our past experiences, scepticism about the applicability of the Framework Convention in both of these areas is understandable. However, national minorities, often situated on the outskirts of social influence and power, do not have the luxury of waiving or ignoring any of their national minority rights.

On a more positive note, there are bright spots, including the establishment of two Bilingualism Offices (one in Prekmurje and one in the Litoral). These Offices operate under the auspices of the two central representative bodies of the Italian and Hungarian national minorities: the Coastal Self-Governing Community of the Italian Nationality and the Hungarian National Community of Pomurje. Their primary purpose is to facilitate the translation of professional literature, correspondence, and documentation from Slovene into Hungarian or Italian, and vice versa. They would collaborate to find terminological solutions and create a standardised database of professional legal terminology for the harmonised use in Hungarian and Italian, accessible to all state and municipal administrations in ethnically mixed areas. Additionally, the two Offices would cooperate with ministries and other public institutions and assist other organisations in ethnically mixed areas with translations. They are also tasked with monitoring the implementation of bilingualism.

In their constitutive instruments, the Framework Convention is mentioned in the preamble as the basis for their establishment. Although the Framework Convention had no influence on the development of Slovenia's minority protection model, as it was adopted many years after the model had been set up, its value lies in the fact that, through the reports by the Advisory Committee, it draws the attention of state institutions to the deficiencies in the Slovene minority protection model and prompts the country to make necessary adjustments.

BIBLIOGRAPHY

Burra, A. & Debeljuh, A. (2013). *L'italiano nelle aree di confine: analisi e proposte per la sua rivitalizzazione / Italijanščina na obmejnem območju: analiza in predlogi za njeno oživitev*. Capodistria: Centro italiano di promozione, cultura, formazione, sviluppo Carlo Combi / Koper: Promocijsko, kulturno, izobraževalno in razvojno italijansko središče Carlo Combi.

Gazzola, M. et al. (2016). The EU'S Financial Support for Regional or Minority Languages: A Historical Assessment. *Treatises and Documents, Journal of Ethnic Studies* 77, 33–66, https://rig-td.si/wp-content/uploads/2018/11/77_-4.pdf (accessed 14 September 2023).

Grin, et al. (2003). *Language Policy Evaluation and the European Charter for Regional or Minority Languages*. Basingstoke (Hampshire); New York (N.Y.): Palgrave Macmillan.

Komac, M. (2000). Evropska listina o regionalnih ali manjšinskih jezikih v luči ohranjanja manjšinskih jezikov v Sloveniji. In: I. Štrukelj (Ed.) *Kultura, identiteta in jezik v procesih evropske integracije* (pp. 50–77). Ljubljana: Slovene Association of Applied Linguistics.

Komac, M., Zupančič, J. & Winkler, P. (1999). *Varstvo narodnih skupnosti v Republiki Sloveniji : vademecum*. Ljubljana: Institute for Ethnic Studies.

Laakso, et al. (2016). Towards Openly Multilingual Policies and Practices: Assessing Minority Language Maintenance across Europe. (1 ed.) *Linguistic Diversity and Language Rights*, No. 11). Multilingual Matters.

Lantschner, et al. (2012). *Practice of Minority Protection in Central Europe*. Baden-Baden: Nomos.

Medvešek, M. & Bešter, R. (2016). Institucionalna dvojezičnost v Prekmurju. In: D. Grafenauer & K. Munda Hirnök (Eds.) *Raznolikost v raziskovanju etničnosti* (168–190). Ljubljana: Institute for Ethnic Studies.

Medvešek, M. et al. (2020). *Vloga dvojezičnega šolstva pri ustvarjanju podlag za uresničevanje institucionalne dvojezičnosti na narodno mešanem območju v Prekmurju: ciljno raziskovalni projekt: zaključno poročilo*. Ljubljana: Institute for Ethnic Studies.

Nećak Lük, A. (1993). Medetnični odnosi v slovenskem etničnem prostoru: primerjalna analiza elementov narodnostne identitete prebivalstva na stičnih območjih obmejnih regij Slovenije, Avstrije, Italije in Madžarske. *Treatises and Documents, Journal of Ethnic Studies* 28, 5–14, https://rig-td.si/wp-content/uploads/2018/11/A.-Ne%C4%87ak-Luk-Medetni%C4%8Dni-odnosi-v-slovenskem-etni%C4%8Dnem-prostoru.pdf (accessed 14 September 2023).

Nećak Lük, A. (Ed.) (2000). *Medetnični odnosi in etnična identiteta v slovenskem etničnem prostoru (2), Urejanje medetničnih odnosov v Lendavi.* Ljubljana: Institute for Ethnic Studies.

Novak Lukanovič, S. (2003). Jezikovno prilagajanje na narodnostno mešanih območjih v Sloveniji. *Treatises and Documents, Journal of Ethnic Studies* 42, 38–62, https://rig-td.si/wp-content/uploads/2018/11/42_-3.pdf (accessed 14 September 2023).

Novak Lukanovič, S. & Mulec, B. (2014). Izvajanje dvojezičnosti v javni upravi v Sloveniji. *Mednarodna revija za javno upravo* 12(1), 95–108.

Novak-Lukanovič, S. (2020). Dodatek za dvojezičnost v javnih ustanovah na narodnostno mešanih območjih v Sloveniji. In: M. Medvešek & S. Novak-Lukanovič (Eds.) *Raznolikost v raziskovanju etničnosti: izbrani pogledi II* (pp. 373–400). Ljubljana: Institute for Ethnic Studies.

UNESCO (2003). *Language Vitality and Endangerment*, https://ich.unesco.org/doc/src/00120-EN.pdf (accessed 14 September 2023).

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Bosnian-Herzegovinian Pluralism: Transitioning from Ethnicities to National Minorities*

Abstract

The main approach of this article is to represent Charles Taylor's idea of the "politics of recognition", proposed in his eponymous article (1994), which is grounded in advocacy for the promotion of respect for diverse cultures, identities, and values within society. Taylor accentuates the significance of acknowledging various cultures and groups, along with their contributions to society, rather than subjecting all these diversities to a singular universal norm or standard (Taylor, 1994). The paper is divided into two sections. The first section explores the concept of 'the politics of recognition' in Bosnia and Herzegovina (B&H) and presents glaring instances of violations of rights, not only of national but also of constitutional minorities in B&H, which stem from the Dayton state structure.[1]

* This article was created as a part of the activities of the Academic Network for Cooperation in Southeast Europe, which, within its scope of work, focuses on the implementation of the Framework Convention for the Protection of National Minorities in the countries that emerged in the territory of the former Yugoslavia. Some of the data regarding the national minorities living in Bosnia and Herzegovina were used based on the research conducted between 2002 and 2006 for the purposes of the doctoral dissertation of the author of this text.

[1] The Dayton structure of the state of Bosnia and Herzegovina (B&H) denotes a complex political system established in 1995, in Dayton, USA, by the General Peace Agreement for the cessation of hostilities in B&H, aimed at halting the brutal killing of civilians in B&H. The Peace Agreement stipulated that B&H would consist of the following entities: the Federation of Bosnia and Herzegovina and the Republika Srpska, as well as the Brčko District. The Federation of Bosnia and Herzegovina encompasses ten cantons, primarily covering territories inhabited by Bosniaks and Croats, while the Republika Srpska is composed of municipalities with a predominantly Serbian population. The Brčko District is a territory located between the Federation and the Republika Srpska, holding a distinct status. The authorities in this district operate in coordination with the entities, but they also possess specific powers over local matters. Moreover, there exists a central government for the state of Bosnia and Herzegovina, possessing limited competencies and being responsible for foreign

Specifically, to avert the brutal suffering of the inhabitants of B&H, the architects of the Dayton Peace Agreement missed the opportunity to influence the formation of a society that actively recognizes and respects identities of diverse cultures and groups and affords them the ability to retain their distinctive characteristics and autonomy (Taylor, 1994). Understanding B&H within a broader context will provide a clearer insight into Bosnia and Herzegovina's experiences with the Framework Convention for the Protection of National Minorities. The second part delves into the significance of multiculturalism as an approach that values and supports various cultural expressions, languages, customs, and ways of life. The multicultural mosaic of Bosnia and Herzegovina is presented, which was crafted through different historical epochs from the Ottoman era to the socialist period (Šačić, 2007). This segment also provides a reflection on the recent war in B&H, wherein the right to equality for all citizens before the law was violated. Upon analyzing the status of national minorities in Bosnia and Herzegovina, we conclude that even after 25 years of the existence of the Framework Convention for the Protection of Minority Rights, the protection of their political, economic, and cultural rights remains insufficient. The concept of multiculturalism, which equally serves the protection of individual and collective rights (Kymlicka, 1997) as well as inclusivity in decision-making processes should be nurtured as a value in the future, as it has contributed to a greater equality and fairness among all members of the Bosnian-Herzegovinian community in the past.
Keywords: diverse cultures, identities, values, society, Bosnia and Herzegovina, national minorities

1. Politics of Recognition in Bosnia and Herzegovina

Taylor's "Politics of Recognition" in the context of Bosnia and Herzegovina (B&H) should refer to a set of political, social, and cultural strategies aimed at recognizing and protecting the diverse ethnic, religious, and cultural groups within the society. B&H is known for its complex ethnic and cultural structure, where three main ethnic groups are present: Bosniaks, Croats, and Serbs.

affairs, international relations, defense, and certain other aspects. The state has a presidency composed of three members representing the three main ethnic groups (Bosniaks, Croats, and Serbs), with a rotating presidency. The objective of this structure was to sustain peace and stability after the war; however, it frequently confronted challenges of political impasse and discord among diverse ethnic factions.

After the dissolution of the former Yugoslavia, B&H became an independent state. However, that independence came with significant challenges, including conflicts that escalated during the 1990s. The Dayton Agreement signed in 1995 established the foundation for peace and stability in the country, but it also set up a political system that is highly intricate and based on ethnic quotas and rights. The Constitution of B&H created under the Dayton Peace Accords reserves participation in some of the key state decision-making bodies to its "constituent peoples" – namely Serbs, Croats, and Bosniaks. As a result, people of other ethnic origins are excluded from, for instance, the House of Peoples and the Presidency.

The concept of "constituent peoples means that Bosniaks, Croats, and Serbs are recognized as the three key ethnic groups with distinct rights in political institutions. This is reflected in the institutional structure, including the presidency, parliament, and other organs of power, where political positions are allocated based on ethnic identity.

However, this structure also faces criticism, as it is often seen to perpetuate ethnic divisions and hinder progress towards a unified society. Many analysts emphasize the need to transcend this ethnically-based politics of recognition in order to foster more inclusive and sustainable social cohesion. The main points of those critical views stem from the attitude of the majority (tri-ethnic majority) towards minority communities in the post-Dayton period, particularly. In the past period, the position of national minorities is regulated in different ways. According to Vera Karz, "During socialism in Yugoslavia/Bosnia and Herzegovina, national minorities had full national and civic rights" (Katz, 2017: 202).

The war in Bosnia and Herzegovina and the Dayton peace structure brought great injustice and inequality to national minorities. It took eight years after the war before the Law on the Protection of National Minorities was adopted. In the census of B&H in 2013 (the first census after the war), national minorities were unnamed and included as others. "This happened for the first time since the enumeration of the population in Bosnia and Herzegovina, and members of national minorities cannot exercise all their rights" (Katz, 2017: 202). Regardless of the fact that many of them left a

huge impact on the historical heritage of Bosnian society, in today's history (post-Dayton history), their representation is not adequate.

For example. Dervo Sejdić and Jakob Finci are citizens of Bosnia and Herzegovina (B&H). Sejdić is Roma, and Finci is Jewish. They wanted to stand for elected office. On February 10, 2006, and January 3, 2007, they received written confirmation from the Central Election Commission that they were ineligible to stand for election to the Presidency and the House of Peoples of the Parliamentary Assembly because of their ethnic origins. They challenged this situation in the domestic courts. The Constitutional Court of B&H delivered two decisions in March and May 2006 stating that it had no competence to decide whether any constitutional provision (or laws under them) conformed with the European Convention on Human Rights. Applications were then submitted to the European Court of Human Rights in 2006.

Sejdić and Finci argued that, despite having qualifications similar to those of the highest elected officials, they were unable to run for the Presidency and the House of Peoples of the Parliamentary Assembly due solely to their ethnic backgrounds, as stipulated by the Constitution of Bosnia and Herzegovina and the Election Act of 2001. This meant that they were unfairly prevented from participating in public life, which violated their rights under Article 14 of the European Convention on Human Rights (ECHR) regarding non-discrimination, in conjunction with Article 3 of Protocol No. 1 ECHR, which pertains to the right to free elections, as well as Article 1 of Protocol No. 12 ECHR, which generally prohibits discrimination.

Dervo Sejdić and Jakob Finci sued Bosnia and Herzegovina before the European Court of Human Rights in Strasbourg. In that case, on December 22, 2009, a judgment was passed against Bosnia and Herzegovina, obliging it to amend the constitutional arrangement of Bosnia and Herzegovina. The judgment proved that Bosnia and Herzegovina is currently the only country violating Protocol 12 of the European Convention on Human Rights and Article 3 of the Convention for the Protection of National Minorities. The judgment has not yet been implemented.

EU representatives often warn that without the implementation of the mentioned judgment, there is no convincing application for the EU accession.

On the other hand, several other judgments (Ilijaz Pilav, Azra Zornić, and Svetozar Pudarić) are also mentioned in international narratives about protecting human rights in Bosnia and Herzegovina. In the case of Ilijaz Pilav[2] against Bosnia and Herzegovina, a verdict has been issued, and it was determined that the Constitution of Bosnia and Herzegovina was discriminatory. No Serb from the Federation of Bosnia and Herzegovina can run for the position of a member of the Presidency of B&H, nor can Bosniaks and Croats from the Republika Srpska. The tripartite presidency of B&H consists of a Serb, Bosniak, and Croat representative. The Serb representative is elected in the entity of the Republika Srpska, while the other two are elected in the entity of the Federation of Bosnia and Herzegovina, which is shared by Bosniaks and Croats. Unfortunately, from this description, it is evident that Bosnia and Herzegovina is deprived of the greatest social capital, which Taylor writes about, and that is social cohesion – transcending social statuses, regions, and ethnic and religious identities.

In one of the reports, the Advisory Committee of the Council of Europe adopted its Fourth Opinion on Bosnia and Herzegovina (Article 3, 2017), which called for an immediate amendment of the Constitution and other relevant legal provisions to remove the exclusion of 'Others,' including national minorities, and 'constituent peoples' who didn't reside in their ethnic-affiliated areas from participating in and holding public offices.[3]

Only a few countries in the world have such an internationalized constitution and a very complex political system that establishes a state on an ethnic basis. The greatest paradox of the post-Dayton structure is that members of different minorities in Bosnia and Herzegovina almost represent the majority of the population in the country, if we add up the constituent minorities and national

[2] Ilijaz Pilav filed a complaint to the Human Rights Court in Strasbourg (2006), after the Constitutional Court banned him from running for Presidency as a Bosniak from the Republika Srpska entity (RS), he thought he was doing the right thing. The Strasbourg court decided that Bosnia's constitution was breaking the Human Rights Convention. The ruling elites continue to ignore the verdict.

[3] Fourth Opinion on Bosnia and Herzegovina, adopted on November 9, 2017. https://www.coe.int/en/web/minorities/-/bosnia-and-herzegovina-publication-of-the-4th-advisory-committee-opinion

minorities. The Constitution of Bosnia and Herzegovina and the entities' constitutions do not recognize the category of constituent minorities, and the Council of National Minorities is not competent to address issues related to these minorities. Otherwise, the role of the Council of National Minorities is limited; only in Sarajevo Canton does its mandate exceed the classical advisory role, and it has the authority of a proposer in the assembly.

Who lives in the shadow of the constituent peoples of Bosnia and Herzegovina? The main idea of this article is that the post-Dayton policy in Bosnia and Herzegovina, which promotes the tri-ethnic version of multiculturalism, is divisive. It encourages different ethnic groups to coexist, but is driven by territorial ambitions to establish ethnically pure regions. This has resulted in the country being divided into entities, the Republic and the Federation. In contrast, I believe in a more inclusive and unifying form of multiculturalism that embraces all residents of Bosnia and Herzegovina, regardless of their ethnic or religious background. This approach values mixed marriages and even atheists.

Furthermore, this perspective contradicts the historical understanding of Yugoslavia, where Bosnia and Herzegovina were seen as a place that is not just Serbian, Croatian, or Muslim, but rather a combination of all these identities. This challenges the traditional model of a nation-state with a single dominant identity.

But this was a leftist commitment to a social contract in which equality of not only ethnic rights, but also the rights of equal and free citizens were confirmed – the Declaration from Sanski Most adopted in 1944 – adopted four years before the European Declaration of Human Rights, guaranteed freedom of choice and religion, and a range of other rights to all.

Minorities in Bosnia and Herzegovina have diverse territorial origins, and their arrival in B&H took place in various historical circumstances. Some were assimilated, some integrated, and according to some, the state treated them very poorly. However, for the most of them, it can be said that they remained a factor in the integration of the Bosnian society and, through their incorporation into Bosnian-Herzegovinian culture and political community, became indigenous and, as such, have equal rights to their freedoms, beyond several conventions that B&H has signed.

Therefore, the essential implementation of the Convention for the Protection of National Minorities appears paramount. The laws on national minorities adopted in 2003 at different levels of authority have spurred the establishment of numerous associations of national minorities, enabling them to apply for certain projects and receive financial support from institutions for learning their mother tongue, developing literature, and preserving folklore. In this way, an effort is made to preserve the cultural identity of these minority groups (Article 5 of the Convention). However, if we examine the state's report on legislative and other measures, where the expenditure is presented in tabular form, it is not difficult to conclude that significant, proactive, and regular support for cultural projects of national minorities is missing.

As we know, intercultural dialogue requires active communication that strengthens the understanding of other cultures and their values. Dialogue allows for the dismantling of prejudices and fostering of mutual respect. The Interreligious Council in Bosnia and Herzegovina, formed after the war, has taken on this role with the aim of breaking down prejudices and fostering mutual respect. The council consists of representatives from the four dominant religious communities in Bosnia and Herzegovina. Its members work on monitoring hate speech and publicly condemning attacks on religious structures, which tend to increase, especially during election campaigns. The theoretical role of this council is not negligible, as it influences the public sphere and the balance between universal values, such as human rights, and cultural diversity.

It is important to bear in mind that Bosnia and Herzegovina is one of the rare countries in the entire world to, unfortunately, have an apartheid legal system, which labels and separates children based on their national and religious identity. For every democratic country, this system is unacceptable and inappropriate.

The principle of 'two schools under one roof' is best explained in the documents of the Working Group for Two Schools under One Roof and the OSCE report. The Working Group's report was written in April 2009 and finalized in February 2010, defining this term as "a school building in which two or more schools of the same or different levels of primary or secondary education are

located as separate legal units, founded by municipalities or cantons, which are working according to curricula for the same or different level of education and they teach in the different languages of the constituent people" (according Bakić, Mujagić, 2021: 228).

According to the OSCE mission in Bosnia and Herzegovina reports, there are 56 primary and secondary schools in Bosnia and Herzegovina in 28 locations that are using this principle. During the 1990s war in Bosnia and Herzegovina, apart from the direct impact on education, by destroying schools' infrastructure, ethnonationalist policies have also intervened in schools. The names of the schools changed, and religious symbols began to stand out. In the past years, it has become clear that education is one of the most important national interests and has an immense impact on the citizens and peace in this country. The war has ended (Dayton Peace Agreement 1995), but ethnic divisions and conflicts are still running. The political elites of this country are using schools as their battlefields and promoting intolerance between different national groups (Bosniaks, Serbs, and Croats) in Bosnia and Herzegovina. Every year, the OSCE provides recommendations, and efforts are made to establish a common core curriculum (Bakić, Mujagić, 2021).

There are many more issues at play, but for the promotion of essential recognition policies, it is crucial that local authorities are sensitive when determining street names, school names, and other toponyms (Article 6). However, practice shows that this hasn't been the case, as even student dormitories have been named after convicted war criminals. The question of the rights of national minorities in the media domain is not seriously addressed within the development policies of Bosnia and Herzegovina. If there have been any such initiatives, these are sporadic attempts and initiatives without coordination and dialogue. Even organizations representing national minorities do not address this issue, although a strategic document at the state level for resolving the issues of national minorities, containing a component concerning realization media rights, has never been adopted. There are no media outlets in the languages of national minorities in Bosnia and Herzegovina. Specific content about national minorities in the official languages is sporadic, has continuity, and is mainly broadcast by local media. Bilingual print media, as seen with the Polish and

Slovenian communities, are extremely rare, and their printing is not supported by the state.

In the cases where content about national minorities does appear, the media often resorts to a folklorization approach, and in portraying their situation, the entirety of their lives in the country is not considered. The potential of the media to affirm culture, language, and identity has not been utilized (Article 9 of the Convention).

2. Visiting the "Others"

Although the future generation does not know and will probably not have the opportunity to learn much about the history of multicultural society in Bosnia and Herzegovina, in the further part of the text, we will try to represent multi-ethnic Bosnia and Herzegovina up to 1945 and during the period of socialism.

The largest number of foreigners arrived at the time of the inclusion of Bosnia and Herzegovina in the Austro-Hungarian Monarchy (after 1878). In addition to these, many nations settled during the Austro-Hungarian rule in Bosnia and Herzegovina: Germans, Hungarians, Poles, Czechs, Slovaks, Slovenes, Ukrainians, Italians, and many others from the countries of the Monarchy, but also Russians, Bulgarians, Romanians, English, French, Vlachs, Turks, Arabs, Greeks, and others (Pejanović, 1955:49). They were from the South-Slav peoples and differed according to their language, religion, nationality, ethnicity, or origin, and their way of life brought the charm of Europe to the oriental Bosnian society. In addition to the already existing religious communities in Bosnia and Herzegovina – Catholic, Orthodox, Islamic, and Jewish – additional immigrants with diverse religious backgrounds entered, such as those from the Evangelical Church, the Reformed Helvetia Church, the Croatian Old Catholic Church, and some other religious communities with fewer affiliated believers. According to the social structure, the settlers were soldiers, officers, servants, traders, artisans, craftsmen, skilled workers, farmers, intellectuals, scientists, artists, and so on.

After World War I and the dissolution of the Austro-Hungarian Monarchy, the Kingdom of Serbs, Croats, and Slovenes was established, renamed the Kingdom of Yugoslavia in 1929. This led to an exodus of foreigners from Yugoslavia, resulting in a significant

reduction in the number of national minorities, particularly in Bosnia and Herzegovina.

Between the two world wars (1918–1941), the 1921 and 1931 censuses identified various national communities within the Bosnian and Herzegovinian population. These included Germans, Poles, Ruthenians, Vlachs, Ukrainians, Jews, Romani people (commonly known as Roma), Czechs, Slovaks, Russians, Hungarians, Italians, Romanians, Albanians, Turks, French, English, Greeks, Arabs, Bulgarians, Norwegians, Danes, and Dutch (Pejanović, 1955: 49). These communities lived alongside the Yugoslav peoples (Slovenes, Croats and Serbs).

Population censuses were conducted based on the languages spoken, resulting in the exclusion of Austrians due to their German language, despite their historical presence stemming from the Austro-Hungarian rule in Bosnia and Herzegovina. As a result, despite emigration during the interwar period, Bosnian-Herzegovinian society managed to retain its multinational character, albeit with significantly fewer numbers.

After a twenty-years peaceful period, World War II brought about new victims. Given the suffering that the population of Bosnia and Herzegovina endured during the Second World War, ethnic minority members suffered significant demographic losses compared to their numbers within the overall population.

For instance, the population of Poles decreased by 15,000, Germans by 14,000, Jews by 12,000, and the majority of other national minorities lost at least 1,000 of their members (Žerjavić, 1989: 19). During socialism, Slovenes, Montenegrins, and Macedonians were not officially classified as national minorities. However, a larger or smaller number of 18 other national minorities from Yugoslavia lived in Bosnia and Herzegovina, including Albanians, Austrians, Bulgarians, Czechs, Germans, Greeks, Hungarians, Italians, Jews, Poles, Roma (referred to as Gypsies until 1971), Romanians, Russians, Ruthenians, Slovaks, Ukrainians, Turks, and Vlachs. All of these groups held equal status as constituent peoples of the Yugoslav Federation, in accordance with all federal and republican constitutions from 1946 to the 1990s.

For instance, the first Constitution of the Federal People's Republic of Yugoslavia in 1946 stipulated their rights as follows:

"National minorities in the Federal People's Republic of Yugoslavia enjoy the rights and protection of their cultural development and the free use of their language."[4] The same Constitution also mandated: "All citizens of the Federal People's Republic of Yugoslavia are equal before the law and regardless of nationality, race, and religion. (...) Acts that grant citizens privileges or limit their rights based on differences in nationality, race, and religion, as well as any advocacy of national, racial, and religious hatred and discord, are contrary to the Constitution and are punishable."[5]

Furthermore, all the later constitutions in Yugoslavia and Bosnia and Herzegovina followed the same model of protecting the rights of national minorities.

Unlike the other republics in Yugoslavia (Slovenia, Croatia, Serbia, Macedonia, and Montenegro) that were based on the national principle of the majority nation in each of them, Bosnia and Herzegovina gained republic status within Yugoslavia based on the existence of historical rights, which were even recognized by revolutionary authorities during World War II (in 1943). In other words, Bosnia and Herzegovina did not have a core nation after which the republic was named. Among other things, this was why Bosnia and Herzegovina repeatedly stated that the national issue had been resolved and that brotherhood and unity among its peoples achieved, emphasizing that all citizens were equal in their rights and obligations. To maintain the proclaimed multi-national equality, according to many historians, state-party radicalism was more pronounced in Bosnia and Herzegovina than in other Yugoslav republics. In other words, the Communist Party of Bosnia and Herzegovina pursued its political and ideological course rigorously, and any hint of nationalism and threats to equality were severely sanctioned. When presenting harmonious coexistence in Bosnia and Herzegovina, the Communist Party and state leadership inevitably emphasized multi-nationality as the most positive aspect of this society.

[4] Ustav Federativne Narodne Republike Jugoslavije, *Službeni list FNRJ* (posebno izdanje), br. 22/1946, Beograd, 1946, p. 9.

[5] Ustav Federativne Narodne Republike Jugoslavije, *Službeni list FNRJ* (posebno izdanje), br. 22/1946, Beograd, 1946, p. 12.

Jews

Jews are the oldest national minority in Bosnia and Herzegovina. They began to arrive in Bosnia and Herzegovina during the Ottoman Empire (in the early 16th century), at the time of their persecution in Spain and Portugal. According to the results of previous studies, "they [were] gradually blended into the former Ottoman society, according to their abilities, lifestyle, religion, and customs, and to this day their few descendants live in Bosnia and Herzegovina" (Katz, 2017: 194). According to the census of 1910, during the Austro-Hungarian occupation, the Ashkenazi Jews came to Bosnia and Herzegovina; the locals called them German Jews, thus distinguishing them from the Espanola or Sephardic Jews. The Ashkenazi spoke Yiddish, a mixture of Hebrew, Polish, and German. The Ottomans allowed Jews to build places of worship. They also built railroads and magnificent buildings. Their material ascent continued until 1941, when Jews began to disappear in the ashes of Auschwitz, Jasenovac, and other camps for mass extermination.

As is known, the construction of synagogues is prohibited in many European environments. However, before World War II, there were 37 synagogues in Bosnia and Herzegovina; in Sarajevo, there were 8 synagogues and between 13,500 and 14,000 Jews. After World War II, despite the expropriation of private property, Jews achieved a high degree of equality in the Federal Republic of B&H. They considered that at that time, they experienced equal treatment to that of other ethnic communities for the first time. With their spiritual value and long-standing presence in B&H, they have felt as a little bit more than a "minority". The Jewish population in today's B&H does not exceed 1,000 people (Šačić, 2006).

Roma

In the 1991 census in Bosnia and Herzegovina, there were approximately 9,000 Roma, but according to data from Romani associations, the number was 80,000. Such a significant disparity in the statistics can be attributed to the fact that many Roma individuals identified themselves as Yugoslavs, Muslims, or other ethnic groups in 1991, and also because many Roma were not registered

in civil registries. A significant number of Roma suffered during the war, especially in places like Prijedor, Vlasenica, Rogatica, Srebrenica, Doboj, Bijeljina, among others. Today, Roma communities can be found in 71 municipalities in Bosnia and Herzegovina, with the largest populations residing in Sarajevo, Brčko, Bijeljina, Banja Luka, Tuzla, Mostar, Kakanj, Prijedor, Zenica, and Teslić.

Roma are currently the most vulnerable ethnic minority in Bosnia and Herzegovina. The exact number of Roma in Bosnia and Herzegovina is difficult to ascertain because often, multiple generations from a single Roma family are not registered in official records. It is estimated that there are between 60,000 and 100,000 Roma in the country. The most pronounced issues facing Roma communities are related to employment, housing, healthcare, and education. Roma often live in segregated areas on the outskirts of local communities.

According to unofficial data from Roma non-governmental organizations and the OSCE, the number of Roma in B&H today amounts to up to 80,000. The most important Roma organization in B&H is the Roma Council, which brings together about 45 Roma associations with the aim of raising the level of education, employment, housing, and health care for Roma. Despite institutional discrimination, some Roma activists manage to draw attention to alarming violations of their human rights in the public sphere. Besides Dervo Sejdić, who sued B&H, their activists have sought the formation of a so-called Advisory Committee for Roma within state institutions, to address issues related to Roma registration, education, etc. Roma in B&H are marginalized due to the prejudices of other citizens towards them. Stereotypes are mostly related to associations with disorder and uncleanliness. This "passive segregation" is reportedly present due to the "Roma way of life" (Šačić, 2006). Roma often emphasizes the need for employment and their abilities – the crafts that are part of their tradition and are almost extinct in the Bosnian-Herzegovinian areas (carvers, gardeners, blacksmiths, umbrella makers, etc.). They have not had experience with nationalism, conquering wars, or drawing borders in their history.[6]

[6] Oršolić, Marijan (2016, July 17). „Učimo od Roma, manjine koja ne poznaje nacionalizam, ograđeni teritorij i osvajačke ratove". *Prometej.ba.* http://www.prometej.ba/

Italians

Members of the Italian national minority today mostly live in Sarajevo, Tuzla, and Prnjavor. A few kilometers from Prnjavor Štivor is located, a place where Italians organized and settled during the Austro-Hungarian period. About 150 Italians live in Štivor today, mostly from the middle-aged and older generations. Italian is still spoken in Štivor with the Trentino dialect, which is no longer present in Italy. Masses are held in Italian, weddings are conducted in the Italian way, and national Italian dishes are cooked. During the 1990s war, the Italians remained indifferent in a political sense, while they had participated politically in the former SFRY. In Tuzla, Italians come mainly as experts, craftsmen, masons, stonecutters, and miners. In today's Tuzla, there is a place called Talijanuša (Little Italy), which reminds us of the process of assimilation of Italians in B&H. They are mixed with all the constituent peoples, including Serbs, Croats, and Bosniaks. Their surnames are their only distinguishing mark. (Šačić, 2006).

Today in Bosnia, there are two associations that gather Italians. The Italian Association in Banja Luka was founded in 2004, connecting people of Italian descent and educating them about their language and culture. The second association, the Citizens' Association "Trentini Di Stivor" from Štivor, organizes the "Maškare" event every year, a festival through which Italians in this part of Bosnia and Herzegovina preserve the customs of their ancestors. This tradition, in which locals dress up and parade while dancing, has been ongoing for over 120 years in Bosnia and Herzegovina. The associations estimate that there are around 300 Italians living in Bosnia and Herzegovina.

Ukrainians

Ukrainians, mostly landless, settled mainly in Prnjavor, Kozarac, Derventa, Banja Luka, Trnopolje, and Srbac. They arrived in the regions of Bosnia and Herzegovina from Western Galicia, in the late 19th and early 20th century. The majority were Greek Catholics

clanak/drustvo-i-znanost/manjine-u-bih/ucimo-od-roma-manjine-koja-ne-poznaje-nacionalizam-ogradjeni-teritorij-i-osvajacke-ratove-2580

(98%), with only 2% being of Orthodox faith, located in Hrvaćani. They are deeply religious, often inhabiting places near their church buildings.

It is assumed that the number of Ukrainians has halved compared to 1991, when there were around 7,500 of them, and today there are only about 3,000. During the war, a significant number of Ukrainians were forcefully mobilized and taken to camps, while two Ukrainian churches were destroyed in Prnjavor and Stara Dubrava. In Prnjavor, the largest Ukrainian center in Bosnia and Herzegovina was established – the Cultural-Spiritual Center. Various entertaining and educational programs have been conducted there, along with Ukrainian language courses throughout the year. Additionally, within the same complex, there is a library of Ukrainian literature and a Ukrainian ethnographic-monographic-historical museum containing tools that Ukrainians brought with them while settling in Bosnia and Herzegovina. They are faithful custodians of the Ukrainian identity in many aspects. The Ukrainian language is predominantly known among all Ukrainians and spoken within the family, in the church, and Ukrainian associations that work towards preserving the identity (Svit Kulture, Taras Shevchenko). Even church masses are conducted in the Ukrainian language.

In Devetina, a village near Laktaši, the first Ukrainian houses with thatched roofs have been preserved. The Ukrainian school of "Taras Shevchenko" used to operate there, but it is now looted and empty. Interestingly, Ukrainians themselves have contributed to preserving their cultural identity, as ties to their homeland are rare. Ukrainian attire is present in every family as much as "Kobzar", the most famous collection of poetry by the most translated Ukrainian poet, Taras Shevchenko. The church also takes care of informational activities and regularly supplies Ukrainians with Ukrainian press and literature to prevent their native language from falling into oblivion. Nostalgia for the former system is still present (Šačić, 2006).

Czechs

The Czech national minority, driven by economic reasons (free land), has mainly concentrated in Prijedor, Prnjavor, Sarajevo, Srpci, Banja Luka, and Zenica. However, there are only two places

where Czechs form the dominant community: the villages of Mačino Brdo near Prnjavor and Nova Ves near Srpci. Czechs have made significant contributions to the development of Sarajevo, notably Karel Paržik, considered the creator of European Sarajevo. His monumental work is the Academy of Fine Arts. The inscription on his grave reads: A Czech by birth, a Sarajevan by choice. Czechs have also left visible marks in Banja Luka, particularly in music, which is often the first aspect of their identity that diaspora Czechs emphasize. In 1895, they constituted 17% of Banja Luka's population (every fifth resident was Czech), but today they are among the smallest national minorities due to the Inform biro Resolution that expelled Czechs from Bosnia and Herzegovina. Their land was confiscated, and their societies were closed (Czech Association). It is estimated that only about 1,000 Czechs are living in Bosnia and Herzegovina today (Šačić, 2006).

Germans

The German story in Bosnia and Herzegovina begins in the late 13th and early 14th century, when the first Saxon miners from Hungary and Transylvania arrived in Bosnia to aid in the development of mining (largely at the invitation and encouragement of Bosnian kings Stjepan Kotromanić and Tvrtko). Another wave began after 1878, primarily including officials, peasants, and workers. Data from 1910 indicate that at that time, there were 1,277 officials in Bosnia and Herzegovina whose mother tongue was German, representing over 11% of the total officials (kuferaši).[7] By 1910, they had 54 colonies. In the late 19th century, they began forming societies aimed at nurturing German spirit, culture, and awareness, resulting in a total of 21 associations that gathered Germans in Bosnia before World War I.

After World War II, Germans were subjected to various forms of discrimination. Some were imprisoned in camps before their expulsion. Several camps existed in Bosnia and Herzegovina, particularly around Bosanska Gradiška (Nova Topola and Bosanski

[7] See more: Oršolić, Marijan (2015, August 5). „Nijemci u BiH: od Sasa do kuferaša". *Prometej.ba*. http://www.prometej.ba/clanak/drustvo-i-znanost/manjine-u-bih/nijemci-u-bih-od-sasa-do-kuferasa-2123

Aleksandrovac) and in Banja Luka (the Lauš Camp), as well as in Bosanska Dubica. A small number of Germans managed to prove their lack of involvement in World War II. A significant number of Germans left Bosnia and Herzegovina for Western Europe in 1948 and 1949 after an invitation from Polish authorities. Today, only a very small number of Bosnian citizens have German origins.

Poles

Poles also began to settle in Bosnia and Herzegovina during the Austro-Hungarian period, mainly coming from Galicia, which led to the local population referring to them as Galicians. They settled in rural areas that were mostly separated from neighboring villages, which enabled them to resist assimilation. Between the two world wars, they established their schools, and there were even separate classes for them. Teaching was conducted in the Polish language.

Polish writer Maria Dombrovska wrote a document in 1934 containing observations on the economic and political status of the Polish immigrants in Bosnia, addressing issues of preserving national identity and coexistence between Poles and the local population. Interestingly, Dombrovska concluded that at that time, Poles in Bosnia lived significantly better than the average peasants in Poland.

By the end of World War II, more than 15,000 Poles remained in Bosnia and Herzegovina. After a call from Polish authorities for all Poles in the diaspora to return home, Bosnian Poles held a conference on July 1, 1945, deciding to return to Poland. Following Tito's approval for the emigration of Poles, a delegation of Bosnian Poles traveled to Poland and chose a location in Lower Silesia (Boleslawiec district) for resettlement. The transfer of Poles from Bosnia in 1946 was the first case of organized collective relocation of a national minority in Bosnia and Yugoslavia. Upon returning to Poland, the Bosnian Poles were allocated land. Even today, Poles of Bosnian origin play old Balkan songs at weddings, and women make pies following the original Bosnian recipe. According to the 1991 census, only 526 Poles remained in Bosnia and Herzegovina. It is estimated that there are around 200 Poles in Bosnia and Herzegovina today. They are poorly organized. Both associations

(the Association of Polish Heritage Citizens Polsa and the Polish Association of Republika Srpska) face challenges in their work as they lack premises. Occasional Polish language courses are held in the Czech language due to the proximity of Czechs (Šačić, 2006).

Albanians

Although the presence of Albanians in Bosnia and Herzegovina has been quite long, few Albanians can accurately estimate the time of their arrival in the Bosnian region. They came in various periods, mainly from Macedonia, Kosovo, Montenegro, with a small portion of them coming from Albania. The most famous Albanian who lived and studied in B&H is the distinguished Fra Gjergj Fishta (1871–1940), the most influential Albanian writer of the first half of the 20th century, the first Albanian Nobel Prize nominee, celebrated as the "national poet of Albania", the "Albanian Homer". Fishta settled in B&H in 1886 and studied theology, philosophy, Italian, and Latin in Franciscan monasteries. During his stay in B&H, he maintained contacts with the well-known Bosnian writer Fra Grga Martić and the poet Silvije Strahimir Kranjčević.

Albanians mostly settled in urban areas. It is assumed that in 1971, about 18,000 Albanians were living in Sarajevo alone. According to the 1990 data, there were around 1,000 Albanian students at the University of Sarajevo.

Albanians in Bosnia and Herzegovina are organized through the Cantonal Associations of Albanians, united under the Community of Albanians in Bosnia and Herzegovina. Through this association, Albanians commemorate significant dates in Albanian history, preserve books in their native language, and other mementos from their homeland. With the assistance of the Government of Kosovo, the Community seeks to reintroduce supplementary Albanian language classes for Albanian immigrant children in Bosnia and Herzegovina, which were discontinued due to a lack of financial resources.

From a religious perspective, Albanians in Bosnia and Herzegovina are predominantly Muslim, but throughout history, Albanian Catholics have also played a significant role in the context of Albanian migration to Bosnia and Herzegovina.

It is estimated that there are between 8,000 and 10,000 Albanians living in Bosnia and Herzegovina today. However, according to the Constitution of Bosnia and Herzegovina, like other minorities, Albanians are classified as "others" and cannot be elected as members of the Presidency of Bosnia and Herzegovina or serve as delegates in the national House of Peoples. Some representatives of the Albanian minority argue that these positions are not important to them and that they are more concerned about the deteriorating economic situation of the majority of Albanian immigrants in Bosnia and Herzegovina (Šačić, 2006).

Hungarians

A part of the Hungarians had also come during the Austro-Hungarian period, but the largest number of them arrived after World War II, mainly from Vojvodina. They came for work and studies and remained in Bosnia and Herzegovina, blending with the constituent peoples. Some Hungarians might be recognized by their Bosnian language skills, as they often mix genders and cases. Today, Hungarians live in Sarajevo, Mostar, Zenica, Tuzla and Banja Luka. It is estimated that before the war against Bosnia and Herzegovina, there were about 2,000 of them, and today, that number has been halved, as it is estimated that there are about 1,000 of them in B&H (Šačić, 2006).

Montenegrins

Montenegrins have become nationally aware. They had had the status of a people in ex-Yugoslavia, but political change during wars made them national minorities. The first significant waves of Montenegrin immigrants to eastern Herzegovina were during Montenegro's struggles for independence from the Ottomans, and later, after the formation of the first Yugoslavia. However, the largest number of Montenegrins in B&H arrived during the former SFRY (Šačić, 2006).

According to the 1991 census, Montenegrins were the largest national minority in B&H, with over 10,000 members. Today, that number has been halved. During the chaos of the 1990s, some

Montenegrins, depending on their religious affiliation, affiliated with the Bosniaks, and some with the Serbs. There are currently seven councilors of the Montenegrin national minority in B&H, representing them at the municipal level, in Doboj, Bosanska Gradiška, Trnovo, Vareš, Trebinje and Srebrenica. Montenegrins in B&H are organized fairly well: significant among their associations are the "Vuk Mićunović" Association of Montenegrins in Herzegovina, based in Trebinje, with over 3,000 members, and the Association of Montenegrins of Republika Srpska named "Njegoš."

Slovenes

With Bosnia and Herzegovina becoming a part of the Austro-Hungarian administration, not only seasonal workers arrived from Slovenia and other parts of the Monarchy, but also permanent immigrants of various professions (engineers, architects, soldiers, doctors, professors, traders, craftsmen, railway workers, officials), who settled in the regions of Central Bosnia, Sarajevo, and Banja Luka. The second wave of Slovenian immigration to Bosnia and surrounding countries occurred after the establishment of the Kingdom of SHS in 1918 and the Rapallo Agreement, in which a large part of Slovenian territory was given to Italy. Between the two world wars, a significant number of Slovenians arrived, mainly craftsmen such as carpenters, stonecutters, and machinists. Therefore, they were primarily a working group that was large enough for the establishment of the Workers' Cultural Society (Delavsko kulturno društvo) Ivan Cankar in Sarajevo (Šačić, 2006). Slovenians are associated with the development of major industrial enterprises such as "Rudi Čajavec" and "Vitaminka", as well as the development of metallurgy and mining (Zenica, "Kreka" in Tuzla).

Apart from the Ivan Cankar Association, there are other Slovenian associations in Bosnia and Herzegovina, such as the Slovenian Community in Sarajevo and Tuzla, as well as the Zvezda Slovenaca in Banja Luka. It is estimated that there are about 10,000 Slovenians in B&H, and they have good relations with Slovenia, which supports them financially and organizationally.

Macedonians

B&H and Macedonia have much in common. Internal instability resulting from ethnic misbalance, corrupt political elites, peace agreements, and neighboring relations have all contributed to the situation. The first Macedonians arrived in Bosnia and Herzegovina at the beginning of the 20th century, with the largest influx occurring during the time of the former SFRY. Macedonians arrived in B&H as craftsmen, bakers, and confectioners, as well as artists, officials, soldiers, engineers, builders, teachers, doctors, and more. According to the 1991 population census, there were only 1596 Macedonians in B&H. However, these data do not provide a completely accurate picture, as many Macedonians in B&H identified themselves as Yugoslavs at that time. The exact number of Macedonians in B&H today is not known. Most of them live in Sarajevo and Banja Luka, where they have their associations. The first of these associations was founded in Sarajevo in 1992, and the second, the "Association of Macedonians of Republika Srpska", in Banja Luka in 2002 (Šačić, 2006).

3. Conclusion

The research into the discriminatory position of members of the national minorities living in Bosnia and Herzegovina points to their marginalized status in the society, and illustrates the policies of non-recognition of the Other and the Different that have caused various divisions in Bosnian and Herzegovinian society and rendered the state entirely dysfunctional. Political conflicts among the three dominant constituent peoples in Bosnia and Herzegovina have left traces on national minorities, who have made a significant contribution to promoting the multiculturalism of Bosnia and Herzegovina and fostering social cohesion within the country.

During the research, it has been noticed that the political conflicts among the constituent peoples in B&H left traces on the national minorities, dividing them along entity lines, as depending on the entity they found themselves in, the national minorities, became exposed to ethno-political authority "abuse". Studying national minorities meant much more than obtaining statistical data.

Through their position and status in Bosnia and Herzegovina we get a clearer idea that ethnopolitics is not integrative. Ethnopolitics keep Bosnian society trapped in a cycle where Serbs verbally oppose Bosniaks and Croats, Bosniaks oppose Serbs and Croats, and Croats oppose Serbs and Bosniaks. Nationalist and ethnical ideological elements have been transported to a wider social context, while general or common good or public interest has been reduced to ethnic or party affiliation.

Can we establish a connection between the open, aggressive space inhabited by the dominant ethnic majority consisting of Serbs, Croats and Bosniaks, and the confined space where other nationalities of Bosnia and Herzegovina, now referred to as "Others", are located? Perhaps, but it will be a long process. Throughout its history, Bosnia and Herzegovina possessed no technological wealth, nor did it have conventions that obligated it to prevent discrimination, but it had many things that other societies did not have. Diversity is worthy of respect and political recognition. Therefore we decided, by means of this paper, to shed light on the once integrating, and today obscured segment of the Bosnian society.

BIBLIOGRAPHY

Bakić, S., Mujagić, N. (2021). Fight back against segregation: the problem of 'two schools under one roof' / Lucha contra la segregación: el problema de las "dos escuelas bajo el mismo techo" (coautors with Sarina Bakić). *Religación. Revista de Ciencias Sociales y Humanidades*, 6(27), pp. 228–237. https://doi.org/10.46652/rgn.v6i27.764

Katz, V. (2017). The Position of National Minorities in Bosnia and Herzegovina Before and After the Breakup of Yugoslavia. *Studia Środkowoeuropejskie i Bałkanistyczne.* Tom XXVI. Polska Akademia Umiejętności.

Kymlicka, W. (1997). *The Rights of Minority Culture.* Oxford: Oxford University Press.

Nezirović M., Nilević, B. & Rizvić, M. (eds.) (1995). *Sefard 92*. Sarajevo.

Oršolić, M. (2016, July 17). Učimo od Roma, manjine koja ne poznaje nacionalizam, ograđeni teritorij i osvajačke ratove. *Prometej.ba*. http://www.prometej.ba/clanak/drustvo-i-znanost/manjine-u-bih/ucimo-od-roma-manjine-koja-ne-poznaje-nacionalizam-ogradjeni-teritorij-i-osvajacke-ratove-2580

Oršolić, M. (2015, August 5). Nijemci u BiH: od Sasa do kuferaša. *Prometej.ba*. http://www.prometej.ba/clanak/drustvo-i-znanost/manjine-u-bih/nijemci-u-bih-od-sasa-do-kuferasa-2123

Pejanović, Đ. (1995). *Stanovništvo Bosne i Hercegovine*. Beograd.

Taylor, C. (1994). The Politics of Recognition. In: A. Gutmann (ed.) *Multiculturalism: Examining the Politics of Recognition* (pp. 25–73). Princeton: Princeton University Press.

Žerjavić, V. (1989). *Gubici stanovništva u Jugoslaviji u Drugom svjetskom ratu*. Zagreb.

Šačić, N. (2007). *Izvan politike*. Sarajevo: Fakultet političkih nauka.

DOMESTIC, FOREIGN ACTS/REGULATIONS, JUDGMENTS

Case of Sejdić and Finci v. Bosnia and Herzegovina (Applications nos. 27996/06 and 34836/06), Strasbourg, 22 December 2009.

Census of Population, Households and Dwellings in Bosnia and Herzegovina. 2013, (hereinafter the "BHC2013"). (June 2016). *Agency for Statistics of Bosnia and Herzegovina* (hereinafter the "BHAS"). Sarajevo. http://www.bhas.ba

Etnička obilježja stanovništva. Rezultati za Republiku i općine(1993). *Statistički bilten 233*, p. 10. Sarajevo: Zavod za statistiku Bosne i Hercegovine.

Framework Convention for the Protection of National Minorities and Explanatory Report. (February 1995). Strasbourg. https://rm.coe.int/16800c10cf

Fourth Opinion on Bosnia and Herzegovina, adopted on November 9, 2017. https://www.coe.int/en/web/minorities/-/bosnia-and-herzegovina-publication-of-the-4th-advisory-committee-opinion

Odluka o Vijeću nacionalnih manjina. *Službeni glasnik B&H*, broj 10/21.

Statistički godišnjak SR BiH (1989). *Republički zavod za statistiku SR BiH*. XXIII, pp. 354–355. Sarajevo.

Ustav Federativne Narodne Republike Jugoslavije. (1946). *Službeni list FNRJ* (posebno izdanje), br. 22/1946, p. 9. Beograd.

Zakona o zaštiti prava pripadnika nacionalnih manjina. *Službeni glasnik B&H*, br. 12/03, 76/05 and 93/08.

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The Position of National Minorities in North Macedonia according to the Framework Convention

Abstract

After the armed conflict in 2001 and the adoption of constitutional changes related to the Ohrid Framework Agreement, opinions have increasingly been heard, from intellectuals, as well as other members of public, that beneath the layer of multiculturalism, North Macedonia has been developing into a bi-ethnic, bi-cultural, and bi-polar society. In such a context, North Macedonia as a diverse society has been creating its own model of multiculturalism, from several levels, but with asymmetrical relations.

Since the entry into force of the Framework Convention for the Protection of National Minorities, North Macedonia has been confronted with international standards in this field, as well as challenges to their implementation. Despite the fact that in statements by politicians, regardless of their orientation, especially those intended for international actors, the declaration that Macedonia is a multicultural society and that it meets (and exceeds) international standards dominates, many things related to the protection of communities remain unclear, undeveloped and non-functional in terms of state policies and strategies. North Macedonia has already started the EU accession negotiations and Chapter 23 is about to be opened very soon, thus recommendations of the AC FCNM within the sixth cycle of monitoring will be crucial for the improvement of the position of minority communities in the country.

Keywords: inter-ethnic dialog, antidiscrimination, education, minority participation, media

The Republic of North Macedonia was among the first member states of the Council of Europe to adopt the FCNM. The Convection was signed on July 25, 1996, and the Parliament ratified it on April 10, 1997. The Framework Convention entered into force as part of the Macedonian legislation on February 1, 1998.

The state had had the obligation to submit the first initial report no later than February 1, 1999, but it nevertheless did so

on September 23, 2003. This delay was probably a consequence of the war conflict that had broken out in the country in 2001 (and previously in 1999, in the neighboring country of the FR of Yugoslavia, regarding the Kosovo issue). In 2001, the country known at the time as "the (former Yugoslav) Republic of Macedonia", adopted constitutional changes initiated by the Ohrid Framework Agreement. Actually, a set of amendments were adopted that improved the rights of communities, especially the amendments IV to XVIII, which related to the issues of languages, adequate and just representation, power-sharing, etc. (Reka & others, 2011).

On the other hand, without any decision by the Parliament or Government, the Ministry of Foreign Affairs in the Initial Report informed the Advisory Committee of the FCNM that the "Albanians, Turks, Vlachs, Serbs and Roma are placed under the protection of the Convention in the Republic of Macedonia" (CoE FCNM, 2003: 23). Later, following the second monitoring cycle and upon the recommendation by the AC of the FCNM, the scope of application was extended to the Bosniak community (CoE AC FCNM, 2008: 4).

However, the aforementioned recommendation of the Advisory Committee was not respected when it comes to the Egyptian community, or other communities that not mentioned in the Preamble of the Constitution (CoE AC FCNM, 2008: 32–33). The Advisory Committee of the FCNM in its Opinion from 2004 made remarks about this limitation of the scope of the communities that seek to be protected by the Convention and that it be provided to all communities that requested it (CoE AC FCNM, 2005: 8–10). However, this recommendation was not taken into account by the state in any cycle of the monitoring, with five monitoring cycles having been completed and the 6th cycle starting. In the latest opinion of the Advisory Committee, in addition to the need is emphasized of protecting the Egyptian, Croats and Montenegrin communities, as well as the Torbeshi community was also mentioned, and all those who request such protection (CoE AC FCNM, 2022: 8).

It is significant to note that throughout the preceding five monitoring cycles, the need to protect the Bulgarian community in the Republic of North Macedonia has not been mentioned once. This is important to mark, because the European Commission, upon a request by the Republic of Bulgaria, through the so-called "French

Proposal", as a condition for continuing the Republic of North Macedonia's EU accession negotiation process after the screening process, demanded for the communities that requested it, such as the Bulgarians, to be included in the Constitution (Council of the EU 2022: 2).

1. Brief Overview of the Opinions of the AC of FCNM

Since the *First Cycle, in 2004*, the main observations and recommendations have been that the country has started reforms with a direct impact on the protection of national minorities, and these need to be completed and the full implementation in practice ensured. A failure to take measures to raise the level of *inter-ethnic tolerance and interaction* has been designated a permanent issue of the country, and highlighted in all further opinions. Also emphasized has been the perception of the *"numerically smaller communities" (non-Albanian minorities) that they have been left on the margins* of the reform processes initiated by the Ohrid Framework Agreement, and that the authorities should pay attention to duly involve them (CoE AC FCNM, 2005).

In the *Second Cycle of monitoring in 2007*, the Advisory Committee of the FCNM once again set as the priority to address the deficit of initiatives to improve *tolerance, mutual understanding, and inter-ethnic dialogue*, which was reflected in the *media and media reporting*, with minority communities having *limited access* to the media. The need for *anti-discrimination guarantees* and the adoption of legislation to combat discrimination was strongly stressed, following several cases of impunity of direct discrimination against the *Roma* (CoE AC FCNM, 2005).

The *Third Cycle* of monitoring, of which the opinion of the Advisory Committee was published in 2011, had a strong message for taking concrete steps towards *targeted policies for the inclusion of Roma*, especially in relation to housing, health, education, and specifically in terms of the needs and problems of Roma women. In addition to the topic of *intercultural dialogue and interculturalism*, which was indicated again, the Advisory Committee noted the problem *of low representation of persons belonging to minority*

communities in the state administration and other public institutions at all levels (CoE AC FCNM, 2011).

In the *Fourth Monitoring Cycle*, i.e. the Opinion of the AC FCNM published in 2016, contained the first mention of the so-called "*recommendations for urgent action*"! The authorities were urged to take all the necessary measures for the *development of an integrated society*, which would be based on the rule of law, the protection of human and minority rights, respect for diversity, as well as the *discouraging of ethno-nationalist policies* that led to the establishment of parallel societies. Measures were required to restore trust in institutions, *fight against hate speech, and sanction crime caused by hate*. To initiate all measures for the development of an *integral multilingual educational system*, as well as implement the principle of *adequate representation and effective participation* of communities in public life, with a special reference to *participation in decision-making* (CoE AC FCNM, 2016).

The Fifth Monitoring Cycle opinion by the AC FCNM published in September 2022, among other things, contained as recommendations for urgent measures that: "the authorities should take further steps towards *promoting an integrated society* based on respect and trust between different communities"; that *sustainability of the Strategy for "One Society and Interculturalism*" be ensured, by providing high-level political support, solid funding, and outreach to practitioners in *education, the media, and civil society, as well as the public*; and that *Roma children's access to quality education* be improved by strengthening good practices such as educational mediators, scholarships, and educational supplements for Roma parents (CoE AC FCNM, 2022).

2. Main Issues and Their Evolution

2.1. *Interethnic Dialog and Tolerance*

The Republic of North Macedonia experienced a greater intensity of multicultural politics during the period of Tito's Yugoslavia (Constitution from 1974) than in that of democracy (a new Constitution for building a multi-party and democratic state was adopted in 1991), having the country in constant ethnic tensions.

Many of the elements of the socio-cultural model of multiculturalism were practiced before the disintegration of the SFRY, especially in terms of the use of languages of smaller minority communities. Today's political response to the multicultural reality is that ethnic differences have deepened, becoming a factor of confrontation, while recognition policies have not contributed to the development of integrated multicultural society, just as the politics of difference have taken on dimensions of more pronounced structural inequality (Чупеска, 2021: 10).

According to Petar Atanasov, the main obstacle in the process of Macedonian social integration is precisely the "ethnic knots", with the future of the Macedonian state and society as a multicultural reality lying in their untangling. In addition, he emphasizes that the multicultural discourse of both Macedonian and Albanian leaders is only a cover for their own "ethnic dreams": of completing the national state for the Macedonians, or creating a sub-national state for the Albanians. Except for Macedonians and Albanians, other communities, are absent from this "ethnic" competition (Атанасов, 2017).

Ever since its *First Opinion*, the Advisory Committee of the FCNM has been noting that the legacy of the armed conflict is still felt within the society, making the restoration of trust and inter-ethnic understanding more complicated. The Advisory Committee considered that both central and local authorities should make sustained efforts to promote tolerance and peaceful interethnic relations. It was found that there was a low level of interaction between the various ethnic groups, in particular between Macedonians and Albanians. Moreover, it was considered essential for the authorities to take a range of measures to counter the phenomenon of polarization of the society along ethnic lines, in particularly, in the field of education (CoE AD FCNM, 2005: 27).

In the *Second Opinion* of 2005, the AC FCNM considered the inter-ethnic dialog the first issue of concern. It was characterized as "*insufficient, and is in some cases virtually absent, a matter which [was] particularly disconcerting as it [affected]*" the Macedonian and Albanian schoolchildren and teachers (CoE AC FCNM, 2008: 39). Concerns about the intercultural dialog were noted in the sphere of media and media coverage of minorities, too.

This issue of inter-ethnic (non) tolerance culminated in the second decade of the XXI century, when inter-ethnic fights among the young people began breaking out in the streets, and in public transportation, and the country entered the category of "*a divided society*" (Harel-Shalev, 2013).

The first systematic response of the Government to address and alleviate the inter-ethnic tension, (non)tolerance, and the "divided society" was made in 2019, with the *National Strategy for Developing the Concept of "One Society" and Interculturalism*. This Strategy initiated activities for strengthening the processes of communication and cooperation between communities, towards creating a society in which everyone would feel like members of "one society". The Strategy addressed seven strategic areas: legal framework, education, culture, media, youth, local self-government, and social cohesion, and was implemented over a period of 3 years from 2020 to 2022 (Zemon, 2021).

The AC FCNM in its latest Opinion from 2022 noted that "*the Government adopted in 2019 the* Strategy for development of the 'One society for all' concept and interculturalism *and that the document makes explicit reference to the Advisory Committee's fourth cycle recommendation under Article 6 and is based on the principle of non-discrimination and the interculturalism approach. … According to the authorities, the implementation was slowed down by the COVID-19 pandemic but is overall on a good track; concrete measures flowing from the Strategy have for instance been adopted in the areas of culture (see Article 5) and education (see Article 12). According to surveys, a certain improvement in inter-ethnic relations compared to the previous monitoring cycle can indeed be observed. Opinion polls show increased trust between persons identifying as Macedonians and those identifying as Albanians. Albanians and members of other ethnic groups tend to perceive the last years more positively than persons identifying as Macedonians…. However, ethnic cleavages still come to the surface in situations such as elections, political crises, or high-profile court cases with an ethnic component*"(CoE AC FCNM, 2022: 13).

International experts including Mitja Žagar from Slovenia and Soren Keil from Switzerland reviewed the strategy as a document. The first one noted that "[a]*mong the fiercest opponents of the*

new official intercultural strategy and policy, we can expect nationalists from the two largest ethnic communities in North Macedonia. On the one hand, there are nationalists from the Macedonian ethnic community who opposed changing the official name of the country and declared it a national (high) treason. On the other hand, there are nationalists from the Albanian ethnic community who fear that they may lose the influence and privileges gained under previous policies of exclusive and divisive 'multiculturalism'…" (Zemon, 2021: 182).

The Advisory Committee also notes this situation in reality and for that reason "*urges the authorities to take further steps towards the promotion of an integrated society that is based on respect and trust between the various communities. To ensure the sustainability of the Strategy 'One Society for All', the authorities should provide high-level political support, solid financing, and outreach to practitioners in education, media, and civil society as well as the general public*" (CoE AC FCNM, 2022: 14).

2.2. *Antidiscrimination*

Since the proclamation of the independence of the Republic of Macedonia in 1991, almost all research and international reports have indicated that discrimination on the ethnic basis has been the most common, with the employment being the area where the discrimination is the most present (Кржаловски, 2010: 130). Namely, in the last decade of the XX century and the beginning of this century, discrimination was not recognized by the citizens, and the institutions did not have sufficient awareness of the need of an equal third party, or protection against discrimination.

This situation in the country is noted by the Advisory Committee in their First Opinion in 2005, finding that "*there exist gaps in the specific legal guarantees against discrimination and considers that the authorities should examine the extension of the scope of nondiscrimination provisions*" (CoE AC FCNM, 2005: 26).

In the second monitoring cycle, the AC made a strong recommendation that authorities should review current anti-discrimination laws and take the required legislative action, including, if necessary, bypassing all-encompassing anti-discrimination legislation. This had to be done to make sure that domestic law provided

adequate protections against racial discrimination in all contexts and potential victims had access to efficient remedies. Furthermore, a recommendation was also made a propos concerted efforts to educate the public about human rights and the need for action against prejudice, including collaboration and support of the civil society working in this area in strengthening their capacities. In order to combat and punish such expressions of prejudice against members of national minorities, adequate efforts have also been taken to gather the most recent data on such incidents (CoE AC FCNM, 2008: 11).

Finally, the *Law for Combating and Preventing Discrimination* was adopted for the first time in 2010. Although it meets the minimum standards to some extent, it has been criticized for several fundamental shortcomings. A complete analysis of the legal framework, its weaknesses, and shortcomings, can be found in the *Analysis of the Harmonization of Domestic Legislation on Equality and Non-Discrimination* prepared for the OSCE and the Commission for the Prevention of Discrimination in 2015. Here the focus was on three key shortcomings – personnel coverage, institutional setting, and procedural adjustments (Котевска, 2015).

In October 2020, the Parliament of North Macedonia adopted the new *Law on Prevention and Protection against Discrimination* (LPPD), committing to align other laws with anti-discrimination provisions within two years. In January 2021, the Parliament elected the Commission for Discrimination Protection, a positive step toward a comprehensive framework.

In its latest Opinion, the AC FCNM reaffirms its position that a functioning anti-discrimination framework with institutions that are independent, well-resourced, and have a broad enough mandate to effectively support victims in obtaining legal remedy is necessary in order to achieve full and effective equality for people who identify as national minorities. Significant advancements in this area include the new comprehensive anti-discrimination legislation, strengthened equality body, and Ombudsperson mandates. It is commendable that the Commission on Prevention and Protection against Discrimination has taken an active role in defending minority rights, particularly by resisting the idea of making it necessary to list ethnicity on ID cards.

Nevertheless, The Advisory Committee "*calls on the authorities to provide the necessary resources for the Commission on Protection and Prevention against Discrimination and the Ombudsperson so they can independently and effectively fulfill their mandates*" (CoE AC FCNM, 2022: 10). Moreover, the Advisory Committee demands that incidences of hate crimes and hate speech be quickly recognized, documented, and thoroughly investigated and that those involved are prosecuted. Furthermore, the existing initiatives against online hate speech, such as the Council on Media Ethics and the Registry of Professional and Ethical Online Media, should be given all necessary support (CoE AC FCNM, 2022: 15).

Regarding racial discrimination the Advisory Committee also urges the authorities to increase efforts to prevent human rights violations against persons belonging to national minorities by the police. Additionally, it needs to be made sure that the Ombudsperson's Office, the Public Prosecutor's Office, and the Ministry of the Interior's supervision procedures are effective and that any reported incidents of police misconduct are thoroughly investigated and appropriately punished (CoE AC FCNM, 2022: 16).

2.3. *Minority Education*

Currently, five teaching languages are used in the country (Macedonian, Albanian, Turkish, Serbian, and, more recently, Bosnian). However, in conditions of knowing only the mother tongue, and not the other languages (especially among the members of Macedonian and Albanian communities), the absence of a common language makes the very contact between the members of different communities more difficult.

The Advisory Committee in its First Opinion found that there were attitudes of intolerance amongst Macedonian and Albanian pupils towards the issue of mixed schools and considered that the authorities should aim at facilitating contact between pupils when designing measures in the field of education, including through the promotion of individuals' knowledge of the languages spoken in their region. Furthermore, it stated that the relevant department of the Ministry of Education dealing with minority education did not have the institutional capacity to carry out its tasks

adequately and considered that the authorities needed to review the situation. Textbooks in minority languages and the availability of qualified teachers had various shortcomings that have remained great challenges even today. Low school attendance and high dropout rate after primary school among Roma pupils, for example, is an issue that the authorities had to address and solve, but the situation has persisted with no significant progress (CoE AC FCNM, 2005: 29).

Regarding the teaching in minority languages, in its First Opinion, the Advisory Committee found that there were demands from the Turkish and Albanian communities to open additional classes providing instruction in their language. Moreover, there were shortcomings in the teaching in and of the Vlach, Roma, and Serbian languages, and the AC considered that the authorities needed to provide adequate support in this area (CoE AC FCNM, 2005: 29). In its Second Opinion, the AC noted that the authorities' efforts to support minority education, although appreciable, had not adequately met the needs of the smaller communities, while difficulties were still reported with regard to Albanians' access to teaching in and of their language (CoE AC FCNM, 2008: 40).

The Concept for Nine-Year Basic Upbringing and Education lists a number of guiding principles that should serve as the foundation for all educational endeavors, including democracy, non-discrimination, respect for individual differences among students, as well as the principles of understanding "the others" and multiculturalism. It is made abundantly clear that the materials, strategies, and programs used in schools should foster tolerance and respect for differences as values. The desire to accept a variety of any kind is clearly emphasized in the vision of the two most recent strategic papers in the sphere of education (the Concept for Intercultural Education and the Strategy for Education 2018–2025). The Concept for Intercultural Education's mission statement vouches to "*[c]reate an educational environment that will nurture intercultural relations and integration processes and that will promote cultural differences and their bridging in a larger societal multi-ethnic and multicultural context*." Additionally, it urges society to prioritize intercultural education as a long-term strategic goal. The idea encourages a review of raising and education with the goal of improving cooperation,

understanding, and communication among people from different ethnic communities in educational institutions.

In its latest Opinion, the Advisory Committee "*urges the authorities to implement an intercultural approach to education through allocating adequate resources, continuing to review teaching materials, and training teachers and other education staff on the cultures, history and present situation of the different minorities. More regular contacts among pupils with different ethnic backgrounds should be ensured, including by providing for mixed school and classroom environments*" (CoE AC FCNM, 2022: 20–21). Furthermore, the Advisory Committee calls on the authorities to enhance the environment for minority language teaching and learning. The requirement for starting a minority language class should be reduced, and surveys on requests should be undertaken frequently and well in advance of each school year. The authorities should investigate ways to encourage children from the majority to learn minority languages, especially Albanian (CoE AC FCNM, 2022: 31).

2.4. *Participation in Decision-Making*

According to Ana Chupeska, consociational democracy and power sharing are the main pillars of the Ohrid Framework Agreement, which is reflected in the post-election coalition, with the division of executive power between the largest party of ethnic Macedonians and the largest party of ethnic Albanians. The second element of the Macedonian consociality is the so-called Badinter's principle[1] and the third the so-called Committee for Inter-Community Relations (Чупеска, 2017: 100–104).

The Advisory Committee in its 2005 Opinion from 2005 finds that "*there is limited information and consultation of minorities by the authorities and considers that the authorities should examine the ways to establish a direct dialogue with organizations representing the various minorities, including through the setting up of a Council for Minorities.*" Furthermore, in order to gradually increase the participation

[1] The Constitution of the Republic of North Macedonia is predicting double majority for the Parliament's decisions that tackle issues related to the rights of communities, or inter-communities relations (Article 69, point 2, Amendment X of the Constitution).

of people from minorities in public administration, the principle of equitable representation was incorporated into domestic law. It is believed that the government should increase its efforts to apply this principle, including to the numerically smaller minorities, in all areas of the public administration (CoE AC FCNM, 2005: 30).

Regarding the numerically smaller communities, The Advisory Committee found that the under-representation, or the absence of representation, in the judiciary was striking and considered that the authorities needed to adopt measures to remedy this shortcoming at all levels of the judiciary. Moreover, with regard to Albanian and Roma women, there were issues with the effective participation of people from national minorities in economic life. The AC believed that the government would intensify its efforts to address these issues, taking into account programs like the National Strategy for Roma (CoE AC FCNM, 2005: 30).

Two decades later, according to the AC FCNM, the situation with participation in decision-making processes of numerically smaller communities has not significantly improved. "*Participation of persons belonging to the ethnic communities in decision-making could be made more effective, both at the central and local level, particularly for smaller communities. The representation of ethnic communities in law-enforcement structures and the judiciary remains unsatisfactory*" (CoE AC FCNM, 2022: 31). Another criticism is that persons belonging to minorities, particularly the numerically smaller ones, are not proportionally represented in managerial positions. Additionally, women from national minorities are frequently underrepresented, especially in executive roles. Because of a high degree of politicization concerning higher positions, some interlocutors claim that candidates need to be of the "right" ethnicity and party affiliation. Furthermore, persons belonging to communities that are not mentioned in the Constitution, such as *Egyptians* and *Torbeshi,* complained that the system did not apply to them (CoE AC FCNM, 2022: 25).

Regarding participation on the local level, the Advisory Committee strongly encourages the authorities to strengthen the local Commissions for Inter-Community Relations through clarifying their mandate, equipping them with a budget, providing training to members, and improving the appointment process.

The Advisory Committee noted that while the majority of interlocutors appreciated that certain changes had been made and did not contest the idea of equitable representation in general, the system still has many problems. Although the authorities claim that this is no longer the case, there are reports that the idea of merit is nevertheless frequently disregarded. *"Cases, where applicants changed ethnic affiliation to increase their chances in application processes, were also reported, and the authorities admit that the possibility to change one's ethnic affiliation with every new application procedure is problematic*" (CoE Ac FCNM, 2022: 26).

In order to uphold the principle of merit and increase the representation of numerically smaller minorities and women belonging to national minorities at the managerial level, the Advisory Committee strongly encouraged the authorities to improve the equitable representation of people belonging to national minorities in public administration. It also invited them to increase the socio-economic participation of persons belonging to national minorities living in rural areas through investing in infrastructure and employment opportunities and targeted support for minority youth, As effective participation of the communities concerned needed to be ensured (CoE Ac FCNM, 2022: 26).

2.5. *Minority Culture*

In the field of culture, the initial efforts to define the Macedonian society as multicultural, and the consequential approach to the concept of multiculturalism as the support to the existence of several different cultural or ethnic groups within the society without them developing and nurturing appropriate ties and connective tissues, led to the divisions of Macedonian society. Invoking the rights of, first of all, ethnic groups, a situation of a kind of parallelism in society was reached. The second relevant public policy framework deals with the "culture for all" strategy, first through the "Government Work Program 2017–2020" and then the "National Development Strategy for Culture in the Republic of Macedonia in the Period 2018–2022". In these documents, the term "national interest" is replaced by the term "public interest". It is a result (or an appropriate syllogism) that derives from the concept of

"participation and culture for all" which implies not only the right of access to culture, but also the encouragement of cultural creation, understood in its broadest sense, in which all groups and individuals, regardless of their professional or other interest, are optimally involved.

The Advisory Committee in its First Opinion found that "*state support [was] provided to a number of associations working to promote the culture of the various communities but that this support [was] considered inadequate by representatives of various communities*" (CoE AC FCNM, 2005: 27). The Advisory Committee also noted that representatives of the Vlach community had complained that they were under a de facto threat of assimilation, and considered that the authorities needed to step up their support in order for the Vlach identity to be preserved.

In the latest Opinion of 2022, the Advisory Committee concluded that both the legal basis and the practice of supporting national minority cultures had remained largely unchanged. "The Ministry of Culture has no separate funding line for national minorities but supports some minority cultural activities through the general 'National call for the financing of cultural needs' published annually" (CoE AC FCNM, 2022: 12).

The Advisory Committee calls on the authorities to maintain efforts to enhance an inclusive approach to cultural policy and to provide designated and sustainable funding at a level that satisfies the cultural requirements of people who are members of national minorities.

2.6. *Media*

In the media sphere, the rights of the communities have been fully safeguarded as early as with the 1991 Constitution and the First Broadcasting Law from 1997. Freedom of expression, speech, public speech and public informing, as well as the unobstructed establishing of institutions for public informing, are guaranteed by Article 16 of the Constitution.[2] The same Article

[2] Assembly of RNM, *Decree for promulgation of the Constitution of RNM,* Skopje, available at: https://www.sobranie.mk/WBStorage/Files/UstavnaRmizmeni.pdf

safeguards the free access to information, the freedom to receive and impart information. Article 48 of the Constitution, which was amended in 2001, safeguards the rights of members of the communities to freely express, nurture, and develop their identity and specificities.

The exercise of rights of non-majority communities in media[3] was elaborated in more detail in the first *Broadcasting Law*, adopted in 1997. This law provided for an obligation of the public service to also broadcast programs in the non-majority languages (Article 45).

The National Radio Television (NRT), as a public service, continues to have the largest legal obligations when it comes to the nurturing of linguistic diversity and cultural identity of non-majority communities. The law determines that the NRT is obliged to develop and plan a programmatic scheme in the interest of the general public, and programs to target all segments of the society without discrimination, taking into account specific social groups. In addition, according to the Law, the NRT shall provide at least one television program service in Macedonian language, one program service in the language spoken by at least 20% of the citizens, which will be broadcasted 24 hours a day, every day, as well as one television program service that will broadcast program in the languages of other non-majority communities" (Article 107). The same article emphasizes that "the NRT shall provide at least two program services in the Macedonian language on the radio, one service in the language spoken by at least 20% of the citizens, which will be broadcasted 24 hours, every day of the week, and one program service in the language spoken by other non-majority communities, which will be broadcasted 24 hours".

The public media broadcaster airs programs in the languages of the communities both on national television and on the national radio. As of 2002, these programs have been broadcast on the Second Service of the National Television. The majority of programs broadcasted are in Albanian language, followed by Turkish,

[3] The area of printed media in the RNM is not regulated in a single law, that is, the right of the non-majority communities to establish printed media comes directly from the Constitution.

whereas programs in Roma, Serbian, Vlach and Bosnian languages have the duration of around two hours a week each. At the national radio, there are 119 hours a week of programs in Albanian language, 35 hours in Turkish language, and 3 hours and 30 minutes of programs in Vlach, Romany, Bosnian and Serbian languages. (Tuneva M. 2013) In 2019, there were a total of 45 television and 70 radio outlets active in the commercial broadcasting sector in the state.[4] Out of these, 17 television and 14 radio outlets broadcast programs in some of the languages of the ethnic communities (Albanian, Turkish, Bosnian, Romani, and Serbian).

In the national printed media sector, the following publications are published in Albanian: dailies 'Koha', 'Lajm', the magazine 'Zaman Shqip' children's magazines 'Mini Libi' and 'Libi' and the monthly magazine 'Shenja'. The publications printed in the languages of other communities are the following: in Turkish language the monthly 'Yeni Balkan', the bi-monthly 'Bahce' and the weekly 'Yeni Balkan Haftal'k Bilten' and 'Zaman' (as both a weekly and a monthly).

There are also online media, which post online content in the languages of the communities. Most of them are in the Albanian language, but what has been missing is a comprehensive source of data about the media operating in the languages of non-majority communities. One of the ways to determine ownership of an online media outlet is via Marnet, which registers the '.mk' domains in the state.

In its First Opinion of 2005, the Advisory Committee found that minority issues were given biased coverage in some media reports. It considered that further measures were needed to increase the media's ability to ensure a balanced reporting of minority issues and that the authorities needed to pay increased attention to the implementation of the provisions on incitement to national, racial, and religious hatred (CoE Ac FCNM, 2005: 27).

However, in its latest Opinion of 2022, the Advisory Committee notes that the reform resulted in significantly increased broadcasting hours for all national minorities, which interlocutors

[4] Agency for Audio and Audio-visual Media Services, *Register of TV outlets*, available at: http://avmu.mk/registar-na-televizii/

welcomed. Vlach representatives, for instance, reported that while there had been three programs in the Vlach language per week, this now increased to three per day. However, the increased broadcasting times are not matched with an appropriate increase in human and financial resources. The fourth TV channel lacks staff in the ethnic minority newsrooms. "*The Vlach newsroom, for example, has only two staff. The Turkish newsroom is larger, but a network of Turkish correspondents that used to deliver news from the regions has been disbanded and only a few journalists continue on a voluntary basis. As a result, much of the programming are rebroadcasts from Türkiye rather than own productions about the situation of the Turkish minority in North Macedonia*" (CoE AC FCNM, 2022: 16–17).

Finally, the Advisory Committee calls on the authorities to allocate sufficient resources to the minority language newsrooms operating within the public broadcaster. In order to support societal integration, they should also make sure that public media continuously encourages intercultural respect and understanding. For numerically smaller minorities, the authorities ought to think about supporting printed or internet media sources (CoE AC FCNM, 2022: 17).

3. Instead of Conclusion

Implementation of the recommendations of the Advisory Committee of the Framework Convention on National Minorities for the Republic of North Macedonia is an important benchmark in the EU integration process. The national strategy "One Society and Interculturalism", even though it is an authentic and pioneering one, is partially implemented by the authorities in order to promote a multicultural society. However, the authorities recognized the need to timely adopt the new Strategy for the development of the concept of "one society and Interculturalism", for the period of 2024–2026. European Commission in its draft screening report recommended further efforts to ensure sufficient political support and adequate funding, in order to promote equal opportunities and improve social cohesion in the country.

In a future special attention should be given to the protection of rights and non-discriminatory treatment of the citizens belonging to minorities or communities. Ensuring the realization of the rights of persons belonging to smaller non-majority communities and proper implementation of the One Society strategy, require improved coordination between competent authorities, such as the Ministry for Political Systems and Inter-Community Relations and the Ministry of Labor and Social Policy. The financial independence of the Agency for Communities' Rights Realization, and the Language Implementation Agency need to be improved, in order to enhance their resilience to attempts of political influence.

Low representation of non-majority communities at local level, including municipalities, remains one of the biggest problems in the Macedonian political system. Furthermore, there is some discrepancy in the implementation of the law in different municipalities.

Funds for cultural projects for non-majority communities have to be increased bearing in mind that culture is very vulnerable and even in danger of disappearing in certain communities, and thus requires protection.

BIBLIOGRAPHY

Атанасов, П. (2017). *Македонски мултиетнички јазли: Битка за едно или две општества*. Скопје: Просветно дело.

Котевска, Б. (2015). *Анализа на хармонизираноста на домашното законодавство и недискриминација*. Скопје: ОБСЕ и КЗД. https://www.dropbox.com/s/7688zae60e6nluj/Harmonization%20Analysis_Final_MK.pdf?dl=0 (approached on 09 September 2023).

Кржаловски, А. и др. (2010). *Дискриминација по основ на етничка припадност: извештај од истражување*. Скопје: ОБСЕ. https://www.osce.org/files/f/documents/d/d/116792.pdf (approached on 09 September 2023).

Чупеска Станишкова, Ана. (2017). *Мултикултурна акомодација – од различни правни режими за заштита на поодделни културни права до диференцијално граѓанство*. Скопје: Библиотека Патеки.

Чупевска А., Земон, Р., Атанасов, П., Тахири, С. & Ибраими, М. (2021). *Помеѓу поделено и едно општество (Македонски рефлексии)*. Скопје: Авант Прес.

Harel Shalev, A. (2013). Implementing democracy and minority rights in deeply divided societies: a comparison of Macedonia and Israel. *New Balkan Politics Issue 13*. http://www.newbalkanpolitics.org.mk/item/Implementing-democracy-and-minority-rights-in-deeply-divided-societies:a-comparison-of-Macedonia-and-Israel (approached on 08 September 2023).

Reka, B. (ed.) (2011). *Ten Years from the Ohrid Framework Agreement: Is Macedonia functioning as a multi-ethnic state?*. Tetovo: SEE University.

Tuneva, M. (2013). *Analysis of rights and reporting about ethnic communities in the media*. Skopje. http://aopz.gov.mk/wp-content/uploads/2015/01/MK-%C0%ED%E0%EB%E8%E7%E0%F2%E0-%ED%E0-%D2%F3%ED%E5%E2%E0.pdf (approached on 10 September 2023).

Zemon, R. (2021). Republika Severna Makedonija između etničke demokratije i koncepta "Jedno Društvo", *Kulturna autonomija nacionalnih manjina u svetlu činjenica* (str. 168–187). Beograd: Institut društvenih nauka.

INTERNATIONAL LAW SOURCES

CoE FCNM (2003). Report Submitted by the "The former Yugoslav Republic of Macedonia" pursuant to Article 25, paragraph 1, of the Framework Convection for the Protection of National minorities. https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008aecd (approached on 08 September 2023).

CoE AC FCNM (2005). Opinion on the "the former Yugoslav Republic of Macedonia" adopted on 27 May 2004. https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008bd41 (approached on 08 September 2023).

CoE AC FCNM (2008). Second Opinion on the "the former Yugoslav Republic of Macedonia" adopted on 23 February 2007. https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008c189 (approached on 08 September 2023).

CoE AC FCNM (2011). Third Opinion on the "the former Yugoslav Republic of Macedonia" adopted on 30 March 2011. https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008c62e (approached on 08 September 2023).

CoE AC FCNM (2016). Fourth Opinion on "the former Yugoslav Republic of Macedonia", adopted on 24 February 2016. https://rm.coe.int/

CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806d23e3 (approached on 08 September 2023).

CoE AC FCNM (2022). Fifth Opinion North Macedonia adopted on 18 May 2022. https://rm.coe.int/5th-op-north-macedonia-en/1680a82967 (approached on 08 September 2023).

Council of the EU (2022). Council conclusions on North Macedonia and Albania 11440/22– https://data.consilium.europa.eu/doc/document/ST-11440-2022-INIT/en/pdf (approached on 08 August 2023).

National Strategy for Development of the "One Society for All" Concept and Interculturalism, (2020). Government of the Republic of North Macedonia. https://vlada.mk/nacionalni-strategii?ln=mk (approached on 10 September 2023).

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Implementation of the *Framework Convention for the Protection of National Minorities* in Montenegro – Experiences and Challenges

Abstract

In the period when Montenegro expects the *Fourth Opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities*, it is advisable to draw attention to some of the most important challenges faced by those responsible for the implementation of policies towards ethno-cultural minority communities and by the members of these communities themselves. Bearing in mind the most important conclusions and suggestions given in the *Third Opinion on Montenegro* of 2011, the paper will deal with some still current problems in the successful management of ethno-cultural pluralism in the context of Montenegro, a very important part of which is the successful application of the *Framework Convention for the Protection of National Minorities*. A significant part of the *Third Opinion on Montenegro* refers to the problems and challenges faced by the members of the Roma and Egyptian ethno-cultural community. The status of Roma and Egyptians is still incomparably worse compared to the position of all other ethno-cultural communities in Montenegro. This fact requires additional efforts by all relevant political and social actors so that, finally, the members of the mentioned communities cease being outside the social and political arena, exposed to anti-Romaism, segregation and marginalisation in all dimensions of social integration.
Keywords: Framework Convention for the Protection of National Minorities, Montenegro, national minorities, Roma, minority rights

1. Introduction

After the restoration of independence, Montenegro's membership in the Framework Convention for the Protection of National Minorities (hereinafter: the Framework Convention) was recognised in 2006. In this period, Montenegro introduced the measures

and mechanisms of the model of multiculturalism in the process of managing ethno-cultural pluralism in its territory. The Law on Minority Rights and Freedoms of 2006, as well as the Constitution of Montenegro of 2007, set the legal and political framework for the protection of the rights of minority national communities. In parallel with the introduction of the model of multiculturalism, the 2007 Constitution defines the political community in civil terms in an effort to make it more inclusive in relation to the various ethno-cultural communities in the state. The scopes of the two solutions, after almost two decades of implementation, differ in relation to individual ethno-cultural communities.

Regarding the application of the Framework Convention in the context of Montenegro, three Opinions of the Advisory Committee on the Framework Convention (hereinafter: the Advisory Committee) were published in 2008, 2013 and 2019. The paper will analyse the most important points of the mentioned reports, with an emphasis on the current situation regarding the protection of the rights of national minorities, that is, ethno-cultural communities in Montenegro. We will focus on the most important challenges in the process of achieving the most important goals concerning the scope of application of the mentioned convention in the context of Montenegro. The successful constitution of the model of multiculturalism in Montenegro in the legal and institutional sense depends to a large extent on the successful application of the Framework Convention.

2. Some articles of the Framework Convention for the Protection of National Minorities in the context of Montenegro

One of the most important documents in the field of protection of the rights of ethno-cultural minorities is certainly the Framework Convention, which recognises the necessity of including individual ethno-cultural communities in the socio-economic and political sense, on an equal basis, without discrimination and marginalisation. Achieving this goal is considered one of the key conditions for the prevention of inter-ethnic tensions and strains, the regulation of which is one of the most important challenges

for modern, ethno-culturally plural societies. At the same time, it is of less importance whether we are dealing with national minorities, as the dominant type of ethno-cultural communities in a specific (post-)national-state context, or whether we are talking about immigrant communities, different types of ethno-religious communities and the like (for more details, see: Kimlika, Opalski, 2002: 27–108). In Montenegro, in this sense, there is a predominance of national minorities, which, in short, we define as ethno-cultural communities that have historically, for a long period, been present on the territory of the state they consider their homeland, that want to preserve the specificities of their national identity as well as continue the nation-building process (Kimlika, Opalski, 2002).

In the last few years, a significant influx of immigrant communities from Turkey, Russia and Ukraine has been recorded in Montenegro. In the 2011–2021 period, that number amounted to 66,409 persons, according to official data (Koprivica, Radojević, 2023: 5). The influx of immigrants was especially intensified at the beginning of the war in Ukraine, in February 2022. Until now, no research has been done that would deal with the legal and institutional framework of the integration of immigrant communities into Montenegrin society, bearing in mind their specificities. If we are talking about Ukraine and current events, the analysis of the present situation regarding the status, demographic structure and rights of refugees from Ukraine in the context of Montenegro was done by the International Organisation for Migration. (see: https://dtm.iom.int/reports/montenegro-study-temporary-protection-ukrainian-refugees-montenegro-march-2023) Currently, Montenegro is the country that has received the largest number of Ukrainian refugees relative to the number of its inhabitants, and they make up 5.4% of the total population (according to data from the last population census in 2011) (https://www.aa.com.tr/ba/balkan/oko-33-hiljade-stanovnika-crne-gore-%C4%8Dine-ukrajinske-izbjeglice/2948294) (see also: https://www.unicef.org/montenegro/en/stories/classrooms-open-children-foreign-countries) That percentage is even higher, bearing in mind the data on the decrease in the number of inhabitants by 74,000 in the 2011–2021 period, while in 2022, the difference between the number of people that left Montenegro as opposed to the number of those that

immigrated to it equals 1,951 in favour of those who left (Koprivica, Radojević, 2023: 4). Therefore, although traditionally an emigrant area, Montenegro has become an increasingly interesting destination for immigrants in recent years. If the current trend continues, it will be necessary to further "elaborate" the existing institutional and legal framework related to the integration of immigrant communities. The specificities of this type of ethno-cultural communities and the differences in relation to national minorities will also require the adaptation of measures and mechanisms that currently exist in the context of Montenegro. As a reminder, one of the proclaimed goals of the Framework Convention is to ensure not only *respect* for the ethno-cultural specificities of national minorities, but also the creation of legal, political and social conditions that will enable their preservation and further development. Constantly improving the conditions for inclusive dialogue and reaching compromises, raising the capacity to understand the position of those who differ in the ethno-cultural sense (and the problems they face in the inclusion process), as well as encouraging interest in their identity specificities, are prerequisites for the successful management of ethno-cultural pluralism, in accordance with the goals of the Framework Convention. This is especially true for societies with pronounced ethno-cultural plurality, such as the Montenegrin, where it is very important to ensure that (ethno-)cultural diversity is "a source and a factor, not of division, but of enrichment for each society" (Council of Europe, 2019: 3). The fact that there is no ethno-cultural community in Montenegro that is present in the population structure in a percentage greater than fifty was also noted by the Advisory Committee[1] (Advisory Committee on the Framework Convention for the Protection of National Minorities, 2019: 2). This circumstance is considered an additional challenge in the process of successfully managing ethno-cultural pluralism, both for national minorities and other ethno-cultural communities, as well as for the process of consolidating a common political identity into a civil one. It was previously mentioned that, so far, three Opinions

[1] In this paper, we use the term *ethno-cultural community* when distinguishing national minorities from ethnic groups in the narrow sense is of secondary importance. It is a terminological solution that is "broad" enough to "embrace" different types of these communities.

of the Advisory Committee on the application of the Framework Convention in Montenegro have been published. In relation to the first published Opinion of 2008, and until the last report, in 2019, significant efforts were made to improve the status of members of national minorities in Montenegro, in all aspects important for their inclusion. However, the analysis provided in the Third Opinion of the Advisory Committee of 2019 "detects" the scope of the policies implemented so far in this area well. Relying primarily on this report, it is necessary to draw attention to the most important challenges in certain segments of relevance to the integration of members of national minorities, on equal grounds and without discrimination.

But before that, it is no less important to point out certain positive developments since the introduction of the model of multiculturalism, and especially since 2013 and the Second Opinion on Montenegro issued by the Advisory Committee. In the Third Opinion of the Advisory Committee, it is stated that the framework of the model of multiculturalism in Montenegro is quite well established. The presence of a "general climate of tolerance", significant budgetary funding of activities of importance for national minorities, the existence of media and programme content in minority languages and ensured media representation, a good anti-discrimination legal framework as well as the existence of efforts to improve inter-ethnic relations and strengthen social cohesion are emphasised. Progress in regulating the status of displaced persons from Kosovo is also praised (Advisory Committee on the Framework Convention for the Protection of National Minorities, 2019: 2). Some of these observations merit a more detailed analysis. One of the criticisms of the Advisory Committee concerns the framework for the application of the Framework Convention, which is still, despite the suggestions given in previous monitoring cycles, limited to Montenegrin citizens. In the *Fourth Report of Montenegro on the Implementation of the Framework Convention for the Protection of National Minorities*, it is only stated that the Law Amending the Law on Minority Rights and Freedoms, of 2017, did not question the citizenship criterion, despite the suggestion given in the Third Opinion of the Advisory Committee (Ministry of Human and Minority Rights, 2022: 47).

In the Montenegrin legal system, the terminological construction *minority peoples and other minority national communities* is used for minority ethno-cultural communities. At the same time, neither the Constitution nor the Law on Minority Rights and Freedoms specify the ethno-cultural communities that would fall into the first or second group. Article 2 of the Law on Minority Rights and Freedoms defines minority nations and other minority national communities, specifying them as "any group of citizens of Montenegro, numerically smaller than the rest of the predominant population, having common ethnic, religious or linguistic characteristics, different from those of the rest of the population, being historically tied to Montenegro and motivated by the wish to express and maintain their national, ethnic, cultural, linguistic and religious identity" (https://www.katalogpropisa.me/propisi-crne-gore/zakon-o-manjinskim-pravima-i-slobodama-4/)

Apart from the problematisation of the citizenship criterion for the recognition of minorities, another problematic circumstance, when it comes to the scope of application of the Framework Convention, concerns the formation of the Councils of National Minorities. Namely, one of the "pillars" of the model of multiculturalism in Montenegro are the Councils of National Minorities, which are the bearers of non-territorial minority autonomy, whose goal is to provide a certain degree of self-government in matters that are important for preserving the identity specificities of national minorities and the process of their integration. In the Third Opinion of the Advisory Committee, attention is drawn to the absence of normative conditions for the establishment of national councils by the so-called smallest national communities, i.e. those that make up less than 3% of the population in the population structure. The situation in which the members of the Egyptian national community, of which there are more than two thousand in Montenegro, find themselves is especially highlighted – due to the current rules on the election of members of the Councils of National Minorities and the number of necessary signatures of the community members, they could have a national council, but this has yet to happen. In this sense, the upcoming population census will be very important. It should be pointed out that, so far, the statistics in the field of education, social and health care do

not make a clear distinction between Roma and Egyptians. In this sense, there is no progress in relation to the period for which the Third Opinion of the Advisory Committee was given.

A very important part of the issue of the personal scope of application of the Framework Convention concerns the collection of data and the still very topical issue of the population census. It is certain that the population census, *inter alia*, is very important for multiculturalism policies in Montenegro and that without precise data on the ethno-cultural structure of the population, there can be no mention of their successful implementation. It is very important to reduce the degree of politicisation of the population census and to interpret it as a statistical process within the context of a necessary precondition for achieving the proclaimed goals in the field of managing ethno-cultural pluralism, and in accordance with the current Constitution of Montenegro. In general, the collection of data on the ethnic and national structure of the population is still discontinuous and incomplete. In this sense, the observations of the Advisory Committee given in the Third Opinion still remain current (see: Advisory Committee on the Framework Convention for the Protection of National Minorities, 2019, item no. 31). Article 9 of the *Law on Census of Population, Households and Dwellings* of 2022, specifies that, *inter alia*, data on "national, i.e. ethnic affiliation" will also be collected (https://me.propisi.net/zakon-o-popisu-stanovnistva-domacinstava-i-stanova/). Open-ended questions allow citizens to self-define themselves in terms of identity as they wish, without pre-given identity determinants. The aforementioned also enables the visibility of the so-called plural or multiple identities in the ethno-cultural sense, where they exist. Such a solution gives greater freedom to individuals in their expression of ethnic and national identity, and this is an essential step in the process of successful management of ethno-cultural pluralism in Montenegro. In conditions of a high degree of politicisation and instrumentalisation of ethnic and national affiliations in Montenegro, we perceive the above as very significant. The collection of data on the ethnic and national affiliation of state administration employees and local self-government bodies is still quite partial and discontinuous, and this represents one of the obstacles to the successful realisation

of the right to proportional representation, which is guaranteed by the Constitution of Montenegro.

A particularly important issue, when it comes to data collection, concerns Roma and Egyptians. Data on the number of members of the mentioned ethno-cultural communities varied in the last two censuses, so it is necessary to carefully and additionally collect and supplement data in this sense. Also, it is important to educate the members of these communities about the importance of the population census for the realisation of minority rights, as they are defined and guaranteed in the Montenegrin institutional and legal system. Due to the existing discrimination and marginalisation of members of these communities as well as deep-rooted stereotypes and prejudices, there is a danger of the so-called *ethnic mimicry*, i.e. concealing identity specificities in order to ensure better acceptance by the rest of the population and avoid discrimination. Historically rooted anti-Romaism and pronounced ethnic distance make the context of Montenegro quite complex when it comes to Roma and Egyptians. It is necessary to make an additional effort and encourage Roma and Egyptians, educating them about the mechanisms they have at their disposal for preserving identity specificities in the Montenegrin legal and institutional system. Certainly, voluntary assimilation, i.e. acceptance of the identity characteristics of other communities, is a potential choice of each individual and falls within the scope of their personal freedom. The above should be distinguished from the situation in which an individual hides their identity out of fear and in order to avoid discrimination in various dimensions of integration. Bearing in mind the importance of a quality enumeration process during the population census, additional efforts should be directed towards quality training of enumerators from the Roma ethnic community. It is necessary to pay attention to their expected number so that they can completely "cover" the spatial points where the members of this community are settled.

Article 4 of the Framework Convention concerns the legal and institutional framework for the fight against discrimination. The *Draft Law on Equality and Prohibition of Discrimination* of 2022 is the result of efforts to improve the legal and institutional framework for the fight against discrimination and is in accordance

with the previous two cycles of Opinions of the Advisory Committee. In the *Draft Law on Equality and Prohibition of Discrimination,* the areas of discrimination are better profiled and the definition of hate speech is approached in a more layered way. This is especially important when considering the members of the Roma and Egyptian ethno-cultural communities. Namely, the *Patterns and degree of discrimination in Montenegro* research, from November 2022, shows that 55.2% of Montenegrin citizens perceive Roma as the most exposed to hate speech (Bešić, Cedem, 2022: 54). What is also progress, from the perspective of the fight against discrimination, is the elaboration of "severe forms" of discrimination in Article 14 of the *Draft Law on Equality and Prohibition of Discrimination* and the definition of so-called "systemic discrimination". It is defined as discrimination "committed in a comprehensive and persistent manner and deeply rooted in social behaviour and organisation, against a group of persons, including legal rules, policies, practices, or through prevailing cultural attitudes in the public or private sector that create relative disadvantages for some groups, and privileges for other groups" (https://www.gov.me/dokumenta/769d24d1-8908-4c3b-9c7d-e370b18977a4).

As far as the institutional framework is concerned, there are still open questions concerning the Ombudsman, more specifically, the lack of sanctioning authority as well as the problematic nature of the appointment procedure. In the Third Opinion, the Advisory Committee marked the procedure as "not sufficiently transparent" since there is no public call. The Protector of Human Rights is dependent on the parliamentary majority and political influence, which does not contribute to strengthening their independence (Advisory Committee on the Framework Convention for the Protection of National Minorities, 2019: 13, 14). In the important part related to the efforts to suppress the public funding of organisations or political parties that promote racism through their activities and actions, there was no significant progress.

The status of Roma and Egyptians has rightly been treated with special attention since members of this community are still marginalised in all dimensions of integration. The current *Minority Policy Strategy 2019–2023* superficially addresses the issue of political participation of Roma and Egyptians (Ministry of Human

and Minority Rights, 2019: 47–51). Although a separate strategy is dedicated to the status issue of Roma and Egyptians, the position of Roma (and Egyptians) should have been more meaningfully and clearly indicated in this fundamental document and one of the pillars on which the model of multiculturalism in Montenegro rests. Since they are formally and legally discriminated against in the area of electoral legislation and, in the existing circumstances, cannot have authentic representatives in the most important centre for making political decisions – the state Parliament – their position is incomparable to the position of any other ethno-cultural community.

One of the fundamental pillars of the model of multiculturalism in Montenegro is the *Fund for the Protection and Realisation of Minority Rights*, (hereinafter: Fund) an institution established by the Parliament of Montenegro "for the purpose of supporting activities significant for the preservation and development of national, i.e. ethnic characteristics of minority peoples and other minority national communities and their members in the field of national, cultural, linguistic and religious identity" (Article 36, https://www.katalogpropisa.me/propisi-crne-gore/zakon-o-manjinskim-pravima-i-slobodama-4/). At least 0.15% of the current budget of Montenegro is allocated to finance the work of this institution as well as projects to support the mentioned activities. A public call for the distribution of allocated funds is published by the Fund, and the submitted projects are evaluated by a commission whose seven members are elected by the Parliament for a period of four years, after the public call publication. The criteria that must be taken into account when making a decision are specified in the Law itself and refer to: "preservation and development of the national, religious, linguistic and ethnic identity of every minority nation or minority national community; compatibility of the project with strategic documents of the Government; contribution of the project to intercultural cooperation and reduction of the ethnic distance; promotion of the spirit of tolerance, intercultural dialogue and mutual respect and understanding; transparency and the possibility to monitor the implementation of the project; and professional and technical capacities of the project applicant" (Article 36i, https://www.katalogpropisa.me/propisi-crne-gore/

zakon-o-manjinskim-pravima-i-slobodama-4/). The evaluation commission evaluates projects, compiles a ranking list and formulates a proposal for the distribution of funds for financing projects to support activities of importance for minority ethno-cultural communities. However, the Director of the Fund decides on the distribution of the mentioned funds and may decide not to accept the proposal of the evaluation commission, but to return it for review and re-evaluation. After reviewing its proposal, the evaluation commission is obliged to submit a new proposal, after which the Director makes a decision on the distribution of funds for financing projects to support the above-mentioned activities. Public call participants have the right to appeal the Director's decision to the Management Board of the Fund (Article 36nj, https://www.katalogpropisa.me/propisi-crne-gore/zakon-o-manjinskim-pravima-i-slobodama-4/). Difficulties and challenges in the functioning of the Fund were also noted in the Third Opinion of the Advisory Committee, which noted the lack of quality monitoring of the projects to which the funds were allocated, especially if one considers projects that should contribute to interculturalism, i.e. connecting ethno-cultural communities, emphasising what they have in common (Advisory Committee on the Framework Convention for the Protection of National Minorities, 2019, items no. 69 and 70). This is very important since research on ethnic distance does not show its reduction (Bešić, 2019) and the latest data on ethnic distance within the high school population are quite worrying. The respondents showed a pronounced ethnic distance towards Roma and Albanians, and one in six high school students experienced discrimination based on their national identity (https://www.newipe.net/2023/08/15/istrazivanje-u-crnoj-gori-najveca-etnicka-distanca-prema-romskoj-zajednici/).

The Fund for Minorities allocated EUR 1,410,000.00 for 187 projects, by the Decision of the Director of the Fund from July 2023 (http://www.fzm.me/v/index.php/naslovnal). The presidents of five National Councils (Albanian National Council, Council of Muslims of Montenegro, Roma Council, Serb National Council and Croatian National Council of Montenegro) addressed an open letter to the public on 18 September 2023, questioning the aforementioned distribution of funds as well as the legality of the work of the Fund for the Protection and Realisation of Minority Rights. The

presidents of the aforementioned Councils draw attention to, in their opinion, "unfair and illegitimate treatment of minority national communities, i.e. their projects" (https://adria.tv/vijesti/drustvo/drzavni-novac-po-partijskoj-liniji-spremaju-li-se-zloupotrebe-u-fondu-za-manjine/). On the other hand, the Director of the Fund points out that the funds were distributed exclusively according to the quality of the projects and the ranking by the evaluation commission (https://rtcg.me/vijesti/drustvo/470326/savjeti-se-zale-na-privilegije-u-fondu-za-manjine.html). This, as well as the previous distributions, were marked by polemics and disagreements over the manner of allocating budget funds that are intended to improve the status of minority peoples and other minority national communities and preserve their identity. In this sense, recommendations given in the Third Opinion on Montenegro remain current, in which it is specified that, with regard to the mentioned allocations, "distribution of funding should be available to the public, and the process should be more transparent, with project reports and evaluations available to the public" (Advisory Committee on the Framework Convention for the Protection of National Minorities, 2019: item 75). The Advisory Committee's encouragement of political decision-makers to continue funding and supporting intercultural projects is still very relevant. In a society where political actors often politicise and instrumentalise ethnic and national identities for particular political interests, there is a constant danger of jeopardising social cohesion. Emphasis on differences to the point of exclusivity and insufficient efforts to emphasise and promote what is common to different ethnic and national communities contribute to the weakening of social ties between them.

The above is directly related to Article 6 of the Framework Convention, which refers to tolerance and intercultural dialogue. In this sense, it is important to pay attention to the results of the research on the patterns and degree of discrimination, which was conducted in Montenegro on a representative sample, in the period from 2 to 15 November, which measured the perception of discrimination among Montenegrin citizens (more details about the operational framework of the research in: Bešić, Cedem, 2022: 11). Due to the relevance of the research and the importance of the findings for the implementation of the Framework Convention, it

is advisable to draw attention to certain items. According to the aforementioned research, the highest degree of discrimination in Montenegro exists against Roma. At the same time, the degree of discrimination against Roma in the 2020 survey amounted to 36.2%, while in 2022 that percentage equalled 37.3. (Bešić, Cedem, 2022: 29, 30). Comparison of waves of discrimination research[2] (2010, 2015, 2017, 2018, 2020 and 2022) shows that the degree of discrimination in 2022 compared to 2010 is cumulatively lower by 3% while, at the same time, the existing degree of discrimination is at the level it was in 2018 (Bešić, Cedem, 2022: 31). Research on the patterns and degree of discrimination in Montenegro of 2022 also shows a high degree of social distancing towards Roma and Egyptians: 25.2% of respondents do not want to have members of the mentioned ethno-cultural communities in their neighbourhoods, while 2.8% would not want their neighbours to be of other nationalities. It is indicative that political parties are perceived as actors who make the least contribution to the fight against discrimination with their activities. Only 17.3% of respondents believe that political parties make a key and major contribution to that fight. It is interesting that 68.1% of citizens support measures to fight discrimination against Roma and Egyptians, and this is the lowest percentage compared to previous waves of research. Especially if we are talking about 2020 when 77.1% of citizens supported measures to fight discrimination against members of the aforementioned communities (Bešić, Cedem, 2022: 32, 40, 46).

The importance of the 2022 Research on Patterns and Degree of Discrimination for Article 6 of the Framework Convention and its implementation in the context of Montenegro is also reflected in the findings regarding hate speech. Twenty-eight point seven per cent of respondents do not know what hate speech is, while 42.7% named the group towards which, in their opinion, the hate speech is directed. Here we come to the most important finding for the issue we are dealing with. Namely, 31.2% of the respondents who identified the group most exposed to hate speech,

[2] Discrimination against sex/gender, nationality, religion, political belief, age, persons with disabilities, sexual orientation and (in 2020 and 2022) against Roma and Egyptians was measured in the mentioned waves.

believe that these are groups that differ by race/skin colour, while 24.6% of them believe that the most exposed to hate speech are ethnic or national communities, more precisely individuals because of their ethnicity and nationality (Bešić, Cedem, 2022: 49, 50). The data that is worrying concerns the presence of hate speech, which, in the opinion of 68.1% of respondents, is most present in the speeches of politicians, and is most pronounced towards Roma and Egyptians in the perception of 55.2% of Montenegrin citizens (Bešić, Cedem, 2022: 52, 54). Apart from the speeches of politicians, hate speech is also very present in the media (especially on social networks and television) as well as in schools. The above is very problematic if we consider the importance of schools and the media as agents of socialisation whose actions can influence the reduction of hate speech, prejudice, stereotypes and violence, but also result in completely opposite trends.

Based on the research on discrimination patterns in Montenegro of 2017,[3] according to which about 30% of Montenegrin citizens would not like to have Roma in their neighbourhoods, the Advisory Committee expressed concern in the Third Opinion on Montenegro "at this increasing level of anti-Gypsyism" (Advisory Committee on the Framework Convention for the Protection of National Minorities, 2019: item no. 79).[4] It is advisable to bear in mind the problematic nature of the term "anti-Gypsy". In our opinion, the term "Antigypsyism"/"Antiziganism" in the context of Montenegro (and the contexts of the former Yugoslav republics) should not be translated as "anticiganizam" (especially not as "anti-ciganstvo"). Owing to the deep-rooted and historically present anti-Romaism in Montenegro, the term "ciganin" is used by the non-Roma population in a dominantly negative sense and as such has become completely unusable for most members of the Roma ethno-cultural community. Members of this community refer to

[3] The research in question was carried out within the Council of Europe programme "Support to the National Institutions in Preventing Discrimination in Montenegro" (PREDIM).

[4] The term "anti-ciganstvo" was used in the version of the Third Opinion on Montenegro, which is available on the Government of Montenegro website (https://www.gov.me/dokumenta/918098fb-377d-4a11-92b8 -8ca8c393adbe) as well as on the Council of Europe website (https://rm.coe.int/3rd-op-montenegro-me/1680980583).

themselves as Roma and use that term in the names of their most important organisations, including the name of the national council, national political party, etc. We believe that it is more expedient to use the term "anti-Romaism" to denote a specific form of racial discrimination to which the Roma are exposed practically from the moment they immigrated to the territory of today's Montenegro (more in: Vuković-Ćalasan & Đoković, 2022). Arranged marriages, begging and a high degree of domestic violence are still current problems that make the status of Roma and Egyptian women difficult. It is justified to point out the mild penal policy in certain cases of arranged marriages characterised by the prosecution as an extramarital union with a minor, instead of as human trafficking, which does not contribute to the eradication of this form of violence (https://www. vijesti.me/vijesti/drustvo/508485/tajni-svijet-ugorenih-brakova). Stronger support from competent institutions is necessary, as well as an additional effort by the social community in order to solve the aforementioned problems faced by Roma and Egyptian women.

One of the very important elements of the model of multiculturalism concerns the media representation of ethno-cultural communities. The above is very important in the context of Montenegro when we talk about Roma and Egyptians. Regarding the media representation of ethno-cultural communities and the fact that it is not enough to ensure only their visibility, but that it is also necessary to pay attention to the content that is circulated in the media as well as the methods of reporting, it is advisable to draw attention to several elements. Firstly, it is very important to choose topics when reporting, especially if we are talking about Roma and Egyptians. Is the media presence accompanied by quality content that introduces the rest of the population to the challenges and obstacles that members of these communities face in the process of inclusion, or is the content exclusively reduced to elements of folklore and customs (which is also very important)? Is the reporting stereotypical and as such increases the prejudices that exist against members of these communities and the like? In this sense, it is important to note the following: "3. On issues relevant to ethno-cultural communities, which, for certain reasons, are controversial or produce deep divisions and disagreements, it is necessary

to inform in a balanced way, encouraging a culture of dialogue... 4. With the content related to ethno-cultural communities, it is necessary to raise the degree of "interest in the other", without which there is no real interaction, connection and exchange between ethno-cultural communities. In this way, the media will contribute to the prevention of self-confinement and self-isolation as potentially negative effects of the model of multiculturalism, and in the end, significantly influence the preservation of good multi-ethnic relations" (Vuković-Ćalasan, 2021: 182).

Generally speaking, a significant part of the Third Opinion on Montenegro is dedicated to the position and the most important challenges faced by Roma and Egyptians in the integration process. An effective approach to education at all levels implies removing the main obstacles to achieving that goal. They are still present even though significant progress has been made in the field of education. The difficult economic situation and lack of funds, unresolved legal status and, most often, the lack of support in dealing with everyday challenges (such as the problem of the lack of transportation to educational institutions) are still present obstacles. The lack of affirmative action in higher education has far-reaching implications for members of the Roma and Egyptian communities. Without a sufficiently educated staff, it is not possible to increase the degree of social organisation and political engagement, in the narrower sense. It is necessary to urgently envisage affirmative action measures in the field of higher education for Roma and Egyptians. This primarily refers to special and separate enrolment quotas as well as financial and other support during studies. An effective approach to education would enable a more successful fight against problematic cultural practices such as arranged marriages while at the same time strengthening the community's capacity to deal with begging, domestic violence, anti-Romaism and other negative phenomena that prevent members of this community from getting out of the vicious circle of poverty, segregation, non-acceptance and marginalisation.

The most important challenges in the implementation of Article 15 of the Framework Convention, which refers to effective participation in the political, socio-economic and cultural life of the community, also predominantly concern Roma and Egyptians.

The absence of affirmative action in the field of electoral legislation and, consequently, the impossibility of achieving authentic representation is still the biggest problem. The formal discrimination to which the Roma are exposed in this dimension reinforces their sense of injustice and exclusion and prevents their integration.

3. Conclusion remarks

In this paper, we tried to single out some of the most important challenges in the implementation of the *Framework Convention for the Protection of National Minorities* in Montenegro. A detailed elaboration of the current situation in the application of each individual article of the Framework Convention in the mentioned context would require much more space. It is necessary to pay attention to the effects of the model of multiculturalism on relations between ethno-cultural communities and the present ethnic distance, as well as to find ways to increase the degree of trust both in the vertical and horizontal dimensions. It is necessary to reduce the degree of instrumentalisation of ethnic and national affiliations (mainly by the most important political actors) in order not to negatively affect both inter-ethnic relations and the social cohesion of the community. Roma and Egyptians are in a particularly difficult position and the scope of their inclusion in the political and socio-economic sense is quite limited.

The status of Roma in Montenegro almost two decades after the introduction of the model of multiculturalism is characterised by: 1. Pronounced marginalisation in all dimensions of social integration. Advances have been made in certain areas, such as legal status, health care and education. However, the measures and mechanisms implemented within the model of multiculturalism are of limited scope since they do not result in the reduction of ethnic distance, hate speech or acceptance by the rest of the population; 2. Exposure to formal discrimination in the legal and political sense, in the field of political rights, i.e. the right to authentic representation guaranteed by the Constitution of Montenegro of 2007. Roma are discriminated against in relation to the Croatian national community, for whose political parties and national electoral lists the electoral census was reduced to 0.35% of the total number of valid

votes, which enables them to have authentic representatives in the most important centres for making political decisions, at the state and local level; 3. The strong presence of *ethnoeconomy* that "keep" the members of this community in a vicious circle of poverty and segregation. It is historically rooted and Roma, practically from the moment they immigrated to the territory of Montenegro, perform the least attractive, lowest-paid jobs that are unacceptable for the rest of the population. Instead of a clear perception of the mentioned circumstances as problematic, in the perception of the rest of the population and even some social organisations, certain occupations become immanent in the ethno-cultural identity of the community.

The very present and historically rooted anti-Romaism is, in our opinion, one of the most important reasons for the limited range of integration policies towards Roma (and Egyptians) in Montenegro. The lack of awareness of the complexity of this form of racism with its layers and manifestations, not only among the non-Roma population but, quite often, also among institutions and organisations responsible for the implementation of multicultural policies, makes the effects of the efforts so far rather limited.

BIBLIOGRAPHY

Advisory Committee on the Framework Convention for the Protection of National Minorities. (2019). *Treće mišljenje o Crnoj Gori*. https://www.gov.me/dokumenta/918098fb-377d-4a11-92b8-8ca8c393adbe

Bešić, M. (2022). Centre for Democracy and Human Rights. *Istraživanje o obrascima i stepenu diskriminacije u Crnoj Gori*. Podgorica: Cedem.

Bešić, M. (2019). Etnička distanca u Crnoj Gori deset godina nakon sticanja nezavisnosti. *Stanovništvo*. Vol. 57(1). p. 1–25.

Bogdanović, M. (23 June 2023). Classrooms open to children from foreign countries. *Unicef*, Montenegro. https://www.unicef.org/montenegro/en/stories/classrooms-open-children-foreign-countries

Council of Europe. (2019). *Okvirna konvencija za zaštitu nacionalnih manjina sa obrazloženjem*. https://rm.coe.int/okvirna-konvencija-za-zastitu-nacionalnih-manjina/168094dfe6

Državni novac po partijskoj liniji: Spremaju li se zloupotrebe u Fondu za manjine? (23 September 2023). https://adria.tv/vijesti/drustvo/

drzavni-novac-po-partijskoj-liniji-spremaju-li-se-zloupotrebe-u-fondu-za-manjine/

Fund for the Protection and Realisation of Minority Rights of Montenegro. (2023). *Odluka o raspodjeli sredstava za finansiranje projekata za podršku aktivnostima iz člana 36 stav 1 zakona o manjinskim pravima i slobodama za 2023. godinu.* http://www.fzm.me/v/index.php/naslovnal

International Organisation for Migration (IOM). (2023). *Montenegro – Study on Temporary Protection for Ukrainian Refugees in Montenegro* https://dtm.iom.int/reports/montenegro-study-temporary-protection-ukrainian- refugees-montenegro-march-2023

Istraživanje u Crnoj Gori: Najveća etnička distanca prema romskoj zajednici. (15 August 2023). Newip. https://www.newipe.net/2023/08/15/istrazivanje-u-crnoj-gori-najveca-etnicka-distanca-prema-romskoj-zajednici/

Koprivica, D. & Radojević, G. (2023). *Dok čekamo odgovorniju vlast: Zašto Crnoj Gori nije stalo do spostvenog stanovništva?.* Podgorica: Centre for Democratic Transition (CDT), Association of Statisticians and Demographers of Montenegro (DSD).

Kimlika, V. (2002). Zapadna politička teorija i etnički odnosi u Istočnoj Evropi. In: Kimlika, V. & Opalski, M. (ed.). *Može li se izvoziti liberalni pluralizam?* (p. 27–108). Belgrade: Belgrade Centre for Human Rights.

Lalević, D. (23 September 2023). Savjeti se žale na privilegije u Fondu za manjine. https://rtcg.me/vijesti/drustvo/470326/savjeti-se-zale-na-privilegije-u-fondu-za-manjine.html

Ministry of Human and Minority Rights. (2022). *Četvrti izvještaj Crne Gore o ostvarivanju Okvirne konvencije za zaštitu nacionalnih manjina* https://wapi.gov.me/download/3b8426c7-803a-4676-a4ef-9d37c4d72e8d?version=1.0

Ministry of Human and Minority Rights. (2019). *Strategija manjinske politike 2019–2023.* Podgorica.

Muharem, A. (18 July 2023). Oko 33 hiljade stanovnika Crne Gore čine Ukrajinske izbjeglice. *AA.* https://www.aa.com.tr/ba/balkan/oko-33-hiljade-stanovnika-crne-gore-%C4%8Dine-ukrajinske-izbjeglice/2948294

Nacrt Zakona o jednakosti i borbi protiv diskriminacije. (2022). https://www.gov.me/dokumenta/769d24d1-8908-4c3b-9c7d-e370b18977a4

Nikolić, B. (1 February 2021). Tajni svijet ugovorenih brakova. *Vijesti.* https://www.vijesti.me/vijesti/drustvo/508485/tajni-svijet-ugovorenih-brakova

Vuković-Ćalasan, D. & Đoković, R. (2022). Roma in the history of Montenegro: displacement, marginalisation and discrimination. *Southeast European and Black Sea Studies*. Routledge. ELIAMEP. DOI: 10.1080/14683857.2022.2137904

Vuković-Ćalasan, D. (2021). Etnokulturne zajednice, multikulturalizam i mediji. In: Vajzović, E., Milojević, A. & Ružić, N. (ed.). *Regionalni osvrt na razvoj i integraciju medijske i informacijske pismenosti.* (p. 179–183). Sarajevo: Faculty of Political Sciences.

Zakon o manjinskim pravima i slobodama. https://www.katalogpropisa.me/propisi-crne-gore/zakon-o-manjinskim-pravima-i-slobodama-4/

Zakon o popisu stanovništva, domaćinstava i stanova. (2022). https://me.propisi.net/zakon-o-popisu-stanovnistva-domacinstava-i-stanova/

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Significance of the Framework Convention for the Protection of National Minorities in Shaping Croatian Minority Policy

Abstract

The ratification of the Framework Convention for the Protection of National Minorities (FCNM) in Croatia in 1997 marked the beginning of the formation of a model for the protection of national minorities based on the principles of identity and integration. According to these principles, members of national minorities should be integrated into Croatian society as equal citizens, but also have the possibility of preserving and developing their minority identities. The FCNM, together with European Charter for Regional or Minority Languages, served as the basis for the subsequent adoptions of the Law on the Official Use of the Language and Script of National Minorities (2000) and the Law on Education in the Language and Script of National Minorities (2000), as well as Constitutional Law on the Rights of National Minorities (2002) as the most important piece of minority legislation in Croatia. The adoption of a normative framework for the protection of national minorities was an important prerequisite for the beginning of Croatia's European and Euro-Atlantic integration. The FCNM and national legislation in Croatia enabled a high level of participation of national minorities in decision-making processes at all levels of government, as well as the establishment of minority institutions for the preservation and development of their identities.
Keywords: Framework Convention for the Protection of National Minorities (FCNM), national minorities in Croatia, Constitutional Law on the Rights of National Minorities, minority rights, political participation

1. Introduction

As an ethnically heterogeneous country,[1] from the beginning of the state building process, Croatia had to incorporate this

[1] In 1991 Census, there were 78.1% Croats, 14.91% national minorities, 3.19% others, 0.95% regional affiliation,1.53% non-declared, 1.32% unknown. Total population was 4.784.265.

diversity into its political system through general legislation and through the legal framework for the protection of national minorities. The model for the protection of minority rights that is in force in Croatia today is significantly different from the one that was introduced immediately after gaining independence from the former Yugoslavia, and the new framework significantly improved many minority rights. The establishment of this model was influenced by various internal and external factors, among which the FCNM has been particularly important. Ethnic diversity represents one of the fundamental values of the country, and thus the Croatian Constitution since 2010 has recognized twenty-two national minorities (Croatian Parliament, 2023). The Constitution itself was changed in order to take into account the diverse character of the Croatian society, since in its earlier versions, not all minorities were listed by name (Jakešević et al., 2015). This can also be seen as the result of efforts to integrate provisions of the FCNM into domestic laws and to ensure equality between members of national minorities and members of the majority nation. Despite recorded progress in the definition and implementation of minority rights and the growing awareness of the general population of the need of their protection, some minorities still face obstacles in realizing the full range of their rights. This was also recognized through the six cycles of monitoring concerning the implementation of the FCNM, analyzed below. The aim of this paper is to provide an insight into the processes that marked the development of the model for the protection of national minorities in Croatia in accordance with the provisions of the Framework Convention for the Protection of National

In 2001 Census, there were 89.63% Croats, 7.46% national minorities, 0.49% others, 0.21% regional affiliation, 1.8% non-declared, 0.41% unknown. Total population was 4.437.460.
The 2011 Census resulted in 90.42% Croats, 7.67% national minorities, 0.44% others, 0.64% regional affiliation, 0.62% non-declared and 0.21% unknown. Total population was 4.284.889. (*Croatian Bureau of Statistics*, 2013).
In 2021 Census, there were 91.63% Croats, 6.2% national minorities, 0.57% others, 0.33% regional affiliation, 0.58% non-declared, 0.69% unknown. Total population was 3.871.833. (C*roatian Bureau of Statistics*, 2022)
There is a noticeable de-population trend, which is accompanied by a growing percentage of the majority population and a decreasing share of national minorities in the general population.

Minorities, and to point out the possibilities for further improvement of the implementation of that model.

2. A Model for the Protection of Minority Rights

Following the declaration of independence, Croatian diplomatic efforts were directed towards international recognition and membership of international organizations and alliances. The process of international recognition was gradual and partly depended on how Croatia would regulate its evident ethnic diversity (Jakešević & Zorko, 2007). In this respect, it can be claimed that the "minority issue" in Croatia was already internationalized in the early stages of the state's existence, which largely determined the context of the formulation of the normative framework. After it assumed international obligations, the next step for Croatia was to ensure the implementation of the relevant legislation for the protection of minority rights, which would prove to be problematic at different stages of the development of the society and political community, depending on the political circumstances (Jakešević, 2013: 42). However, the current legislative framework is comprehensive and covers a wide range of minority rights, despite the problems that exist in their implementation. In addition to internal circumstances, the dynamics of implementation was greatly influenced by external ones – especially relations in the region of Southeast Europe and efforts to achieve Croatia's foreign policy goals, defined in terms of membership in the European Union and NATO. This gave external actors, especially the European Union, a great opportunity to influence the realization of minority rights in Croatia in the pre-accession process, whereby Chapter 23 – Judiciary and Fundamental Rights – was of particular importance. In the assessment of Croatia's progress in the negotiation process, other international organizations, such as the Council of Europe (CoE) and the OSCE, played a major role, and the EU also referred to their insights in order to get a better understanding of the processes of democratic transition of the country.

After joining the UN and OSCE (then CSCE) in 1992, Croatia joined the Council of Europe in 1996. The path to the membership in the Council of Europe was marked by war and immediate

post-war circumstances, which had an extremely negative impact on inter-ethnic relations, especially between Croats and Serbs. Therefore, both in the pre-accession and post-accession phase, the Council of Europe demanded that the position of national minorities should be legally regulated, their members provided with rights in accordance with international standards, and that Croatia would sign international documents on the protection of national minorities (CoE – Parliamentary Assembly, 1996). Simultaneously with joining these (and other) organizations, Croatia began to introduce relevant international standards for the protection of minority rights into its legal framework, through the adoption of international instruments and their incorporation into Croatian laws.

Croatian concept of minority policy was formed in a long process, which began in the 1990s when the Republic of Croatia failed to pay sufficient attention to the protection of national minorities immediately after proclaiming its independence. The initial concept referred only to those national minorities that had also had that status in the SFRY, while the status of those communities that became minorities with the independence of the Republic of Croatia remained undefined. After gaining independence and the Homeland War (1991–1995), great social, political and demographic changes took place in Croatia. Intensive internal and external migration caused a significant decrease in the number of members of national minorities, which consequently affected the level of their rights. "The Republic of Croatia inherited from the former SFRY the minority rights protection model which recognized only certain national minorities. Faced with the fact that it could not reduce the acquired rights of the then existing national minorities,[2] the Republic of Croatia immediately recognized those rights. However, a certain type of problem appeared in terms of defining the rights of members of "new national minorities". The new national minorities included citizens who had previously belonged to the constituent nations of the SFRY. The Republic of Croatia was then faced with the question – how to define the status of citizens who did not belong to the majority Croatian nation, and until that point had not have the status of a national minority, in the new circumstances? The Republic of

[2] Hungarians, Italians, Czechs, Slovaks, Ruthenians and Ukrainians.

Croatia did not immediately respond adequately to these demands and soon came under criticism from the international community, especially the European Economic Community, with one of the conditions for the international recognition of the Republic of Croatia being the regulation of the position of all national minorities, especially the Serbs who until that point had had the status of a constituent people. In an attempt to solve this problem, the Constitutional Law on Human Rights and Freedoms and on the Rights of Ethnic and National Communities or Minorities in the Republic of Croatia was passed in 1992, but it was not an expression of real internal political will to solve minority problems, but rather the result of international pressures. This was a bad circumstance that had negative consequences, because there was no real motivation to implement the imposed or forced solution" (Tatalović, 2022: 39).

By gradually adopting international standards related to human rights and the rights of national minorities, Croatia provided the necessary normative prerequisites for their realization and protection, thus starting a process which lasted for more than a decade, to form a model for the protection of national minorities. The beginning of that period was marked by the previously mentioned adoption of 1992 Constitutional Law. After the end of the war and the peaceful reintegration of the Croatian Danube region in 1997, Croatian Government, based on international standards and the experiences of other countries, began to define current model for the realization of the rights of members of national minorities. Its aim was to ensure the preservation and development of their identities, either individually or collectively. "According to this model, the majority of ethnic rights were exercised by members of national minorities through the regular institutions of the system, which were responsible, professionally and administratively, for certain areas of social life, which was supposed to achieve the principle of integration of members of national minorities into Croatian society, as well as the preservation of their cultural and national identity. Only a part of ethnic rights was ensured by the activities of various associations and institutions of national minorities, which provided additional protection against assimilation" (Tatalović, 1997: 31). The model was supposed to encourage more effective realization of the rights of national minorities in the parts of the country

where their members lived, and to encourage the cooperation of national minority associations with their kin-states, which was important for the preservation and development of the national, cultural and linguistic identity of members of national minorities.

By the end of that decade, all international conventions related to human rights and the protection of national minorities were ratified, including the FCNM and European Charter for Regional or Minority Languages.

In addition to the FCNM, by adopting the European Charter on Regional or Minority Languages[3] Croatia was obliged to enable the exercise of rights in the minority languages[4] in the field of education, work of judicial and administrative bodies, public services, public media, cultural activities, economic and social life in the areas where these languages were used as official. This obligation was the basis for the later adoption of the Law on the Use of Languages and Scripts of National Minorities.

However, the process of defining the legislative framework for the protection of national minorities was not completed until the political changes took place in Croatia in 2000, when a multi-party government with clear pro-European orientation, was formed. It was then that democratic transition really began in Croatia, the goal of which was membership in the European Union. An important part of transition processes was the normative regulation and realization of the rights of national minorities, as one of the country's long-term international obligations. This was particularly influenced by the Council of Europe, OSCE and the European Union.

Following that period, critical steps were taken to precisely define different aspects of minority rights – among others, right to political participation at all levels of government, right to be represented in the local and regional representative bodies,[5] right to or-

[3] The Charter entered into force in 1998.

[4] Italian, Hungarian, Serb, Czech, Slovak, Ruthenian and Ukrainian.

[5] Article 20 of the Constitutional Law on the rights of national minorities stipulates that proportional representation is granted to the minorities which account for no less than 15% of the population in the municipalities and cities, and no less than 5% in the counties. In such units, members of minorities also have the right to representation in executive bodies, i.e. they have the right to the positions of deputy mayor, mayor or prefect.

ganize a minority education in the minority language (and script), to preserve their identity individually and collectively, etc. The abovementioned, as well as a number of other rights, are defined, on the one hand, by the Constitution, general legislation and anti-discrimination laws, and on the other, by special laws that deal with various aspects of minority rights. Among these special laws are the Law on the Official Use of the Language and Script of National Minorities and the Law on Education in the Language and Script of National Minorities, both adopted in 2000, and the Constitutional Law on the Rights of National Minorities enacted in 2002. "The adoption of the Constitutional Law was one of Croatia's international obligations upon entry into the Council of Europe (CoE), as well as an imperative for implementation of the European Union Association and Stabilization Agreement" (Petričušić, 2002/3: 607). It is particularly important that this "umbrella" law protecting the rights of national minorities is a constitutional law, which as such is more firmly positioned in the legislative framework. "Equality and protection of the rights of national minorities are regulated by the constitutional law adopted in the procedure for the adoption of organic laws. (…) Organic laws regulating the rights of national minorities are adopted by the Croatian Parliament by a two-thirds majority vote of all Members of Parliament. Other organic laws are adopted by the Croatian Parliament with the majority vote of all Members of Parliament" (Croatian Parliament, 2023a). In addition to the fact that this law defines the term 'national minority' in the Croatian legal system, as well as various aspects of minority rights based on international standards, it is particularly important that its adoption enabled the establishment of several minority institutions whose role in realizing the model of minority protection has been vital.

An important component of this institutional framework since 2003 has been the Council for National Minorities of the Republic of Croatia which, together with the eight representatives of national minorities in the Croatian Parliament, constitute the highest level of minority institutions. In its twenty-year history, as an autonomous body in the Croatian political system, the Council significantly influenced the dynamics of the implementation of minority legislation, the preservation of the cultural autonomy of national minorities, and served as a barrier to attempts to reduce the level

of acquired rights. Another novelty introduced by the Constitutional Law are the councils and representatives of national minorities, elected in separate elections by members of national minorities every four years in local and regional self-government units. The councils and representatives have the right to create coordination at the national level. Although they only have an advisory character, their role in raising awareness of the problems faced by members of the minorities in their local communities should not be ignored, and instead their abilities, capacities and role should be further strengthened. So far, six elections have been held for councils and representatives of national minorities, the latest in May 2023, which, like the previous ones,[6] was marked by a low voter turnout[7]. This points to the fact that various measures should be used to encourage members of minorities to exercise their rights. The Government of the Republic of Croatia has had an Office for National Minorities since the early nineties; today it is the Government Office for Human Rights and the Rights of National Minorities, which is responsible for the preparation of the yearly Report on Implementation of the Constitutional Law on the Rights of National Minorities and coordination of the activities regarding reporting on the implementation of the FCNM.

Thus, at the beginning of the 2000s, normative framework for the protection of the rights of national minorities was completed, which on the one hand was harmonized with the standards of the Council of Europe, and on the other with the political circumstances in Croatia and the needs of national minorities. The normative framework enabled a high level of minority rights, which required their gradual implementation. This process started in 2002 and developed positively until 2013, when the Republic of Croatia became a member of the European Union. During those ten years, continuous progress was made in the implementation of minority rights. To this end, action plans were adopted for the implementation of the Constitutional Law on the Rights of National Minorities, which very specifically indicated what had been achieved and what

[6] Previous elections were held in 2003, 2007, 2011, 2015 and 2019.

[7] The voter turnout in the latest elections was 10.28% in counties, 9.21% in cities and 18.54% in municipalities (State Electoral Commission of the Republic of Croatia, 2023: 11).

should be achieved in the coming period. In addition to the submission of periodic reports on the implementation of the FCNM, action plans have had a positive effect on the continuous raising of the level of realization of the rights of national minorities.

Croatia's membership in the European Union, which was achieved in 2013, was crucial for the realization of the rights of national minorities. Representatives of national minorities in the Croatian Parliament participated in the process that led to the fulfillment of that goal, and they positively assessed the level of realization of the rights of national minorities, i.e. the implementation of laws for the protection of national minorities. They confirmed that the Republic of Croatia was a mature democracy that respected the rights of national minorities, although they were aware that not all rights enshrined in the Constitution and other laws had yet been fully implemented. „We were joining the European Union and with our signature we confirmed that we would continue to strengthen the protection of minorities, including the effective implementation of the Constitutional Law on the Rights of National Minorities, but almost immediately the opposite began to happen. At one point, it seemed that the process of Croatia's accession to the European Union would make society more democratically mature in terms of minority rights, but it turned out that there was still a lot of work to be done. At the time, expectations that membership alone would solve numerous problems were not realistic" (Udar.net). They believed that Croatian membership in the EU would lead to the full implementation of minority rights. However, the exact opposite happened, and what followed was not only a halt in the implementation of minority rights, but also an attempt to reduce them normatively through referendum initiatives. The pressures from certain social groups were very strong and had the effect of halting the process of implementation of minority rights until 2016 and the formation of a new parliamentary majority, which also included representatives of national minorities. After that period, special attention was directed towards realizing the social rights of national minorities with the aim of their complete social inclusion, which primarily refers to the Roma national minority and part of the members of the Serb national minority living in the areas affected by the war.

3. Reports on the Implementation of Framework Convention for the Protection of National Minorities

The ratification of the Framework Convention for the Protection of National Minorities in September 1997 was of critical importance for the realization of the rights of national minorities, since it was the first legally binding international document on the rights of national minorities, which obliged the signatories to implement its provisions. The Law on Confirmation of the FCNM entered into force on February 1, 1998, and in the past 25 years Croatia submitted six Reports, the most recent one in June 2023. Three of these reports (1999, 2004 and 2009) were submitted before and three after (2014, 2019, 2023) Croatia joined the EU in 2013, and the implementation of the FCNM provisions was also taken as a measure of the success of the democratic transformation of the society.

State reports, as well as the opinions of the Advisory Committee, noted constant progress in the protection of national minorities, however, the existence of specific problems was still indicated, such as the insufficient representation of national minorities in the state administration, the official use of languages and scripts of certain national minorities in some local units, and the position of Serb and the Roma national minority.

The first report on the implementation of the FCNM was prepared in 1999. Although this report represented official statements on the application of certain provisions of the Convention in practice, it also indicated the problems present at the time, as well as certain reluctance of some state bodies to implement the rights of national minorities. After visiting Croatia, Advisory Committee on the implementation of the Framework Convention drafted an Opinion referring to the report. It acknowledged that Croatia had made a certain effort, especially when it came to protecting the Italian national minority. It was also considered that the implementation of the Convention was complicated due to the consequences of the 1991–1995 war, which were still felt in Croatian society. This conflict was often reflected in various difficulties encountered by members of the Serbian national minority, but it also affected

other national minorities. Despite these difficulties, the Advisory Committee expressed their opinion that in the period after the ratification of the FCNM, there was a noticeable improvement in the statements and positions of the Government concerning the protection of national minorities. These improvements represented a key basis for further progress in the implementation of the Convention and led to certain positive developments in the field of legislation. This first opinion of the Advisory Committee was of crucial importance for the adoption of the Constitutional Law on the Rights of National Minorities in 2002. The main reason for the Advisory Committee's concern was that the implementation of the Convention in practice was very slow, especially at the local level. It was considered that certain authorities were not inclined towards its implementation, not only when it came to correcting the negative consequences of past discriminatory practices and other problems related to national minorities, but also in terms of the need to ensure that such problems do not arise in of the future. These problems were particularly visible in relation to the refugee return process, but also in other areas. In this regard, the Advisory Committee considered that the area that deserved a quick reaction and the introduction of measures was the field of employment, especially for the Serbian and Roma minorities. The Advisory Committee also called for the introduction of further measures in the field of media, the aim of which would be the fair presentation of persons belonging to national minorities and their better access to various media (CoE, 1999). „In its opinion on Croatia, the Advisory Committee stated that the national Report provided a detailed description of certain types of protection of national minorities. The report included a number of interesting statistics, although some of them were outdated due to the population movements caused by the 1991–1995 war. At the same time, certain parts of the report provided very limited information on a whole range of key elements of the Framework Convention, particularly on relevant practice. However, the Advisory Committee formed a much more complete picture of the situation through the government's comprehensive written response to the questionnaire sent to it by the Advisory Committee, and especially during the visit to Croatia, when discussions were held with relevant governmental and non-governmental actors. (…)

Additional information on the implementation of relevant provisions of the Framework Convention provided by the Government and other sources, including representatives of national minorities, were of great importance. It is important that certain minority organizations had the opportunity to participate in the process that led to the acceptance of the state report. However, the consultations carried out by the Government were quite limited in scope and a range of well-known non-governmental organizations dealing with national minority issues had not been not informed about the process of drafting the report" (Tatalović, 2005: 42).

The second report on the implementation of the FCNM was prepared in 2004, by which time the Parliamentary Assembly of the Council of Europe had already abolished the monitoring carried out until the year 2000, in order to ensure that Croatia complies with the obligations it assumed upon joining the Council. In the period between the first and second reports, the laws mentioned in the previous chapter were adopted, and therefore Croatia recorded significant progress in the normative regulation of the rights of national minorities. Guided by the provisions of the Framework Convention, the legal framework for the protection of national minorities after 2000 became more inclusive and enabled greater political participation of national minorities at all levels – the number of representatives of national minorities in the Croatian Parliament increased, the representation of minorities in representative bodies of local and regional governments was regulated, and councils and representatives of national minorities began to function as consultative bodies in local and regional self-government units. The report particularly emphasized that the principles stated in the FCNM had been transformed into various provisions of the Constitutional Law on the Rights of National Minorities (CoE, 2004: 11). The report contains a description of the activities undertaken by individual ministries, offices, commissions and state bodies[8] in order to put into practice the laws for the protection of individual and collective rights of national minorities, and thus also the principles written in

[8] Ministries of justice, foreign affairs, science and education; Government Office for National Minorities; Commission on Relations with Religious Communities, Central State Administration Bureau.

the FCNM. Additionally, it contains opinions, proposals and comments of national minority associations, councils and representatives, as well as the Council for National Minorities, unlike the first report and its failure to include NGO's and minority associations in its drafting. The above can be considered a positive move and a sign of a greater inclination of political actors towards the inclusion of minorities in political life, and thus a greater willingness to implement the law. This was also recognized by the Advisory Committee, which pointed to positive developments and warned that there were still problems in the implementation of certain provisions of the Croatian legislation and provisions of the FCNM, with regard to the representation of minorities in the judiciary and administrative bodies, the rights of national minorities to use their languages at the local level, the return of Serbian refugees, ethnically based discrimination, as well as the implementation of the National Program for Roma (CoE, 2005).

As stated earlier, this was directly related to Croatia's foreign policy aspiration to acquire the status of a candidate for EU membership after concluding the Stabilization and Association Agreement and to start the accession negotiations. This confirms the thesis that the dynamics of exercising the rights of national minorities was largely conditioned by external factors, and that the external actors with whom Croatia wanted to develop stronger political ties (in this case the EU) served as a source of pressure to create a positive climate at the internal level (among political actors and the general population) for a positive attitude towards the rights of national minorities.

The Advisory Committee warned that steps should be taken to further improve the position of national minorities, especially with regard to citizenship issues, procedures for implementing educational models provided for by the Law on Education in the Language and Script of National Minorities (especially for the Serbian national minority in Vukovar), the use of minority languages at the local level and financial support for improving the social position of the Roma (Ibid).

In October 2009 Croatia submitted its third report, which was followed by the Advisory Committee's opinion in May 2010. Its structure was more detailed, since it referred separately to the

activities taken by various institutions in accordance with different articles of the FCNM. A series of activities undertaken for the purpose of inclusion and improvement of the social position of Roma and monitoring the implementation of the FCNM, in accordance with the previous recommendations of the Advisory Committee, particularly stand out in this report. An inclusive approach to the drafting of the report continued, with various actors, including minority representatives, agreeing that the legal framework and material conditions enable the full implementation of minority rights, particularly in terms of cultural autonomy. Nevertheless, minority representatives continued to warn about the problem of inadequate representation of members of national minorities in state administrative bodies. In accordance with the proposals of the Advisory Committee, in the period after the second report, the capacities of state bodies for the implementation of the Constitutional Law on the Rights of National Minorities had been strengthened, which was accompanied by an increase in the funds allocated by the Government from the state budget to the Council for National Minorities to finance the programs of minority associations in the field of cultural autonomy (CoE, 2009). The Advisory Committee Opinion on the third report was positively toned, recognizing a continuous effort to improve the implementation of minority rights and acknowledging that relevant provisions of the FCNM had been built into the Constitutional Law. Therefore, although there were no objections to the normative framework, a number of problems were still pointed out: "cases of discrimination of persons belonging to the Serbian minority and the Roma in the field of education, employment, housing, recognition of property and other acquired rights, reconstruction of housing units damaged during the war, sustainability of minority returns, access to health care and social protection (…); ethnically-motivated incidents against persons belonging to national minorities, in particular the Serbs and Roma (…); the functioning of the councils of national minorities, (…) is, in many self-government units, unsatisfactory (…); in many self-government units, co-operation between the councils of national minorities and local authorities is lacking" (CoE, 2010: 2–3). In addition, the Opinion warns about the unresolved problem of insufficient representation of members

of minorities in state administrative bodies "in particular in public administration, the judiciary, local government and public enterprises, the non-respect of the right to proportional representation of persons belonging to national minorities established under the provisions of the Constitutional Act on the Rights of National Minorities gives rise to serious concern" (Ibid). Consequently, the Advisory Committee's recommendations were aimed at a prompt elimination of these problems, particularly with regard to the need to increase the trust of minorities in the police and the judiciary.

An important change, suggested by the Advisory Committee in their earlier opinions, took place in 2010, when amendments to the Constitution ensured that all 22 national minorities were mentioned by name in the Preamble. However, although it was an important step, a number of problems still existed on a practical level, which would not be solved even by Croatia's entry into the European Union.

The following three reports on the implementation of the Framework Convention (2014, 2019 and 2023) were submitted after Croatia became a member of the EU, and therefore it is possible to observe whether the change in its international political position affected the position of minorities and the dynamics of exercising their rights. From the second Report, an integral part of that document have been the opinions of national minority associations on the implementation of FCNM and on the problems that their members face in exercising their rights. Therefore, it is useful to point out some of the still insufficiently addressed problems, despite the fact that the general trend has been mostly positive, which is also confirmed by minority associations.

The problems pointed out by minority associations in the reports include, among others: inconsistency in the implementation of a well-defined normative framework; the unresolved issue of the application of Article 15 of the Constitution on the so-called additional right to vote for members of minorities; the issue of inadequate representation of small minorities in the Parliament, who do not have the right to individual representatives, but groups of minorities elect one representative; problems in the application of defined models of education for members of national minorities at

all levels of education, including problems of inadequate funding, establishment of minority educational institutions and unavailability of teaching materials; cases of local resistance to the inclusion of Roma children in regular educational processes; media access and fair reporting on minorities; low voter turnout in elections for councils and representatives of national minorities, making it necessary to take measures regarding better organization of elections and motivate members of minorities to vote.

In order to address these problems, an Action Plan for the implementation of the Constitutional Law on the Rights of National Minorities was set up, noted as a novelty in the fourth Report on the implementation of the FCNM in Croatia (CoE, 2014). Among other things, the Action Plans were particularly focused on monitoring the implementation of Article 22 of the Constitutional Law on the Representation of Minorities in State Administration Bodies and the Judiciary. The novelties that appeared after the last report included, among other things, new programs and measures for combating discrimination, hate speech and strengthening institutional capacities for the implementation of minority rights. However, the most significant change, which in the end was not implemented in practice, was related to the amendments to the Constitutional Law, which provided for a different system of election of representatives of national minorities in the Parliament, whereby new provisions of article 19 prescribed that „a minimum of three seats in the Croatian Parliament shall be reserved for representatives of those national minorities which, on the effective date of this Constitutional Act, account for more than 1.5 percent[9] of the population of the Republic of Croatia and which achieves their right to representation on the basis of universal suffrage, whereas national minorities which account for less than 1.5% of the population of the Republic of Croatia shall, in addition to their right to exercise universal suffrage, be entitled to the special right to vote, enabling them to elect five deputies belonging to such national minorities from within their own special constituencies" (CoE, 2014: 7). This represented an attempt to resolve doubts and long-standing disputes regarding the application of Article 15 of

[9] This only pertains Serb national minority.

the Constitution. "However, the amended electoral legislation was contested by a number of constitutional complaints that required judicial review of the Constitutional Court (hereinafter: CC). In July 2011, the Croatian CC abolished the dual voting right and outlawed the separate voting mechanism for the Serbian minority. The CC decision prescribed that the "old" voting mechanism remain in place until the Parliament passes new legislation, but that has not happened since" (Petričušić & Tatalović, 2018: 114). To this day, no consensus has been established regarding the interpretation of Article 15 of the Constitution. Not only that a more inclusive approach to the representation of all national minorities in the Croatian parliament was not established, but initiatives were launched that aimed at devaluing their mandate in relation to the mandates of other representatives. Although in the end there was no referendum on changes to the electoral legislation, especially the part concerning the representation of minorities, these initiatives were an indicator of the strengthening of negative perception of national minorities and their political participation.

Many international crises took place following Croatia's accession to the EU, which left internal consequences in many European countries, thus affecting European unity and putting various values into question. Some of these crises, such as BREXIT, financial crisis, migration crisis, terrorist activities, Russian-Ukrainian conflict since 2014, and the COVID-19 pandemic, have affected the state of democracy, trust in institutions, and the stability of political relations in and among EU member states. The consequences of such development include the strengthening of intolerance, extremism, radicalization, hate speech and of the far-right political options, which has become the subject of debates in a wider European context. These tendencies strengthened in Croatia as well, and had a negative impact on the previously positive development of minority rights. In the public space, anti-minority rhetoric became more prevalent, and in political life, parties that advocated reducing the acquired rights of national minorities gained strength. This was also recognized by the Advisory Committee, which in its three most recent reports warned of the need to address the aforementioned phenomena, particularly stressing the problem of growing nationalism.

Already in its 2015 Opinion on the Fourth Report, the Advisory Committee pointed to the need for an urgent Government response to the social phenomena which result in the creation of an unfavorable social climate for the realization of minority rights. Special attention was paid to the problem of increasingly frequent and acceptable hate speech, also used in political circles, as well as anti-minority rhetoric, and the problems that had been indicated in earlier reports. What was particularly worrying was that the report indicated for the first time that the government's involvement in suppressing nationalism was insufficient and that minorities perceived the social environment for the fulfillment of their rights as unfavorable (CoE, 2016).

Despite the many positive developments that have taken place in previous years, this negative trend confirms the assumptions that the level of achieved minority rights has possibly been seriously reconsidered and even reduced after Croatia's accession to the European Union (Jakešević et al., 2015: 14). This process of re-examination has not been over yet, and it usually intensifies during the pre-election period, thus serving as a factor of political mobilization.

In 2018, Croatia assumed its first presidency of the CoE's Committee of Ministers. One of the four priority areas of its presidency was the "efficient protection of national minorities and vulnerable groups" (MVEP, 2018) which served as an indicator of the effort to ensure the continued realization of minority rights in the CoE member states. This was also emphasized in the Fifth Report in 2019, which stated the most important achievements in the reporting period: the implementation of the Constitutional Law by which Croatia fulfilled its international obligations and obligations under the FCNM, the introduction of Operational Programs for National Minorities as an effort to improve minority rights, the implementation of measures for improvement of the social position of the Roma, to which a large part of the report is devoted (CoE, 2019). Although it seemed less critical compared to the previous one, the Opinion of the Advisory Committee on this report still warned of the old, but also some new problems that minorities faced. Namely, although Croatia applied the provisions of the FCNM to 22 national minorities, some of them were still unable to enjoy some of

their rights on an equal basis with the other members of minorities and the majority people. Thus, the inadequate model of representation of small minorities in the Croatian parliament, mistrust of the results of the population census, cases of discrimination and hate speech against minorities, especially Serbs and Roma, and problems in using the right to the language and script of the minority in some local areas were once again highlighted. Programs intended for the Roma national minority, as well as measures to ensure cultural autonomy and measures in the field of education, were evaluated as positive, and the Government was invited to strengthen inter-ethnic trust (CoE, 2021).

The sixth report that Croatia submitted in March 2023 still has to be evaluated by the Advisory Committee. So, the question is – have there been any changes that would indicate progress in the areas previously deemed critical. For example, the report shows that there is still a problem of representation of members of minorities in state administrative bodies and the judiciary. At the same time, the assessment of national minority associations on the implementation of their rights varies – from associations that are particularly satisfied with the results achieved in this reporting period, to those that are still not satisfied with the model of political participation of minorities, the level of funding of cultural autonomy programs, and the possibilities of bilateral cooperation with the kin-state.

4. Conclusion

The development of the current model for the protection of minority rights in Croatia can be divided into two phases: the first, which lasted from independence until the end of the 1990s, and the second, which began in the early 2000s. The second phase has been marked by the implementation of international standards for the protection of national minorities in the Croatian legal framework, and these standards stemmed from international documents signed by Croatia towards the end of the 1990s. Therefore, the Croatian model for the protection of the rights of national minorities formed most of the provisions in accordance with the framework provided by the FCNM and the European Charter on Regional

or Minority Languages. The process of shaping the model was completed with the adoption of the Constitutional Law on the Rights of National Minorities in 2003.

This was followed by a period when the main efforts in the implementation of the minority policy were aimed at ensuring that Croatia met the criteria for the membership in the European Union. The process of implementing the national legislation and the Framework Convention had developed positively until 2013, when Croatia fulfilled that goal. This was followed by an unfavorable period for the realization of the rights of national minorities, and there were attempts to reduce the level of certain rights. This primarily related to the participation of national minorities in decision-making processes at the state level and the right to official use of minority languages.

These problems and the need to eliminate them have also been pointed out in the reports on the application of the Framework Convention. The last three reports highlight the strengthening of anti-minority rhetoric in the public sphere, with the political parties advocating for the reduction of the acquired rights of national minorities gaining strength. Although the position of national minorities has been improving since 2016, when representatives of national minorities became part of the parliamentary majority, the latest reports on the Framework Convention still point to problems such as an inadequate model of minority representation in Parliament, distrust in the results of the 2021 population census, cases of discrimination and hate speech against national minorities, especially Serbs and Roma, and problems in realising the right to minority languages.

It can be concluded that the Framework Convention for the Protection of National Minorities and the monitoring of its implementation in Croatia had a positive impact on the current level of the rights of national minorities. It has been proven as an important instrument and landmark for state authorities and representatives of national minorities in the process of designing and implementing specific Croatian model for the protection of national minorities. Nevertheless, considering the trends we have highlighted in the text, the question of a possible third phase in shaping the model of minority rights protection in Croatia remains open.

BIBLIOGRAPHY

Jakešević, R., Tatalović, S. & Lacović, T. (2015). Oblici političkog predstavništva nacionalnih manjina u Hrvatskoj – problemi funkcionalnosti Vijeća i predstavnika. *Političke perspektive*, 5(3), 9–37.

Jakešević, R. (2013). Zaštita manjinskih identiteta u Republici Hrvatskoj. *Politički život – časopis za analizu politike*, No.9/September 2013, 37–47.

Jakešević, R. & Zorko, M. (2009). Granice i etnički odnosi u procesu raspada SFRJ. *Međunarodne studije*, 9(3), 45–73.

MVEP (2018). Hrvatsko predsjedanje Odborom ministara. https://mvep.gov.hr/vanjska-politika/multilateralni-odnosi/multilateralne-organizacije-i-inicijative/vijece-europe-21909/hrvatsko-predsjedanje-odborom-ministra/22679 (20 Sept. 2023).

Petričušić, A. & Tatalović, S. (2018). In Search of Multicultural Elements of the Croatian Minority Policy: Threatening Assimilation and Cultural Segregation. In: G. Bašić, M. Žagar, S. Tatalović (Eds.) *Multiculturalism in Public Policies*. Belgrade: Institute of Social Science and Academic Network for Cooperation in South-East Europe (pp. 96–127).

Petričušić, A. (2002/3). Constitutional Law on the Rights of National Minorities in the Republic of Croatia. *European Yearbook of Minority Issues*, 2(2002/3), 607–629.

State Electoral Commission of the Republic of Croatia (2023). Information on the final results of the election of council members and the election of representatives of national minorities in local and regional self-government units held on May 7, 2023. https://www.izbori.hr/site/UserDocsImages/3808 (20 Sept. 2023).

Tatalović, S. (2005). *Nacionalne manjine u Hrvatskoj*. Split: STINA.

Tatalović, S. (2008). *The policies of protection of national minorities in the Republic of Croatia*. Split: STINA.

Tatalović, S. & Šimić, M. (1997). Model of the Realization of Ethnic Rights of National Minorities in the Republic of Croatia. *Politička misao*, 34(5), 27–41.

Udar.net. https://www.portal-udar.net/boris-milosevic-saborski-zastupnik-srpske-nacionalne-manjine-test-ostvarivanja-manjinskih-prava-bitice-kada-manjine-ne-budu-u-vladajucoj-koaliciji/ (5 Sept. 2023).

INTERNATIONAL LAW SOURCES

CoE (2023). Sixth Report submitted by Croatia pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities. https://www.coe.int/en/web/minorities/croatia (10 Sept. 2023).

CoE (2019). Fifth Report submitted by Croatia pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities. https://www.coe.int/en/web/minorities/croatia (10 Sept. 2023).

CoE (2021). Advisory Committee on the Framework Convention for the protection of national minorities. Fifth Opinion on Croatia, adopted on 1 February 2021) https://www.coe.int/en/web/minorities/croatia (10 Sept. 2023).

CoE (2014). Fourth Report submitted by Croatia pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities. https://www.coe.int/en/web/minorities/croatia (10 Sept. 2023).

CoE (2016). Advisory Committee on the Framework Convention for the protection of national minorities. Fourth Opinion on Croatia, adopted on 18 November 2014. https://www.coe.int/en/web/minorities/croatia (10 Sept. 2023).

CoE (2009). Third Report submitted by Croatia pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities. https://www.coe.int/en/web/minorities/croatia (10 Sept. 2023).

CoE (2010). Advisory Committee on the Framework Convention for the protection of national minorities. Third Opinion on Croatia, adopted on 27 May 2010. https://www.coe.int/en/web/minorities/croatia (10 September 2023).

CoE (2004). Second Report submitted by Croatia pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities. https://www.coe.int/en/web/minorities/croatia (10 Sept. 2023).

CoE (2005). Advisory Committee on the Framework Convention for the protection of national minorities. Second Opinion on Croatia, adopted on 01 October 2004. https://www.coe.int/en/web/minorities/croatia (10 Sept. 2023).

CoE (1999). Report submitted by Croatia pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities. https://www.coe.int/en/web/minorities/croatia (10 Sept. 2023).

CoE (2002). Advisory Committee on the Framework Convention for the protection of national minorities. Opinion on Croatia, adopted on 06 April 2001. https://www.coe.int/en/web/minorities/croatia (10 Sept. 2023).

Council of Europe – Parliamentary Assembly (1996). Opinion 195. Application by Croatia for membership of the Council of Europe. http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=13934&lang=en (7 Sept. 2023).

Croatian Bureau of Statistics (2022). Census 2021 – Final results. https://dzs.gov.hr/vijesti/objavljeni-konacni-rezultati-popisa-2021/1270 (26 Sept. 2023).

Croatian Bureau of Statistics (2013). Statistical Reports. Population by ethnicity, 1971–2011 Censuses. https://dzs.gov.hr/istaknute-teme-162/popisi-stanovnistva-2/popis-stanovnistva-2011/196 (26 Sept. 2023).

Croatian Parliament (1992). Constitutional Law on Human Rights and Freedoms and on the Rights of Ethnic and National Communities or Minorities in the Republic of Croatia. *Official Gazette*, no. 34/1992.

Croatian Parliament (2002). Constitutional Law on the Protection of National Minorites. *Official Gazette*, no.155/2002. https://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation__Constitutional-Law-on-the-Rights-NM.pdf (7 Sept. 2023).

Croatian Parliament (2023). The Constitution of the Republic of Croatia (consolidated text). https://www.sabor.hr/en/constitution-republic-croatia-consolidated-text (11 Sept. 2023).

Croatian Parliament (2023a). Legislative procedure. Overview. https://www.sabor.hr/en/about-parliament/legislative-procedure (20 Sept. 2023).

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National Minority Recognition and the Scope of Implementation of the Framework Convention in in the States of the Post-Yugoslav Area

Abstract

Different understandings of the notions of nation and national minority among states made it impossible to establish a universal definition in international law. The lack of definition of national minorities in the Framework Convention on National Minorities, (hereinafter: Framework Convention) enabled flexible approach allowing the acceptance and ratification by the majority of member states. The solution was that a State would not need to declare specific national minorities at the time of the ratification, while the groups to access minority rights and benefit from application of the Framework Convention would not need a specific legal status under the given circumstances. This solution allowed the promotion of minority rights in Europe, but with the potential of states avoiding the obligation by using different interpretations of the term of minority. In order to avoid the arbitrary exclusion of certain minorities by the states, the Council of Europe authorized the Advisory Committee as a group of independent experts to help in monitoring and advising on the recognition of the groups exercising minority rights. Monitoring reports show that there are member states that still persistently avoid to provide the rights to all the groups that should benefit from them. All the countries of the post-Yugoslav area adopted the Framework Convention, but the Advisory Committee criticized the scope of its application in all of them.
Keywords: National Minorities, Nation, Ethnicity, Majority, Exclusion, Rights, Recognition

1. Introduction

Recognition of the existence of any identity is the first step towards its protection from discrimination and development of conditions for its free expression. Identity is at the same time a

philosophical and psychological category that consists of an objective element defined by birth, a subjective one, which implies self-determination of the individual, and a normative one, which implies social recognition of identity. Each person has several different identities that can be based on gender, sex, language or some other characteristic, and each of them finds similarities with other individuals developing collective identities.

There are various forms of collective identity, but the ones I will deal with in this paper are the national and national minority identities in the states of the Post Yugoslav area. In political theory and practice, national affiliation can be ethnic or political: nation as a national community whose members are linked by ethnic affiliation, or nation as a political community whose members are linked by state affiliation (Hobsbaum, 1996: 13).

During existence of Yugoslavia, in addition to national identities that stemmed from ethnic affiliation, the Yugoslav identity was developed, whose members were bound by citizenship (political identity). Together with this identity, Yugoslav culture spread as a result of interculturalism, that is, the intertwining of different identities and cultures of its citizens. With the breakup of Yugoslavia, however, ethnic identities prevailed and became the connective tissue of the new states. The new states, through their constitutional legal order, followed the concept of the nation based on the ethnicity of the numerically dominant ethnic communities on their territories. All these countries, except Bosnia and Herzegovina, have defined themselves as kinstates for the members of their numerically dominant ethnic communities who lived outside their borders. On the other hand, due to its complexity, Bosnia and Herzegovina was established as a state of the three dominant ethnic groups: Serbian, Croatian and Bosnian. All these countries have signed the Framework Convention for the Protection of National Minorities (hereinafter: Framework Convention) and defined in different manner the scope of its application, as it did not contain the universally accepted definition of national minority. Different interpretations of the concept of nation have influenced the different understandings of the term of national minority, resulting in the lack of its universally accepted definition international law. The member states have been allowed a margin of appreciation in

assessing which groups are to be covered by the Framework Convention within their territory.

This paper is focused on different approaches to application of the Framework Convention in the states of the post-Yugoslav area in the context of the lack of a universal definition. To understand the differences in approach, in the first section of this paper, I will examine the origin and characteristics of different approaches to the notions of nation and national minorities. In the second section, I will analyze the approach of the Advisory Committee to the scope of application of the Convention in the absence of a universal definition of national minorities. After explaining the position behind the Convention, in third section I will compare the manners in which the states of the post-Yugoslav area deal with the scope of the Framework Convention, according to the Advisory Committee's practical experiences and analyses of the challenges. Finally, in the conclusion, I will present the findings and a possible future direction in dealing with the challenges in relation to the scope of the Framework Convention.

2. Different Approaches to the Notions of Nation and National Minority

The notion of national minority consists of its anthropological, political, and normative dimensions. The anthropological dimension elaborates this concept as essentially the individuals' awareness and feeling of being members of a 'We' group, based on human similarities and differences, including the origin of minorities, their customs, beliefs and more social and cultural forms (Antweiler, 2015: 17). The political dimension derives from the constitutional identity of the state, specifically from the notion of sovereignty that differs between states. The normative dimension relies on the previous two dimensions and, depending on them, defines or rejects recognition of the existence of national minorities.

To understand the problem of the non-existence of internationally accepted definitions of nation and national minority requires a prior analysis of different approaches to the notion of nation in different states, and the relationship between the concepts of ethnic group and national minority.

In political theory and practice, the notion of national affiliation is used in two ways. Namely, it can be political or ethnic: a nation as a political community whose members are linked by state affiliation, or a nation as a national community whose members are connected by ethnicity (Hobsbaum, 1996: 14). These two concepts of the notion of nation have shaped different normative frameworks that I would divide into two main models: the one that is based on individual rights (the individual model), and the other that accepts and regulates group rights for national or ethnic minorities (the ethnic model).

The individual model of the normative framework, which was first developed in France, takes the notion of nation to imply a political community whose members are connected by a common nationality. Such notion of nation appeared in the normative framework in France as a result of the revolution of 1789, with its idea that "the principle of any Sovereignty lies primarily in the Nation. No corporate body, no individual may exercise any authority that does not expressly emanate from it" (The Declaration of the Rights of Man and of the Citizen, Article 3). According to the French understanding, demos is the basis of a nation and all citizens are understood as a nation, with the ethnicity not even being visible (Rosenfeld, 2012: 6). Within this concept, demos is understood as a political unit made up of individuals whose citizenship is the basis of their collective identity, regardless of ethnicity. In line with this understanding, there are no national minorities in France, as all citizens as individuals are members of the French nation and there is no space for recognition of group identity. The preamble to the first French constitution from 1971 reads as follows: "There is no longer, for any part of the nation, or for any individual, any privilege or exception from the general law of all French people." French normative framework based on individual rights perceives nation as a political community. Within this (individual) concept, the homeland is where the prosperity is (*ubi bene, ibi patria*), and where freedom is (*ubi libertas, ibi patria*). The only recognized collective identity is to actually belong to the state as its citizen. But the practice in France, after the proclamation of such a notion of the nation, revealed intolerance towards the citizens of France who did not speak the French literary language (Hunt, 1996). Therefore,

the French concept, without acknowledging the existence of other collective ethnic identities, was proven to be leading to assimilation into the strongest ethnic identity. In accordance with this position, France and the countries that accepted the so-called the "French" model, refused to sign the Framework Convention on the Protection of National Minorities.

In contrast to France, the notion of nation in Germany, which represents the ethnic model of the normative framework, relies on the ethnos and concept of self-governance by and for a single homogeneous ethnic group (Marko, 2019: 4). The concept of ethnic nation implies a homogeneous and indivisible community, formed as such before the adoption of any constitution and the establishment of the state. The state is conceived as an instrument for the purpose of preserving the nation (Rosenfeld, 2012: 6). In line with this approach, the German Philosopher Johann Gottlieb Fichte said:

„The first, original, and truly natural boundaries of states are beyond doubt their internal boundaries. Those who speak the same language are joined to each other by a multitude of invisible bonds by nature herself, long before any human art begins; they understand each other and have the power of continuing to make themselves understood more and more clearly; they belong together and are by nature one and an inseparable whole." (Fichte, 1922: 223)

Both the individual French model, and the ethnic German one underpins the need for one collective identity as a necessity for political unity (Rosenfeld, 2012: 55). The French model of political unity is based on civic universal identity while German model is characterised by ethnic unity. These two models shaped and influenced the constitutions and normative frameworks of other countries with greater or fewer differences. The countries that followed the German model defined the concept of national minority in different ways, and subsequently also the conditions that a community needs to meet in order to be recognized as a national minority. This made difficult finding a common definition of national minority, thus denying some groups their recognition as national minorities.

Another problem occurs when it comes to different understandings of the concepts of national minority and ethnic group. The term ethnic group is sometimes used interchangeably with that

of national minority, but it can also be used to convey a different meaning. One group of theorists uses the term of national minority for the segments of the population living outside the country in which the population is numerically dominant, i.e. outside of what they call their kin state (Smith, 1992). In accordance with that, ethnic groups are those communities that represent the segments of population that are not the majority in any country, therefore, not having their 'kin' state. This way of understanding the term ethnic group is in line with the way of understanding the term nation under which ethnicity and nation merge as a political affiliation of the state in which this community is numerically dominant. This understanding is in line with the concept of nation-state (kin-state), whose constitution particularly emphasizes the numerically dominant ethnic community. The states that followed German ethnic model treat themselves as the so-called motherlands of their most numerous ethnic communities.

However, after the Second World War and its severe consequences, the German Basic Law was adopted in 1947, which in Article 116 introduced special measures to enable restoration of German citizenship to those who had been forcibly deprived of it and in which, among other things, a new meaning of a German was given:

"A German in the sense of this Basic Law is a person who possesses German citizenship or who was admitted to the territory of the German Reich by December 31, 1937 as a refugee or exile of German ethnic origin or as a spouse or descendant of such a person."

In this way, there is an evolution of the German state as a nation-state based on ethnos into a civil state in which political unity is based on citizenship. This new meaning of the concept of German has become especially important with the strong change in Germany's ethnic structure, due to the mass migrations of the last few decades.

The states created on the territory of the former Yugoslavia followed German ethnic model, with a different understanding of what is meant by the term national minorities and with a different regulation of their constitutional and legal status. Taking the ethnicity as the basis for political unity proved to be a problem with

the breakup of Yugoslavia in 1991. The problem with the concept of the nation state was that national minorities were perceived as a threat to social cohesion, security, and unity (Rosenfeld, 2012: 36, Antic, 2023).

Defining which groups could be treated as a national minorities through the prism of nation state had a strong impact on the implementation of the Framework Convention. Before comparing the ways in which the states of the post-Yugoslav area deal with the scope of the Framework Convention are in the next section, I will assess the approach of the Advisory Committee.

3. Approach of the Advisory Committee to the Scope of Application of the Framework Convention

The Framework Convention for the protection of national minorities (hereinafter: Framework Convention) in its Article 3 stipulates the right of "[e]very person belonging to a national minority to freely choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice". This, however, does not mean that some objective criteria cannot be applied in recognition of the status of national minorities. States have been given a margin of appreciation to assess which groups are to be covered by the Convention within their territory.

In order to overcome different state approaches towards the notion of national minority, the Explanatory report on the Framework Convention (2009) states in point 43 that the enjoyment of its protection does not "imply that all ethnic, cultural, linguistic or religious differences lead to the creation of national minorities". In the given circumstances, this solution has enabled the promotion of minority rights in Europe, but with the potential for states to avoid committing themselves, by individually interpreting what minorities are.

However, the Article 2 of the Framework Convention stipulates that the decision which groups are to be covered by Convention must be taken in good faith and in accordance with the principles of good neighborliness, friendly relations, and cooperation between states. Formal recognition is not required for enjoyment

of the rights provided by the Framework Convention and recognition should have declarative character. In order to avoid arbitrary exclusion of certain minorities by a state, the Council of Europe mandates the Advisory Committee as a group of independent experts to assist in monitoring. Council of Europe in its Thematic Commentary No. 4 (2016) stipulates that the absence of definition on national minorities is not left solely to the discretion of state parties, and that such an interpretation in favor of the discretion of the contracting states would be contrary to Article 26 of the Vienna Convention on the Law of Treaties and the basic principle of *pacta sunt servanda*. Furthermore, "The Advisory Committee has consistently acknowledged that state parties have a margin of appreciation in this context but has also noted that this margin must be exercised in accordance with the general rules of international law contained in Articles 31 to 33 of the Vienna Convention on the Law of Treaties" (para. 6). The permanent dialogue among all involved actors, including with the persons requesting enjoyment of the rights provided by the Framework Convention, is highlighted by Advisory Committee as a prerequisite for functioning of the Framework Convention. States are in obligation to examine requests regardless of their previous position regarding the recognition of the national minority status of a group (2. OP The Netherlands, 2013: 9; 3. OP Albania, 2011: 10; 4. OP Denmark, 2014: 8). Furthermore, the right to free self-determination provided by the Framework Convention, according to the Advisory Committee includes the right no to be "obliged to choose between preserving their minority identity or claiming the majority culture as both options must be fully available to them" (Thematic Commentary No 4, para. 13).

In the process of monitoring, particularly in its first cycle, the Advisory Committee evaluated the objective criteria for recognizing the status of national minorities introduced by states, whether they are "in good faith and (do) not constitute a source of arbitrary or unjustified distinction among communities with regard to access to rights" (para. 26). In its Thematic Commentary No. 4, the Advisory Committee singled out the following objective criteria by which states unjustifiably excluded certain groups from exercising the rights proclaimed by the Framework Convention: (a) formal recognition; (b) citizenship; (c) length of residency; (d) territoriality;

(e) substantial numbers; (f) support by kin state; (g) specific identity markers and ascribed categories. The Advisory Committee highlights a flexible and article-by-article approach as a key to ensuring the rights that the Framework Convention provides for those who need it (Marsal and Palermo, 2018: 92–110). Over the time, some states changed their position and extended the list of groups who can enjoy the rights provided by the Framework Convention (ACFC 2. OP Finland, 2006, para. 23).

The monitoring reports show the citizenship criterion as a particularly difficult to be removed by dialogue (Marsal, Palermo, 2018: 100). While the criterion of citizenship can be seen as a legitimate requirement in the sphere of the right to political participation at the state level, it cannot be considered legitimate in other areas addressed by the Framework Convention. The Venice Commission in its report on non-citizens and minority rights emphasized that: "[t]he longer the period of residency, the more likely it is that social ties will develop and the greater the degree of "insiderness". It can logically be argued on this basis that those non-citizens able to demonstrate an "effective link" with the State e.g. through permanent residency, could be entitled to exercise the political right to vote or stand for office, at least at a local government level. If citizenship is largely irrelevant for purposes of entitlements to human rights, including minority rights, the question arises as to whether it is relevant at all" (para. 84). Given that the formal removal of the citizenship criterion could be difficult for some states, in its latest opinion, the Advisory Committee invites the states to concentrate on dialogue on the practical effect of citizenship in order to avoid unjustified exclusion of people (Marsal, Palermo 2018: 100).

The right to self-determination guaranteed by Article 3 of the Framework Convention is particularly highlighted in the collection of ethnic data, which the Advisory Committee points out as important for policy development and measuring its achievements in order to ensure the rights of national minorities (3. OP Sweden, 2012, para. 31). On the one hand, it is important to collect such data, but the right to self-determination does not imply an obligation to answer such questions. The "compulsory" introduction of such a question has been criticized, since it threatens the principle of free self-identification (1. OP Italy, 2001, para. 21; 1. OP Estonia, 2001, para. 19).

In addition to official statistics, the need to look at other sources is indicated in the Thematic Commentary No. 4 (2016, para. 18) The Advisory Committee also emphasizes the right to multiple identities and criticizes the countries that prevent the selection of multiple identities when collecting such data (Thematic Commentary No. 3, 2012, paras 19–20; Thematic Commentary No. 4, 2016, para. 16).

However, despite these limitations, the approach of the Advisory Committee without the existence of an international definition of national minorities, nevertheless resulted in the improvement of the rights of national minorities in the states that had signed the Framework Convention. In the given circumstances, this solution has enabled the promotion of minority rights in Europe, but with the potential for states to avoid committing themselves by interpreting what minorities are. As Alan Phillips noted in addressing the lack of an internationally agreed definition of minorities in the Framework Convention on National Minorities, a flexible approach helps to ensure its acceptance and ratification by the majority of the member states (Trier, Samasile, 2005: 18). In accordance with this approach, all the countries of the post-Yugoslav space signed the Framework Convention, while also having different constitutional identities and objective criteria for determining national minorities on their territories. In the following section, I will analyze the different approaches to national minorities in these countries and the problems they have been facing in the implementation of the Framework Convention.

4. Personal Scope of Application of the Framework Convention in the States of the Post-Yugoslav Area

All six states formed on the territory of former Yugoslavia that are members of the Council of Europe, i.e. Bosnia and Herzegovina, Croatia, Montenegro, North Macedonia, Serbia and Slovenia, signed and ratified the Framework Convention. At the time of the ratification, none of them submitted a reservation, but two of them, North Macedonia, and Slovenia, submitted a declaration.[1]

[1] For more information visit: www.coe.int/en/web/conventions/ (accessed 28 August 2023).

Both declarations ware related to the term "national minorities". North Macedonia specified that the Framework Convention "shall be applied to the citizens of the Republic of Macedonia who live within its borders and who are part of the Albanian people, Turkish people, Vlach people, Serbian people, Roma people and Bosniak people" (Declaration contained in a letter from the Minister of Foreign Affairs, dated 16 April 2004, registered at the Secretariat General on 2 June 2004). Slovenia with its Declaration limited the scope of the Framework Convention only to the autochthonous Italian and Hungarian National Minorities, and the members of the Roma community who lived in the Republic of Slovenia. By defining the autochthony as the single criteria for recognition of minority statues, Slovenia excluded a large number of minority populations (German-speaking ethnic group, Bosniak, Macedonian, Serbian, Montenegrin, and Albanian national communities). The Constitution of Slovenia did not recognize these populations indicated in reports as "new national communities". Representatives of these groups were advocating for years to obtain constitutional status as a national community. A step towards improving the rights of these so-called new minorities was taken in 2011 with the introduction of the Declaration on the Status of the National Communities of the Nations of the Former Yugoslavia. In order to preserve the language, culture and history, this declaration granted these people the right to self-identification and self-organization. However, in the latest Fifth Report of the Advisory Committee for Slovenia (2018: 7), it was pointed out that despite the observed efforts to solve the issues of these minorities, there was no extension of the scope of application of the Framework Convention.

Other four states did not made declaration, but in the process of monitoring, the Advisory Committee nevertheless indicated several unjustified limitations of the scope of the Framework Convention for certain groups. Citizenship as an objective criterion as an unjustified basis for limiting the personal scope of application of the Framework Convention and restrictions on the expression of multiple identities were observed in all these countries.

In Croatia, there are 22 officially recognized national minorities to which the Framework Convention applies and including only traditionally settled citizens (Petričušić, 2004: 612). Without a

clear explanation of what "traditionally settled" means, this is the basis of exclusion similar to the Slovenian "autochthonous" criteria. The advisory committee invited Croatia to reconsider such a position, given the large number of stateless persons among certain national minorities, especially the Macedonian and Roma, who cannot obtain citizenship due to complicated procedures (ACFC 5. OP Croatia, 2021, p. 9). Montenegro also limits the application of the Framework Convention to its citizens and those who are historically tied to Montenegro, but unlike Croatia, which uses the term national minorities, it uses the term minority peoples and other minority national groups (The Law on Minority Rights and Freedom, 2017, art. 2). Serbia also provided a definition of national minorities, which conditioned minority status on citizenship and long-term and solid connections with the territory (Law on Protection of Rights and Freedoms of National Minorities, 2002, art. 2) In addition, the status is conditioned by numerical representation. These criteria created the possibility of unjustified exclusion of certain groups from the enjoyment of the Framework Convention. In its 4th Report, the Advisory Committee (2019: 7) welcomed Serbia's flexible approach regarding the language rights of minorities and the extension to non-citizens in communication with national minorities. However, the Advisory Committee concluded, the enjoyment of other relevant rights, especially social and economic rights, remained a problem. The complexity of the challenges with the personal scope of the implementation of the Framework Convention is most escalated in Bosnia and Herzegovina among the states of the post-Yugoslav area. In addition to limiting the enjoyment of the rights from the Framework Convention only to the citizens of Bosnia and Herzegovina, a system has been established that places the three proclaimed constituent nations, Serbs, Croats and Bosniaks, in a privileged position, especially in the area of political participation (Venice Commission, Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representatives, 2005). National minorities are listed in the Law on National Minorities, but with the addition of the word "others", which allows for flexibility in interpretation. However, Advisory Committee in its Fourth Report (2017: 9) expressed regrets that the limitation of application of the scope of Framework Convention

only to citizens "is not in line with current efforts aimed at developing a more nuanced approach to the use of the citizenship criterion in the protection of national minorities".

Limitation of the right to multiple identities was observed by the Advisory Committee in its latest reports in all six countries of the post-Yugoslav area. In Serbia, the multiple affiliation has been made possible in the census form, but the Advisory Committee (4. OP Serbia, 2019, para. 18) concluded that "persons belonging to national minorities are not sufficiently made aware of the advantages of multiple affiliations and that the system as a whole is not structured around this possibility". Furthermore, the Advisory Committee specifically expressed regret that members of national minorities can only be registered on one minority register list for the election of the National Council of the National Minority, which represents a form of minority self-government (Antic, 2021: 102–115). The Law on National Councils of National Minorities allows registration in only one election list of minorities, so persons who consider themselves members of several national minorities are limited to register for only one of their identities. In the Fourth Report for Bosnia and Herzegovina (2017), the Advisory Committee noted that in the state census, respondents could declare more than one ethnicity, but only one line was provided for the answers. Furthermore, multiple responses to self-identification are not allowed in any of the relevant state census questions and the question pertaining to "mother tongue" was limited to the selection of only one language. Similarly, in its Fifth Report on North Macedonia (2022), the Advisory Committee laments the lack of opportunities to express multiple affiliations, especially due to the country's multi-ethnic character. In Croatia, multiple affiliation is categorized as "other", which according to the Fifth Opinion of the Advisory Committee (2021) discourages persons to express their multiple affiliations. Also, in its latest opinion for Croatia, the Advisory Committee noticed the lack of "equality data disaggregated by ethnicity". In Slovenia, the Advisory Committee (5. OP, 2022: 8) noted the lack of multiple affiliations in relevant registries due to their national provision on the protection of personal data that did not allow the collection of data on ethnicity, with the Slovenian authorities using only an estimate and not planning to

organize other surveys. In its Fifth Opinion for Slovenia, the Advisory Committee "encourages the authorities to collect accurate disaggregated data about ethnic affiliation and language competence in co-operation with representatives of the minority communities concerned and consider ways of allowing for multiple affiliation" (5. OP, 2022: 9).

In its opinions, the Advisory Committee has not been dealing with the causes of the problem, but rather with identifying non-compliance with certain standards, where the solution is always found in constant dialogue. This short overview of limitations of scope of application of the Framework Convention in the post-Yugoslav states shows that there is need in all six state to strengthen the dialogue with representative of national minorities. However, the problem of not understanding multiple identities in all these countries, restrictions based on citizenship, limiting minority rights to the so-called "indigenous" communities like in Slovenia, all indicate that, in addition to the dialogue, there is a need to reassess the constitutional identity in order to deal with the cause of the problem.

5. Conclusion

The analysis of the notions of nation and national minority and their different interpretations among states showed inability to develop an internationally agreed definition on national minorities. On the one hand, there are states in which the identity of the citizens and ethnic identity are combined under the term nation and others who perceive the nation as a political community. The states created on the territory of the former Yugoslavia tie the ethnic affiliation of the numerically dominant community to the territory and regulate the status of national minorities in different ways. The attachment of the ethnic affiliation of the numerically dominant community to the territory is particularly evident in bilateral agreements on the protection of national minorities through the prism of the kin states. In the legal order of Bosnia and Herzegovina, ethnicity and territory are also linked, but unlike other countries, B&H involves three constitutive nations. The merging of ethnicity and territory, or state, limits the development

of a common identity of all citizens (identity based on citizenship) living in those states. With its Basic Law, Germany stepped in that direction and introduced the dual meaning of German, German as a political affiliation and German as an ethnic affiliation. In this way, members of national minorities have the identity of Germans as a political affiliation simultaneously with their ethnic identity. This solution should be considered in further development of the constitutional identities in the states formed on the territory of the former Yugoslavia. Additionally, should an agreement be reached at the international level on defining the term of nation as a political community, national minorities would be less perceived as a potentially disruptive factor.

The mechanisms provided through the Framework Convention without an internationally agreed definition of national minorities show limitations, as well as advantages. During the reporting, the scope of application of the framework convention expanded and the rights of minorities were improved. However, defining objective criteria such as autochthony and citizenship, as well as limiting the right to multiple identities, proved to be particularly persistent problems. In all reports for the countries of the former Yugoslavia, the Advisory Committee called for dialogue with national minorities in order to resolve these issues. However, the dialogue must include a comprehensive analysis of the constitutional identities of these states and identify the causes of the problem.

BIBLIOGRAPHY

Antic, P. (2021). Ostvarivanje prava na manjinsku samoupravu (odlučivanje) u Srbiji. Várady, Bašić, Tatalović (ur.) *Kulturna autonomija nacionalnih manjina u svetlu činjenica* (str. 93–113). Beograd: Institut društvenih nauka, Srpska akademija nauka i umetnosti, Akademska mreža za saradnju u Jugoistočnoj Evropi.

Antic, P. (2023). Sanctioning Hate Speech on the Internet: In Search of the Best Approach, *Pravni zapisi*, 74–100. https://DOI 10.5937/pravzap1-43118

Antweiler, C. (2015). Ethnicity from an anthropological perspective. In: *Ethnicity as a Political Resource*. University of Cologne Forum.

Fichte, G. J. (1922). *Addresses to the German Nation*. Chicago and London: The Open Court Publishing Company.

Hobsbaum, E. (1996). *Nacije i nacionalizam od 1780, program, mit i stvarnost*. Beograd: Filip Višnjić.

Hunt, L. (1996). *The French Revolution and Human Rights.* Boston: Bedford/St. Martin's.

Law on Protection of Rights and Freedoms of National Minorities, *Official Gazette of FRY*, No. 11/02 of 27 February 2002.

Law on National Councils of National Minorities, *Official Herald of the Republic of Serbia*, No. 72/2009, 20/2014 – Decision CC, 55/2014 and 47/2018.

Marko, J. (2019). *Human and Minority Rights Protection by Multiple Diversity Governance*. London and New York: Routledge.

Marsal, S. & Palermo, F. (2018). Commentary of Article 3 of the Framework Convention for the Protection of National Minorities. In: Rainer, H., Tove H. M., Detlev B. R., (eds.) *The Framework Convention for the Protection of National Minorities*. Brill, pp. 92–110.

Petričušić, A. (2004). Constitutional Law on the Rights of National Minorities in the Republic of Croatia. *European Yearbook of Minority Issues*, Vol. 2, 607–629.

Rosenfeld, M. (2012). *Constitutional Identity, the Oxford Handbook of Comparative Constitutional Law.* Oxford: Oxford University Press.

Smith, A. D. (1992). Introduction: Ethnicity and Nationalism, *International Journal of Comparative Sociology*.

Trier, T. & Samasile, E. (2005). *'Towards Ratification' Conference on the Framework Convention for the Protection of National Minorites*, European Centre for Minority Issues.

INTERNATIONAL LAW SOURCES

Council of Europe (1998). *Framework for the Protection of National Minority*, ETS No. 157.

Council of Europe, FCNM Advisory Committee (2000). *1. Opinion on Finland.* https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008bd45 (accessed 30 August 2023).

Council of Europe, FCNM Advisory Committee (2006). *2. Opinion on Finland*. http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008c179 (accessed 30 August 2023).

Council of Europe, FCNM Advisory Committee (2013). *2. Opinion on the Netherlands*, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008c1ae (accessed 30 August 2023).

Council of Europe, FCNM Advisory Committee (2011). *3. Opinion on Albania* http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008c633 (accessed 30 August 2023).

Council of Europe, FCNM Advisory Committee (2014). *4. Opinion on Denmark*. http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016801cdeca (accessed 30 August 2023).

Council of Europe, FCNM Advisory Committee (2012). *3. Opinion on Sweden*. http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008c6bb (accessed 30 August 2023).

Council of Europe, FCNM Advisory Committee (2022). *5. Opinion on Slovenia*. http://rm.coe.int/5th-op-slovenia-en/1680a830d8 (accessed 30 August 2023).

Council of Europe, FCNM Advisory Committee (2021). *5. Opinion on Croatia*. http://rm.coe.int/5th-op-croatia-en/1680a2cb49 (accessed 30 August 2023).

Council of Europe, FCNM Advisory Committee (2019). *4. Opinion on Serbia*. http://rm.coe.int/4th-op-serbia-en/16809943b6 (accessed 30 August 2023).

Council of Europe, FCNM Advisory Committee (2017). *4. Opinion on Bosnia and Herzegovina*. http://rm.coe.int/4th-op-bih-en/16808e2c53 (accessed 30 August 2023).

Council of Europe, FCNM Advisory Committee (2022). 5. *Opinion on North Macedonia*. http://rm.coe.int/5th-op-north-macedonia-en/1680a82967 (accessed 30 August 2023).

Council of Europe, FCNM Advisory Committee (2008). *Thematic Commentary No 3*. http://rm.coe.int/16806b6a0b (accessed 30 August 2023).

Council of Europe, FCNM Advisory Committee (2016). *Thematic Commentary No 4*. http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a8fe8 (accessed 30 August 2023).

National Assembly of France (1789). *The Declaration of the Rights of Man and of the Citizen*.

Venice Commission (2006). *Report on non-citizens and minority rights*. http:// www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)001-e (accessed 30 August 2023).

Venice Commission (2005). *Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representatives*. http://www.venice.coe.int/webforms/documents/CDL-AD(2005)004-e.aspx (accessed 30 August 2023).

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Tolerance and Intercultural Dialogue vs. Discrimination of National Minorities* – Application of the Framework Convention for the Protection of National Minorities in Serbia

Abstract

This paper aims to analyse the application of the Framework Convention for the Protection of National Minorities in Serbia, i.e., obligations arising from Articles 4 and 5 of this Convention. The analysis deals with prerequisites and conditions that are of relevance for the purpose of protecting national minorities, the latter being significant in order to ensure that national minorities are protected against discrimination. For the minority national and ethnic identities to be accepted, it is important to raise the level of population's culture, especially political culture, whereby it is particularly significant to embrace and respect differences. Without this, a harmonious cohabitation of all ethnic groups, both the majority and minority ones, is not possible. Substantial means for the fulfilment of obligations stipulated by the Framework Convention are upbringing, education, socialisation, dialogue, tolerance, compromise, and consensus. The purpose of this paper is also to review conditions for the specific application of Articles 4 and 6 of the Framework Convention for the Protection of National Minorities. This analysis includes the Fourth and the Fifth Periodical Reports on monitoring the application of the Convention, the reports pertaining to mutual interactions and communication, use of the language in everyday communication, education, and protection against discrimination. We have additionally analysed proposals and views of the Council of Europe Advisory Committee and reports compiled by the Republic of Serbia. Finally, we have drawn certain conclusions presented in the form of measures which, according to the Framework Convention, Serbia should undertake for the purpose of protecting national minorities.

Keywords: national minorities, equality, dialogue, tolerance, discrimination

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1. Introduction

Before the Council of Europe was established, the protection of national minorities had been conducted at a country level and was mainly connected with relative policies that were implemented within each country's inner organisation. In a small number of European countries, political awareness ripened, according to which normality, safety and stability in the social life of a relative country may be accomplished solely when members of various ethnicities living in it are treated equally. What is particularly significant is to eliminate discrimination of the members of national minorities and attempts by the majority and other ethnicities to assimilate them. It was concluded that the Council of Europe, as an umbrella organisation connecting European countries, should come up with a valid legally binding international instrument which would codify the highest standards for the protection of national minorities' rights, thereby making such practices uniform and ensuring the application of standards used in the countries with a proven track record of successful protection of national minorities, including regulatory governance of minorities (Bašić, 2018a: 166).

In 1994, the Committee of Ministers of the Council of Europe drafted and adopted the Framework Convention for the Protection of National Minorities while as of 1st February 1995 the Convention was presented for signing to all the Council of Europe members. In terms of the implementation of the Framework Convention, the member countries are obligated to submit individual reports on the application and realisation of the Convention, for each signatory country individually. The Committee of Ministers of the Council of Europe is in charge of monitoring the application of the Framework Convention. Within the Committee, the Advisory Committee has been established as a special body composed of experts who address the oversight of the realisation of the Convention in the member states in a comprehensive and specialised manner.

As part of implementation of the Convention, each country is obligated to submit periodically the Report on the Application of the Convention. Once all reports have been submitted, the Advisory Committee provides its opinions on these reports and

also issues recommendations for due implementation of identified shortcomings. Based on the reports submitted by every country, as well as the opinions and recommendations issued by the Advisory Committee, and the comments that every country must present subsequently, resolutions are passed relative to the implementation of the Framework Convention, as well as recommendations on what is to be done in order for minority communities to be legally protected. This ends a five-year cycle for the implementation of the major international treaty on the protection of national minorities.

The Republic of Serbia has undertaken the obligation to proceed with what the Federal Republic of Yugoslavia (FRY) committed to and ratified in the Federal Assembly in 1998, as part of the Council of Europe's Framework Convention for the Protection of National Minorities. The FRY accepted invitation by the Committee of Ministers of the Council of Europe and became party to the Framework Convention on 11th May 2001, which took legal effect on 1st September the same year. To date, the FRY, then the State Union of Serbia and Montenegro, and as of 2006 the Republic of Serbia, has submitted five periodical reports (2002, 2007, 2012, 2019 and 2022), so as to comply with the obligations set forth in Article 25 of the Framework Convention and provide full information on legislative and other measures undertaken for the purpose of implementing the principles defined in the Framework Convention.

This paper in particular analyses the obligations arising from Articles 4 and 6 of the Framework Convention, namely guaranteeing equality before the law and equal legal protection, and prohibition of any discrimination of persons belonging to national minorities (Article 4, Paragraph 1), as well as obligations that are relative to encouraging a spirit of tolerance and intercultural dialogue, promoting mutual respect, understanding, and co-operation (Article 6, Paragraph 1). We have particularly analysed the fulfilment of these obligations in practice by competent authorities, i.e., the measures undertaken by the State of Serbia for the purpose of fulfilling the above-mentioned obligations.

2. Presumptions and conditions for the protection of national minorities in Serbia per the Framework Convention

Education is one of major elements for creating and maintaining identities, both personal and group ones. Apart from upbringing and education, socialisation plays a significant role in creating, as well as maintaining group identity and the identities of persons belonging to a national minority (Jovanović & Joković Pantelić, 2022). An education system that applies the standards of accepting and preserving differences is ensured by means of two extremely important aspects, dialogue and tolerance, thus allowing for good relations within multinational, multireligious, multiconfessional, and multicultural communities (Čupić & Joković, 2013b: 225–226). Respect for differences ensures good communication and relationships among persons in societies and countries which are multinational and multicultural (Fukuyama, 2022: 126–127). Maintaining identity and, accordingly, a sense of safety and stability of persons belonging to various national minorities, and majority populations alike, is dependent on commitment to the application of standards, as well as on legislative solutions. In Serbia, the Framework Convention for the Protection of National Minorities is based specifically on the guaranteed rights.

The most significant segment in terms of the protection of national minorities in Serbia is to create an atmosphere in which all stakeholders, especially those at an institutional level in charge of the implementation of the Framework Convention, will encourage and nurture respect of different ethnic origin, culture, language, and religion, as well as of other features of their respective identities. Furthermore, it is also important to protect them against any form of discrimination, exclusion, hostility, and violence (Joković, 2015: 85). The spirit of the Framework Convention is to practise intercultural dialogue and culture as regards differences and diversity and to encourage cooperation and mutual understanding in cohabitation.

To ensure required conditions that will allow national minorities to maintain and develop special characteristics of their respective cultures, it is necessary to guarantee major elements in the

maintaining of their identities: language, education, religion, and culture (Bašić, 2018b: 70). To incorporate the elements of differences in social fibre, it is necessary to create a cultural atmosphere that accepts and respects differences (Bauer, 2004: 51). Furthermore, it is necessary to develop political culture that will allow for the application of differences, without any consequences potentially leading to animosity, exclusionism and confrontation. The issue of political culture is the issue of breadth and level of general culture for the entire population in society and the country. Increasing the level of culture is ensured by means of a well-designed education policy, i.e., a well-organised education system.

Culture, especially political culture, creates necessary prerequisites that are utterly significant for accepting and respecting not only individual persons, but also their group affiliation (Čupić, 2021: 149). Additionally, culture appeals to understanding among diversities that will not lead to confrontation. The culture of diversity expands and enriches special experiences. Trust is one of the most fundamental prerequisites for mutual cooperation among diverse entities. Trust is about identifying similarities that connect the diverse (Fukuyama, 2000: 40). Trust does not raise any doubts regarding differences, but rather supports them in the best possible manner. In addition to this, the means significant for the purpose of protecting the rights of national minorities are those enabling its acceptance and its actual life: dialogue, tolerance, compromise and consensus. When people are aware of those major elements of cultural life and political culture, all other measures that are significant for protecting national minorities will be easily accepted and applied. These are the measures elaborated in relative laws and regulations, and the length of their application makes them become a rule. Without the said elements, it will be difficult to achieve even the most adequate solutions regarding the protection of national minorities.

An individual, as a cultural being, acquires full identity by becoming incorporated in all identities that matter to them. Individual identity, as a basis for all other identities, is incorporated in the identities that form content and riches of a person. Cultural identity is especially important because with the help of this identity, an individual chooses values and relationships with persons who belong

to various cultures. Cultural identity is not enclosed in its own community. Just the opposite, this identity is connected "with democratic political values" (Wolton, 2009: 404). In other words, cultural identity makes it impossible to be isolated in a society that comprises members of national minorities. The presumption of cultural identity is to possess critical capacity that will not lead this identity either to fragmentation or separation, which may ultimately result in isolation and, subsequently, in segregation.

Within the doctrine of human rights, it is equally important to protect persons both as individuals and as members of a group, to protect beliefs or convictions a particular individual deems significant for their life. Hence, it is not sufficient just to protect individuals in terms of their personal rights, it is also important to protect their rights that stem from different forms of their ethnicity (Bašić, 2017: 38).

The first element of political culture that is significant for the protection of national minorities is *respect*. It entails both respect for an individual personality and an individual's affiliation to a group or any specificity. If people treat each other with respect, then it will be easy for them to accept and practise protection mechanisms within the bounds of legal and legislative solutions. In situations with no respect, but with valid mechanisms relative to the political and legal nature of the protection of identity, these mechanisms are unlikely to be applied with sincerity. Hence, people's awareness of *respect* is exceptionally important since it serves to accomplish everything guaranteed in regulatory terms. Even when issues are raised by certain individuals regarding this awareness, by way of exception, i.e., incident, this will not substantially result in deterioration of the relationship of respect among people of different ethnicity, beliefs and convictions. To build and raise such awareness, it is also necessary to include and develop it through education, socialisation and cultivation of a meaningful life of people in the community (Joković Pantelić, 2023: 21).

Another significant element in terms of the protection of national minorities' rights is *trust*. It is one of the elements of democratic political culture. Trust is content and a process that is built not over years but rather over decades, i.e., with the passage of time and the change of generations. It shows that it is possible for

different people in the same area to live and cohabitate with people belonging to different cultures and having different beliefs and convictions. Niklas Luhmann believes that trust is the basic fact of social life, while Ivan Krastev argues that without it "person could not get up in the morning" (Krastev, 2013: 79). Trust implies several levels, from physical to business ones to the level of trust born from the state of mind and spiritual orientations (Giddens, 1998: 118–121). If there is no trust in a community, then it is difficult to protect members of national minorities only with the use of legal mechanisms. When there is no trust, ways will always be found to bypass legal mechanisms. Without trust, there is always a threat of tension and rift. Mistrust potentially breeds conflicts that range from aggressive verbal intolerance to wars. In societies in which trust is built, it becomes a pattern that is passed on from generation to generation. Trust eliminates discrimination and inequality, but also a sense of anxiety and endangerment (Čupić & Joković, 2013a: 26–34).

3. Means of accomplishing the protection of national minorities in Serbia

Important aspects for the accomplishment of respect are *dialogue, tolerance, compromise* and *consensus*. *Dialogue* is the best way because it is non-violent. Dialogue helps people to resolve any possible misunderstanding and misreading in an amicable manner. People who opt for dialogue commence conversation holding a set of opinions and views and end the conversation holding a set of new and better opinions (Šušnjić, 2007: 10). With better argumentation, people reach the most acceptable and the most productive decisions and solutions for their relationships. Historical experience shows that people involved in dialogue resolve their misunderstandings and problems in the best possible manner while at the same time abandoning misconceptions, prejudice, and stereotypes. Dialogue is the best way for people to develop individually, as a group and as whole society and, in such development, to raise individual and social standard of living. Due to the said reasons, dialogue among different ethnicities is exceptionally important, ethnicity not infrequently giving rise to misunderstanding and conflict.

Dialogue ensures better rules and laws, i.e., legally organised and guaranteed protection of every national minority.

Another significant aspect is *tolerance*. It is a presumption that allows individuals and groups to resolve potential misunderstandings via dialogue. As regards national minorities, the most important form of tolerance is the acceptance of differences and diversity (Čupić, 2002: 22). When society incorporates and builds the awareness of tolerance, it is then possible to have dialogues in which common solutions are found, i.e., decisions are rendered jointly. Tolerance directs people towards the use of another segment – *compromise*. Compromise is undoubtedly important for the purpose of seeking solutions and decisions to be accepted by people regardless of their opinions and views that will remain unchanged. Compromise is about abandoning exclusivism and sacrificing one's own positions that are in opposition to other's positions, but in such a manner that the victim does not entirely rebut mentioned positions. Compromise is achieved between two (or more) possibly good and/or fair solutions, whereby the solution that is accepted is the one with better argumentation and more beneficial consequences. Once a compromise solution is accepted, it is applied without any difficulty in practice. Certainly, there are potential limitations to compromise, for a simple reason that there is no compromise "between the truth and the lie, justice and injustice, good and evil" (Čupić, 2021: 175). The last significant and necessary means segment is *consensus*, i.e., agreement to the effect that a decision or a solution is accepted with all national minorities agreeing to it. When all parties in society and the country agree on the manner and mechanisms for the protection of national minorities, they will not be threatened, nor will they be pressured into anything that is imposed by the majority.

4. Fulfilment of obligations under Article 4 of the Framework Convention – the Fourth Oversight Cycle

As part of the Fourth Oversight Cycle for the application of the Framework Convention, the Advisory Committee recommended to Serbian authorities that the anti-discriminatory legal framework should be adjusted to international standards so as to add

clarity, since there were many laws that contained anti-discriminatory provisions that contradicted one another (The Fourth Opinion on Serbia, 2019: 12). Given the fact that the 2021 modifications and amendments to the Law on Prohibition of Discrimination contributed to harmonisation with international standards, the matter will be dealt with in more detail in the section below that analyses the fulfilment of obligations stipulated per Article 4 of the Framework Convention, as part of the Fifth Oversight Cycle.

The recommendation of the Advisory Committee, issued as a result of the previous (third) oversight cycle, emphasises that Serbia needs to provide adequate support to Ombudsperson institutions at all levels and to the Commissioner for the Protection of Equality "to ensure the efficient handling of complaints received and that they are known and accessible to persons belonging to national minorities" (Resolution CM/ResCMN (2015)8, 2015: Article 2). Regarding this matter, in the Fourth Periodical Report Serbia states that for the purpose members of national minorities familiarising themselves with the institution of the Commissioner for the Protection of Equality, multiple publications and brochures were created, and a number of projects were realized with the aim of better informing the members of national minorities about the mechanism of protection against discrimination. Furthermore, the state notes that the Ombudsperson institutions at all levels did not mention having any difficulty regarding the efficient performance of their activities and their recognition in minority communities (The Fourth Periodical Report, 2018: 116, 117). Nevertheless, the Fourth Opinion of the Advisory Committee shows that national minorities less and less frequently protect their rights in relative process before the Commissioner for the Protection of Equality and the Ombudsperson, and accordingly the Advisory Committee "calls on the authorities to step up their efforts to raise awareness especially among groups most frequently exposed to discrimination, in particular Roma living in informal settlements as well as the relevant community workers, about the legislative standards and of the remedies available to victims of discrimination" (The Fourth Opinion on Serbia, 2019: 13).

As regards gathering equality data, the Third Opinion of the Advisory Committee notes the need to collect reliable data on

discrimination and to develop adequate methods of ethnic data collection while fully respecting personal data protection. In the Fourth Periodical Report, the state reports that the Rulebook on More Detailed Criteria for Detecting Different Forms of Discrimination by an Employee, Child, Student or Third Party in an Educational Institution (*Official Gazette of the Republic of Serbia*, No. 22/16) stipulates the employees' obligation to detect and report to state authorities any case of discrimination, thereby contributing to collecting reliable data on discrimination (The Fourth Periodical Report, 2018: 119). Since this obligation applies only to the field of education, i.e., that this is a norm stipulating the duties of stakeholders in the education system in a general manner, and since this provision is not self-applicable, but also given that it is not governed by this bylaw in further detail, it would be too optimistic to believe that it could contribute in more substantial terms to achieving the mentioned recommendations. Consequently, in its Fourth Opinion, the Advisory Committee notes that it is necessary for the authorities to set up, as soon as possible, a data collection framework, as well as to promote complementary qualitative and quantitative research and also, on the basis of such data and research, to set up, implement, monitor, and periodically review minority policies (The Fourth Opinion on Serbia, 2019: 14). As part of the Fourth Cycle, the absence of data on the position of Roma is underlined, including the data relative to the application of regulations, which prevents the appraisal and assessment of the situation as to whether anti-discrimination and other relevant measures were undertaken or not. In the contemporary literature focused on Roma rights, there is a consensus that discrimination stands as the primary barrier preventing social inclusion, as well as social and legal equality for members of the Roma community (Bašić & Stjelja, 2021: 234).

5. Results of the fulfilment of obligations under Article 4 of the Framework Convention – the Fifth Oversight Cycle

In 2022, the Republic of Serbia submitted the Fifth Periodical Report (covering the period between 2017 and 2021), in which it is, *inter alia*, noted that the Law on Amendments to the Law on the

Prohibition of Discrimination (*Official Gazette of the Republic of Serbia*, No. 22/2009 and 52/2021) was adopted in 2021, whereby the local anti-discrimination framework was adjusted to international standards. Thus, the definition of indirect discrimination now complies with the EU legislation, and the concept of segregation was incorporated in the Law, which is particularly important for the purpose of exercising national minorities' rights, especially the Roma minority, since the segregation of Roma pupils and students is still present in Serbia, as well as in the education systems of some other European countries. To successfully combat segregation in the education system, it is necessary to "enable the use of efficient remedies which should be made available but also to design preventative measures which are based on facts, hence it is necessary to obtain relevant data which would be used as a basis for designing such measures" (Stjelja, 2017: 529). In this connection, it is worth noting that the mentioned modifications and amendments to the Law on the Prohibition of Discrimination stipulate relative records, administrative registries and statistical data to be used as facts for the purpose of proving discrimination in civil proceedings (Article 27), since all attempts at proving segregation before court had failed.

As for monitoring of the prohibition of discrimination and access to legal protection, i.e., guarantee to minorities to protect their right to non-discrimination before court, the State reported on multiple publications, leaflets, and trainings whose objective was to raise awareness of the members of national minorities in terms of possibility to protect their rights before the Commissioner for the Protection of Equality.

From the analysis of the reports compiled by the Commissioner for the Protection of Equality, submitted to reflect discrimination against national minorities in the period between 2015 and 20022, it can be seen that the number of filed complaints per year was as follows: 2015: 119; 2016: 60; 2017: 62; 2018: 59; 2019: 50; 2020: 114; 2021: 96; 2022: 163.[1] The analysis of the number

[1] Regular Annual Report of the Commissioner for Protection of Equality for 2015, 2016: 119; Regular Annual Report of the Commissioner for Protection of Equality for 2016; 2017: 142; Regular Annual Report of the Commissioner for Protection of Equality for 2017, 2018: 139; Regular Annual Report of the Commissioner for Protection of Equality for 2018, 2019: 95; Regular Annual Report of the Commissioner

of complaints shows that following a decrease in the number of complaints until 2019, this mechanism of protection became used much more frequently. Better identification of discrimination faced by the Roma in Serbia, as reflected in the increased number of complaints submitted to the Commissioner, is a significant development. This increased number of complaints leads to increased measures being taken against the perpetrators of discrimination, which in turn encourages those who suffer discrimination to continue reporting it. Additionally, the increased number of complaints raises the significance of the issue of discrimination of national minorities to a higher level, bringing attention to the urgent need for continued efforts to combat discrimination and promote inclusion. It is important to note that a higher number of reported cases usually does not reflect more frequent discrimination in a society, rather it indicates that victims are supported and encouraged to report the discrimination.

On the other hand, the Fifth Periodical Report notes that the Ombudsperson was not sufficiently perceived as a "go-to" institution for national minorities for the purpose of protecting their rights (The Fifth Periodical Report, 2022: 87), and if one were to look into the practices prevailing in recent years, this opinion is all the more confirmed. From the analysis of regular annual reports compiled by the Ombudsperson, for the period 2018 to 2022, it is noted that the Ombudsperson reviewed the following number of case files in the field of the protection of national minorities' rights on an annual basis: 2018: 64; 2019: 71; 2020: 46; 2021: 44 and 2022: 27.[2] A significant decrease in the number of cases is noticea-

for Protection of Equality for 2019, 2020: 103; Regular Annual Report of the Commissioner for Protection of Equality for 2020, 2021: 18; Regular Annual Report of the Commissioner for Protection of Equality for 2021, 2022: 21; Regular Annual Report of the Commissioner for Protection of Equality for 2022, 2023: 20 (Regular Annual Reports are available at https://ravnopravnost.gov.rs/izvestaji/, accessed on 25th September 2023).

[2] Regular Annual Report of the Ombudsman for 2022, 2021: 4; Regular Annual Report of the Ombudsman for 2021, 2022: 8; Regular Annual Report of the Ombudsman for 2020, 2021: 7; Regular Annual Report of the Ombudsman for 2019, 2020: 21; Regular Annual Report of the Ombudsman for 2018, 2019: 48. (Regular Annual Reports are available at https://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji, accessed on 25th September 2023).

ble and the Ombudsperson was far less frequently approached by the members of national minorities.

Finally, when it comes to collecting equality data and establishing the framework for collecting data and promoting qualitative and qualitative research so as to assess the position of the members of national minorities, the State reports only on a proposal for providing support to designing a web portal/application in which competent authorities should enter all data of relevance for monitoring the fulfilment of national minorities' rights, according to developed criteria and data within the joint EU and CE programme *The Horizontal Facility for the Balkans and Turkey*. This would enable the establishment of a sustainable human-rights based framework for collecting data that pertain to issues of access to human rights for members of the national minorities (The Fifth Periodical Report, 2022: 40).

In the context of collecting discrimination-related data, it is especially important to note amendments to the Law on the Prohibition of Discrimination of 2021, which stipulate the establishment of official records on protection against discrimination. Namely, the Commissioner is obligated to maintain records of "anonymised legally binding judgments and decisions made in connection with discrimination and violation of the principle of equality that the courts submit to the Commissioner", for the purpose of reviewing the situation in the field of protection against discrimination (Article 40a). On the other hand, all courts are obligated to maintain records of all "legally binding judgments and decisions made in lawsuits for protection against discrimination, of legally binding judgments and decisions made in misdemeanour proceedings for violation of provisions prohibiting discrimination and of legally binding judgments and decisions in criminal proceedings for criminal offenses related to discrimination and violation of the principle of equality", and are to submit the said judgements to the Commissioner no later than 31st March of the current year, for the previous year (Article 40b). Nevertheless, relative bylaw that stipulates maintaining records on the proceedings related to protection against discrimination has still not been passed by the minister in charge of the judiciary.

6. Fulfilment of obligations under Article 6 of the Framework Convention – the Fourth Oversight Cycle

According to the recommendation issued by the Advisory Committee, "the Serbian authorities should intensify their efforts to develop and implement measures aimed at increasing and strengthening contacts and interactions between the various communities living in Serbia. Specific efforts in this regard should be made with respect to the Sandžak and South Serbia regions. Measures to enhance mutual interest in and respect and understanding for each other's culture amongst young people are of particular importance. Better use could also be made of councils for inter-ethnic relations in this context" (The Fourth Periodical Report, 2018: 136). Relative to this recommendation, it is noted in Serbia's report that systemic measures have been planned for the purpose of "enhancing and strengthening contact" and for "interaction among the various communities that live in the Republic of Serbia". Enhancing the contact and interaction among the various communities refers to the field of education, personal and national identity, development of the sense and feeling of belonging to the Republic of Serbia, respect and nourishment of the Serbian language and national minorities' languages, respect of traditions and culture of Serbian people and national minorities, thus creating conditions for interculturalism (The Fourth Periodical Report, 2018: 137–138). The Report states that recommendations issued by the Advisory Committee are incorporated in the Law on Culture (*Official Gazette of the Republic of Serbia*, No. 72/2009, 13/2016 and 30/2016), Law on Public Information and Media (*Official Gazette of the Republic of Serbia*, No. 83/2014, 58/2015 and 12/2016), and the National Youth Strategy 2015–2025.

As regards the implementation of measures stipulated per Article 6, which is in operational terms implemented by the Office for Cooperation with Civil Society of the Government of the Republic of Serbia, the 2016 Report shows that funds allocated for the purpose of expanding national minorities' culture, which also include funds for spreading peace and non-violence, strengthening the rule of law and growth of democracy amounted to RSD 430,017,775.00, which accounted for 4.46% of the envisaged budget for the Office for Cooperation with Civil Society. The same

report mentions that no funds were used neither for preserving cultural identity nor for multiethnic projects and the promotion of minorities' rights (The Fourth Periodical Report, 2018: 139). These data indicate that, despite regulatory obligations prescribed within its legislation as regards Article 6 of the Framework Convention, the Republic of Serbia carried out its own plans only in part while regarding recommendations issued by the Advisory Committee, the extent of realisation is at a minimum.

For multicultural projects by different regions, funds are especially earmarked for the Autonomous Region of Vojvodina. The project *Promotion of Multiculturalism and Tolerance in Vojvodina* has been underway since 2005. The owner of this project is the Provincial Secretariat for Education, Regulations, Administration and National Minorities (The Fourth Periodical Report, 2018: 139–140), while many other organisations and institutions active in the field of culture are involved in the project. Particular focus in this project has been placed on strengthening inter-ethnic relations among the young. This project, which is conducted throughout Vojvodina, particularly includes primary and secondary school students. International organisation, government authorities, local self-government authorities, and NGOs are involved in changes in the project. A sub-project, which deals with the preservation and nurturing inter-ethnic tolerance, was funded in 2016, for which purpose the amount of RSD 13.3 million was earmarked (The Fourth Periodical Report, 2018: 140).

According to the recommendations issued by the Advisory Committee to local self-government units in the regions of Sandžak and South Serbia, a number of projects are underway in Bujanovac, Preševo, Medveđa, Novi Pazar, Sjenica, Tutin, Prijepolje, Priboj and Nova Varoš. These projects are as follows: *Promotion of Human Rights and Protection of Minorities in Southeast Europe*, *Youth in Multicultural Community*, *Promotion of Intercultural Practice in Culturally Diverse Schools*, *Our City, Our Schools*, and *Our Story* (The Fourth Periodical Report, 2018: 140–141). All of the above-mentioned projects were also supported by various foundations from European countries. There would have probably been some difficulty in realising these projects if they had been funded solely by the Republic of Serbia, because funds it invests are negligible.

In 2016, according to The Fourth Periodical Report (2018: 131), four national minorities received RSD 1 million or more for culture promotion purposes: the Hungarian national minority (RSD 1.8 million), the Bosniak national minority (RSD 1.75 million), Roma (RSD 1.2 million), and the Croatian national minority (RSD 1.0 million). All other ethnic communities were granted between RSD 200,000 and RSD 600,000 respectively. For the project aimed at the preservation of cultural identity and creativity of the members of national minorities, only one national minority (Hungarian) was granted an amount exceeding RSD 1 million (RSD 2.48 million) in 2016 (The Fourth Periodical Report, 2018: 132). All other ethnic communities were granted between RSD 15,000 and RSD 700,000 for this purpose. The Slovak national minority was granted the latter amount.

In its Fourth Opinion on Serbia, which was adopted on 26th June 2019, the Advisory Committee notes a low level of research, i.e., studies that should present data and show the condition of tolerance in terms of embracing differences and diversity, as well as maintaining intercultural dialogue among national minorities and the majority. In other words, such research and studies would ensure that data relative to inter-ethnic relations in Serbia are obtained. In this Opinion, it is observed that "the promotion of tolerance and openness towards diversity in society is essential not only for the development and implementation of successful integration strategies, but it is also a central precondition for persons belonging to national minorities to self-identify as such without hesitation and proactively claim the rights contained in the Framework Convention" (The Fourth Opinion on Serbia, 2019: 20). The Advisory Committee also recommends support to the development of independent qualitative and quantitative research showing the level and nature of inter-ethnic relations, including relations between persons belonging to national minorities and persons belonging to the majority. It is also recommended to conduct an independent qualitative study in order to assess the functionality of the Councils for Inter-Ethnic Relations (The Fourth Opinion on Serbia, 2019: 21) as working bodies of local self-government units that are often assigned responsibility they do not actually have.

7. Results of the fulfilment of obligations under Article 6 of the Framework Convention – the Fifth Oversight Cycle

In the Fifth Periodical Report of 2022, the Republic of Serbia provided answers to the Secretary General of the Council of Europe about the implementation of the Framework Convention and recommendations issued by the Advisory Committee. In response to recommendation issued by the Advisory Committee regarding the independent qualitative and quantitative research showing inter-ethnic relations, as well as relations among minorities and the Serbian majority, a list of conducted studies is presented in the Report. It is stated that the Republic of Serbia conducted several studies over the observed period. Of particular note are three studies: that of social relations between ethnic communities in Serbia, conducted by the Ethnicity Research Centre and the Institute of Social Sciences in Belgrade; the Senta workshop for the research of national minorities' identities, and the study of nationalist tendencies of Serbian population, which was part of broader research entitled *Stratification Changes in the Period of Capitalist Consolidation in Serbia*, conducted by the Institute for Sociological Research, Faculty of Philosophy, University of Belgrade (The Fifth Periodical Report, 2022: 106).

As regards Article 6 of the Framework Convention relative to projects addressing the promotion of multiculturalism and tolerance in the Autonomous Region of Vojvodina, 139 projects were funded in 2019, for which the amount of RSD 20,968,647.17 earmarked (The Fifth Periodical Report, 2022: 96–97). In 2020, as many as 214 projects were funded for which the funds of RSD 15,130,000.00 were earmarked, while in 2021 the amount of RSD 14,619,645.00 was earmarked for 184 projects. The Republic of Serbia allocated RSD 10,250,000.00 for mass media projects (The Fifth Periodical Report, 2022: 97–98). Nevertheless, the manner in which national minorities are presented in the media frequently contains a hint of discrimination, with the media often showing footage that is prejudiced and contains stereotypes, which contributes to negative perception of national minorities. The protection of national minorities in media reports is primarily governed by

anti-discrimination and media legislation, while the laws that protect the rights of national minorities do not govern this area. Instead, they only stipulate such issues that are relative to the provision of information in the media in national minorities' languages. In this relation, a good practice, which however is not common, is translation of national minority programmes into the Serbian language that makes national minority issues more accessible to the majority, which undoubtedly contributes to the development of multicultural society (Bašić & Stjelja, 2018: 298).

In 2021, three national minority communities were granted the amount of RSD 1 million or more for projects which are of significance for the national minorities – Hungarian RSD 3.35 million, Slovak 1.15 million, and Croatian RSD 1 million (The Fifth Periodical Report, 2022: 101). All other national minority communities were granted between RSD 50,000 and RSD 700,000, the latter having been granted to the Romanian national minority. For funding national minority councils, the Republic of Serbia earmarked the amount in excess of RSD 10 million from its budget only for a few of them (The Fifth Periodical Report, 2022: 104–105). The Hungarian national minority was granted RSD 59,438,983.00, Bosniak RSD 27,828,583.00, Roma RSD 22,122,634.00, Slovak RSD 17,778,528.00, Romanian RSD 14,160,015.00, Albanian RSD 13,226,019.00, and Croatian RSD 12,975,990.00. For all other communities, granted funds ranged between RSD 3,388,209.00 (Ashkali) and RSD 9,033,971.00 (Ruthenian) (The Fifth Periodical Report, 2022: 104–105). The only national minority that was granted more than RSD 10 million from the budget of the Autonomous Region of Vojvodina, namely the amount of RSD 24,417,200.00, was the Hungarian national minority. All other national councils were granted between RSD 100,000 and RSD 6,391,600.00, the latter amount having been granted to the Slovak National Council (The Fifth Periodical Report, 2022: 105).

These data show the attitude of the Republic of Serbia to the allocation of funds issued from the budget for projects that are applied for by members of national minorities and the minorities' national councils. There are two criteria based on which funds are allocated: the size of a particular national minority and the political attitude to a particular national minority. The size of national

minority criterion should be taken into account when budget funds are earmarked for the purpose of funding national councils and projects. An extremely important criterion for fund allocation is social vulnerability of a particular national minority. According to this criterion, the most sizeable amount should be granted to the most financially sensitive groups, so as to improve their position and accordingly to raise the level of their cultural life and to provide equal treatment in Serbia. It is therefore necessary to maintain a set of statistical data that would show both cultural and social potentials for equal inclusion of the members of national minorities in social, political, and social life, as well as fair civilisational and social distribution. The mentioned studies and statistics based on them are not maintained in Serbia, so their existence would significantly elevate the level of awareness and culture and education of all members of national minorities, but also equality in terms of participation in social and political life.

The research conducted in Senta as part of the *Workshop for the Research of Minorities' Identities* shows that 35.2% members of all members of the Hungarian national minority believe that relationship between other ethnicities have improved in the past ten years, while 7.6% of them believe that it deteriorated (The Fifth Periodical Report, 2022: 107–108). Additionally, this research shows that members of the Hungarian national minority believe that relations between Hungarians and Serbs are stable and that there are no threats in this sense, i.e., that Hungarians and Serbs have a relationship of stable cohabitation. When it comes to percentages, 61.1% of the respondents believe that these relations have been stable in the past ten years, 23.3% believe that they will be improving in the future, while only 5.3% of the respondents believe that relations have deteriorated (The Fifth Periodical Report, 2022: 107–108). This research additionally confirms the impression that the Hungarian national minority in Serbia is satisfied with its position as well as the manner in which it is treated by the Serbian majority. This was especially a result of good relations between Hungarian and Serbian political elites (Bašić, 2021: 81).

The research conducted by the Institute for Sociological Research of the Faculty of Philosophy, University of Belgrade, in which nationalist tendencies of the population were investigated,

shows that there is strengthening valuation of organic nationalism as compared to ethnocentric nationalism. What stands out in organic (romantic) nationalism are common origins, tradition and history. This research has shown that valuation of organic nationalism is stronger with the majority, but also with members of national minorities. The results demonstrate that there is a decrease in ethnocentric nationalism both with the majority and national minorities, i.e., in extreme positions in inter-ethnic relations (The Fifth Periodical Report, 2022: 108). According to the research results, the respondents in the majority of cases reject nationalist views, especially vis-à-vis members of other ethnicities. There are three indicators for this decrease in ethnocentric nationalism: mixed marriages, trust in inter-ethnic relations, and being enclosed in ethnically "pure communities". The research has shown that there is still strong sensitivity in terms of the valuation of organic nationalism and the drop in ethnocentric nationalism, which steeply rose in the Republic of Serbia during the 1990s. These are sensitive areas and, in the future, they should be addressed so as to ensure they reach the level that will not give rise to prejudice, stereotypes, discrimination, and feeling and sense of unequal position of any member of the national minorities.

The 2020 research into social relations between ethnic communities in Serbia, which was conducted by the Ethnicity Research Centre and the Institute of Social Sciences with the support of the Open Society Foundation, measured social distance between Serbian respondents and respondents from selected national minorities. This research included the Albanian, Bosniak, Hungarian, Croatian, Roma, Romanian, and Slovak national minorities. Social distance was measured based on the following three criteria: social contact, personal views of one ethnic group on other ethnic groups, and the respondents' trust in the members of other ethnic groups in relation to important social roles in society and the state (The Fifth Periodical Report, 2022: 106). With regard to social contact, the questions pertained to the existing relationships (social and familial) among the members of various ethnicities. According to the criterion for measuring the attitude to other ethnic groups, the investigated aspect was cohabitation in the state, as well as neighbourhood, then making acquaintances and forging friendships with

the members of other ethnicities, workplace collegiality, and marital relations among various ethnicities. As part of the third criterion, the investigated aspect was that of trust that the members of various ethnicities would have in the election of the state's President, Prime Minister, ministers, presidents of municipalities, selection of teachers, and doctors.

The answers to the questions on the use of language, especially in the education systems of national minorities, have shown that members of the Serbian nationality do not use national minorities' languages (99.7%). It has also shown that they are against an education system in which the national minorities will use only their mother tongue. Accordingly, 66.5% of the respondents are against this approach to education of the national minorities, while only 18.7% support the exclusive use of national minorities' mother tongue in the education system. As for bilingual education, members of the Serbian majority (87.5%) support it, while mere 6.3% are against it (Bašić et al., 2020: 79).

According to this research, the Albanians in Serbia have the closest relations with the Serbs (77.6%), then Roma (56.7%), and the Bosniaks (53.1%). The contacts they have with all other national minorities are under 30% (Bašić et al., 2020: 90). In everyday life, the Albanians in Serbia use the Albanian language (97.8%). The Serbian language is used for everyday communication by 33.33% members of the Albanian national minority, while only 7.3% never use the Serbian language (Bašić et al., 2020: 111). In the education system, the Albanian respondents are in favour of the use of the Albanian language (60.2%). Bilingual education in Albanian and Serbian is accepted by 65.8% of the Albanian respondents (Bašić et al., 2020: 112).

The Bosniaks have the closest relations with the Serbs (96.2%), Albanians (80.5%), Roma (67.1%), and the Croats (64.8%). The contacts they have with all other national minorities are under 50% (Bašić et al, 2020: 126). In everyday life, 75.5% members of the Bosniak national minority said they used the Bosniak language. Moreover, the respondents belonging to this national minority (62.8%) also use the Serbian language on a daily basis (Bašić et al., 2020: 148); 54.2% of the respondents are in favour of the use of the Bosniak language in the education system, while 29.1% are

against it. As many as 74.4% respondents are in favour of bilingual education, while this form of the use of language is not supported by 13.5% respondents (Bašić et al., 2020: 150).

Members of the Hungarian national minority have the closest relations with the Serbs (97.2%), the Croats (83.8%), the Slovaks (60.5%), and Roma (60.8%). They use the Hungarian language for everyday communication (93.2%). Moreover, the respondents belonging to this national minority (79.1%) also use the Serbian language on a daily basis (Bašić et al., 2020: 185); 72.1% of the respondents opt for the use of Hungarian in the education system, 74.9% are in favour of bilingual education, while 16.8% are against it (Bašić et al., 2020: 186).

Members of the Croatian national minority have the closest relations with the Serbs (89.6%), then the Hungarians (83.3%), the Bosniaks and Roma (80.4% each) (Bašić et al., 2020: 201). The respondents belonging to the Croatian national minority use the Serbian language in everyday communication (79.5%), while the Croatian language is used by 19.2% (Bašić et al., 2020: 223). Exclusive use of Croatian in the education system is supported by 31.7% of the respondents, while 42.6% are against it; 71.4% respondents are in favour of bilingual education, while 7.1% are against it (Bašić et al., 2020: 225).

The respondents belonging to the Roma national minority have the closest relations with the Serbs (97.7%), the Bosniaks (57.4%), the Croats (53.6%), and the Albanians (50%). The contacts they have with all other national minorities are under 50% (Bašić et al., 2020: 241). The members of Roma nationality use the Serbian language in everyday communication (77.8%) more than their native language (18.5%) (Bašić et al., 2020: 263). The use of the Roma language in education is supported by 26.2% of the respondents, while 64.1% are against it. At the same time, bilingual education is supported by 82.4% of the respondents, while that method of education is not accepted by 13.6% of the respondents (Bašić et al., 2020: 265).

The Romanian respondents have the closest relations with Serbs (98.8%), Slovaks (85.1%), Hungarians (82.4%), and Roma (81.1%) (Bašić et al., 2020: 280). In everyday communication, 50.2% of the Romanian respondents use the Serbian language, while

Romanian is used by 49.8% (Bašić et al., 2020: 300); 36.7% of the respondents are in favour of the use of Romanian in education, while bilingual education is supported by 85.7% of the respondents (Bašić et al., 2020: 301).

Members of the Slovak national minority have daily contacts with the Serbs (99.1%), the Croats (84.4%), the Hungarians (82.6%), the Bosniaks (76.1%), Roma (70.8%), the Romanians (56.6%), and with other minorities under 50% (Bašić et al., 2020: 315). The respondents belonging to the Slovak national minority use the Slovak language in everyday communication (75.5%) and then Serbian (24.5%) (Bašić et al., 2020: 338). As regards the education process, 73.6% are in favour of exclusive use of the Slovak language, while 17.4% are against it. Bilingual education is supported by 81.8% of the respondents, whereas it is not accepted by 8.5% of them (Bašić et al., 2020: 340).

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Minority rights have indisputably developed in the Republic of Serbia since 2000, whereas the integration of minorities has not been achieved yet. Characteristically, there are still separate cultural areas among ethnic communities. Not much has been done to handpick the common threads that connect ethnic cultures without questioning their differences whatsoever. A positive step forward is certainly that there has been a decrease in the number of inter-ethnic conflicts, while the objective of multiculturalism policies is civil society if which there is zero tolerance for discrimination and in which the various cultures intertwine in the public field.

Based on the analyses of the recommendations, data, reports, and opinions issued by the Advisory Committee of the Council of Europe and the Government of the Republic of Serbia pertaining to Articles 4 and 6 of the Framework Convention, the following conclusions can be drawn: it is necessary to provide better access to legal protection for the minorities and to collect equality data in order to assess the position of the members of national minorities, as well as to adopt and apply more efficient minority policies; it is necessary to conduct more thorough research into the acceptance of differences, as well as their tolerance among the majority and national minorities, but also among national minorities themselves, in the

social life of Serbia; it is necessary to encourage meetings in which the position and development of national minorities will be discussed and to open a dialogue on issues arising therefrom. It is additionally necessary to prompt integration processes that do not bring into question language, culture, religious beliefs of the members of national minorities, this obligation arising from the Framework Convention. The allocation of funds from the Republic of Serbia budget should be increased so as to fund projects proposed by the members of national minorities. The criteria for fund allocation should be clearly and precisely elaborated. The size of national minority is not sufficient as a criterion. The criterion of sensitivity of the members of national minorities should be introduced. All projects should encourage the quality of understanding between the majority and the members of national minorities, but also the quality of life of Serbian citizens. Fair allocation of funds for such projects will result in lower dissatisfaction levels while prompting an increasing level of agreement in terms of issues that are of relevance for cohabitation in Serbia. This approach decreases and minimizes the occurrence of the idea of segregation of a national minority. Fair allocation strengthens respect for and acceptance of international regulatory obligations, as well as those obligations that arise from Serbian legislation. Accepting regulatory obligations and compliance with them is thus not seen as a mere formality to which no stakeholder adheres. Legal protection becomes a barrier for exclusionists and those who are not tolerant while all others accept it and live by it.

BIBLIOGRAPHY

Bašić, G. (2017). Multiculturalism: How to Proceed? *Forum za sigurnosne studije*, 1(1), 33–43. [In Serbian]

Bašić, G. (2018a). *Multiculturalism and Ethnicity.* Beograd: Institut društvenih nauka. [In Serbian]

Bašić, G. (2018b). Policy of Multiculturalism in Serbia: Between Legal Confusion and Social Segregation. In: G. Bašić, M. Žagar & S. Tatalović (eds.), *Multiculturalism in Public Policies* (pp. 63–95). Belgrade, Ljubljana & Zagreb: Academic Network for Cooperation in South-East Europe, Institute of Social Sciences, Institute for Ethnic Studies & Center for International and Security Studies of Faculty of Political Sciences.

Bašić, G. (2021). Minority Self-Government and Cultural Autonomy in Serbia: From a Good Idea to Cumbersome Practice. In: T. Várady, G. Bašić & S. Tatalović (eds.), *Cultural Autonomy in the Light of Facts* (pp. 74–91). Beograd: Institut društvenih nauka, Srpska akademija nauka i umetnosti & Akademska mreža za saradnju u Jugoistočnoj Evropi. [In Serbian]

Bašić, G. & Stjelja, I. (2018). Media Reporting on National Minorities in Serbia – The Role of Independent Institutions. In: Z. Pavlović (ed.), *Yearbook No. 1, Human Rights Protection "From Unlawfulness to Legality"* (pp. 295–313). Novi Sad & Belgrade: Provincial Protector of Citizens – Ombudsman & Institute of Criminological and Sociological Research.

Bašić, G. & Stjelja, I. (2021). Discrimination and Roma Identity in Serbia. *Pravni zapisi* [Union University Law School Review], 12(1), 234–260. DOI: 10.5937/pravzap0-31983

Bašić, G., Todosijević, B., Marković, K. & Zafirović, J. (2020). *Research of Social Relations among Ethnic Communities in Serbia*. Beograd: Centar za istraživanje etniciteta & Institut društvenih nauka. [In Serbian]

Bauer, A. T. (2004). Culture of Diversity. In: S. Malović (ed.), *The Riches of Diversity* (pp. 43–69). Zagreb: Sveučilišna knjižara, ICEJ & OESS. [In Croatian]

Fukuyama, F. (2000). *Trust*. Zagreb: Izvori. [In Croatian]

Fukuyama, F. (2022). *Identity*. Podgorica: CID, UDG. [In Serbian]

Giddens, A. (1998). *The Consequences of Modernity*. Beograd: Filip Višnjić. [In Serbian]

Joković, M. (2015). The Use of Democracy and the State for Populist and Totalitarian Purposes by Modern Political Rulers. *Srpska politička misao*, 48(2), 71–89. [In Serbian]

Joković Pantelić, M. (2023). Identity and Statehood. In: R. Zemon (ed.), *Global trends and threats related with identities, cultural heritage, environment, creative communities, tourism and sustainable local/regional development* (pp. 21–29). Skopje: Center for Advanced Research.

Jovanović, S. M. & Joković Pantelić, S. M. (2022). Education of National Minorities in Primary Schools in the Republic of Serbia. *Sociological Review*, 56(4), 1378–1404. doi: 10.5937/socpreg56-41720.

Krastev, I. (2013). *Trust in Mistrust*. Beograd: Clio. [In Serbian]

Stjelja, I. (2017). Segregation in the Serbian Education System – Legal Framework and the Protection of Sensitive Data. In: S. Lilić (ed.), *Perspectives of the Implementation of European Standards in Serbia's*

Legal System, Vol. 7 (pp. 515–531). Beograd: Centar za izdavaštvo i informisanje Pravnog fakulteta Univerziteta u Beogradu. [In Serbian]

Wolton, D. (2004). For cultural ... cohabitation. In: C. Halpern & J. C. Ruano-Borbalan (eds.), *Identity(ies)* (pp. 402–407). Beograd: Clio. [In Serbian]

Čupić, Č. (2002). Political Dialogue and Tolerance. In: T. Živković (ed.), *Tolerance – Where Differences Meet* (pp. 19–26). Beograd: Savezno ministarstvo nacionalnih i etničkih zajednica. [In Serbian]

Čupić, Č. (2021). *Politics and Political Culture*. Podgorica: Humanističke studije, UDG. [In Serbian]

Čupić, Č. & Joković, M. (2013a). Trust as a Prerequisite for Sustaining Minorities and Accepting Minority Identities. *Politički život* 9, 25–35. [In Serbian]

Čupić, Č. & Joković, M. (2013b). Significance of education for forming patterns of a culture of dialogue, tolerance, and positive emotions – a contribution to the development of new cultural policy. In: V. Vukotić (ed.), *Education and Development* (pp. 222–233). Beograd: Centar za ekonomska istraživanja Instituta društvenih nauka. [In Serbian]

Šušnjić, Đ. (2007). *Dialogue and Tolerance*. Beograd: Čigoja štampa. [In Serbian]

REPORTS

Regular Annual Report of the Commissioner for Protection of Equality 2015–2022. https://ravnopravnost.gov.rs/izvestaji/ (Accessed on 25th September 2023) [In Serbian]

Regular Annual Report of the Commissioner for Protection of Equality 2018–2022. https://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji (Accessed on 25th September 2023) [In Serbian]

The Fifth Periodical Report Submitted to the General Secretary of the Council of Europe in accordance with Article 25 of the Framework Convention, Framework Convention for the Protection of National Minorities, Belgrade, August 2022. https://www.minljmpdd.gov.rs/lat/multilateralni-ugovori.php (Accessed on 14th August 2023)

The Fourth Opinion on Serbia, Advisory Committee on the Framework Convention for the Protection of National Minorities, adopted on 26th June 2019. https://www.minljmpdd.gov.rs/lat/multilateralni-ugovori.php (Accessed on 9th August 2023)

The Fourth Periodical Report Submitted to the General Secretary of the Council of Europe in accordance with Article 25 of the Framework Convention, Framework Convention for the Protection of National Minorities, Belgrade, September 2018. https://www.minljmpdd.gov.rs/lat/multilateralni-ugovori.php (Accessed on 7th August 2023)

LEGAL SOURCES

Law on Amendments to the Law on the Prohibition of Discrimination, *Official Gazette of the Republic of Serbia*, No. 22/2009 and 52/2021.

Law on Ratification of Framework Convention for the Protection of National Minorities, *Official Gazette of the FRY – International Treaties*, No. 6/98 dated 4th Dec. 1998.

Resolution CM/ResCMN (2015)8 on the implementation of the Framework Convention for the Protection of National Minorities by Serbia, Adopted by the Committee of Ministers on 1st July 2015 at the 1232nd meeting of the Ministers' Deputies.

Rulebook on More Detailed Criteria for Detecting Different Forms of Discrimination by an Employee, Child, Student or Third Party in an Educational Institution, *Official Gazette of the Republic of Serbia*, No. 22/16.

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