PROTECTION OF NATIONAL MINORITIES IN THE BALKANS:
THE CASE OF MACEDONIAN MINORITIES
(VARSTVO NARODNIH MANJŠIN NA BALKANU:
PRIMER MAKEDONSKIH MANJŠIN)

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Ljubljana, September 2018
# Table of Content

I. INTRODUCTION ................................................................................................................................. 1  

1.1 Rationale of the Research ................................................................................................................. 1  
1.2. Purpose of the Doctoral Dissertation ............................................................................................ 4  
1.3. Dissertation Hypothesis .................................................................................................................. 9  
1.4 Original Contribution to Legal Science ............................................................................................ 15  
1.5. Methodology .................................................................................................................................. 16  

II. INSTRUMENTS FOR THE PROTECTION OF MINORITIES IN INTERNATIONAL LAW ............ 18  

2.1. The Problem of Conceptual Clarity ................................................................................................. 18  
   A. The Definition of ‘Minority’ in International Law ............................................................................ 18  
      A.1. A Liberal Proposal for Expansion of the Definition ................................................................. 21  
      A.2. On the Notion of ‘National Minorities’ and Old v. New Minorities .......................................... 21  
      A.3. Meaning of the Term ‘Minority Protection’ ............................................................................... 24  
   B. Individual vs. Collective Rights ....................................................................................................... 25  
   C. Minority Rights as Human Rights .................................................................................................... 29  
   D. Prevention of Discrimination and Protection of Minorities .......................................................... 31  
   E. Relation between the Rights of Minorities and of Indigenous Peoples ......................................... 34  

2.2. The Evolution of Protection of Minorities in International Law ..................................................... 37  
   A. Minority Protection prior to World War I ....................................................................................... 37  
      1. Peace of Westphalia (1648) and Its Legacy .................................................................................. 38  
      2. The Congress of Vienna (1815) ................................................................................................. 39  
      3. Eastern Question and the Congress of Berlin (1878) .................................................................. 41  
   B. The League of Nations System of Minority Guarantees ............................................................... 42  
      1. Minorities Treaties ....................................................................................................................... 43  
      2. Minority Petitions Procedure and Its Efficiency ......................................................................... 46  
      3. Failures and Accomplishments of the League of Nation’s System of Minority Protection ....... 47
C. Minority Rights in the United Nations System ................................................................. 48

1. Foundation of the UN and Its New Approach to Human Rights ........................................... 48
   1.1. Transfer of Minorities in the Aftermath of World War II ................................................. 49
   1.2. The UN’s Interpretation with respect to the Continuation or Expiration of Minorities Treaties Concluded under the Aegis of the League of Nations ........................................... 51
   1.3. Charter of the United Nations and the Universal Declaration of Human Rights ............... 52
   1.4. Activities of the Sub–Commission on the Prevention of Discrimination and Protection of Minorities ........................................................................................................ 54

2. Main Instruments for Protection of Minorities .......................................................................... 56
   2.1. Article 27 of the ICCPR .................................................................................................. 56
      a) Concept of Minorities within Article 27 ........................................................................... 57
      b) Individual v. Collective Rights ......................................................................................... 58
      c) Permanence of Minorities within the State ...................................................................... 59
      d) Positive vs. Negative State Duties ................................................................................. 60
      e) Article 27 as Customary Law? ......................................................................................... 62
   2.2. Convention on the Elimination of All Forms of Racial Discrimination (ICERD) ............ 63
   2.3. Declaration on the Rights of Persons Belonging to National or Ethnic, Racial and Linguistic Minorities ........................................................................................................ 65

3. Procedures of the United Nations Bodies for Monitoring the Human Rights and Minority Rights Record of the Member–States ........................................................................... 69
   3.1. Universal Periodic Review by the Human Rights Council ............................................. 69
   3.2. Reports and General Comments from the Human Rights Committee (HRC) and Committee on the Elimination of Racial Discrimination (CERD) ........................................... 71
      a) Human Rights Committee (HRC) ................................................................................... 71
      b) Committee on the Elimination of Racial Discrimination (CERD/C) .............................. 74
   3.3. Reports from UN Special Rapporteur on Minority Issues .............................................. 75

2.3. Protection of Minorities in Europe ........................................................................................... 78
   A. Minority Rights in Europe: Contemporary Developments ................................................. 78
   B. Minority Issues on the OSCE’s Agenda: A Brief Review ..................................................... 80
      1. The Copenhagen Concluding Document on Human Dimension of 1990 ...................... 81
2. High Commissioner on National Minorities ................................................................. 83

C. Council of Europe and Protection of Minorities ......................................................... 84
1. European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) ...... 85
   1.1. Approach of ECtHR in Minority Related Cases ...................................................... 86
   1.2. Protocol No. 12 to the ECHR and Its Possible Impact on Minorities ......................... 91
2. Framework Convention for the Protection of National Minorities:
   Assessment of its Operative Articles Prescribing Minority Rights .................................. 92
   2.1. General Overview of the Convention ...................................................................... 92
   2.2. The Conventional Rights of Persons belonging to National Minorities .................... 94
   2.3. Implementation and Achievements ......................................................................... 97
3. European Charter for Regional and Minority Languages:
   Summary of Its Significance for Minorities ................................................................... 98
4. European Commission against Racism and Intolerance (ECRI) ......................................... 102
5. Council of Europe’s Commissioner for Human Rights .................................................... 104

D. European Union’s Approach with Respect to Human Rights and Protection of Minorities ...... 104
1. Minority Protection in the European Union through the Prism of Its Main Institutions ............ 104
2. Human Rights and Minority Protection within EU Law ................................................. 106
3. Charter of Fundamental Rights .................................................................................... 107
4. Minority Protection and the EU’s Enlargement Process ................................................ 108

E. Bilateral Agreements and Minority Protection in Europe: Case of East/Southeast
   European Agreements .................................................................................................. 110

III. PROTECTION OF MINORITIES WITHIN SELECTED BALKAN AND
   CENTRAL EUROPEAN COUNTRIES ............................................................................ 114

3.1 Minority Protection in Hungary .................................................................................. 116
   A. Minority Self-Government in Hungary ....................................................................... 118
   B. Right to Education in Minority Languages .................................................................. 119
   C. Participation of Hungarian Minorities in Public Life .................................................. 120
   D. Domestic Human Rights Bodies and Bilateral Agreements with Neighboring Countries .... 120

3.2. Minority Protection in Romania ................................................................................ 121
A. The Right to Participation in Public and Political Life in Practice................................. 124
B. Educational and Linguistic Rights of Minorities.......................................................... 125
C. Hungarian – Romanian Bilateral Agreement.............................................................. 127

3.3. Minority Protection in Croatia .................................................................................. 128
 A. Educational Rights and Language Rights of Minorities.............................................. 130
 B. Political Representation of National Minorities in the Croatian Parliament and in the Local and Regional Representative Bodies .............................................. 132
 C. National Minority Councils and the Council for National Minorities ...................... 133

3.4. Minority Protection in Slovenia .................................................................................. 134
 A. Constitutional and Legal Framework for the Protection of Minorities ...................... 138
 B. Enforcement of Rights Prescribed for Autochthonous Minorities ............................ 139
 1. Education ................................................................................................................... 139
 2. Use of Minority Languages ....................................................................................... 140
 3. Right to Participation in Public Affairs ..................................................................... 140
 4. Self-Governing Ethnic Communities ........................................................................ 141

3.5. Protection of Minorities in Montenegro ....................................................................... 142

3.6. Protection of Minorities in Bosnia and Herzegovina .................................................. 145

3.7. Protection of Minorities in Turkey .............................................................................. 147

IV. CURRENT POSITION OF MACEDONIAN MINORITIES IN THE NEIGHBORING COUNTRIES OF THE REPUBLIC OF MACEDONIA: PRESENT CHALLENGES FOR FUTURE DEVELOPMENTS ........................................................................................................... 151

4.1. Macedonian National Minority in the Republic of Albania.......................................... 152
 A. Review of the Albanian System of Minority Protection ............................................... 152
 1. Brief Historical Review on Minority Protection in Albania ........................................ 152
 2. Status and Numerical Strength of Minorities in Albania .......................................... 153
 3. Legal Framework Presupposing Minority Rights in Albania ................................... 156
 4. Linguistic Rights and System of Mother Tongue Education in Albania ...................... 158
 5. Participation of Minorities in Public Life and the Role of State Committee for Minorities ............ 160
B. Macedonian National Minority in the Republic of Albania

1. Geographical Distribution of the Macedonian National Minority and Its Numbers ........................................... 162
2. Review of the Present Situation of Macedonians in Albania................................................................. 164
3. Perceptions of Macedonians in Albanian Society and Cases of Discrimination........................................ 166
4. Freedom of Association............................................................................................................................. 167
5. Linguistic Rights and Free Use of Minority Language.............................................................................. 168
6. Right to Personal Identity (Name and Surname) and Right to Designate Topographical Signs in Minority Language......................................................................................................................... 169
7. Implementation of the Right to Receive Education in Mother Tongue ..................................................... 170
   a) Brief Historical Review of the Educational Rights of Ethnic Macedonians in Albania .................. 170
   b) Present Situation in the Field.................................................................................................................. 171
8. Effective Participation of the Macedonian Minority in Public Life at Central and Local Level.............. 174
9. Cultural Activities and Access to Information in Mother Language...................................................... 177


A. Overview of the System for Protection of Human Rights and Minorities in Bulgaria ........... 179
   1. Brief Historical Review of Minority Protection in Bulgaria................................................................. 179
   2. Status and Numerical Strength of Minorities in Bulgaria ................................................................. 181
   3. Legal Framework Pertaining to Minority Rights in Bulgaria ............................................................ 183
   4. Linguistic Rights of Persons belonging to Minorities....................................................................... 186
   5. System of Minority Language Education in Bulgaria ....................................................................... 187
   6. Political Participation of Minorities in Bulgaria ................................................................................. 189
B. Macedonian National Minority in the Republic of Bulgaria .............................................................. 191
   a) “Macedonian Question” and the Bulgarian National Narrative ....................................................... 191
   b) The ‘Language Dispute’ between Bulgaria and Macedonia and Its Reflections on the Macedonian Minority in Bulgaria .................................................................................................................. 193
1. Present Position and Status of the Macedonian National Minority in Bulgaria .................................... 194
  1.2. Present Status of Macedonian Minority in Bulgaria ....................................................................... 197
2. Geographical Distribution and Size of Macedonian Minority in Bulgaria with emphasis on the Right to Ethnic Self-Identification ................................................................. 198

   2.1. Interpretation of the Term ‘Macedonian’ in the Bulgarian Discourse .......................... 200

3. Situation in the Field of Language Rights and Mother Tongue Education .......................... 202


   3.2. Present Situation of Macedonian Language in Bulgaria ............................................. 203

4. Freedom to Association of Ethnic Macedonians in Bulgaria through the Prism of Domestic Courts’ Attitude and ECtHR Judgments concerning Macedonian Organizations .............. 204

   4.1. The Case of Cultural Association UMO Ilinden ....................................................... 206

   4.2. Case of UMO Ilinden and others v. Bulgaria (1 & 2) .................................................. 207

5. Review on ECtHR Judgments concerning Freedom to Hold Peaceful Assemblies .............. 211

   5.1. Case of Stankov and UMO Ilinden v. Bulgaria of 2001 .............................................. 211

   5.2. Case of UMO Ilinden and Ivanov v. Bulgaria (1 & 2) .................................................. 213

   5.3. Other Cases Where Similar Breaches Were Found ................................................... 215

6. Political Participation of Ethnic Macedonians in Public Life .......................................... 215

   6.1. Case of UMO Ilinden PIRIN v. Bulgaria ................................................................. 216

   6.2. The Repetitive Case of UMO Ilinden PIRIN v. Bulgaria (2) ....................................... 219

   6.3. The Overall Significance of ECtHR’s Judgments related to UMO Ilinden PIRIN on the Participation of Macedonian Minority in Public Life ........................................ 220

7. Printed and Electronic Media in Macedonian Language and Cultural Activities .................. 221

4.3. Minority Protection in Greece with Special Attention on the Position and Status of the Macedonian National Minority ................................................................. 223

   A. Summary on the Framework for Protection of Human Rights and Minorities in Greece .... 223

1. Brief Historical Review of Minority Protection in Greece ............................................... 223

2. Who are Minorities in Greece? .................................................................................... 224

3. Legal Framework Presupposing Human Rights and Minority Rights in Greece .............. 228

   3.1. Interpretation of the Term ‘Minority’ in the Greek Legal System and Review of the Legal Acts that Differentiate between Persons of Greek and non-Greek Ethnic Origin ........ 230

4. Freedom of Association ............................................................................................. 231

5. Educational Rights of ‘Muslim’ Minority in Western Thrace .......................................... 232
6. Political Participation of Minorities in Public Life ................................................................. 234

B. Macedonian National Minority in the Republic of Greece.................................................. 235

   a) Greek Position on the ‘Macedonian Question’ ............................................................... 235

   b) The ‘Name Issue’ between Greece and Macedonia and its reflection on the Macedonian minority ............................................................. 237

1. Review of the Present Position of the Macedonian National Minority in Greece from the Human Rights Law Perspective .................................................. 240

   1.1. Main Events in the Past Century that Determined the Present Day Position of Ethnic Macedonians ............................................................... 241

   1.2. Present Position and Status of Macedonian Minority in Greece .................................. 242

2. Right to Ethnic Self-Identification and Numerical Strength of Macedonian Minority .......... 244

   2.1. Ambiguity Over the Terms ‘Macedonian’ in Greek (Aegean) Macedonia and Types of Identification among the Macedonian-speakers in Northern Greece ............................................................. 246

3. The Right to Freedom of Expression of Persons belonging to the Macedonian Minority .......... 248

4. Right to Personal Identity (Name and Surname) and Right to Designate Topographical Signs in Minority Language ........................................................................... 250

5. Situation concerning the Private and Public Usage of Macedonian Language ............... 251

   5.1. Historical Review on the Linguistic and Educational Rights of Ethnic Macedonians .... 251

   5.2. Present Situation of Macedonian Language in Greece and the Official Greek Position .... 255

   5.3. Activities Launched by Ethnic Macedonians in the Fields of Mother Tongue Education and Language Revitalization .................................................. 257

6. Freedom of Association with Emphasis on the ECtHR cases ........................................... 258

   6.1. The Case of Sidiropoulos and others v. Greece ............................................................ 260

   6.2. The Repetitive Case of Home of Macedonian Culture v. Greece of 2015 ..................... 265

7. Participation of Ethnic Macedonians in Political and Public life of Greece and Role of Political Party EFA Rainbow ................................................................. 266

   7.1. The Case of Rainbow and others v. Greece of 2005 .................................................... 268

8. Religious Liberties and the Case of Father Nikodim Tsarknias .......................................... 271

9. Printed and Electronic Media and Cultural Activities ....................................................... 273

10. Citizenship and Property rights of Ethnic Macedonian Refugees from the Greek Civil War .... 276

   10.1. Legal Acts Concerning Citizenship Rights ................................................................. 276
10.2. Legal Acts Pertaining to Property Rights of Ethnic Macedonian Refugees ........................................... 278

10.3. Human Rights Law Aspects of these Legal Acts .......................................................... 279

4.4. Macedonian National Minority in the Republic of Serbia ................................................. 281

Introduction .......................................................................................................................... 281

A. General Overview of the System of Minority Protection in Serbia ..................................... 281

1. Linguistic and Educational Rights of National Minorities in Serbia .................................. 284

2. Participation of Minorities in Public Affairs ..................................................................... 286

2.1. Councils of National Minorities .................................................................................. 287

B. Position and Status of Macedonian National Minority in Serbia .................................. 289

1. Demographic Features of Macedonian Community in Serbia and Its Legal Status ............ 289

2. Review of the Present Human Rights Situation of Macedonians in Serbia ..................... 291

3. Effective Realization of Language Rights of Persons belonging to the Macedonian Minority .... 293

4. Education in Macedonian Language ............................................................................. 295

5. Political Participation of Macedonian Minority in Public Life ...................................... 297

6. Activities in the Area of Culture and Access to Information in Mother Language .......... 298

7. Religious Freedoms of Macedonians in Serbia .................................................................. 299

4.5. Minority Protection in the Republic of Kosovo and Human Rights Position of the Macedonian-speaking Gorani Community ............................................................ 302

A. Overview on the Position of Minority Communities in Kosovo and Legal Framework Pertaining to Minority Rights ................................................................. 302

1. Effective Participation of Minority Communities in Central and Municipal Level Institutions .... 305

2. Right to Education in Minority Languages ...................................................................... 308

3. Linguistic Rights of Minority Communities in Kosovo .................................................. 311

B. Review of the Present Human Rights Situation of the Macedonian-speaking Gorani Community in Kosovo ................................................................. 312

1. Demographic Features of the Macedonian-speaking Gorani Community with Emphasis on the Issue of Ethnic Self-Identification ...................................................... 313

2. Exercise of Kosovo’s Gorani Rights to Education and Political Representation ............. 315
C.  Human Rights Law Aspects on the Present Situation of Persons Declared as Macedonians and the Issue of Their Non-Recognition .......................................................... 317

V. CONCLUSIONS AND RECOMMENDATIONS ............................................................................. 319

VI. POVZETEK ............................................................................................................................... 343

VII. APPENDIX ................................................................................................................................ XII

VIII. BIBLIOGRAPHY .................................................................................................................... XIX
## List of Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>AC FCNM</td>
<td>Advisory Committee on the Framework Convention for the Protection of National Minorities</td>
</tr>
<tr>
<td>BiH</td>
<td>Bosnia and Herzegovina</td>
</tr>
<tr>
<td>CERD</td>
<td>Committee on the Elimination of Racial Discrimination</td>
</tr>
<tr>
<td>CFR</td>
<td>Charter of Fundamental Rights of the European Union</td>
</tr>
<tr>
<td>CHM</td>
<td>Commissioner for Human Rights of the Council of Europe</td>
</tr>
<tr>
<td>CM</td>
<td>Committee of Ministers of the Council of Europe</td>
</tr>
<tr>
<td>CoE</td>
<td>Council of Europe</td>
</tr>
<tr>
<td>e.g.</td>
<td>“for example” (exempli gratia)</td>
</tr>
<tr>
<td>EBLUL</td>
<td>European Bureau for Lesser Used Languages</td>
</tr>
<tr>
<td>ECHR</td>
<td>European Convention for the Protection of Human Rights and Fundamental Freedoms</td>
</tr>
<tr>
<td>ECJ</td>
<td>European Court of Justice (EU)</td>
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<tr>
<td>ECOSOC</td>
<td>United Nations Economic and Social Council</td>
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<tr>
<td>ECRI</td>
<td>European Commission against Racism and Intolerance</td>
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<tr>
<td>ECRML</td>
<td>European Charter for Regional and Minority Languages</td>
</tr>
<tr>
<td>ECtHR</td>
<td>European Court of Human Rights</td>
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<tr>
<td>EFA Rainbow</td>
<td>European Free Alliance ‘Rainbow’ (Greece)</td>
</tr>
<tr>
<td>etc.</td>
<td>“and the others” (et cetera)</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>FCNM</td>
<td>Framework Convention for the Protection of National Minorities</td>
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<tr>
<td>GHM</td>
<td>Greek Helsinki Monitor</td>
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<tr>
<td>HCNM</td>
<td>High Commissioner on National Minorities (OSCE)</td>
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<tr>
<td>HMC</td>
<td>Home of the Macedonian Culture (Greece)</td>
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<tr>
<td>HRC</td>
<td>United Nations Human Rights Committee</td>
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<tr>
<td>HRW</td>
<td>Human Rights Watch</td>
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<tr>
<td>i.e.</td>
<td>“that is” (id est)</td>
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<td>Ibid.</td>
<td>“in the same place”</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<tr>
<td>ICERD</td>
<td>International Convention on Elimination of All Forms of Racial Discrimination</td>
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<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>ICJ</td>
<td>International Court of Justice (UN)</td>
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<td>IMRO</td>
<td>Internal Macedonian Revolutionary Organization</td>
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<tr>
<td>MAEI</td>
<td>Macedonian Alliance for European Integration (Albania)</td>
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<tr>
<td>MEPs</td>
<td>Members of the European Parliament (EU)</td>
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<tr>
<td>MGC</td>
<td>Macedonian Gorane’s Community (Kosovo)</td>
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<tr>
<td>MP</td>
<td>Member of the National Parliament/Assembly</td>
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<tr>
<td>MRG</td>
<td>Minority Rights Group</td>
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<tr>
<td>NGO</td>
<td>Non-governmental Organization</td>
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<tr>
<td>NMC Serbia</td>
<td>National Minority Council of Macedonian Minority in Serbia</td>
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<tr>
<td>OHCHR</td>
<td>Office of the High Commissioner for Human Rights (UN)</td>
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<td>op.cit.</td>
<td>“the work cited” (opere citato)</td>
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<tr>
<td>OSCE</td>
<td>Organization for Security and Cooperation in Europe</td>
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<tr>
<td>PCIJ</td>
<td>Permanent Court of International Justice</td>
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<td>pp.</td>
<td>“pages”</td>
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<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<tr>
<td>UDMR</td>
<td>Democratic Union of Hungarians in Romania</td>
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<tr>
<td>UMO Ilinden</td>
<td>United Macedonian Organization Ilinden (Bulgaria)</td>
</tr>
<tr>
<td>UMO Ilinden- PIRIN</td>
<td>United Macedonian Organization Ilinden - Party for Economic Advancement and Integration of the Population (PIRIN) (Bulgaria)</td>
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<tr>
<td>UN SRMI</td>
<td>UN Special Rapporteur on Minority Issues</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNDM</td>
<td>UN Declaration on the Rights of Persons belonging to the National or Ethnic, Racial and Linguistic Minorities of 1992</td>
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<tr>
<td>UPR</td>
<td>Universal Periodic Review (UN)</td>
</tr>
<tr>
<td>Venice Commission</td>
<td>European Commission for Democracy through Law (Council of Europe)</td>
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<tr>
<td>WWI</td>
<td>World War I or the First World War</td>
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<td>WWII</td>
<td>World War II or the Second World War</td>
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I. INTRODUCTION

1.1 Rationale of the Research

The objective of this doctoral dissertation was to conduct a comparative analysis of the international instruments for protection of national minorities and their applicability and implementation in the cases of Macedonian minorities in the Republic of Macedonia’s neighbouring States. I also briefly analyze the legislation and jurisprudence in minority related cases of Slovenia, Croatia, Hungary, Romania, Bosnia and Herzegovina, Montenegro and Turkey, however, the emphasis rests on the protection of the Macedonian minorities in the neighboring countries of the Republic of Macedonia, i.e. Greece, Bulgaria, Albania, Serbia and Kosovo. The assessment of the legal position of the Macedonian minorities is intended to ascertain the effects of those international instruments on practices of the countries neighboring the Republic of Macedonia when dealing with minority rights and whether national legislation, administrative measures and judicial practice in respect to ethnic Macedonians in these countries comply with applicable international law.

There are some peculiarities, uncertainties and even ambiguities when dealing with the position and rights of the Macedonian minorities in countries neighboring the Republic of Macedonia. In fact, the research shows that each of the countries neighboring the Republic of Macedonia has its own unique approach in understanding/misunderstanding and promoting/opposing the rights of members of minorities generally, and particularly with respect to the Macedonian minority. Furthermore, some of these countries have also made attempts to provide “evidence” of the “artificiality” of the formation of the Macedonian ethno-cultural identity, both in the Republic of Macedonia and its neighboring countries. Therefore, the basic problem faced by the Macedonian minority in some of the countries neighboring the Republic of Macedonia is the non-recognition of its right to identity and moreover denial of its existence.

Will Kymlicka pointed out that “amongst the Western countries, perhaps the only country that remains strongly and ideologically opposed to the official recognition of sub-state national groups is Greece, where the once-sizeable Macedonian minority has now been swamped in its traditional homeland”. After the Republic of Macedonia declared its independence, Greece objected to its northern neighbor’s use of the designation “Macedonia”, alleging that the name implies territorial claims on northern Greece and claiming the exclusive right to the name “Macedonia”. Moreover, Greece obstructed

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international recognition of the new independent State under its constitutional name. It is noteworthy that Louis Henkin and his colleagues concluded that “there appears to be no basis in international law or practice for Greece’s position” that Macedonia should change its name.² Contrary to the ‘name dispute’, the problem with the non-recognition of the Macedonian minority is a much longer dispute dating back more than a century. This issue is often underestimated and in essence is at the very core of the name dispute. The former Greek Prime Minister Konstantinos Mitsotakis once said that beyond the opposition to the constitutional name of the Republic of Macedonia there was an intention to prevent an “emergence of the second minority problem in the Greek region of Western Macedonia”, i.e. the region where the Macedonian minority comprise a sizeable portion of the population.³

Regarding the Macedonians in Bulgaria, it should be noted that the recognition of the Macedonian minority as such by the authorities emanated from a short-lived Yugoslav – Bulgarian rapprochement after the Second World War.⁴ Moreover, aside from the improvement of the position of Macedonians in Bulgaria, “cultural autonomy” of the region of Pirin (nowadays the District of Blagoevgrad) was promulgated in order to facilitate the realization of the prescribed rights for the Macedonian minority. It was only in 1948, and respectively in 1956, when, due to the deterioration of neighboring relations, authorities reversed their position towards the Macedonian minority in Bulgaria, denounced previously mentioned minority rights and hence revoked the “cultural autonomy” of the Pirin region. In the following decades, the authorities moved towards denying the existence of the Macedonian minority. Although there have been repeated declarations by the Bulgarian government which commit to the principles of respecting and promoting civil, political, cultural and economic rights to all citizens, the authorities’ non-recognition of the minority status to ethnic Macedonians remains unchanged.⁵

With respect to the Macedonians in Albania, there are some variations depending on the particular region in which they are concentrated. Namely, Macedonians living in the region of Mala Prespa are recognized as such by the Albanian state and enjoy all rights prescribed to minorities under

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³ Θόδωρος Σκυλακάκης, *Στο όνομα της Μακεδονίας* [Theodoros Skylakakis, *In the name of Macedonia*], Athens, 1995. The foreword is written by Konstantinos Mitsotakis. In the following context, “first minority problem” refers to the situation of “Muslim” minorities, whose representatives are mostly of Turkish origin, and predominantly are located in the region of Western Thrace (Northern Greece). To date, by virtue of Lausanne Peace Treaty of 24 July 1923, Greek government recognizes the existence of only one minority in the country, the previously mentioned “Muslim” minority. Even though some positive measures in the field of educational rights for members of “Muslim” minority have been undertaken, the full enjoyment of their right of self-identification as members of Turkish minority is restricted and their ethnicity is often disputed by the authorities. See: UN Human Rights Council, *Report of the Independent Expert on Minority Issues, Gay McDougall: Addendum: Mission to Greece (8-16 September 2008)*, 18 February 2009.
domestic laws and treaties to which Albania is a party. Moreover, Albania has successfully implemented several affirmative action initiatives for their benefit, including the possibility for local governments to represent the ethnic reality in the region. Consequently, there is one municipality where the mayor and municipal counselors belong to the Macedonian minority. Conversely, the situation in other regions where ethnic Macedonians and Macedonian speakers are autochthonous, particularly the regions of Golo Brdo and Gora, is quite the opposite. It is noteworthy that ethnic Macedonians in the region of Mala Prespa are predominantly Orthodox Christians, whereas the vast majority of those living in the regions of Golo Brdo and Gora follow Islam. At the same time, we must recognize that, as a result of internal migration, there are now Macedonian communities in some Albanian cities, particularly Korce, Pogradec, Bilisht, Elbasan and the national capital Tirana.

The Macedonian community in Serbia was established as a minority group in a unique way. While first ethnic Macedonian families were settled in Vojvodina with the land reforms imposed in the former Yugoslavia in 1946, some families were sheltered in Vojvodina as refugees from the Civil War in Greece in the late 1940s. Also, during the Socialist Republic of Macedonia’s participation in the former Yugoslav Federation many ethnic Macedonians migrated to Serbia. Therefore, the amalgamation of Macedonians originating from different countries and regions created a base for the formation of the Macedonian minority and its existence today in various regions in Serbia. It is noteworthy that Serbia is the only neighboring country with which Republic of Macedonia has concluded a bilateral agreement for regulation of minority protection. Ethnic Macedonians are recognized in Serbian society as a national minority and have continuously received annual allocations for cultural activities from the central budget of Serbia. Additionally, there are several elementary schools where representatives of the Macedonian minority teach Macedonian language and history. However, there are some uncertainties due to the steady decline of their number in the last few censuses.

The Macedonian-speaking Gorani in Kosovo are mostly concentrated in Kosovo’s Gora region. They are an autochthonous community whose presence in this society is somewhat ambiguous. Even

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8 See: Peter Hill, *Macedonians in Greece and Albania: A Comparative Study of Recent developments*, Nationalities Papers, Vol. 27, No. 1, 1999, pp. 24-25. The region of Gora is divided among Albania and Kosovo. Located in a quite isolated terrain, its relative inaccessibility gave basis for the original dialect of the people in the Gora region to be preserved, despite the long lasting struggle over their ethnic-cultural specifics.
though they are not subjugated or discriminated against in the new Republic of Kosovo, there is some ‘competition’ over their ethnic identity which needs to be clarified. Despite their local dialect which linguistically represents a regional variation of the Macedonian language,\textsuperscript{12} over the years some scholars and journalists have attempted to “prove” their ethno-cultural association with the Serbians, Bosnians, Albanians and Bulgarians.

Overall, these varying situations of the position of Macedonian minorities in the countries neighboring the Republic of Macedonia have provided an opportunity to conduct comparative research about minority rights in the Balkan countries, to assess how the Macedonian national minority is positioned in relation to human rights law, and to identify possible inconsistencies in the realization of their rights and freedoms.

\textbf{1.2. Purpose of the Doctoral Dissertation}

The main purpose of this Doctoral dissertation is to provide detailed research on the position of Macedonian minorities in the countries neighboring the Republic of Macedonia, from the perspective of how international legal framework presupposes minority rights (\textit{lex lata}) and comparison with the implementation of minority rights in selected European countries, i.e. Hungary, Romania, Slovenia, Croatia, Montenegro, Bosnia and Herzegovina and Turkey. To that end, the legal frameworks that presuppose and guarantee human rights and the rights of persons belonging to national minorities in Balkan countries were examined, with particular focus on Greece, Bulgaria, Serbia, Albania and Kosovo. This includes the internal legal acts (constitutions, laws, judicial practices) and treaties dealing with, whether directly or indirectly, the rights of persons belonging to minorities, with emphasis on those countries neighboring Macedonia that have acceded to these treaties.

Dissolution of the former Yugoslavia and its violent dismantling gave way to (re)emergence of various “forgotten” minority issues in the region. Namely, for more than half a century, since the foundation of the United Nations, debates and interest in minority rights had been replaced with an emphasis on individual human rights coupled with a principle of nondiscrimination.\textsuperscript{13}

At the same time, a “third wave of democratization” invoked great interest in the rights of persons belonging to national, ethnic, religious and linguistic minorities.\textsuperscript{14} These developments served as


\textsuperscript{14} From the title of the well known and highly influential book by Samuel Huntington, \textit{“The Third Wave: Democratization in the Late 20\textsuperscript{th} Century”}, first published in 1991.
a stimulus for members of the Macedonian minorities in the countries neighboring the Republic of Macedonia to undertake steps toward exercising the rights and freedoms prescribed for minorities. Concurrently, minorities in the Balkans are seen as suspect for their associations with competing national ideologies, especially those with a formed national identity and a respective kin–state, and as I have attempted to show, the case of the Macedonian minorities in the Balkan countries is not an exception to that “general rule”.15

Legal frameworks, both international and domestic, define one side of the realm of minority rights in general. In practice, however, the decisions of domestic courts reflect how different societies respond to issues of protecting the identities and cultures of national minorities. Therefore, Joseph Marko rightly argued that “it is the jurisprudence of the courts and the rules that they develop in interpreting and applying the law which can have tremendous consequences for minority protection”.16 Thus, special emphasis is given to the practices of national courts of different levels of competence (including supreme and constitutional courts) in minority-related cases.

A substantial part of this research is devoted to assessing the implementation of the rights and freedoms stipulated in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and its protocols in the aforementioned countries. The European Court of Human Rights (ECtHR) offers a crucial advantage when compared with other international bodies that have a prescribed obligation to be guardians of treaties: the possibility of examining complaints of violations of rights, guaranteed by the ECHR, and to render binding judgments, providing the ECtHR with a ‘competitive edge’ in comparison with other human rights treaty bodies. Even though the essence of the Human Rights Committee (HRC) and the Committee on the Elimination of Racial Discrimination (CERD) is to provide protection of human rights and prospectively the rights of minorities, they lack real jurisdictional character as their decisions/opinions/general comments are not legally binding for States.17 Furthermore, one could argue that ‘persuasive authority’ of the ECtHR jurisprudence is supported by the quality of legal argumentation and legal reasoning that this jurisprudence is capable of generating.18 Another crucial aspect of the ECtHR success is relatively high level of compliance with its judgments.

17 The UN High Commissioner for Human Rights noted that the treaty bodies system had developed ad hoc and does not function as an integrated and indivisible framework for human rights protection, and therefore called for a unified standing treaty body, proposing several methods. See: Malcolm N. Shaw, International Law (6th ed.), Cambridge University Press, 2008, pp. 302-338.
Unsurprisingly, other bodies ‘persuasive authority’ has been sometimes questioned on the grounds that the style and quality of their decisions are deficient.\textsuperscript{19}

In spite of the absence of a specific provision on minority rights in the ECHR, the Court affords indirect protection to minorities, especially by means of Article 10 (freedom of expression), Article 11 (freedom of association), Article 8 (right to family life) and Article 14 (right to not be discriminated against on the grounds of belonging to a national minority; to be read in conjunction with other articles of the Convention).\textsuperscript{20} For that reason, the sections of this dissertation on Bulgaria and Greece have special sub-sections on ECtHR case law related to cases initiated by representatives of Macedonian minorities. To date, ethnic Macedonians in Bulgaria have lodged several applications with the ECtHR, and in eight cases this judicial authority has found Bulgaria to be in violation of Articles 10 and 11 of ECHR. Additionally, out of four cases brought before the ECtHR by representatives of the Macedonian minority in Greece, Greece was found to be in breach of Article 11 of ECHR in three of them, with a concomitant breach of the right to a fair trial (Article 6) in one of those three.

In this context, the first and leading case Sidiropoulos and others v. Greece has been considered by many authors as initiating a ‘new era’ in the ECtHR’s approach to minority rights.\textsuperscript{21} The most innovative part of this judgment is the judicial authority’s finding that “even supposing that the founders of the association...assert a minority consciousness, the Copenhagen Document of the CSCE and the Charter of Paris – which Greece has signed – allow them to form associations to protect their cultural and spiritual heritage”.\textsuperscript{22} Prior to this judgment, the ECtHR had been consistent in applying its teleological approach in interpretation of the Convention provisions and consequently reluctant to build minority related provisions of the ECHR around external standards.\textsuperscript{23} In Sidiropoulos and others v. Greece, it implicitly acknowledged the inevitable intrusion of OSCE standards to uphold the right of freedom of association of minority members under the ECHR. Even some 18 years after the judgment was handed down, Greek authorities continue to refuse to register the cultural organization “Home of the Macedonian Culture” in Florina (Lerin). In the same manner, quite different from the merits of decisions in previous cases, Bulgarian authorities oppose the formation of the cultural association UMO Ilinden as well as motions to register the political party UMO Ilinden PIRIN.

In the aforementioned repetitive cases, it is clear that the repetitive violations of Article 11 originated from administrative practice contravening the adopted standards regarding freedom of

\textsuperscript{19} Ibid
\textsuperscript{21} Ibid, pp. 249-250.
\textsuperscript{22} European Court of Human Rights: Case of Sidiropoulos and others v. Greece (Application No.57/1997/841/1047), 10 July 1998, Strasbourg, para. no. 44.
assembly of members of the Macedonian minority.\textsuperscript{24} Furthermore, cases concerning the non-registration of minority associations indicate that domestic courts have not managed to adopt the ECHR standards relating to freedom of association of members of national minority.

The dissertation’s section on Greece also includes legal analysis of the possibility for realizing the citizenship and property rights of ethnic Macedonian refugees from the Greek Civil War (1946-1949), by using the possibilities laid down in the ECHR and in the ICERD. These people, in addition to being expelled from their traditional homelands, were stripped of citizenship, and in most cases had properties confiscated, expropriated without compensation, and/or nationalized. Moreover, the amnesty laws promulgated some 40 years after the civil war excluded ethnic Macedonian refugees from reclaiming their citizenship and property rights, since reclamation provisions referred only to refugees who are "Greek by genus".

The section on the protection of the Macedonian minority in Serbia accords special attention to the effective realization of rights and freedoms envisaged in the bilateral convention on minority protection between Serbia and Macedonia. However, it should be noted, although Serbia ratified the European Charter for Regional and Minority Languages (ECRML), Macedonian is not included in the list of languages for which obligations stipulated in Part III of the Charter are undertaken, i.e. in the areas of education, judicial and administrative procedures, media, cultural activities/facilities and economic and social activities. Nevertheless, some positive actions have been taken to promote the use of Macedonian language in mentioned fields, which are considered when assessing the position of ethnic Macedonians in Serbia. Finally, the enactment of the Law on National Councils of National Minorities raised the possibility for establishing the National Minority Council of the ethnic Macedonians in Serbia, as a body with a prescribed jurisdiction to coordinate activities and projects pertaining to minority associations in the fields of culture, education and media.

Assessment of the situation in Albania, \textit{inter alia} focuses on steps undertaken by authorities towards fulfilling obligations enshrined in several international agreements, and particularly on improvements in the consultative role of the State Committee for Minorities, as a representative body of recognized national minorities in the country. Simultaneously, it examines the extent to which the right to freedom of ethnic self-identification and to mother-tongue education is respected for ethnic Macedonians in areas where they lack minority status. Lastly, particular attention is given to the effective participation

\textsuperscript{24} According to the annual publication on the execution of judgments of the ECHR 'clone' or 'repetitive' cases are those “relating to a structural or general problem already raised before the Committee of Ministers in one or several leading cases”, and 'leading cases' are those “which have been identified as revealing a new structural /general problem in a respondent state and which thus require the adoption of new general measures, more or less important according to the case(s)”. See: Council of Europe Committee of Ministers, \textit{Supervision of the Execution of Judgments of the European Court of Human Rights, 4\textsuperscript{th} Annual Report 2010}, April 2011, p. 29.
of the Macedonian national minority in public affairs and decision-making processes at national and local level.

The chapter on the situation in Kosovo draws special attention to the legislative framework for the protection of minority “communities”, primarily “the Ahtisaari Proposal” and legal acts presupposing rights of the members of minority groups enacted from Kosovo’s Assembly prior to and after the declaration of independence. Probably the most important rule arising from Kosovo’s Constitution is the one enabling direct applicability of the provisions contained in the core international human rights treaties and instruments. The issue about position and legal status of the Macedonian-speaking Gorani community in Kosovo is reviewed separately. Here, emphasis is given to those aspects that clarify uncertainties about self-identification, as well as communal preferences for realizing constitutionally enshrined educational, linguistic and participatory rights. Additionally, the human rights of persons with Macedonian identity are reviewed, basically in light of their request to be officially recognized as a minority community within the Kosovo’s legal system.

Human rights and minority rights situation reports issued by several international governmental organizations, NGOs as well human rights bodies, serve as a guide to the examination of the human rights and minority rights record in the aforementioned countries. From the governmental organizations and human rights bodies emphasis is given to:

1) *Reports of the Working Group on the Universal Periodic Review*;
2) *Reports of the European Commission against Racism and Intolerance (ECRI)*;
3) *State Reports submitted in pursuance of the country’s obligations under Framework Convention for the Protection of National Minorities (FCNM)*;
4) *Reports and General Comments of the HRC and CERD*;
5) *Reports of the UN Independent Expert on Minority Issues*;
6) *Reports of the Commissioner for Human Rights of the Council of Europe*.

Additionally, alternative/shadow reports for monitoring of the situation about compliances with international human rights law published by highly referenced human rights NGOs, such as Human Rights Watch, Minority Rights Group etc. inevitably clarify the real position of the minorities in societies, administrative practice while dealing with human rights and legislative measures undertaken for improvement of the human rights and minority rights record of the prospect countries.

Having in mind that this dissertation focuses on legal aspects of the position of the Macedonian minorities, all the above mentioned steps are meant to ensure the objectivity and comprehensibility in the
assessment. Finally, the timeframe (ratios temporis) of this dissertation covers the developments and events up to the end of 2016. Later information on the subject is only exceptionally included.

1.3. Dissertation Hypothesis

The hypothesis of the dissertation is that the right to an identity in many ways, in combination with the other minority rights, represents the essence for national minorities within the wider concept of human rights. The elements of that identity can be ethnic, cultural, religious or linguistic, or more than one in combination, as is usually the case. The basic precondition for the preservation of minority identity is, as Asbjorn Eide recommended, the situation when “neither majorities nor minorities should be entitled to assert their identity in ways which deny the possibility for others to do the same, or which lead to discrimination against others in the common domain”. The essential right of every member of a national minority is to freely choose whether to be treated or not to be treated as such and that no disadvantage shall result from this choice or from the exercise of rights connected to this choice.

The right to identity of persons belonging to national minorities is central to this research. A crucial starting point for elaborating the right to identity is the situation where people are free to express their ethno-cultural characteristics and moreover, their choices in respect to self-identification are duly respected by authorities. Furthermore, effective realization of the right to identity necessitates that recognition or acceptance of the existence of a given ethnic group in a society is necessarily accompanied with: 1) guarantee and adherence with the principle of non-discrimination in enjoyment of rights and freedoms of relevance for national minorities; and 2) adoption of specific rights for minorities, which are ongoing (unlike affirmative action measures which, in theory, are intended to be temporary). In such a way, the hypothesis follows the premise derived from international law, namely that system of minority protection shall be mandatorily composed of two pillars. Therefore, the main assumption in this dissertation is that the right to mother tongue education, in combination with linguistic rights and the right to participate in public and political life, both at the national and local levels, are indispensable for minority identities to flourish in the societies in which they live. Stressing this premise, note that minority languages play an important role in providing a plausible explanation and confirmation of the hypothesis in the dissertation. We find support for this premise in the OSCE’s Recommendations Regarding the Linguistics Rights of National Minorities, whose provisions clearly stipulate that “language is one of the

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26 Council of Europe, Framework Convention for the Protection of National Minorities, Art. 3 (1).
most fundamental components of human dignity…respect for the person’s dignity is intimately connected with respect for the person’s identity and consequently for the person’s language”.

Hence, I argue that, in order to be able to nurture and preserve ethno-cultural identities, persons belonging to national minorities need to have adequate possibilities, provided via the formal education system, to learn their mother language and to use it freely in both private and public domains, including in official correspondence with administrative authorities at the local level. Moreover, as the following chapters intend to establish, this assumption applies equally to all countries included in the survey, whose positions on the status of national minorities and legal nature of rights ascribed to minority groups significantly vary from one to another.

The present research demonstrates that some States included in the survey deny the existence of particular minorities in their territories. Simultaneously, treaties prescribing rights to national minorities make no special reference to states denying the existence of minorities. Regardless, it is important to note that the Permanent Court of International Justice (PCIJ) confirmed that the “existence of communities is question of fact; it is not question of law.” According to Patrick Thornberry, this established customary rule means that “minority’ carries an autonomous meaning in international law, and claims by states that they have no minorities will be judged on the facts in the light of international standards.” In the same manner, the UN HRC in its general comment on this question declared that “the 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.” Inevitably, these arguments lead to an inference that, whereas express recognition may be considered as additional indication of de facto existence of minorities, in no event may the non-existence of a minority be inferred from non-recognition.

On one hand, the practices of human rights bodies and the writings of leading international legal scholars support the premise that non-recognition of a minority by the state is certainly not decisive for determining its existence in a society. On the other hand, while prioritizing the right to self-identification, one must not ignore the practical hurdles to espousing and preserving ethno-cultural features in a society opposed to recognizing the existence of a particular minority. In addition, it should be understood that international law does not automatically attribute international responsibility or any sanctions whatsoever for countries refusing to come to terms with the coexistence of various ethnic groups under their

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30 PCIJ, Interpretation of the Convention between Greece and Bulgaria respecting Reciprocal Emigration, (Question of the ‘Communities’), 1930, para. 35.
31 See: P. Thornberry, An Unfinished Story of Minority Rights, supra note 13, p. 49.
32 UN Human Rights Committee, CCPR General Comment No. 23: Article 27 (Rights of Minorities), 8 April 1994, para. 5.2.
jurisdiction. While analyzing cases of non-recognized minorities in this dissertation, we question whether identities and characteristics of such minorities might be preserved in the long term, via principles of non-discrimination and equality, accompanied with individual rights and freedoms that are justiciable at the international level, but, which in fact, offer only indirect protection to national minorities and their members. In the writer’s understanding, such rights and freedoms are enshrined in the ECHR and its protocols. Hence, particular emphasis is given to the ECtHR jurisprudence in respect to the rights to freedom of association, freedom of expression, to not be discriminated against in enjoying the Convention’s rights and freedoms on the grounds of belonging to particular national minority etc. It is an established fact that unimpeded enjoyment of these rights and freedoms enables individual self-fulfillment, stimulates and protects the emergence of associations with minority-oriented goals and dissemination of information in favor of non-recognized minorities.

Relevance of hypothesis for the title of the dissertation

On the one hand, the hypothesis is generated from the general concept of minority protection in international law, where, as shown below, minority issues are eligible for legal regulation. On the other hand, conceptual differences and political hesitations by States, the main subjects of international law, prevent the gradual development in this area of a coherent legal system of minority protection, applicable everywhere. Hence, the lack of a universally binding treaty prescribing minority rights or compelling States to resolve minority issues within their domains, enables different responses to these issues. Moreover, one finds completely different constitutional systems, administrative practices and jurisprudence in respect to protection of national minorities even among neighboring countries. Lastly, a particular ethno-cultural group, whose members reside across several neighboring countries as national minorities, is faced with multiple challenges, which vary considerably from one State to another. Therefore, it appeared reasonable to conduct research on the position and status of Macedonian minorities in the countries neighboring the Republic of Macedonia.

Several factors support the choice to test this hypothesis through examining the position of Macedonian minorities in the countries neighboring the Republic of Macedonia. At first, the research provides insight into the systems of minority protection in Albania, Bulgaria, Greece, Serbia and Kosovo, and assesses their respective implementation of minority rights as mentioned above. Such rights, in our view, are indispensable for a minority's identity to flourish. Through this approach, comparisons are drawn between the situations in different Balkan countries, beginning with a review of the context in which the Macedonian ethnic minority live in each of the neighboring countries.
Furthermore, the hypothesis is tested both in countries where ethnic Macedonians are an 'autochthonous minority' and in those where the minority’s origin are predominantly of a 'diasporic nature'. In the same manner, the divergent situations revealing 'recognition or denial' of national minority status to ethnic Macedonians in given States presents another, fundamental challenge to a basic premise of this dissertation. In the case of non-recognition of minority status or outright denial of Macedonian ethno-cultural identity in a particular State, the wider context of the issue is briefly assessed. Essentially, such context encompasses questions of history, identity conflict, cultural heritage or bilateral relations with the Republic of Macedonia, but mainly through their implications for the minority issue. Consequently, one needs to concede the possibility of changes in terms of self-identifications and even identity transformation among persons belonging to minorities. Especially, a situation like this could emerge in a case where a minority group, apart from being non-recognized, is concomitantly deprived of the right to learn its mother tongue, to enjoy its culture and to nurture close contacts with people to which it is ethno-culturally related. As social scientists have established, ethnic identity, far from being stable, fixed or naturally given, is a social construction subject to variation and transformation.\(^3^4\)

Each country neighboring the Republic of Macedonia has its own approach to the protection of minorities in general, and in relation to the treatment of the ethnic Macedonian minority in particular. As expected, various constitutional systems and political histories have generated different approaches and challenges which have been identified in this research. Nonetheless, all of these countries proclaim adherence to principles of democracy, human rights and rule of law, and moreover share similar strategic and foreign policy goals. In that manner, since treaties and human rights mechanisms adopted under the auspices of major European organizations provide the most advanced protection for national minorities,\(^3^5\) I endeavored to trace some 'common ground' or 'common denominator' on the position, status and level of protection of rights and freedoms of ethnic Macedonian minorities in Albania, Bulgaria, Greece, Serbia and Kosovo, if any.

In analyzing the legal treatment of Macedonian minorities in different constitutional systems, I invoked the general or abstract models for protection of minorities established in comparative constitutional law. One model, elaborated by Roberto Toniatti, distinguishes the "repressive nationalist state", "agnostic liberal nation state", "national state of multinational and promotional inspiration" and


"paritariun multinational state". This model serves as a frame of reference for my research. As hinted above, several situations are notable in the countries neighboring the Republic of Macedonia. First, two of the five neighboring countries recognize the national minority status of ethnic Macedonians living in their respective territories. Here, as subsequent chapters reveal, the adopted positive measures, as well as individual and quasi-collective rights prescribed for minority groups, are afforded, to a greater or lesser extent, to members of Macedonian minority and their cultural or political organizations. Another constitutional system reaffirms the adherence to individual civil, political, cultural and economic rights, but does not recognize a Macedonian minority or afford any rights associated with minority groups to members of this minority. Furthermore, this research reveals that, in one case, reconceptualizations and redefinitions of the national identity were employed to marginalize “internal significant others”, a term denoting non-recognized minorities, in both domestic politics and the legal system.

Similarly, in some cases, courts investigating claims of the denial of the freedom of association and expression related to the Macedonian minorities, have circumvented domestic laws. In these cases, the attitudes of judicial authorities endorsed breaches of the rights prescribed by law, and in the process silenced “voices of dissent” that challenge the official position on the status of this minority. It should be reiterated that these two rights provide only indirect protection for persons belonging to national minorities, but are crucial for testing my hypothesis in those cases where Macedonian minority is not-recognized as such by authorities. At the same time, we must not downplay the importance of opposing cases, where governmental actions were undertaken with a view: to conclude a bilateral treaty on the protection of kin-minorities with the Republic of Macedonia; to enable formation of the “National Council of the Macedonian Minority”; to enhance the participation of the Macedonian minority in public and political life at the national level, either by election of a 'genuine minority deputy' in the National Assembly (Serbia), or by appointment of a representative of the Macedonian minority to an advisory body

36 In the “repressive nationalist state” the uniform national identity and homogeneity of the population is ideologically over-inflated in terms of its exclusiveness and superiority, to the point of legitimating policies which officially deny the existence of minorities. The “agnostie liberal nation state” envisages the coincidence between nationality and citizenship of the population, therefore being indifferent to the existence and to the development of the national identities of minorities. A third model represents “national state of multinational and promotional inspiration”, which is typified by the predominance of a minority group (the majority) and the presence of several minority groups. The recognition, protection and promotion of minorities are an integral part of constitutional order and its fundamental values. In the last model, the “paritarian multinational state”, the constitutional order aims at integration and reflection of the multinational society on a paritarian basis by means of territorial organization as well as through substantive legislation. See: Roberto Toniatti, Minorities and Protected Minorities: Constitutional Models Compared, in Michael Dunne, Tiziano Bonazzi (eds.), Citizenship and Rights in Multicultural Societies, Keele, Keele University Press, 1995, pp. 195-221, at pp. 206-208.

37 On 6 May 2010 the Bulgarian Foreign Minister, Nikolay Mladenov, during an official visit to the Republic of Macedonia, in reply to a journalist’s question about the Macedonian minority in Bulgaria stated: “There is no Macedonian minority in Bulgaria. In Bulgaria there are no minorities of any sort, however there are people who have human rights and our constitution is based on the individual rights of people and not collective rights”. See: http://www.australianmacedonianweekly.com/edition/1124_18052010/070_english.html

of the Prime Minister (Albania), tasked with monitoring the situation of minorities and recommending improvements where shortcomings are identified.

The jurisprudence of the ECtHR since 1998 has consistently confirmed its protective stance towards associations with a minority focus, by referring to a limited ‘margin of appreciation’ of States and sanctioning refusals of parties to recognize or register such associations.\(^{39}\) The ECtHR also clarified in *Ouranio Toxo v. Greece* that “pluralism is built on...the genuine recognition of, and respect for, diversity and dynamics of traditions and of ethnic and cultural identities”.\(^{40}\) In recent years, a growing number of grievances and complaints have been lodged in Strasbourg by members of (non-recognized) Macedonian minorities and their organizations claiming breaches of the rights prescribed in the ECHR and its protocols.

Notwithstanding the indisputable significance attached to the indirect protection of minorities in the case-law of the ECtHR, some final judgments in cases initiated by the representatives of the Macedonian minorities in Greece and Bulgaria could be regarded as “repetitive judgments concerning national minorities that have demonstrated serious difficulty on the part of the Court to effectively influence member states’ law, policy and practice”.\(^{41}\) Furthermore, as noted by experts such as Sitaropoulos, the implementation of ECtHR’s judgments in national minority cases in some Balkan countries shows that States still consider national minority protection frameworks to be within their own *domaine réservé*.\(^{42}\)

This indicates that States, despite their non-interference with the way in which minorities realize their ECHR rights, must consider that for real and effective exercise of rights there is a need for positive steps and measures, making real commitments to the rights of special importance for minorities, as well as to the principle of non-discrimination. In other words, realizing these rights may require “positive measures of protection from the states, even in the sphere of relations of individuals, although such obligations cannot be interpreted in a way as to impose an impossible or disproportionate burden on the authorities”.\(^{43}\) I try to demonstrate that this approach is also applicable to most of the rights of persons belonging to minorities contained in various treaties (e.g. FCNM).

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\(^{42}\) Ibid, p. 24.

To date, an ideal system for protecting national minorities has not been devised or implemented in the Balkans nor elsewhere. In the Balkans, protection of national minorities and maintenance of good-neighborly relations are proportionally related. This dissertation includes, apart from assessment of the minority protection in Balkan states, recommendations for improvement of the national minority protection in the analyzed countries, and measures for advancing the legal framework on minority protection and its implementation. In that manner, we should recall ECtHR reasoning in the abovementioned case *Sidiropoulos and others v. Greece* that the “existence of minorities and different cultures in the country was a historical fact that a ‘democratic society’ had to tolerate and even protect and support according to the principles of international law”. 44

Therefore, I argue that there is a need for further improvements in the implementation of rights for persons belonging to the Macedonian minorities as well of promotion of positive measures designed to enhance the effectiveness of their protection in every state discussed in this dissertation.

1.4 Original Contribution to Legal Science

Minority rights issues have a particular significance for Europe, the home of nation-state ideology and the “classic” minority questions and disputes. Even today, there is an evident need for finding common solutions to problems concerning national minorities throughout Europe, and particularly in the Balkan states. Moreover, the desired balance between the need to preserve and foster the ethno-cultural identity of national minorities and the undisputed territorial integrity and national sovereignty of States often results in the circumvention of legally binding duties pertaining to the minorities.

This dissertation aims to contribute to the scientific community in a number of ways. Firstly, in a broad sense, the study of the protection of national minorities and implementation of minority rights, wherever they may reside, is an important topic in Europe today both from a legal and a political perspective. Mark Weller noted that Europe regards itself as the global champion of legal provisions for minorities, because it generated the world’s only legally binding treaties on minority rights in general and on language rights in particular. We should not overlook the continuous growth of international instruments containing legally binding and soft law arrangements pertaining to minorities and their importance for the Balkan countries. Additionally, the study of minorities has become an increasingly important academic field, both for scientists and policy makers. Since this dissertation encompasses twelve countries, whose systems of minority protection are critically reviewed, the overall research provides a better understanding of the similarities and differences between these countries and enables extending some general comments towards devising an ‘ideal system of minority protection’.

44 European Court of Human Rights: *Case of Sidiropoulos and others v. Greece*, supra note 22, paragraph 41.
Second, by providing comprehensive legal research on the position and status of the Macedonian minorities in the countries neighboring the Republic of Macedonia as well as an assessment of the implementation of minority rights, envisaged both in treaty-law and customary law, this study attempts to make a contribution towards identifying and defining additional measures necessary for enhancing the protection of national minorities in the analyzed States. There have been very few focused international legal and comparative studies on the protection of the Macedonian ethnic group across the region, so this dissertation aims to fill in the gap in this regard.

Finally, the intention is also to offer a resource that can be used by contemporary policy makers and observers to improve the situation of Macedonian minority groups in the surveyed countries.

1.5. Methodology

With a view to approaching the legal problem comprehensively, several methods were used, solely or in combination, in the process of writing. The objective, systematic and comparative research guided wider examination of the subject prior to offering conclusions and solutions to the complex issues it revealed. Even though the main arguments are drawn from the realm of international law, I found it necessary to also consider ideas from other disciplines (e.g. international politics, history, sociology, anthropology) that are related to the subject.

*Historical method* is obviously indispensable for an understanding of present challenges faced by persons belonging to Macedonian minorities in countries neighboring the Republic of Macedonia as a legacy and reflection of past events that have influenced the present situations.

Method of *content analysis* was introduced in order to ascertain the scope of the domestic legal framework where human rights and the rights of persons belonging to minorities are stipulated. Constitutional articles and laws implementing minority rights were analyzed and assessed for their correlation with human rights and minority rights treaties to which the prospect countries are parties. Reports from the relevant human rights bodies were also assessed to this end.

Introduction of *comparative research* of international agreements and instruments guaranteeing minority rights, national regulations of minorities in general in the Balkan states compared with the protection of Macedonian minorities in particular lead to a better understanding of the similarities and differences between the countries and hence the real position of the Macedonian national minority in each of the countries neighboring the Republic of Macedonia.

*Case study analysis* of the ECtHR (and other human rights bodies), as well as of the legal principles derived from its jurisprudence is conducted to develop a proper understanding of the extent of compliance with the rights and freedoms stipulated in the ECHR and its protocols. This assessment is
essential, bearing in mind that for persons belonging to minorities the need to preserve and maintain their minority identity in plural societies is crucial. Special emphasis was given to cases initiated at the ECtHR by representatives of the Macedonian minority. Additionally, the jurisprudence of the PCIJ in cases related to minority protection were also taken into consideration. It was this institution that first thoroughly examined the question of minorities in treaty law and established various precedent principles and definitions which later reflected the development of the legal framework on minorities in international law.

The need to collect qualitative data and first-hand evidence on the human rights position of Macedonian minorities required field research and fact finding methods (interviews with minority activists, human rights defenders, NGO representatives, governmental officials etc.)

Guided by a desire to conduct wide and comparative research on the subject, the anthropological and sociological literature dealing with questions of ethnicity and “dual identity”, as well as the research on the image and significance of “Macedonia” and the “Macedonians”, especially among Macedonians in Greece and Bulgaria, were consulted to establish how these people maintain their ethno-cultural identity and what stimulates/deters to actively seek respect for their ethnic distinctiveness as members of the Macedonian minority group.

The sources, primary and secondary alike, that were used are predominantly in English language. However, bearing in mind the main subject of the dissertation, international agreements, legal texts, scientific articles and books written in Greek, Bulgarian, Serbian, Albanian, Macedonian and Slovenian language were also duly consulted.
II. INSTRUMENTS FOR THE PROTECTION OF MINORITY RIGHTS IN INTERNATIONAL LAW

Minority issues as such in the past two decades were considered as a ‘priority topic’ by the international community. At the same time, various international organizations enacted numerous legally binding, non-binding or soft-law documents, which have regulated different aspects of the need to preserve and nurture the separate identity of minorities as recognized vulnerable groups. Notwithstanding these recent developments, the interest of legal science and international lawyers in minorities as such have never ceased, even in the times when, due to political considerations, minority rights have been neglected or absorbed into UN debates for individual human rights.

Before commencing a thorough review of the evolution of minority rights in international law, the legal instruments for protection of minorities in Europe and their implementation in the Balkan countries, we should examine some theoretical issues surrounding the concepts ‘minority’, ‘minority rights’ and ‘protection of minorities’.

2.1. The Problem of Conceptual Clarity

Despite the previously mentioned permanent concerns about minorities by both legal scholars and the international community, the conceptual difficulties related to the notion of ‘minority’ are not adequately resolved. Among various uncertainties, two stand out as most destabilizing, namely: 1) the absence of a definition of ‘minority’ in international law; and 2) the question of whether the prescribed rights attach to the individual or the group. While the former initiated a decades-long but fruitless debate in international law, the latter question arises in the context of human rights law.

After assessing these theoretical issues, we should proceed with further clarifying the concept of minority rights. First we should examine whether minority rights are distinct from or supplementary to the idea of human rights. Then, we will analyze the concepts of ‘prevention of discrimination’ and ‘protection of minorities’, both separately and their interrelations. The initial section will close with a brief consideration of the difference between the rights of minorities and the rights of indigenous peoples.

A. The Definition of ‘Minority’ in International Law

Unlike other social phenomena regulated by international law, the regulation and protection of ‘minority’ remains mired in conceptual disagreements resulting in a lack of definition as to what
constitutes a minority. As Malcolm Shaw pointed out, “what is clear is that international law has thus far provided us with no accepted and binding definition of minority”.45

Treaties concerning the rights of persons belonging to minorities do not offer any clear definitions of minority per se, and hence no conceptual clarity of the subject, but simply refer to persons who belong to national, ethnic, linguistic or religious minorities.46 At the same time, lack of a formal ‘definition of minority’ in international law, and especially in the international instruments for protecting minorities, leaves much scope for interpretation by the monitoring bodies responsible for their implementation. This can be observed from the practice of the HRC and the Advisory Committee created by the FCNM, while they are assessing the enforcement of legally binding commitments by States and expanding the applicability of these human rights arrangements to new minorities.47 It is unsurprising that the more ‘progressive’ interpretations of the treaty bodies provoke considerable resistance by certain States.

Nevertheless, there have been some proposals for a clearer definition of ‘minority’ by international judicial authorities and legal scholars. Perhaps one of the first attempts, “albeit in a negative way”, to define minorities originated from the League of Nations’ rapporteur on minorities.48 Namely, in his view, apart from possessing ethnic, religious or linguistic differences, minorities have to be “the product of struggles, dating back for centuries, or perhaps for shorter periods, between certain nationalities, and of the transference of certain territories from one sovereignty to another through successive historic phases”.49 From this perspective, once the condition of ‘past struggles between groups’ is fulfilled, minorities are eligible for protection with special rights.

The legal reasoning on the subject by the PCIJ is highly relevant here. The Court defined such a ‘community’ as “a group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by this identity of race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, ensuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other”.50 The contours of minority identity described in this quote have served as an inspiration for almost every subsequent attempt to coherently define the

49 Ibid
term. Admittedly, this is mostly visible in the legacy that every attempt to define minority must strictly differentiate the 'objective' and 'subjective' elements therein.

In the UN’s early years, the Sub-Commission on Prevention of Discrimination and Protection of Minorities submitted a resolution with the Commission on Human Rights containing a definition of minorities. The proposed definition adds the ideas of 'loyalty' as well as sufficient or 'minimum size' of persons qualified to be subsumed under the category of ‘minority’, and reads as follows:

(i) the term minority includes only those non-dominant groups in a population which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population;

(ii) such minorities should properly include a number of person sufficient by themselves to preserve such traditions or characteristics; and

(iii) such minorities must be loyal to the State of which they are nationals.\(^{51}\)

Probably the most comprehensive attempt to concisely define ‘minority’ by connecting both the objective criteria with subjective elements, which could be used in international law was made by Francesco Capotorti. Capotorti defined a minority as “a group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members – the nationals of the state – possess ethnic, cultural, religious or linguistic characteristics differing from those of the rest of population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language”.\(^{52}\) This definition was initially drawn up solely in relation to Article 27 of the ICCPR.\(^{53}\) Nonetheless, the approach used in it was largely followed in later proposals for a definition of the term minority,\(^{54}\) which in their essence were influenced by the former.\(^{55}\)


\(^{54}\) Jules Deschenes in “Proposal Concerning a Definition of the Term ‘Minority’”, defines minority as “a group of citizens of State, constituting a numerical minority and in a non-dominant position in that state, endowed with ethnic, religious or linguistic characteristics which differs from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aims is to achieve equality with majority in fact and law”. See: UN Sub-Commission of the Promotion and Protection on Human Rights, E/CN.4/Sub.2/1985/31, 1985, para. 181.

A.1. A Liberal Proposal for Expansion of the Definition

Some scholars reject this definitions, arguing that they contradict with the essence of human rights. Instead, they offer a different perspective, focused on freedom of choice and ‘associational theory’. John Packer, for instance, believes that “the proposition that human beings may be grouped according to inherent differences clearly contradicts the first premise of equality and, therefore, is incompatible with human rights philosophy”. Here, a previous respect of the principle of non-discrimination accompanied with individual rights is quintessential for emergence of minority issue.

Therefore, Packer defines minority as “a group of people who freely associate for an established purpose where their shared desire differs from that expressed by the majority rule”. Accordingly, one may deduce from this ‘contractarian definition’ that “membership of a minority is not established by birth”, but, on the contrary, such membership is established “by free association in relation to a specific issue”. Hence, the labels defining types of minorities such as ‘ethnic’, ‘linguistic’ or ‘religious’ are dropped, since arguments for person’s distinctiveness from the majority in the ethno-cultural manner are considered to undermine, if not deny, the principle of equality.

If accepted, this definition would enable various unconventional minorities to be subsumed under the umbrella of freely associated groups, established for some ‘shared desire’, and prospectively may undermine the burgeoning system of minority protection. That’s why, as fittingly noted by Hannum, “the expansive concept of minority...is yet to be endorsed by any state or international body”. Accordingly, it seems reasonable to assume that, for time being, the vast majority of States adhere to a more traditional concept of ‘minority’, such as Capotorti’s definition. Nevertheless, neither international law nor any supranational authority may legitimately challenge the "liberty for states to reasonably and proportionately afford rights granted to member of minorities to other sets of individuals [and groups - DT] as well, so as to provide the latter with higher standards of treatment".

A.2. On the Notion of 'National Minorities' and Old v. New Minorities

According to Rosenne "generalized definitions are best avoided on the basis of the principle that all definitions are hazardous (omnis definitio in jure periculosa est)". Therefore, we should rather adopt

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57 Ibid, p. 45.
58 Ibid, p. 43.
59 H. Hannum, The Concept and Definition of Minorities, supra note 48, p. 68.
an approach that enables a coalescence of criteria with a view to determine certain attributes or defining characteristics of a minority. To that end, Shaw enumerated several objective (distinct group, numerical inferiority, non-dominance, nationality of the State) and subjective (sense of community, goal and self-identification) criteria, some inextricably related to others. Obviously, the decisive features of a minority group are: a) its existence as a separate and distinct entity; b) a sense of community among its members; and moreover c) the “implicit will to maintain a common identity” and preserve their distinctiveness. Furthermore, one must analyze minority groups in “circumstances of powerlessness (‘numerical inferiority’ and ‘non-dominance’) relative to an implied majority”.

I have stated that this dissertation examines the protection of national minorities in the Balkan countries in general and particularly with case of Macedonian national minorities in the countries neighboring the Republic of Macedonia. There are various approaches to the notion of a ‘national minority’. Historically, the term ‘national minority’ emerged in Europe and perhaps, in the beginning, it was entirely related with various kin state/kin minorities situations, created with territorial redistributions and land swaps following the two world wars. Here, a kin-state refers to one with a certain minority group in the neighboring country, which shares common ethno-cultural and linguistic features.

A kin state/kin minority relationship is, however, "sufficient but not necessary to make a national minority". Despite the fact that some minorities have no corresponding kin-state, they are regularly considered as national minorities. What differentiates national minorities from other types of minorities is "the requirement of political participation in matters of direct concern to them". Valentine takes this a step further, courageously declaring that the label 'national' as a qualifier for the word 'minority' invokes the "concept of nationality". Prospectively, in his view, "if given the opportunity", the national minority might even "become a nation state".

Consequently, Council of Europe (CoE) proposals for more a extensive and inclusive definition of ‘national minority’ will be considered in the following research. In particular, non–treaty engagements, such as Recommendation 1134 (1990) and Recommendation 1201 (1993) of the Parliamentary

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62 M. Shaw, The Definition of Minorities in International Law, supra note 45, pp. 35-42.
63 As Gulivera observes, the existence of a minority group “is determined by fact, not law, although official State recognition may be beneficial for a group’s protection”. See: Gullera Guliyeva, The Rights of Minorities in the European Union (unpublished doctoral dissertation), University of Birmingham, 2010, p. 159.
64 Ibid, p. 182.
65 Jennifer Jackson-Preece, Beyond the (Non) Definition of Minority, ECMI Brief #30, February 2014, p. 19 (5).
68 G. Guliyeva, The Rights of Minorities..., supra note 63, p. 133.
69 J. Valentine, Toward a Definition of National Minority, supra note 66, p. 472.
70 Council of Europe, Parliamentary Assembly Recommendation on the rights of minorities No.1134, 1990. Article 11 of the Recommendation, among others, prescribes national minorities as “separate or distinct groups, well defined and established on the territory of a state, the members of which are nationals of that state and have certain religious, linguistic, cultural or other characteristics which distinguish them from the majority of the population...”.

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Assembly, where descriptions of national minorities are enshrined, will be regarded as providing an improved framework for the use of the term ‘national minority’. Therefore, to keep the main subject firmly in our sights and to ensure terminological clarity, the following pages will use the term ‘national minority’ rather than ‘minority’.

More recently, distinct from the ‘old types’ of minorities, new and unconventional types of minority groups began to seek attention from both scientists and policy makers alike, and to be incorporated into the international human rights framework. In the legal literature, the term 'new minorities' refers primarily to migrant workers, recent settlers, and “new groups of minorities that appeared in the process of State dissolutions and succession”.72 Some of these groups, as Asbjorn Eide underscored, may consider themselves as minorities, or be considered as such by others, and many have good reasons for such claims.73

Thus, generally, whereas old minorities are “composed of persons who lived, or whose ancestors lived, in the country or a part of it before the state became independent or before the boundaries were drawn in the way they are now”, new minorities are groups “composed of persons who have come in after the state became independent”.74 International law, however, does not prescribe different set of rights for different categories of individuals and groups. In the case of 'new minorities', Pentassuglia observed, "socio-economic and/or political aspects determine why the prohibition and prevention of discrimination, rather than the safeguarding of cultural identity as such, is the main concern".75 Nonetheless, without prejudice to the legal grounds establishing this distinction, it would be preferable that “rights granted to a minority, whether ‘new’ or ‘old’, should be tailored to the specific needs of a group”.76

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71 Council of Europe, Parliamentary Assembly Recommendation on an additional protocol on the rights of national minorities to the European Convention on Human Rights No. 1201, 1993. Article 1 of this Recommendation offers a wide and concise definition, prescribing that “expression national minority refers to a group of persons in a state who: a) reside on the territory of that state and are citizens thereof; b) maintain longstanding, firm and lasting ties with the state; c) display distinctive ethnic, cultural, religious or linguistic characteristics; d) are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state; and e) are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language.”
75 G. Pentassuglia, Minorities in International Law, supra note 60, p. 70.
76 G. Guliyeva, The Rights of Minorities…., supra note 63, p. 144.
A.3. Meaning of the Term ‘Minority Protection’

Ramcharan examined the meaning and scope of the term ‘protection’ in the field of human rights law.77 He found that the term ‘international protection’ in human rights law is used in both a broad sense (indirect protection), as well as in a specialized sense (direct protection).78 Indirect protection refers to all activities at the international level to advance the realization of human rights, such as research, studies, dissemination of information, advisory services as well as mechanisms to address violations of human rights. Mechanisms for dealing with complaints are, according to Ramcharan, the essential element of the direct protection (petitions, complaints, judicial or quasi-judicial protection).79 These different but complementary conceptions of ‘protection’ will be carefully considered in this dissertation.

Spilipoulou Akermark clarified that ‘human rights’ and ‘minority protection’ are different but overlapping issues.80 This is derived from the different justifications of the two concepts. According to her, ‘human rights’ are justified by the necessity to respect human dignity while ‘minority protection’ is based not only on the value of human dignity, but also on the strong wish to prevent conflicts and preserve peace, as well as the value of the minority culture as such.81 Furthermore, human rights are qualitatively different in that the rights of all individuals are protected internationally. Or, as Pentassuglia explains, while human rights means equal enjoyment of basic rights and freedoms for every person, minority rights are special rights recognized to the exclusive benefit of minority groups.82

Furthermore, as Spilipoulou Akermark observes, “‘minority rights’ are the legally recognized interests of minorities (their members), while ‘minority protection’ is the whole network of (legal) methods and mechanisms supporting minority cultures”.83 This approach allows us to consider measures for the protection of minorities in international instruments which are not legally binding. Such instruments may not create legal rights, but they reinforce provisions affecting minority protection.

In this study, the term ‘protection of national minorities’ refers to the different methods, including the prescription of rights and their implementation, by which international law preserves or promotes national minorities and their cultures. In this context, we must stress that the essence of minority protection in international law is the protection of the separate identity of minorities. This is the position taken by the PCIJ in its advisory opinion regarding the Minority Schools in Albania, which established the idea that the core of minority protection was to ensure the minority suitable means for the preservation of

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78 Ibid., p. 605.
79 Ibid., p. 604.
81 Ibid.
82 G. Pentassuglia, Minorities in International Law, supra note 60, p. 48.
83 A. S. Akermark, Justification of Minority Protection..., supra note 80, pp. 53-54.
their peculiarities, traditions and national characteristics. Likewise, HRC in its General Comment No. 23 on Article 27 of the ICCPR stated that “the protection of the rights in Article 27 is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole”.

B. Individual vs. Collective Rights

The well rehearsed debate over who possess the rights prescribed in human rights law – whether it is the individual members of the minority group or the group itself – must also be reviewed here. We will briefly survey the main arguments offered by the ‘individualists’ and ‘communitarians’ concerning human rights in general, and their respective positions on minorities. Then we will offer some theoretical considerations on the idea of ‘group rights’.

The essence of individualism is the assumption that “the only unit of moral concern is, or should be, the individual”, and, only if all persons are treated as individuals, will we be “able to show that every individual has equal moral status”. Believing in universal and stable individual identity, individualism aims at “ensuring that members of an ethnic minority are treated without discrimination in relation to members of the majority”. The argument is that individual rights, accompanied with principles of equality and non-discrimination, are the best means to assure that members of minorities enjoy the same rights as members of the dominant group. In addition to these general considerations, Galenkamp adds the specific rights to participation in government, freedom of association, education and religion. According to this reasoning, demands for minority protection would be satisfactorily met and group rights would be redundant.

We must, however, recognize two varieties of individualism: 'methodological individualism' and 'consequential individualism'. The former considers the concept of group rights as "a metaphysical absurdity", and tends to be "hostile to the notion and rhetoric of ethnic rights". Individualism in this form, according to Shahabuddin, protects minorities through the principles of equality and non-discrimination, but also 'protects' them from “the curse of ethnicity – the very constitutive element of

84 P.C.I.J., Minority Schools in Albania, Advisory Opinion No. 26, Series A/B, April 1935, paragraph 51.
85 UN Human Rights Committee (HRC), CCPR General Comment No. 23: Article 27 (Rights of Minorities), 8 April 1994, CCPR/C/21/Rev.1/Add.5, paragraph 9. The document is available online at: http://www.unhcr.org/refworld/docid/4538836c0.html
87 Ibid.
89 A. Addis, Individualism, Communitarianism ..., supra note 86, p. 631.
minorities”, since it rejects the core “conservative notion of minority protection”, namely the promotion of minority identity.\textsuperscript{90}

In contrast, ‘consequential individualism’ might accept the notion of ethnic rights, but it sees "the concept of group rights in strategic and temporary terms".\textsuperscript{91} Far from accepting groups as "units of moral concern", group/collective rights are seen only as a temporary means for correcting "structural and institutional defects which are seen as impediments to treating people as individuals".\textsuperscript{92} In other words, ‘consequential individualism’ accepts special measures and ‘affirmative action’ for minorities, but only temporarily and instrumentally, with the objective of providing “conditions that would allow members of minority groups to make choices with as much freedom as members of other groups”.\textsuperscript{93}

Conversely, communitarians argue that the individual cannot be isolated from the group and culture to which she or he belongs. Communitarians contend that the culture and tradition of a group is what gives meaning to the individuals’ choices. In the words of Addis, a person does not have rights as “an abstract individual”, but rather as "a member of a particular group and tradition, and within a given context".\textsuperscript{94} Moreover, communities provide individuals with the context in which they have subjectivity, and are therefore “intrinsically valuable and their protection is a legitimate justification for limiting individual rights”.\textsuperscript{95}

Logically, communitarianism nurtures the idea of ‘group rights’ and is suspicious of claims that individual rights can satisfactorily protect groups. In other words, for communitarians, group or collective rights cannot be “reducible to a set of individual rights”.\textsuperscript{96} Preece contends that individual human rights and principles of equality have historically been used mainly by States that were not eager to recognize special rights for minorities.\textsuperscript{97} From this perspective, Sanders argues that “cultural rights cannot be vindicated solely by upholding individual rights…[and such-DT] rights may well be lost unless the collectivity is either protected or has the autonomy to protect itself”.\textsuperscript{98}

Peter Jones distinguishes between two main conceptions of group rights: collective and corporate. The collective conception considers a group right to be “a right held jointly by those who make

\textsuperscript{91} A. Addis, Individualism, Communitarianism..., supra note 86, p. 631.
\textsuperscript{92} Ibid.
\textsuperscript{93} Ibid, p. 640.
\textsuperscript{94} Ibid, p. 642.
\textsuperscript{95} Ibid., p. 642.
up the group”, from which perspective, “the group has no existence or interest that cannot be explained as that of its members”. 99 In addition, this conception does not ascribe “a moral standing to the group”, that stands independently from “the moral standing of each of its individual members”. 100 Despite the fact that a given right is prescribed solely to the group as such, “the interest that make the case for the right are the separate, yet identical, interest of the group’s members”. 101

By contrast, the corporate conception ascribes a moral standing to the group that stands separately from its individual members. The group here is conceived as “a single, integral entity”, which cannot be reduced to an aggregate of the individuals who compose it. On this basis, “the group as unitary entity” is perceived to be the holder of rights which are not simultaneously held by those individuals who make up the group. 102

Thus, the collective conception provides a perspective from which it is possible to assume that group (collective) rights are compatible with individual human rights. As Glazer observed, those legal arrangements that specifically guarantee for minority groups “a certain proportion of posts in government, in the civil services, in the universities, in business” are clearly compatible with “a regime committed to human rights as the approach that focuses only on the individual”. 103 Conversely, it is not possible to represent the group rights as compatible with individual human rights from the corporate perspective. Corporate group rights infringe upon the rights of individual members of the group and hence become oppressive, although of course, not all corporate rights exists at the expense of human rights. 104 And, in fact, human rights could arguably be used to restrict and limit the range of corporate group rights.

Some authors have argued that the debate over individual vs. group or collective rights is misleading and have instead proposed models that seek a balance between the interests of individuals and groups in a context of ‘cultural pluralism’. On the one hand, it seems crucial, contra the individualists, to acknowledge the importance that groups play in each individual’s life. 105 On the other hand, rather than embracing a primordial concept of a group that maintains its unchangeable nature, we must recognize that groups continuously evolve as well as the individuals’ contributions to shaping the group’s cultural characteristics. 106

Will Kymlicka attempted to reconcile the two concepts, noting that “some group-differentiated rights are in fact exercised by individuals”, but stressing that “the question of whether rights are

100 Ibid.
101 Ibid.
102 Ibid., p. 86.
106 See: L. Reidel, What are Cultural Rights?…, supra note 95, p. 75.
exercised by individuals or collectivities is not the fundamental issue”.107 What matters most in his ‘liberal theory of minority rights’ is the question of “why certain rights are group-differentiated – that is, why the members of certain groups should have rights regarding land, language, representation…that the members of other groups do not have”.108 The idea of ‘group-differentiated rights’ here is not caught up in endless debates about “the primacy of communities over individuals” and vice versa, but rather, shifts the focus to argue that “justice between groups requires that the members of different group be accorded different rights”.109

Kymlicka intends to support minority groups within a liberal framework, and states that "for meaningful individual choice to be possible, individuals need not only access to information... freedom of expression and association”.110 Instead, individuals need unhindered access to a "societal culture", promoted through three group-differentiated rights and measures, such as self-governing rights, polyethnic rights, and special group representation rights. Kymlicka understands ‘societal culture’ to be a culture that "provides its members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres”.111

Having in mind these theoretical treatises dealing in length on the subject, it is possible to assess whether modern international law recognizes individual or group (collective) rights to minorities. Dinstein, for instance, believes that general international law accords “two collective human rights” to minorities in each sovereign state, namely “the right to physical existence” and “the right to preserve a separate identity”.112 In a similar vein, Ramaga contends that due to the very nature of the rights accorded to minorities and their manner of implementation, minority rights should be considered as collective rights.113

However, one cannot deny that the vast majority of rules and principles outlined in international law on minority protection are formulated in an individualistic manner. This proclivity was enshrined during the emergence of UN and its system of individual human rights protection, “based on a Western and liberal philosophy that emphasized the political over the economic, social and cultural rights, and the essential equality of individuals not groups”.114 This is why an array of human rights and minority rights

108 Ibid.
109 Ibid, p. 47.
110 Ibid, p. 84.
111 Ibid, p. 76.
treaties repeat the torturous phrase ‘persons belonging to ethnic/national minorities’ rather than addressing the minority groups themselves. In particular, States feared that any recognition of minorities as legitimate groups with collective rights in the treaties would fuel demands for territorial autonomy and possibly provide an impetus for secessionist demands among minorities.

Much of the criticism against individual rights would fade away if we were satisfied of their ability to protect “important shared interests in a liberal culture”.\(^\text{115}\) And we must recognize that “the gatekeepers to protecting the value of culture” are always individual group members.\(^\text{116}\) Hence, as Capotorti argues, “it is the individual as a member of a minority, and not any individual” that benefits from various treaties on minority protection in contemporary international law.\(^\text{117}\) Finally, whereas minority rights are designed to protect “individuals as a member of a minority”, simultaneously such rights inevitably require a "collective exercise", since they are based on the interests of minority groups as such.\(^\text{118}\)

Finally, Pentassuglia points out that international law, in general, recognizes three pure group rights: a right to self-determination, a right to be protected against genocide and the collective rights accorded to indigenous peoples.\(^\text{119}\)

C. Minority Rights as Human Rights

Human rights law theory and international practice nowadays consider minority rights as part of the wider international corpus of human rights. This is quite a contrast to the earliest efforts to enshrine minority rights in international law, in the time of the League of Nations, when the two concepts were separated such that human rights were guaranteed domestically, whereas minority rights were considered to be an issue of international concern.\(^\text{120}\) At the very beginning of the UN human rights era, minority rights continued to be treated as irrelevant for the expanding individual human rights system, and it has only been very slowly that minority rights were gradually absorbed into the system of international human rights protection.

By 1995, Council of Europe’s FCNM in its Article 1 proclaimed that the protection of national minorities and the rights and freedoms of persons belonging to minorities forms an integral part of the

\(^{115}\) L. McDonald, *Can Collective and Individual Rights Coexist?*, supra note 96, p. 322.

\(^{116}\) L. Reidel, *What are Cultural Rights?*, supra note 95, p. 66.


\(^{118}\) *Ibid*.

\(^{119}\) G. Pentassuglia, *Minorities in International Law*, supra note 60, p. 47.

\(^{120}\) *Ibid*, p. 48.
international protection of human rights. Similar statements had previously been enshrined in the UN Declaration on Minorities of 1992 and the OSCE’s Copenhagen Document of 1990.

HRC General Comment No. 23 explained in depth the essence and nature of rights prescribed in Article 27 of ICCPR, which presents the sole minority-related provision in a multilateral treaty accepted by the majority of UN member-states. Specifically, HRC stated that this minority article “establishes and recognizes a right which is conferred on individuals belonging to minority groups and which is distinct from, and additional to, all the other rights which, as individuals in common with everyone else, they are already entitled to enjoy under the Covenant”. The terms ‘distinct’ and ‘additional’ may imply that minority rights within the HRC’s reasoning are categorically separate from human rights, or conversely, that they belong to universal human rights, wherein they exist as an additional sub-category of a much wider concept.

Some authors oppose the assertion that minority rights are incorporated in the body of human rights, since, allegedly, the notion of minority as such implies by definition collective rights, whereas human rights are exclusively individual rights. Moreover, they contend, even if human rights are interpreted in minority-sensitive way, this “is not equivalent to their being of the same category”. However, this view is not widely accepted in the legal theory.

The idea that minority rights may exist as something separate from and additional to universal human rights has two shortcomings. First, it could mean that persons belonging to minorities possess more human rights than other persons, and second, in such cases, minority rights would be susceptible to politicisation.

And yet, one cannot reduce minority rights to the principles of equality and non-discrimination. Individual human rights stipulated in various treaties are not “sufficient to protect minorities”, but are nevertheless “essential as part of the platform for their protection”. Indeed, due respect for the principle of non-discrimination combined with individual civil, political and cultural rights of relevance for minorities is a necessary precondition for any functional and coherent system of minority protection.

Pentassuglia noted that human rights presupposes “equal enjoyment of basic rights for everybody”, while minority rights may be explained as “special rights recognized for the exclusive benefit of minorities”.

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122 HRC, General Comment No. 23: Article 27 (Rights of Minorities), supra note 85, para. 1.
of minority groups”]. Special rights and affirmative measures for minorities may conflict with principles of non-discrimination, which is of paramount importance for general human rights protection. Therefore, one author suggests, the principle of non-discrimination “needs to be interpreted in a more sensitive way, especially when issues of culture and identity are at stake”. Admittedly, human rights jurisprudence confirms that special rights and measures accorded to persons belonging to minority groups are derived from the concept of substantive equality.

After all, as Hannikainen concluded, minority rights may rightfully be qualified as “specific sub-category in the body of general human rights with the purpose of ensuring the de facto equality of minorities with the majority”. Consequently, a coherent system of minority protection necessitates the inclusion of “supportive features, such as affirmative action or special protection to ensure de facto equality or even mild special rights to ensure the survival of minority”.

**D. Prevention of Discrimination and Protection of Minorities**

Kristin Henrard noted that an adequate system of minority protection is based on two pillars: 1) the principle of non-discrimination in combination with individual human rights of special relevance for minorities, and 2) specific minority rights aimed at protecting and promoting the right to identity of minorities. Therefore, the fundamental goal of minority protection is the achievement of substantive instead of formal equality for persons belonging to minorities, whereas the prescription of rights suitable for nurturing the identities of minorities is an additional, although essential, aspect of such protection.

The origins of this approach can be traced back to the League of Nations. The premise that protection of minorities, as a concept, is comprised of two basic requirements was first established by PCIJ in the case of Minority Schools in Albania. The Court stressed that there is a need for persons belonging to minorities to be placed "in every respect on a footing of perfect equality with the other nationals of the State". In addition, States have to ensure "suitable means" for minorities to preserve their identities and traditions. In the Court’s view, these two basic requirements are closely related and equally indispensable, since “there would be no true equality between a majority and a minority if the latter were deprived of its own institutions, and were consequently compelled to renounce that which constitutes the very essence of its being as a minority”.

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130 *Ibid*.
133 *Ibid*, para. 52.
Initially, this concept of minority protection was accepted by the UN, at a time when minority issues were not yet seen to be an obstacle for the emerging system of human rights protection. Namely, a document submitted by the Secretary-General on the main types of discrimination noted important differences between the concepts of ‘prevention of discrimination’ and ‘protection of minorities’. The document reads as follows:

"The prevention of discrimination means the suppression or prevention of any conduct which denies or restricts a person's right to equality.

The protection of minorities...although similarly inspired by the principle of equality of treatment of all peoples, requires positive action...such as the establishment of schools in which education is given in the native tongue of the members of the group...The protection of minorities therefore requires positive action to safeguard the rights of the minority group, provided of course that the people concerned...wish to maintain their differences of language and culture".134

Not surprisingly, the HRC accepted the two-pillar system of minority protection and strictly noted that rights for persons belonging to minorities under the Article 27 goes well beyond the guarantees established with the non-discrimination and equality provisions in ICCPR (Articles 2 and 26).135 Simultaneously, the Committee deduced a duty for States to adopt positive measures in order to “protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practice their religion”.136 Indeed, if this is not the case, Article 27 is de facto a redundant provision with no tangible substance.

Some authors vehemently reject the two-pillar system of minority protection, contending that the needs of minorities can be adequately accommodated via individual human rights accompanied by principles of equality and non-discrimination. In Rodley’s view, individual minority rights could even be rendered superfluous, since, supposedly, much of their core may be covered with “enlightened interpretation of the norms against discrimination which cover indirect discrimination and compensatory positive action, as well as the right to freedom of association and certain other substantive rights”.137 On the other side, Thornberry noted that the ‘prevention of discrimination’ principle, if it is not accompanied with special rights for persons belonging to minorities, “may be seen as a means of flattening out differences between cultural and religious groups and promoting assimilation, no doubt in the interests of the dominant culture”.138

134 F. Capotorti, Study on the Rights of Persons Belonging..., supra note 52, para. 238.
135 HRC, General Comment No. 23: Article 27 (Rights of Minorities), supra note 85, para. 4.
136 Ibid, para. 6.2.
Indeed, Henrard noted that the extent to which the principle of non-discrimination can contribute to minority protection may be analyzed through the readiness of the former to move towards substantive equality, protection and promotion of the right to identity.\textsuperscript{139} If such developments are identified, this could prospectively impact on the relevance of the two-pillar system, as an appropriate one for minority protection. Human rights jurisprudence in recent decades witnessed some innovative mechanisms and concomitant openness of the judicial/semi-judicial organs and treaty bodies to accepting notions such as indirect discrimination, the duty to differentiate in order to promote equality and protection, and occasional acceptance of positive action measures.\textsuperscript{140} Inevitably, the more sensitive a society is to the principle of non-discrimination on ethnocultural differences, the broader the scope of protections it might offer. However, before concluding that this approach equates to minority protection and promote identities of minorities, one must assess whether the essence of special measures derived from the non-minority specific instruments is the same as the ones advocated by the two-pillar system.

Importantly, the International Convention on the Elimination of Racial Discrimination (CERD) prescribes the possibility for adopting special/affirmative action measures for the purpose of securing full and equal enjoyment of human rights and fundamental freedoms for all.\textsuperscript{141} In addition, HRC with respect to equality provisions in ICCPR recommended that States “take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant”.\textsuperscript{142} Notwithstanding these propositions, according to CERD, such affirmative measures are temporary, and cannot “lead to the maintenance of separate rights for different racial groups and...they shall not be continued after the objectives for which they were taken have been achieved”.\textsuperscript{143} The CERD/C also stressed that “separate rights” must be distinguished “from rights accepted and recognized by the international community to secure the existence and identity of groups such as minorities [and] indigenous peoples”.\textsuperscript{144}

All in all, one may deduce that special rights for minorities, unlike affirmative action measures adopted to achieve equality and non-discrimination, are “essentially permanent which are intended to safeguard the identity of certain group”.\textsuperscript{145}

\textsuperscript{140} Ibid, pp. 17-19.
\textsuperscript{142} UN Human Rights Committee (HRC), CCPR General Comment No. 18: Non-discrimination, 10 November 1989, para. 10.
\textsuperscript{143} International Convention on the Elimination of All Forms of Racial Discrimination, supra note 141, Art. 1, para. 4.
\textsuperscript{145} G. Pentassuglia, Minorities in International Law, supra note 60, p. 91.
In conclusion, it can be stressed that the principle of non-discrimination and its move towards substantial equality for minorities do not undermine the two-pillar system for minority protection. In the words of Henrard, an adequate system of minority protection would have to recognize “the need of special minority rights in addition to the prohibition of discrimination in combination with general human rights”.146

E. Relation between the Rights of Minorities and of Indigenous Peoples

One final issue that needs to be clarified is the relation and differences between minorities and indigenous peoples, and, respectively, the nature of rights ascribed to their respective members by international law. It is arguable that the UN has strictly separated the two issues, since two declarations and two separate working groups exist.147 Nevertheless, the vast majority of cases before the HRC concerning alleged breaches of Article 27 of the ICCPR, which prescribes minority rights, were initiated by members of various indigenous peoples worldwide.148 Jabareen noted that the minority article in ICCPR and those in the UN Declaration on Minorities do not cover all aspects and needs of indigenous peoples, an argument which has been used to justify the separation of indigenous peoples and their group-defining rights from the corpus of minority rights.149

First and foremost, we should underscore that international law does not provide legally binding definitions of ‘indigenous peoples’. Likewise, the UN Declaration on the Rights of Indigenous Peoples avoids the definitional question. However, former UN Special Rapporteur Martinez Cobo, in his study on discrimination against indigenous peoples, offered a working definition of indigenous peoples, primarily focused on those communities in the “settler-countries” established by European colonization of the Americas which have “historical continuity with pre-invasion and pre-colonial societies”.

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147 UN General Assembly adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities on 3 February 1992, whereas Declaration on the Rights of Indigenous Peoples was passed some 15 years later on 2 October 2007. Additionally, it is worth noting that former Working Group on Indigenous Population existed separately and independently from the former Working Group on Minorities and was active in the period 1982-2006. Following the establishment of UN Human Rights Council in 2006, both working groups were disbanded, and whereas the former was replaced with an Expert Mechanism on the Rights of Indigenous Peoples, the latter was replaced with Forum on Minority Issues. See: Dieter Kugelmann, The Protection of Minorities and Indigenous Peoples Respecting Cultural Diversity, in A. von Bogdandy, R. Wolfrum (eds.), Max Planck Yearbook of United Nations Law, Vol. 11, 2007, pp. 233-263, pp. 257-260.
148 Ibid, p. 262.
150 The Special Rapporteur’s definition reads as follows: “Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories,
definition set forth in the ILO Indigenous and Tribal Population Convention is more inclusive, stating that peoples are regarded as indigenous on account of “their descent from the population which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions”.

Will Kymlicka distinguishes indigenous peoples from national minorities on the premise that “national minorities have been incorporated into a larger state dominated by a neighboring European state whereas indigenous peoples have been colonized and settled by a distant colonial European power”. Hence, vulnerability of indigenous peoples usually comes from the fact that “the subjugation and incorporation of indigenous peoples by European colonizers was a more brutal and disruptive process than the subjugation and incorporation of national minorities by neighboring societies”. Finally, while national minorities mostly accept and adjust themselves to the dominant way of life in all fields, “indigenous peoples are often assumed to have retained pre-modern modes of economic production, engaged primarily in subsistence agriculture or a hunter-gathered lifestyle”.

It follows that indigenous peoples tend to invoke their attachment to a particular homeland and special relationship with native lands as essential factors defining the group’s identity and their distinctiveness from other types of minorities. With this in mind, the ideal type of ‘indigenous people’, in the words of Daes, focuses on “aboriginality, territoriality, and the desire to remain collectively distinct, all elements which are tied logically to the exercise of the right to internal self-determination, self-government, or autonomy”.

It therefore seems plausible to contend that the UN’s “principal legal distinction” between the rights of minorities and those of indigenous peoples is primarily concerned with the right of “internal self-determination”. Indigenous peoples are entitled to internal self-determination that usually includes...
“the right to govern itself within a recognized geographical area, without State interference”, and, as such, this right inevitably requires a “considerable degree of self-management and control over land and other natural resources”. This approach is clearly based on assumptions that minorities generally seek integration, individual rights and non-discrimination, whereas indigenous peoples seek institutional separateness, collective rights and the right to self-government.

There are certainly strong grounds for challenging this delineation of minorities and indigenous peoples. Kymlicka pointed out that the assumed differences between supposedly autonomy-seeking indigenous peoples and integration-seeking minorities might only occur in the context of ‘new minorities', immigrants seeking integration in their new societies. Conversely, though, national minorities, by and large, seek individual as well as collective rights, self-government and have strong attachments to their traditional territories. Indigenous peoples and national minorities, as Aukerman underscored, “share the goal of preserving their distinctive cultures, and justify their claims to group-differentiated rights with similar appeals to self-determination, equality, cultural diversity, history, and vulnerability.” Rightfully, legal arguments that paved the way towards separate socio-cultural institutions, collective rights and degrees of internal self-determination for indigenous peoples might be legitimately invoked by representatives of national minorities too. Nonetheless, at present, due to realpolitiks, it is inconceivable that norms presupposing collective rights and institutional separateness for indigenous peoples will be extended to national minorities.

All these considerations reveal significant overlapping in the justifications for minority protection and the rights of indigenous peoples. Regardless, we must recognize that "indigenous peoples are in most cases also national minorities, while national minorities are in many cases not equal to indigenous peoples". This conclusion is derived from the unique characteristics of indigenous peoples, their descent from populations that inhabited their country at the time of conquest or the establishment of present state boundaries. Another difference is, as underscored by Kugelmann, that “the protection of indigenous peoples is a problem of striving for exclusion and preventing inclusion, whereas the protection of minorities is often a problem of striving for inclusion and preventing exclusion”. Furthermore, one cannot ignore the indigenous attachment to land, since much of their traditional patterns

157 Ibid, paras., 15, 43.
158 W. Kymlicka, The Internationalization of Minority Rights, supra note 152, p. 11.
160 M. Aukerman, Definitions and Justifications..., supra note 150, p. 1045.
161 See: W. Kymlicka, Multicultural Odysseys..., supra note 159.
163 Ibid.
of land usage, collective ownership and spiritual or religious ties to land are not characteristics shared by national minorities.\(^{165}\)

As a final remark, it is clearly evident that contemporary international law predominantly prescribes individual rights to persons belonging to minorities that concomitantly may be exercised collectively. Due to various considerations and fears of autonomy/secession claims, "the specific granting of collective rights to minorities can be only rarely observed in state practice or treaty law".\(^{166}\) Conversely, “collective approach is realized in favour of indigenous peoples who enjoy benefits as a group, not only as an assembly of persons realising their individual rights”.\(^{167}\) Again, one may contend that political instead of clear legal arguments determine the permeability of collective rights for indigenous peoples and the negation of such rights to minorities, but, whatever the explanation, general tendencies in the field have unequivocally separated these two closely related concepts in modern human rights law.

### 2.2. The Evolution of Protection of Minorities in International Law

This section intends to briefly outline how minority protection evolved as a separate issue in international law, with special focus on the main international gatherings and congresses, which more or less determined the development of modern international law. In that manner, it would be reasonable to argue that, in fact, the history of minority protection in international law is intimately connected to the gradual development of international law as a whole, as Asbjorn Eide rightly observed.\(^{168}\) Therefore, the review below aims to show that the prevailing contemporary concept of minority protection developed slowly, with considerable hesitation from States (the main subjects of international law), as a consequence of a popular belief that these, rather contentious issues, are exclusively within their domestic jurisdiction.

#### A. Minority Protection prior to World War I

We can trace the emergence of some aspects of what is today known as minority protection back several centuries. This is not to suggest that these sporadic efforts correspond with the modern system of minority rights as such, but it is nevertheless worth bearing them in mind when we approach a history of minority protection.

\(^{165}\) See: M. Aukerman, *Definitions and Justifications…*, supra note 150, p. 1039.

\(^{166}\) *Ibid*, p. 262.

\(^{167}\) *Ibid*.

The first widely quoted precedent for minority guarantee is St Louis of France’s promise in 1250 to protect the Maronites of Lebanon as if they were French subjects.169 The promise, contained in a letter to the Emir, Patriarch and Bishop, presents a unilateral act for protection of foreign subjects. This promise renewed twice: in 1649 by Louis XIV and again, almost a century later, by Louis XV in 1737.170

1. Peace of Westphalia (1648) and Its Legacy

The precedent in international law and international relations for protecting minorities by treaties is usually attributed to the Peace of Westphalia of 1648.171 The Westphalian gathering is considered a milestone in international relations, when “the horizontal, feudal medieval society of medieval Christendom had clearly been replaced by a modern, vertical society of sovereign states”.172

It is unsurprising that the Peace of Westphalia, bringing closure to the Thirty Years War, focused exclusively on religion in what is considered to have been the first crucial attempt to formulate minority rights in a peace treaty, considering that religious affiliation (Catholics or Protestants, Lutherans or Calvinists) was the major dividing line between the various powers and communities in Europe.173 Despite the territorial redistribution among the belligerent parties, the two treaties of Osnabruck and Munster, collectively known as the Peace of Westphalia, contained provisions which granted certain concessions to members of the Protestant community. Essentially, these provisions provided free exercise of their religion as well as the restitution of churches and ecclesiastical estates possessed by them in the year 1624.174

Thus, while on the one hand the Peace of Westphalia established the modern concept of state sovereignty, one the other hand it simultaneously restricted state sovereignty with provisions for protection of religious minorities.175 Furthermore, we must be aware that in these treaties, “the principle of liberty of conscience was applied only incompletely and without reciprocity”, as Leo Gross points

169 See: P. Thornberry, International Law and the Rights of Minorities, supra note 55, p.27.
170 Ibid.
171 The earlier examples in this context which are relevant for the subject of the research are the Austro–Ottoman Treaty of 1615, which prescribed protection of religious rights for Christians of all denominations in the Balkan region of the Ottoman Empire, and the Treaty of Vienna between the King of Hungary and the Prince of Transylvania from 1607, which granted free exercise of religion for the Protestant minority in Transylvania. See: Ibid.; Rein Mullersson, Human Rights Diplomacy, Routledge, New York, 1997, p.19
174 Treaty of Peace between the Holy Roman Emperor and the King of France and their respective Allies, signed at Munster in Westphalia, 24 October 1648, Article 28. It is worth noting that members of the Protestant community in the treaties are designated as ‘those of the Confession of Augsburg’.
out. Furthermore, in general, the rule *cuius regio eius religio* (whose region, his religion), established by the Peace of Augsburg in 1555, found confirmation in the Peace of Westphalia of 1648.  

In addition, there were also some other major treaties from seventeenth and eighteenth century which to a large extent followed the approach established by the treaties of Osnabruck and Munster. For instance, the Treaty of Oliva of 1660, by which Poland and the Great Emperor ceded Pomerania and Livonia to Sweden, guaranteed the enjoyment of pre-existing religious liberties for inhabitants living in the ceded territories. Similarly, the Treaty of Nijmegen (1678) and the Treaty of Ryswick (1698), both concluded between France and Holland, granted freedom of worship to the Roman Catholic minority in the territory ceded by France to Holland. Finally, as Liebich noted, with the Peace of Paris (1763), which ceded French Canada to Great Britain, with the latter agreed to grant some concessions to the Catholics in the ceded area, the principle of guaranteeing religious rights as compensation for territorial acquisitions moved beyond Europe.  

A common feature of these treaties is that provisions concerning religious minorities were usually limited to the ceded area, which effectively means that co-religionists who were already subjects of the sovereign entity expanding its territory were explicitly excluded from enjoying the newly prescribed religious liberties. In effect, these treaties enshrined a religious *status quo ante* that simultaneously "reduced the losses of those who were ceding the territory and the gains of those acquiring it."  

These early attempts for prescribing rights for religious minorities, according to Danilo Turk, illustrate the relevance of minority issues to the newly established international system based on the concept of territorial sovereign States, and moreover reveal that minority situations, even though at the time exclusively related to religious affiliation, progressively became an appropriate subject matter for international legal regulation.

2. *The Congress of Vienna (1815)*

Multiple events between the closing decades of eighteenth and the beginning of nineteenth century significantly influenced the conduct of key actors in international affairs. Namely, whereas the American Revolution brought to the fore the notion of individual rights, as well principles of political representation and the consent of the governed, the French Revolution and Napoleon's campaigns in

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180 Ibid, at p.251.
Europe combined the idea of fundamental rights with the concept of the rights of nations.\(^{182}\) These developments paved the way towards a need to find solutions for a new ‘phenomena’: nationalism and its fundamental goal, the establishment of the nation-state. But the “transformation of international society from an association of princes to one of nation-states was a gradual process spanning several generations”\(^{183}\).

It wasn’t until the Congress of Vienna (1815) that question of ‘nationality’ emerged as separate issue at the international arena. Statesmen gathered in Vienna to discuss the status of Poland – which had been partitioned in 1772, and again in 1795, between Russia, Prussia and Austria – inserted a provision in the Final Act prescribing the protection of Poles in the three mentioned States as a national rather than religious minority.\(^{184}\) Article 1 of the General Treaty reads as follows:

> The Poles, respectively subjects of Russia, Austria and Prussia, shall obtain a representation of their National Institutions regulated according to the mode of political existence that each of these Governments to which they belong will judge useful and appropriate to grant them.\(^{185}\)

According to Liebich, this unprecedented attempt, “to adumbrate what may be anachronistically referred to as national minority rights”, was the most fateful innovation of the Congress of Vienna.\(^{186}\) As was the case with almost every post–Westphalia treaty, “minority protection was extended to compensate a losing party and to limit a victor’s enjoyment of his newly acquired possessions. In this case, however, the subjects of compensation were only notionally and indirectly rewarded”.\(^{187}\)

Another important precedent of the Vienna Final Act, which extends far beyond religious freedom, is the stipulation of civil and political rights for the communities transferred from one sovereign authority to another. Thus, the people of Bern and the bishopric of Basel transferred to the Cantons of Bern and Basel were guaranteed equal political and civil rights with the rest of population regardless of their religious affiliation. Same guarantees, with respect to cessions made by the Kingdom of Sardinia to the Canton of Geneva, were prescribed for the population in the ceded territory.\(^{188}\)

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\(^{185}\) The General Treaty of the Final Act of the Congress of Vienna, signed between Austria, France, Great Britain, Portugal, Prussia, Russia and Sweden, 9 June 1815, Art. 1.


\(^{187}\) Ibid, p. 255.

3. **Eastern Question and the Congress of Berlin (1878)**

This wave of treaties stipulating protection for minorities continued throughout the nineteenth century. Subjects of the Ottoman Emperor commenced various national struggles for independence during this period, and in most cases where independence was achieved, the treaties recognizing the new reality guaranteed the rights of Muslim minorities in the newly defined territories. In any case, conditioning the new members of the international community to comply with principles of civil liberties and minority rights was beyond the traditional criteria for establishing sovereign state and diplomatic (formal) recognition. For instance, the London protocol of 1830, which declared the independence of Greece, presupposed that the latter would respect the rights of Muslims within its territory, which apart from free exercise of their religion included the freedom to maintain religious institutions.

Finally, at the Congress of Berlin of 1878, the Great Powers met to resolve the national struggles of the Balkan peoples and their nationalistic ambitions. The Treaty of Berlin of 1878, proclaimed Romania, Serbia and Montenegro as independent countries, the Bulgarian principality substantial enhanced its autonomy, while Eastern Roumelia was returned to the Ottoman Empire, with special status and administrative autonomy. As stated above, recognition of independence for these Balkan countries was dependent upon the acceptance of the following provisions, worded identically for each of them:

The difference of religious creeds and confessions shall not be alleged against any person as a ground for exclusion or incapacity in matters relating to the enjoyment of civil and political rights, admission to public employments, functions and honors, or the exercise of the various professions and industries in any locality whatsoever.

The freedom and outward exercise of all forms of worship are assured to all persons belonging to (Bulgaria, Montenegro, Serbia, Romania - DT) as well as to foreigners and no hindrance shall be offered either to the hierarchical organization of the different communions or to their relations with their spiritual chiefs.

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190 See: A. Liebich, *Minority as inferiority: minority rights in historical perspective*, supra note 175, p. 257. The same duties were reiterated in the following decades, when the territory of Greece was substantially expanded, starting with Ionian Islands in 1863 and then with Thessaly in 1881. In the Ionian Islands Treaty of 1864, equality in the secular spheres, accompanied with protection of Catholics and the possessions of the Roman Catholic Church were specifically stipulated.
191 See: Vladimir Ortakovski, *Minorities in the Balkans*, 2 August S, Shtip, 1998, pp. 58-59. As for the remaining Balkan provinces that remained under Ottoman sovereignty (Macedonia, Crete, Albania, Kosovo), the latter was obliged to appoint a special commission for each, where the native element would be largely represented, with a view to study the situation and needs of its population and to propose provincial laws adapted to local requirements that prospectively would improve the situation and rights of all subjects (Article XXIII).
192 Treaty between Austria-Hungary, France, Germany, Italy, Russia and Turkey for the Settlement of Affairs in the East, signed in Berlin, 13 July 1878, Articles V, XXVII, XXXV, XLIV. In the provision stipulating the duties of new the Romanian state, one additional extends the previously indicated protection to the subjects and citizens of all the Powers who were resident in Romania.
According to Thornberry, the broad array of clauses prescribing minority rights in peace treaties allows us to speak about the “tradition of minority protection in international law.” Nevertheless, the poor practical implementation of these treaties was a critical weakness of the nascent system of minority protection with special treaties prior to World War I. As Claude concluded, meager results of the whole system emerged basically from "inadequacy of its scope, the vagueness of its substantive provisions, the rudimentary nature of its machinery and organization, and the uncertainty, ineffectiveness and susceptibility to abuse its sanctions".

B. The League of Nations System of Minority Guarantees

The Paris Peace Conference of 1919, in the aftermath of World War I, faced the unprecedented collapse of the Ottoman, Romanov, Habsburg and Hohenzollern empires as well as the courageously idealistic Wilsonian and Leninist rhetoric of self-determination. Woodrow Wilson, who envisioned the post-war settlement in Europe, proposed several options for oppressed nationalities. Due to the fact that only territories of defeated States were on the table for redrawing borders, and partly to “Wilson’s own unequal sympathies for different nationalities”, the ‘self-determination puzzle’ was far from completely resolved in Europe. Indeed, for some identifiable people, independent statehood was a possible and desirable solution, whereas plebiscites were the fate for several disputed areas. At the same time, for ethnic groups considered to be too small or too dispersed to form a nation-state, a special regime for minority protection was established. As the Great Powers debated reconfiguring the European map, creating new states, and the inevitable minority issues that would be generated, they began discussing the creation of an international organization, namely the League of Nations.

The Committee on New States was set the difficult task of determining post-war boundaries in Europe, with different ethnic communities intermingled throughout almost every region in Central and Eastern Europe. Hence, the Committee made recognition of new and enlarged States in Europe conditional upon their acceptance of certain obligations to their minorities. This was effectively a continuation of the century-old strategy of imposing minority arrangements on new members of the international community.

193 P. Thornberry, International Law and the Rights of Minorities, supra note 55, p. 32.
It is important to note that these new and enlarged States were promptly proclaimed as members of the League of Nations and provided a *cordon sanitaire* between the defeated Germany and Bolshevik Russia.\(^{199}\) This sequence of events epitomizes the premise that “*questions concerning the status of minorities usually come to the forefront of international relations at precisely those moments when a new international order is being established*.\(^{200}\)

1. **Minorities Treaties**

A remarkable approach to the protection of minorities emerged from the Peace Conference. Wilson’s initial proposal for inserting compulsory provisions for minorities in the Covenant of the League of Nations was intentionally dropped due to objections from Britain.\(^{201}\) Hence, the instruments that made provisions for minorities of various States differed, largely dependent upon their position in the international community according to the status-quo established at Versailles.

Thus, in accordance with decisions taken at the Peace Conference, each of the newly created or enlarged States concluded separate minority treaties with the Allied powers. The initial minority treaty was signed by Poland, which concomitantly served as a model for other treaties signed by Kingdom of Serbs, Croats and Slovenes, Czechoslovakia, Romania and Greece.\(^{202}\) The latter treaties essentially reproduced the content and terminology of the Polish treaty.

Alternatively, defeated States were bound to respect their minorities with special minority clauses inserted in treaties of peace which ended the hostilities and thus the war. In that manner, each of the treaties concluded between the Allied powers and Austria, Hungary, Bulgaria and Turkey prescribed the rights of minorities.\(^{203}\) In essence, these provisions were the same as those previously mentioned.

As for the States not included in these two groups, one notorious resolution passed by the League’s Assembly stated that “*in the event of Albania, the Baltic and the Caucasian states being admitted to the League, the Assembly requests that they should take the necessary measures for enforcing*

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\(^{200}\) J. J. Preece, *Minority rights in Europe: from Westphalia..., supra* note 173, p. 76.


the principles on the minorities treaties, and that they should arrange with the Council the details required to carry this object into effect”. Consequently, resolution was used as a legal basis for declarations made by Albania, Lithuania, Latvia, Estonia and Iraq claiming that they adhered to the principles envisaged in the minorities’ treaties. Finally, provisions of this type had been stipulated in treaties relating to the territories of Upper Silesia, Danzig and Memel, as well in the agreement regarding the Swedish–speaking population in the Aaland Islands.

The aspirations of various minorities for recognition as distinct national groups were not fulfilled. They were designated in the treaties as “nationals who belong to racial, religious or linguistic minorities,” which soon became the dominant label for minorities. In the ensuing decades, despite its slight modification, this designation clearly outlived the League.

Generally, these treaties contained provisions that regulated: the full and complete protection of life and liberty for all inhabitants in a given state, accompanied with free exercise of any creed, religion and belief that is consistent with public order; equality before the law and enjoyment of same civil and political rights for all citizens without distinction of race, language, religion; the principle that differences of race, language or religion would not prejudice any citizen’s admission to public employments, functions and honors; free usage of mother language in private intercourse, commerce, religion, press and imposing a duty on the state to establish facilities for minority languages to be used before the courts; equal treatment and security both in law and in fact for members of minorities; equal right to members of minorities to establish, control and manage on its own expense charitable, religious, social and educational institutions accompanied with the right to use their own language and to practice their own religion within them; providing primary education in minority language in districts where minorities are a considerable proportion of the total population; and receiving an equal share of public funds for education, religious or charitable purposes.

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204 A. Eide, Minority Situations: In Search of Peaceful..., supra note 168, p. 1317.
205 Declaration Concerning the Protection of Minorities in Albania, Geneva, October 2, 1921; Declaration Concerning the Protection of Minorities in Lithuania, Geneva, May 12, 1922; Declaration Concerning the Protection of Minorities in Latvia, July 7, 1923; Declaration Concerning the Protection of Minorities in Estonia, September 17, 1923; Declaration Concerning the Protection of Minorities in Iraq, May 9, 1932. See: P. Thornberry, Is There a Phoenix in the Ashes?..., supra note 203, footnote no. 38 at p. 430.
206 Convention between Poland and Free City of Danzig, November 9, 1920; Convention between Germany and Poland Relating to Upper Silesia, May 15, 1922; Convention Concerning the Territory of Memel, May 8, 1924; Agreement between Sweden and Finland regarding the Aaland Islands, June 27, 1921. According to Prof. Danilo Turk, the following bilateral treaties, despite the fact that they were not guaranteed by the League, contained minority clauses and were also part of this group: Treaty between Austria and Czechoslovakia, June 7, 1920; Treaty between Poland and Czechoslovakia, April 23, 1925; Treaty between Russia and Turkey, November 20, 1920. See: D. Türk, Protection of Minorities in Europe, supra note 181, footnote no. 25 at p.156.
208 The order of rights was used from the Polish treaty. In addition to these provision, some of the treaties contained special guarantees and rights for some minorities and communities that were considered vulnerable and whose religious or cultural practices required special protection. Such was the situation with Jews in Poland, Romanians and Greece, Vlachs in Pindus (Greece), non–Greek speaking monastic communities in Mount Athos, the Muslims in Yugoslavia, Greece and Albania, the Szeklers and Saxons in Romania, as well as Ukrainians in Czechoslovakia. See: J. J. Preece, National Minorities and the European..., supra note 46, p. 76-78.
It should be recalled that PCIJ Justice used its jurisdiction to interpret the fundamental purpose of said treaties. Its advisory opinion in the case of *Minority schools in Albania*, where Court clearly revealed:

“The idea underlying the treaties for the protection of minorities is to secure for certain elements incorporated in a State, the population of which differs from them in race, language or religion, the possibility of living peaceably alongside that population and cooperating amicably with it, while at the same time preserving the characteristics which distinguish them from the majority, and satisfying the ensuing special needs.”

The Court emphasized that two “interlocked requirements” were indispensable for “preserving the characteristics” of minorities. First, the treaties aimed to ensure that there is “perfect equality” between persons belonging to minorities and other nationals of the state, and simultaneously, “to ensure...suitable means for the preservations of their racial peculiarities, their traditions and their national characteristics”.

It is amply evident that these treaties guaranteed rights to members of minorities as individuals rather than as collective rights. Dinstein, however, interpreted the individualistic-oriented wording in the treaties in a collectivistic manner. He argued that, "no individual is capable of establishing, managing and controlling a fully-fledged school by himself and for himself". Wippman’s legal arguments, though, seem to be more convincing, when he observes that, “special measures designed to enhance the ability of minorities to enjoy group-specific interests, including language, religion and culture, had the practical effect of advancing the interests of minorities as collectivities”. It is also worth noting that, apart from ascribing rights, the League simultaneously imposed a duty on the minorities to “cooperate as loyal fellow-citizens with the nations to which they belong”.

Ultimately, minority treaties expanded the notion of minority rights with the inclusion of language rights and minimal degrees of cultural protection, accompanied by civil and political rights. Another substantial achievement was that minorities treaties were guaranteed by international organization, i.e. League of Nations. Or, in Thornberry’s words, “the League Council and Permanent Court were the twin pillars, political and judicial, of the guarantee”. Accordingly, these newly

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revealed perspectives made the experience of the League of Nations to be considered as the most important engagement of a single international organization in the area of international legal protection of minorities.  

2. **Minority Petitions Procedure and Its Efficiency**

Probably the most innovative feature to originate from the League's Council (rather than its minorities treaties) was the petition procedure. Petitions were written communications that could be lodged to the League’s Council from various stakeholders in cases where there state infractions of the rights and duties stipulated in the treaties were alleged. While it was crucial that minorities were recognized subjects that could alert the League of Nations about treaties infringements, they did not possessed *locus standi* in the procedure that took place at the Council.

Once a petition was submitted to the League’s Secretary-General, the Secretariat’s Minority Section considered whether it satisfied the necessary conditions. Where the procedural requirements were fulfilled, the petition was forwarded to the State concerned, which had a specified time frame in which to respond. In the later stage, all of the material related to the case was submitted to the members of Council. Then, the Committee of Three established by the Council undertook a thorough examination of the case. There were three possible outcomes at this point, namely the Committee might dismiss the charge as unfounded, secure a remedy after negotiations with the State concerned, or forward the case for examination by the Council as a whole. Finally, if it was necessity for the case to be dealt with by the Council, a representative of the accused state was a member of the Council, and a decision could not be reached without its concurring vote, which means that settlement could only be achieved by compromise.

One peculiarity is that, at the initial phase, the non fulfillment of a duty to avoid usage of 'violent language' in petitions served more often as basis for their inadmissibility than any other reason. In the

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218 *Ibid*, p. 45. The main premise for denying legal standing of minorities before the Council and the PCIJ was to avoid public confrontation between states and their minorities. This was a concession to the treaty-bound states’ concerns about alleged encroachment on their sovereignty.

219 According to the procedural rule established in 1923, with a view to be accepted, the petition must have satisfied these prerequisites: 1) must have had in view the protection of minorities in accordance with the treaties; 2) must not have been submitted in the form of a request for the severance of political relations between the minority in question and the state of which it is a part; 3) must not have emanated from any anonymous or unauthenticated source; 4) must have abstained from violent language; and 5) must not have contained information or referred to facts which had recently been the subject of a petition submitted to the League. See: J. J. Preece, *National Minorities and the European..., supra* note 46, p. 81.


221 Jane K. Cowan, *Who’s Afraid of Violent Language: Honour, Sovereignty and Claims – Making in the League of Nations*, Anthropological Theory, Vol. 3, 2003, pp. 271-291, p. 275. Minorities Section acted according to the resolutions that established the petition procedure, which basically accepted the arguments of treaty-bound states, that were anxious to consolidate its
same time, it should be reiterated that out of some 500 petitions that were considered receivable only fourteen were submitted to the Council.\footnote{222}{D. Türk, Protection of Minorities in Europe, supra note 181, p.158.} As Fink noted, “Committee of Three became the agency for settling minority cases out of court”, despite its task to make a decision based solely on possible recourse to Council.\footnote{223}{C. Fink, The League of Nations and the Minorities Question, supra note 195, p. 200.} Not surprisingly, the vast majority of cases were concluded by negotiation due to the states’ sensitivity to minority claims.

The petition procedure was most frequently used by the Germans and Hungarians, i.e. so-called ‘strong’ minorities. Each of them had a kin-state, openly opposed to the territorial redistribution in Europe after the war, and hence representatives from the said minorities used every opportunity to present their unhappiness with being ‘separated’ from people with whom they shared ethnic and linguistic features.\footnote{224}{See: J. J. Preece, National Minorities and the European..., supra note 46, pp. 84-85.} In the Balkans, the greatest users of petitions were persons affiliated with the Macedonian organization IMRO, which reacted strongly to the discriminatory policies enacted by Serbian and Greek authorities against their Macedonian populations.\footnote{225}{J. Cowan, Who’s Afraid of Violent Language?,..., supra note 221, pp. 275-277.}

3. Failures and Accomplishments of the League of Nation’s System of Minority Protection

The main deficiency of the League’s system was that it encompassed particular states, but omitted the great powers. As Mazower noted, suggestions of making the minority rights regime universal rather than particular were immediately dismissed.\footnote{226}{See: Mark Mazower, The Strange Triumph of Human Rights, 1933-1950, The Historical Journal, Vol. 47, No. 2, 2004, pp. 379-398, p. 382.} The great powers also blocked a Japanese proposal that the League commit itself to racial equality, despite support from other states.\footnote{227}{As Prof. Turk noted, Hitler’s Germany used the situation of the German minorities in Czechoslovakia and Poland as a pretext for its expansionist plans on territories in these two countries where Germans were a significant proportion of the population. See: D. Türk, Protection of Minorities in Europe, supra note 181, p.159.} Moreover, when it became clear that the great powers were not prepared to change the system, Poland unilaterally denounced its treaty obligations in 1934.\footnote{228}{See: T. Musgrave, Self-Determination and National Minorities, supra note 217, pp. 56-57.} Such an attitude on the part of Poland, on the eve of the emergence of an ideology that brought the world into a second world war – Nazism, paved the way for the total demise of the League of Nations.
On the other side, minorities resented for their deprivation of legal standing and inability to directly challenge the treaty’s infractions before the Council. Moreover, they believed that petitions were intentionally dropped or declared inadmissible due to pressure by treaty-bound states. Last but not least, they sought more collective rights and even territorial autonomy.

Despite common knowledge of the League’s failure, there are some undisputed accomplishments which should not be overlooked. To name but a few, the principle that States are responsible for the decent treatment of minorities, precedents established with the ‘petition procedure’ for registering complaints, the concept of an international organization as a guarantor of treaties, the idea of a ‘world court’ with prescribed authority to adjudicate or produce advisory opinions as a possible dispute settlement mechanism among States are certainly the most significant achievements.229 Similarly, the PCIJ and its advisory opinions contributed a lot to the legal clarification and delimitation of some contentious issues at the time. Acquisition of citizenship, equality in law and in fact between the majority and minority as well as the ‘definition of minority’ were issues on which the court indisputably contributed to the progressive development of international law.230

C. Minority Rights in the United Nations System

This section outlines the United Nations’ approach to the protection of minority rights. After a brief review of main trends and documents from the time of its foundation, key documents and provisions that prescribe, directly or indirectly, the rights of relevance for minorities are thoroughly analyzed. Then we will examine the equally important issue of the enforcement of said rights and freedoms, and assess the work of the bodies established to monitor the execution of various treaties.

1. Foundation of the UN and Its New Approach to Human Rights

As discussed above, the end of WWI marks the advent of the age of minority rights, though seriously lacking in universality. In stark contrast, the new world organization that was created in the aftermath of World War II, the United Nations, dedicated itself to the pursuit of individual human rights and “had little difficulty ignoring the preoccupation with minority issues that was the hallmark of its predecessor”.231 These tendencies were philosophically underpinned by the prevailing Western liberalism, focused on individual human rights and freedoms. As Mazower vividly describes it, “the

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229 R. Bilder, *Can Minorities Treaties Work?...*, supra note 216, p. 79.
230 Excerpts of advisory opinions which are relevant for the dissertation are cited in several chapters.
reassertion of the rights of the individual against the omnipotent state fitted smoothly into liberal political thought and seemed especially urgent to those people who felt that the war started because of the inherent bellicosity of dictatorships.”

Proponents of this rising system sought to convince the leaders of countries with different cultural background that the proposed approach would contribute more to world peace than other alternatives. By this, they meant that international activities for promoting individual human rights for all would concomitantly protect the individual rights of members of minorities, and thus, any additional efforts to defend distinct minority rights would be superfluous. Or, in the words of Wippman, as an alternative to promoting “a set of special protections for minorities applicable only to specially designed countries, they (UN–DT) devised a general system of protection resting on respect for universally applicable individual rights”.

To that end, two principles were considered to be of utmost importance for success of this ‘new wave’ approach of individualistic human rights. These two principles, the principle of equality in law and in the enjoyment of human rights by all citizens, regardless of ethnic, religious or linguistic origins, and the principle of non-discrimination provided cornerstones of the new tendencies in the UN human rights era.

One characteristic that fundamentally distinguishes the UN from its predecessor is that the League of Nations was strictly bound with territorial redistribution in Europe after WWI. The foundations of the UN, in contrast, were laid before any peace treaty and had no involvement in settling territorial disputes. On the contrary, despite debates and some well-grounded arguments for frontier revisions after WWII, the UN has basically confirmed the territorial status quo established at the Paris Conference of 1919.

1.1. Transfer of Minorities in the Aftermath of World War II

Not surprisingly, the post-war approach to the dilemma about continuing the League’s efforts in the field of minority protection or creating a completely new system was predetermined during the course of the war. It is well known that the behavior of German minorities before the outbreak of WWII provided strong evidence for the proponents of the complete dissolution of the system of minority protection. The whole process was further accelerated by attitudes of other minorities that had

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235 F. Capotorti, Study on the Rights of Persons Belonging…, supra note 52, para. 135.
236 J. J. Preece, National Minorities and the European…, supra note 46, p. 97. There are some exceptions, though. For example, for strategic reasons, the Potsdam Agreement revised the German/Polish and Polish/Soviet borders that had been subjected to ethnic cleansing and mass population transfers. See below at following sub-section.
intentionally used alliances with Hitler to create their own, short-lived, puppet states. These events, in combination with the atrocities against Jews, resulted in strong allied support for the Czechs and Poles desires to expel German minorities from their territories. Czechoslovakia’s president Beneš in 1942 clearly expressed the desires of the countries invaded by the Nazis to employ coercive measures in order to resettle their German minorities in postwar Germany. In fact, the underlying arguments in favor of such ‘punitive policies’ were the German minorities’ evident allegiance and obedience to Nazi policies, which had served as a fifth column in Germany’s neighboring countries.

Hence, in light of developments in the international arena after the war, the stipulation in the Potsdam protocol that approved the transfer to Germany of German minorities from Poland, Czechoslovakia and Hungary was to be expected. Various authors provide different estimates of the number of people affected by these transfers, but it is clear that approximately 6 million Germans who used to live in these countries found new homes in postwar Germany. Even though not directly addressed in the protocol, this decision also had repercussions for the German communities in Yugoslavia and Romania.

Other countries soon followed this approach, availing themselves of the opportunity to conclude agreements with neighbors for the exchange of minority populations. Such was the agreement between Hungary and Czechoslovakia that enabled the compulsory transfer of 200,000 Hungarians from Czechoslovakia to Hungary and some 200,000 Slovaks from Hungary to Czechoslovakia. Other cases include agreements between Italy and Yugoslavia, Poland and Soviet Union, Czechoslovakia and Soviet Union etc.

Scholars offer different explanations on whether these precedents were contrary to customary international law, or whether they should be seen solely as political precedents, a natural response to the Nazi atrocities and extraordinary circumstances after WWII. For instance, Thornberry noted that with

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240 At the Berlin Potsdam Conference leaders of the three allied countries USA, USSR and UK among others agreed on the following concerning the transfer of the German populations: “The Three Governments, having considered the question in all its aspects, recognize that the transfer to Germany of German populations, or elements thereof, remaining in Poland, Czechoslovakia and Hungary, will have to be undertaken. They agree that any transfers that take place should be effected in an orderly and humane manner.” See: P. Thornberry, International Law and the Rights of Minorities, supra note 55, p. 114.
242 Ibid.
244 One peculiarity of these agreements for transfer of populations is that they affected countries where frontier revisions took place, contrary to the general rule that arose from the Paris Peace Conference for restoration of territorial status-quo in Europe established after WWI. See: J. J. Preece, National Minorities and the European..., supra note 46, pp. 102-104.
population transfers of such scale, the right of millions of people to minority identity was denied, and as such, these precedents ‘promised a bleak future for minority rights’. 245

1.2. The UN’s Interpretation with respect to the Continuation or Expiration of Minorities Treaties Concluded under the Aegis of the League of Nations

One legal issue that arose in light of this new tendency to circumvent the concept of minority protection, was whether the ‘minority treaties’ concluded under the aegis of the League of Nations remained valid and in force for the states that had originally signed or adhered to them. The Secretary-General conducted a study for clarification of the said legal uncertainty. It assessed the ordinary causes for expiration or termination of treaties in customary law, and asked whether some of them could apply in the case of minority treaties. Special emphasis was given to the principle rebus sic stantibus, i.e. fundamental changes of circumstances. The concluding observations of the study have underlined that “the international decisions reached since 1944 have been inspired by a different philosophy. The idea of a general and universal protection of human rights and fundamental freedoms is emerging”. 246 This new philosophy, according to authors of the study, has clearly revealed that supposedly “it is therefore no longer only the minorities in certain countries which receive protection, but all human beings in all countries who receive a certain measure of international protection”. 247 It finally concluded that between 1939 and 1947 “circumstances as a whole changed to such an extent that, generally speaking, the system should be considered as having ceased to exist”. 248

Some scholars have disputed the legal foundations of these conclusions. As Prof. Turk notes, since the study was not expressly endorsed by any official organ of the UN, it could possibly be qualified as a legal opinion. 249 Furthermore, Turk argues, the final quote in the paragraph above does not “lead to the conclusion that the underlying fundamentals of the protection of minorities were abolished altogether”. 250 Akermark goes further, invoking Article 62 of the Vienna Convention on the Law of Treaties, which regulates cases where the clause rebus sic stantibus can properly be invoked as grounds

247 Ibid.
248 Ibid. p. 71. It is worth to note that there were two exceptions to the general conclusion regarding the extinction of the treaties, namely the bilateral agreement between Finland and Sweden concerning the Swedish-speaking population in the Aaland Islands and the Treaty of Lausanne between Greece and Turkey that prescribed protection of the Greek minority in Turkey and Muslim minorities in Greece.
250 Ibid.
for termination of the treaty. She concludes that, according to treaty law, the said clause could not be used by a third party (in the case the UN and its Secretary-General).\textsuperscript{251}


The UN Charter, in its preamble and several articles, enshrines the guarantee of human rights and fundamental freedoms for all human beings, regardless of differences, such as race, language, sex, origin. Article 2 of the Charter prescribes the purposes of the world organization, among which is the stipulation that the UN will act with a view to achieve ‘international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion’.\textsuperscript{252} Clearly, the idea of human rights is deeply embedded in the constituting document of the UN.

In sharp contrast, minorities and their needs are ignored in the Charter. The prevailing climate in international relations at the time considered minority rights to be ‘out of fashion’\textsuperscript{253} Nevertheless, one could assume that questions not explicitly indicated in the Charter are not strictly excluded from consideration by the UN, and therefore, cannot \textit{ipso facto} be declared to be totally outside the scope of the organization.\textsuperscript{254}

Several delegations at the UN Conference in San Francisco in 1945 favored inserting a declaration in the Charter indicating a set of human rights and fundamental freedoms. Despite the proclaimed aim of advancing human rights worldwide, these proposals were rejected. Instead, the Charter prescribed creating a commission for the promotion of human rights charged with a task to ‘prepare a bill of human rights’.\textsuperscript{255} Humphrey notes that in December of 1947, the Commission on Human Rights decided a forthcoming Bill to be composed of three parts, namely a declaration, an international multilateral convention and measures of implementation.\textsuperscript{256}

The General Assembly adopted the \textit{Universal Declaration of Human Rights} (UDHR) on December 10, 1948. The Declaration simultaneously represents a starting point and cornerstone in the UN’s efforts to disseminate the idea of human rights and fundamental freedoms across the world and among people of various cultures and religious affiliations.\textsuperscript{257} Even though it is a legally non-binding

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\item \textsuperscript{251} A. S. Akermark, \textit{Justification of Minority Protection…}, supra note 80, p. 121.
\item \textsuperscript{252} United Nations, \textit{Charter of the United Nations}, 24 October 1945, 1 UNTS XVI.
\item \textsuperscript{254} See: UN Secretary General, \textit{Study of the Legal Validity…}, supra note 246, p. 18.
\end{enumerate}
document, in its preamble, the Declaration proclaims its fundamental goal to become ‘a common standard of achievement for all peoples and all nations’.

Morsink, after analyzing the ‘key words and phrases’ in articles proclaiming civil and political rights, concludes that its inspiration was ‘the eighteenth-century philosophy of natural rights’. The main difference in the terminology is that ‘eighteenth century deism’ was clearly replaced with a ‘twentieth-century secular humanism’. Moreover, with the inclusion of economic, social and cultural rights in the document, the drafters ‘went consciously beyond the earlier declarations’ and widened the notion of human rights in the UN system.

It is important to emphasize that during the drafting of the Declaration, the idea that a principle of non-discrimination cannot protect the cultural aspects of minority identity were not unfamiliar. Morsink notes that at the opening session of the Commission on Human Rights, some delegates expressed the view that ‘the question of human rights was often equated with that of the protection of minorities’. Therefore, prior to the second session of the Commission on Human Rights, a special article was attached to the draft of the Declaration, which read:

In States inhabited by a substantial numbers of persons of a race, language or religion other than those of the majority of the population, persons belonging to such ethnic, linguistic or religious minorities shall have the right, as far as compatible with public order and security to establish and maintain schools and cultural or religious institutions and to use their own language in the press, in public assembly and before the courts and other authorities of the State.

However, the fate of this ‘minority provision’ was determined by the debates over the need for the inclusion of a special provision addressing ‘cultural genocide’ in the Convention on the Prevention and Punishment of the Crime of Genocide. In the end, the entire article was voted down, and the final text neglects to make any connection between the ‘prevention of discrimination’ and the ‘protection of minorities’. Thornberry notes that the omission of a ‘minority article’ in the UDHR negatively impacted the drafting of the ECHR, which in its own preamble trace its inspiration from the former.

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260 Ibid.
261 Ibid.
263 Ibid., pp. 1017-1018.
264 Ibid., pp. 1021-1028. Using the original documentation from sessions that took place at the Commission on Human Rights and in the Sixth Committee of the General Assembly, Morsink underscores that the attitude of states which voted against an article dedicated to ‘cultural genocide’ in the Genocide Convention significantly influenced their later votes at the Commission where the ‘minority article’ was dropped.
265 P. Thornberry, Is There a Phoenix in the Ashes?... supra note 203, p.443.
Nonetheless, one can not ignore the importance for minorities of Article 2, which declares that ‘everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’. Apart from an ordinary non–discriminatory restrictive interpretation that usually is conferred for such clauses, it can also be deduced that this article presupposes that person belonging to minorities will enjoy the rights contained in the document without any restriction or interference.

Notwithstanding the omission of the ‘minority article’ in the Universal Declaration, the General Assembly confirmed that the United Nations cannot ‘remain indifferent to the fate of minorities’. Hence, it passed a resolution which acknowledged that it was difficult to ‘adopt a uniform solution of this complex and delicate question’, and consequently, had decided ‘not to deal in a specific provision’ with various aspects of minority protection. Therefore, the General Assembly requested that the Commission on Human Rights and its subordinate Sub–Commission on the Prevention of Discrimination and the Protection of Discrimination, ‘make a thorough study of the problem of minorities’, with a view to the UN being able ‘to take effective measures for the protection of racial, national, religious or linguistic minorities’.

1.4. Activities of the Sub–Commission on the Prevention of Discrimination and Protection of Minorities

Initially, the UN’s Economic and Social Council (ECOSOC) had empowered the Commission on Human Rights to create two separate bodies, each tasked with studying its own subject, namely the 'prevention of discrimination' and 'protection of minorities' independently. However, in 1947, the Sub–Commission on the Prevention of Discrimination and Protection of Minorities emerged, and henceforth the two issues were an overlapping concern under the jurisdiction of one body. Arguably, the new opposition to the possibility of minority rights re–appearing on the UN agenda significantly shaped this solution.

265 UN General Assembly, Universal Declaration of Human Rights, supra note 258, Article 2.
267 The insertion of the phrase ‘in a specific provision’, according to Morsink, implies that the Declaration does protects the rights of minorities but does not do it in a particular provision due to the unavoidable political considerations in the process of its drafting. See: J. Morsink, Cultural Genocide, the Universal Declaration..., supra note 261, p. 1051.
268 UN General Assembly, Resolution 217 C (III), Fate of Minorities, A/Res/3217/C, 10 December 1948.
269 F. Capotorti, Study on the Rights of Persons Belonging..., supra note 52, para. 145. The Commission on Human Rights was created with a view to implement the human rights provisions in the Charter. Economic and Social Council directed the work of the former towards initiating studies and recommendations with regard to an international bill of rights, international conventions and declarations on civil and political rights, the protection of minorities and the prevention of discrimination.
In its early years, the Sub-Commission conducted or initiated via the Secretary-General several studies on various aspects of the notion of 'minority'. To name but a few, the publication dedicated to the definition and classification of minorities and the one for defining the expressions 'prevention of discrimination' and 'protection of minorities' are among the most widely quoted studies. Nonetheless, in 1954 the Sub-Commission decided to devote itself completely to the prevention of discrimination, and for the next two decades the minority question was only sporadically mentioned in its work. It was not until 1971 that Special Rapporteur Francesco Capotorti was tasked with conducting a study on persons belonging to ethnic, linguistic or religious minorities with respect to Article 27 of ICCPR. The study was completed and released in 1977 and remains unsurpassed as the most comprehensive research on the subject conducted under the auspices of the UN.

The article that addresses the most crucial aspects of the minority identity proposed by the Sub-Commission was inserted in the ICCPR, though with a slight modification. ICCPR Article 27 represents the most fruitful legacy of its work in modern treaty law, whereas many of its other endeavors, such as seeking to have a 'minority article' inserted in the UDHR and proposed solutions to some concrete situations involving minorities, were rejected by the majority of member states.

Finally, though not directly related to the protection of minorities, there were two procedures established by ECOSOC that empowered the Commission and the Sub-Commission to act properly in case of systematic and gross violations of human rights by any UN member state. The '1235' procedure prescribed an annual public debate within the Commission, focused on gross violations of human rights and, if needed, the possibility conducting in-depth investigation of the situation in a particular country with the appointment of a rapporteur. Furthermore, the '1503' procedure enabled the Commission to examine communications by individuals or NGOs about alleged violations if they reveal a consistent pattern of gross violations of human rights.

Here, it is worth briefly outlining the Sub-Commission's reasoning on the meaning of 'prevention of discrimination' and 'protection of minorities', produced at a time when 'minority question' was not off-limits for the Commission on Human Rights. The following considerations were offered:

"1. Prevention of discrimination is the prevention of any action which denies to individuals or groups of people equality of treatment which they may wish.

271 UN ECOSOC, Definitions of the expressions 'prevention of discrimination' and 'protection of minorities', E/CN.4/Sub.2/8; Definition and Classification of Minorities, E/CN/Sub.2/85, UN publication, Sales No. 50/XIV.3.
2. Protection of minorities is the protection of non-dominant groups which, while wishing in general for equality of treatment with the majority, wish for a measure of differential treatment in order to preserve basic characteristics which they possess and which distinguish them from the majority of population... It follows that differential treatment of such groups or individuals belonging to such groups is justified when it is exercised in the interest of their contentment and the welfare of the community as a whole. The characteristics meriting such protection are race, religion and language...

These considerations were further elaborated by the Secretary-General, according to whom, the main aim of the prevention of discrimination is to prevent ‘any act or conduct which implies that an unfavorable distinction is made between individuals solely because they belong to certain categories of groups in society’. With respect to the protection of minorities, besides the fact that it is ‘similarly inspired by the principle of equality’, nevertheless there is a need for ‘positive action’, with a view to ‘safeguard the rights of minority groups’, such as the right to the ‘establishment of schools in which education is given in the native tongue of the members of the group’.

As a final remark, we should emphasize that from 1999 until 2006 this body functioned under the designation Sub–Commission on the Promotion and Protection of Human Rights, when finally, in a sweeping reform of the UN human rights system, the Human Rights Council replaced the former Commission on Human Rights and its subordinate bodies.

2. Main Instruments for Protection of Minorities

2.1. Article 27 of the ICCPR

ICCPR was adopted by the General Assembly on 16 December 1966, along with the International Covenant on Economic, Social and Cultural Rights. Both treaties were regarded as a significant achievement of the UN and formed a fundamental part of what was known as International Bill of Human Rights.

The insertion of an article directly addressing the most essential aspects of minority identity was a considerable step-forward in the internationalization of minority issues in the human rights oriented UN. Almost 50 years since its adoption, Article 27 remains unsurpassed at in international law, establishing the most significant legally binding rule prescribing the rights of minorities. Moreover, its principles have

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276 F. Capotorti, Study on the Rights of Persons Belonging..., supra note 52, para. 238.
277 Ibid.
provided a starting point for almost all subsequent efforts to advance the rights of minorities, both globally and in the European context.

In its final version, Article 27 states:

In those States in which ethnic, religious and 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.\textsuperscript{279}

This article refers to three categories of minorities. In point of fact, the notion 'ethnic minorities' has superseded the once dominant term 'racial minorities', whereas the proposed term 'national minorities' was dropped for pragmatic reasons.\textsuperscript{280} It goes without saying that the terms used were not fixed or static and occasionally were susceptible for more comprehensive coverage, including the groups neglected in the drafting of the Covenant.\textsuperscript{281}

Several issues arising from Article 27 need to be clarified with a view to evaluating its scope and significance for its main beneficiaries, i.e. minorities as such. First and foremost, it should be reiterated that HRC in its General Comment on the right of minorities clearly stated, “this article establishes and recognizes a right which is conferred on individuals belonging to minority groups and which is distinct from, and additional to, all other rights which, as individuals in common with everyone else, they are already entitled to enjoy under the Covenant”.\textsuperscript{282}

\textbf{a) Concept of Minorities within Article 27}

It is noteworthy that the HRC does not consider the recognition of minorities by states to be a prerequisite for persons belonging to such minorities to be entitled to minority protection. So, in manner reminiscent of the PCIJ reasoning on the same legal issue, HRC pointed out that “the existence of...minority in a given State...requires to be established by objective criteria”.\textsuperscript{283}

\begin{flushleft} \textsuperscript{279} UN General Assembly, \textit{International Covenant on Civil and Political Rights}, 16 December 1966, United Nations, Treaty Series, Vol. 999, pp. 171-186. \\
\textsuperscript{280} See: F. Capotorti, \textit{Study on the Rights of Persons Belonging...}, supra note 52, para. 197. According to Capotorti, “the word ‘ethnic’ seemed to be more appropriate, as it refers to all biological, cultural and historical characteristics, whereas ‘racial’ referred only to inherited physical characteristics”. But see in infra n. 113, p. 419, where author contends that it was contradictory “to omit ‘race’ for being unscientific, and yet to subsume it under ‘ethnic’, which, as defined, covered biological characteristics...unless ‘biological’ is interpreted to exclude inherited characteristics”. \\
\textsuperscript{281} One commentator observed that at time of its adoption, the term “religious minorities” strictly referred to major Faiths worldwide. The implementation of this provision by states and the Human Rights Committee extended it beyond the ordinary meaning of religion to address the various subgroups within one religion, known as denominations. See: Philip Vuciri Ramaga, \textit{The Bases of Minority Identity}, Human Rights Quarterly, Vol. 14, No. 3, 1992, pp. 409-428, pp. 411-413. \\
\textsuperscript{282} UN HRC, \textit{General Comment No. 23: Article 27 (Rights of Minorities)}, supra note 85, para. 1 \\
\textsuperscript{283} Ibid, para. 5.2. \end{flushleft}
Moreover, in several minority-oriented cases, it had the opportunity to offer its reasoning about the minority concept as it emanates from the article. With respect to individual membership in a given minority (in this case a Maliseet Indian in Canada), in Lovelace v. Canada, HRC unequivocally answered that "persons who are born and brought up on a reserve, who kept ties with their community and wish to maintain these ties must normally be considered as belonging to that minority within the meaning of the Covenant". In other words, in offering this understanding, HRC made clear that it is the individual choice that resolves the question whether some person should be considered as a member of a particular minority. In Kitok v. Sweden, the Committee attempted to resolve the conflict between the rights of individual members of a minority versus the minority group’s rights. Its reasoning was that, “a restriction upon the right of individual members of a minority must be shown to have a reasonable and objective justification and to be necessary for the continued viability and welfare of the minority as a whole”.

Thus, despite the strong emphasis on individuals in the Covenant, sometimes, due to the vulnerability of a minority as a whole, its group rights could be preferred over those of individual minority members.

Finally, in the case of Ballantyne et al v. Canada, HRC held the view that “minorities referred to in article 27 are minorities within such a State and not minorities within any province”. To be precise, this interpretation prevents persons belonging to minorities in the provinces or federal units, whose ethnic group simultaneously presents an absolute majority in the state as whole, to invoke the rights set forth in Article 27 prior to HRC.

b) Individual v. Collective Rights

With the imposition of a phrase ‘persons belonging to’ prior to the word ‘minorities’, one may conclude that minority rights in Article 27 were assimilated into the predominantly individualistic-oriented human rights tendency of the Covenant. Capotorti indicated three main reasons for this solution. The historical continuation, which traced its roots back to the League of Nations system of minority protection, is indicated as a first reason, while the need for a “coherent formulation” in the ICCPR concerning provisions that prescribe numerous individual rights is noted as a second one. The

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289 It is worth noting that during the travaux préparatoires in the Sub-Commission, British delegate Miss Monroe suggested that “the word ‘minorities’ should be replaced by the phrase ‘persons belonging to minorities’, since in her opinion, minorities as such were not subjects of law whereas the persons belonging to minorities could easily be defined in legal terms. To maintain the idea of a group she suggested the insertion of the words ‘in community with the other members of their group’ after the words ‘shall not be denied the right’. F. Capotorti, Study on the Rights of Persons Belonging..., supra note 52, para. 171.
third reason, which is essentially political, basically aimed to prevent friction between states and minorities, which would supposedly erupt if legal status were granted to minorities as collective entities.\(^{290}\) Furthermore, this reasoning continues the precedent that individuals possess *locus standi* before the HRC, which enables them to submit a communications for alleged violations of rights emanating from the treaty, whereas groups as such are clearly excluded from this possibility.\(^{291}\)

However, the additional phrase, ‘*in community with other members of the group*’, clearly emphasizes that the communal exercise of rights related to the culture, religion and language, are essential components of the minority identity, within the limits of the ICCPR. Again, in accordance with HRC’s reasoning, it should be noted, “*although the rights protected under article 27 are individual rights, they depends on the ability of the minority group to maintain its culture, language and religion*”.\(^{292}\) Consequently, Joseph et al. in their treatise on the ICCPR point out, “*as the rights protected under article 27 apply to members of a minority, they may be thought of in part as collective rights, exercisable individually*”.\(^{293}\)

Hence, the argument that Article 27 “*clearly eschews corporate conception*” is correct: it did not imply rights for minority groups as such.\(^{294}\) Concomitantly, it would be reasonable to conclude that protection of minorities as groups composed of individuals falls indisputably “*within the purview of this article*”.\(^{295}\)

c) **Permanence of Minorities within the State**

The opening phrase, “*In those States in which ...minorities exist*”, was added at the request of the so-called immigration countries of South America, whose delegations maintained that immigrants should not be subsumed into the category of minorities. Anyway, using the grammatical interpretation approach, Nowak underscores that with usage of the word ‘*persons*’ instead ‘*nationals*’ or ‘*citizens*’, “*the protection of minorities has developed from a (collective) citizens’ right, as it was understood in the period between the wars, into a human right under Art. 27 of the Covenant*”.\(^{296}\) HRC in its General Comment on the Rights of Minorities confirmed this proposition, stating that “*individuals designed to be protected need


\(^{292}\) UN HRC, *General Comment No. 23: Article 27 (Rights of Minorities)*, supra note 85, para. 6.1.


not be citizens of the State party. A State party may not...restrict the rights under article 27 to citizens alone".297

Additionally, the General Comment went much further, providing a very broad interpretation of the word ‘exist’ as it pertains to questions of whether persons belonging to minorities are susceptible for protection under the article. In that manner, the General Comment continues, “given the nature and scope of the rights envisaged under that article, it is not relevant to determine the degree of permanence that the term ‘exist’ connotes...Just as they (individuals belonging to minorities – DT) need not be nationals or citizens, they need not be permanent citizens...migrant workers or even visitors in a State party constituting such minorities are entitled not to be denied the exercise of those rights”.298 It was expected that this revolutionary interpretation of the scope of Article 27 would provoke much controversy and criticism.299

Nowak points out that this "extremely liberal interpretation" of the application of Article 27 to non-nationals, migrants and visitors needs to imply fairly restrictive understanding.300 Especially, if it is accepted that the concept ‘protection of minorities’ presuppose special rights for minority groups, then it would be an impossible burden for states to grant such rights to occasionally visitors, foreigners and tourists. According to Schenin, however, the HRC’s argument simply implies that a “state must not deny a migrant worker or a visitor membership in an existing minority merely on the basis of the temporary nature of his or her stay”.301

d) Positive vs. Negative State Duties

A rather unusual formulation of Article 27 enables different and almost mutually exclusive interpretations regarding the issue about the state’s duties toward its minorities to exist. Thus, the negative formulation ‘shall not be denied the right’, according to some commentators, merely obliges the state not to interfere in the way persons belonging to minorities enjoy their prescribed rights.302 In a similar vein, same critics vehemently oppose the possible implications of deriving state duties to adopt concrete positive measures to enhance the possibilities for nurturing of minority identity.

297 UN HRC, General Comment No. 23: Article 27 (Rights of Minorities), supra note 85, at para. 5.1.
298 Ibid, para. 5.2.
299 See: P. Hilpold, UN Standard – Setting in the Fields of Minority Rights, supra note 273, p. 190.
300 M. Nowak, U.N. Covenant on Civil and Political Rights: CCPR Commentary, supra note 296, p. 647.
Conversely, accepting this restrictive interpretation would mean that this article adds nothing to the other provisions in the ICCPR, and would thus render it a redundant provision. Therefore, we understand that where Article 27 “recognize the existence of a ‘right’”, it implies that “positive measures of protection are, therefore, required not only against the acts of the State party…but also against the acts of other persons within the State party”.303

It is evident from this discussion that positive measures of protection are constructed both horizontally and vertically.304 The first or horizontal aspect, which implies a duty on the part of the states to protect minorities against interference by private parties, indisputably emanates from the article as well as from the HRC’s practice. Nowak observes that achieving real equality for minorities presupposes their protection from interference and threats from the dominant ethnic groups and more powerful private actors.305

The vertical aspect of protection, or the need for positive state measures to ensure fulfillment of minority rights, is much more contested among scholars. Some query whether positive measures arise directly from Article 27 or from a general principle of prohibiting discrimination, in case of adoption of policies and measures for the benefit of majority group in the society.306 From this perspective, which sees state duties solely in a non-discriminatory manner, Tomuschat contends, “only if other groups of the population receive funds for their cultural purposes must minorities be treated alike”.307

A unique approach for clarifying this apparently contentious issue was offered by Cholewinski, who argued that positive state duties could be deduced by providing a "dynamic interpretation" of the article, strongly supported by state reporting and through the considerations of the HRC.308 Decades-long practice, he notes, confirms that the rights of minorities to enjoy their own culture, to profess and practice their own religion or to use their own language "cannot be fully satisfied without state assistance, either in the provision of financial aid or in the adoption of special legislative or administrative measures".309 Additionally, it seems that vertical duties were confirmed by HRC, when it courageously stated that “positive measures by States may also be necessary to protect the identity of a minority and the rights of

303 UN HRC, General Comment No. 23: Article 27 (Rights of Minorities), supra note 85, para. 6.1.
304 See: G. Pentassuglia, Minorities in International Law, supra note 60, p. 105.
306 See: G. Pentassuglia, Minorities in International Law, supra note 60, p. 106. The author, by using the case-law from the HRC practice, notes that whereas in the cases involving persons of indigenous groups the Committee is assertive regarding the positive state measures, it is unclear whether the same approach would be implemented in the prospective cases related with critical areas of minority protection, like minority education, effective participation and communication with public authorities. See also: M. Nowak, U.N. Covenant on Civil and Political Rights: CCPR Commentary, supra note 296, p. 664-666.
309 Ibid.
its members”. A complementary, comprehensive understanding of Article 27 may also entail a positive duty on the part of states, with a sole purpose to “rectify the 'hidden inequalities' that supposedly culture-neutral law and institutions embody”.

Finally, Schenin, a renowned expert in this area, highlighted that ICCPR does not imply that every minority within the state must receive exactly same level of protection. To put it clearly, “the scope of positive obligations may be made to depend on matters such as degree of permanence a group has in a particular country, the size of the group and its territorial concentration”.

e) Article 27 as Customary Law?

It seems obvious from this brief review that Article 27 is not devoid of ambiguity, mainly as a consequence of its imperfect language, as well as from the absence of a generally accepted concept of minority protection. Of course, human rights law is full of documents and treaties where blurred wording was the price for reaching a compromise acceptable to the various parties. Accordingly, it would not be an exaggeration to assert that international development in the area of minority protection owes much to the principles set forth in and derived from Article 27. Perhaps the most important principle originating from this article is that it “could be seen as guaranteeing both aspects of equality: non-discrimination (equality in law) and special protection (equality in fact)”.

The question of whether the rules embodied in this article, in whole or in part, could be considered as customary law also divides scholars. Examining the records of the drafting process, Thornberry contends that the article was neither declaratory in nature, nor was evidence for state practice accompanied by opinio juris provided at that stage. In contrast, Dinstein argues that Article 27 reflects a minimum of rights recognized by customary international law.

Apart from these opposing interpretations, there are reasonable arguments for at least the partial inclusion of some principles derived from the article in customary law. For instance, the right of equal enjoyment of one’s own identity as well as the right to assert and preserve such identity free of any forced assimilation is denoted as being a "strong candidate for customary law", widely accepted by the international community.

310 UN HRC, General Comment No. 23: Article 27 (Rights of Minorities), supra note 85, para. 6.2.
2.2. Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

On 21 December 1965, the UN General Assembly passed a resolution by which it adopted the ICERD, a crucial “step towards the elimination of all forms racial discrimination” worldwide.\(^{317}\) Considering its unqualified acceptance by the vast majority of UN member states, “its essential principle has a strong claim to the status of a peremptory norm of international law”.\(^{318}\)

The Convention’s opening article provides a broad and comprehensive definition of the notion of ‘racial discrimination’: “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”.\(^{319}\)

With these broad interpretations of racial discrimination and ‘race’, the Convention’s prohibitions on racial discrimination are of considerable relevance for minorities.\(^{320}\) Besides race, the definition embraces colour and descent, as other categories derived from the very designation of CERD, but also some wide categories, such as national and ethnic origin. Thus, it is reasonable to deduce that "the concept of ethnicity would clearly result in the coverage of many minorities".\(^{321}\)

One important aspect of the Convention’s definition of ‘racial discrimination’ is that it pays equal attention to both indirect and direct discrimination.\(^{322}\) The reference to the ‘effects’ of measures or conduct in the definition enables the CERD/C to review those “measures that are apparently neutral in their formulation, but which have had a disproportionate impact on members of certain groups”.\(^{323}\) In response to objections that these ‘effects of discrimination’ are not always clearly discernible, Thornberry, as a member of CERD/C rather than a scholar, points out that "sometimes disparities of treatment will be glaringly obvious and demand a response".\(^{324}\)

\(^{317}\) UN General Assembly, Resolution 2106 A (XX), 21 December 1965.


\(^{320}\) K. Henrard, Non – Discrimination and Full and Effective Equality, supra note 131, p. 81.


\(^{322}\) A group of renowned scholars defined indirect discrimination as that which occurs when a practice, rule, requirement or condition is neutral on its face, but impacts disproportionally upon particular groups. See: K. Henrard, Non–Discrimination and Full Equality, supra note 131, p. 113.

\(^{323}\) I. Garvalov, The United Nations International Convention..., supra note 321, p. 259

\(^{324}\) P. Thornberry, Confronting Racial Discrimination..., supra note 318, p. 256.
The concept of substantive equality and its corollary, affirmative measures, which are designated as special measures in CERD, are prescribed in two articles. Article 1 (4) stipulate that “measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved”. As for the duties of the state parties to the Convention, Article 2 (2) envisages that, “when the circumstances so warrant”, they would enact and implement special and concrete measures in the “social, economic, cultural and other fields”, with a view to enable “full and equal enjoyment of human rights” for certain racial groups.

The quoted articles illuminate that the goal or legitimate aim of special measures should be the acceleration of de facto equality among various groups in the society. CERC/C, in one of its General Recommendations, acknowledged that special measures are “one component in the ensemble of provisions...dedicated to the objective of eliminating racial discrimination”, and underlined that the obligation to take special measures is “distinct from the general positive obligation of State parties...to secure human rights and fundamental freedoms on a non-discriminatory basis to persons and groups subject to their jurisdiction”.

One could argue that the straightforward usage of terms “certain racial or ethnic groups”, concerning the special measures, presents a considerable departure from the overwhelmingly individualistically-oriented approach in treaties presupposing human rights and minority protection. According to Thornberry, this deviation might be explained in the “limited, temporary nature of State obligations”, as derived from the very concept of affirmative measures.

It goes without saying that minorities and their members could benefit once special measures are established in their favor. Moreover, situations involving minorities imply the need for “some kind of special action intended to uphold the idea of equality in fact”. Nonetheless, in accordance with principles of CERD, these special measures can not lead to the maintenance of separate rights for racial groups, since their duration is limited to the achievement of specific objectives. Conversely, scholars have

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325 According to R. Cook, affirmative measures are “time limited positive measures intended to enhance opportunities for historically and systematically disadvantaged groups, with a view to bringing group members into the mainstream of political, economic, social, cultural and civil life”. See: K. Henrard, Non-Discrimination and Full Equality, supra note 131, p. 130.


327 See: K. Henrard, Non-Discrimination and Full Equality, supra note 131, p. 133.


pointed out that the concept of protection of minorities is wider notion, hence minorities “enjoy their own rights in international law which stand independently of the case of special measures, though some State policies for such groups may be brought within this framework”.

2.3. Declaration on the Rights of Persons Belonging to National or Ethnic, Racial and Linguistic Minorities

Special Rapporteur Capotorti in his study on minorities recommended and outlined a path for the Sub–Commission to initiate a procedure for drafting a declaration on minorities within the principles set forth in Article 27 of ICCPR. The procedure that began in 1978 generated a long–lasting debate and numerous proposals within the working group tasked with determining the text of the declaration. Finally, in 1992, the General Assembly adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Racial and Linguistic Minorities, with a consensus.

The title of the Declaration, even before the categories of ethnic, religious and linguistic minorities, which are entrenched in Article 27, employs the term ‘national minorities’. Pentassuglia notes that the usage of the term ‘national minorities’ in the title does not “constitute a real departure from the traditional approach to the definitional question in the UN context”. Likewise, in his commentary on the Declaration, Eide declared that said terminology does not “extend the overall scope of application beyond the groups already covered by article 27”. Specifically, there is hardly any national minority that is not also an ethnic or linguistic minority.

Importantly, the preamble states that the Declaration is ‘inspired’, but not exclusively ‘based’ on the Article 27 of ICCPR. Some scholars have interpreted this to mean, in fact, that “the Declaration represents a fresh start and is not simply an ‘expansion of the ICCPR’”. The ‘inspiration’ would by and large serve as guidance for interpretation and implementation of the Declaration, but certainly, not restrict it to the limits of Article 27. Instead, the reach and scope of the Declaration is determined on the “whole array of universal, multilateral and even bilateral instruments touching – directly or indirectly – upon minority rights”. Moreover, the fact that the Declaration was adopted some 26 years after the

331 P. Thornberry, Confronting Racial Discrimination..., supra note 318, p. 257.
332 See: F. Capotorti, Study on the Rights of Persons Belonging..., supra note 52, para. 617.
334 G. Pentassuglia, Minorities in International Law, supra note 60, p. 112.
337 P. Hilpold, UN Standard – Setting in the Fields of Minority Rights, supra note 273, p. 186.
promulgation of the ICCPR presupposes the possibility for extending the understanding of core minority rights, once indisputably constrained by Article 27.

It is evident that the Declaration largely follows the individualistic approach when prescribing rights to minorities. Nevertheless, Article 1 stipulates that the existence and identity of minorities shall be protected by the states, in what seems to be a ‘communal protection’ and departure from the firm individualistically oriented wording of its predecessor. Additionally, the same article provides that States shall encourage conditions for the promotion of minority identity within the larger society. As Thornberry noted, the formulation in Article 1 transcends the ‘tentative phrasing’ of Article 27 and proclaims the identity and existence as fundamental attributes of minority groups.338 Furthermore, Alfredsson observed that while other instruments “prescribe the rights to identity, the wording on operative Article 1...about the promotion and protection of identity comes straight to the point”.339 The protection of minorities’ existence constitutes the core of international human rights law, as in the prevention of genocide and population transfers, prohibition of forced assimilation and the principle of non-discrimination.340 The promotion of minority identity, however, requires that minorities are given, in addition to recognition of their distinctive characteristics, an opportunity to develop their culture and institutions.341

The rights of minorities are spelled out in Article 2, which considerably “reinforces” the comparable phrases in Article 27 of ICCPR.342 For example, rather than the phrase “shall not be denied the right”, this article stipulates that persons belonging to minorities “have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language...freely and without interference or any form of discrimination”.343 It is of the utmost importance that “wide ranging participation rights” are prescribed in two paragraphs of the same article, which respectively specify that minorities have the right to participate effectively in cultural, religious, economic and public life, and moreover the right to participate effectively in decisions on the national or regional level that affect them.344 In the Sub-Commission’s commentary to the declaration, Eide concluded that effective participation “provides channels for consultations between and among minorities and governments”, and so would require “representation (of minorities - DT) in legislative, administrative and advisory bodies and more generally in public life”.345

341 Commentary to the Declaration on the Rights of Minorities, supra note 335, paras. 28-29.
344 See: UN General Assembly, Declaration on the Rights of Minorities, supra note 333, Art. 2.
346 Commentary to the Declaration on the Rights of Minorities, supra note 335, paras. 42, 44.
Article 2, paragraph 4, provides that persons belonging to minorities have the right to form their own associations. In the light of a ‘participation right’, Thornberry observes that it can involve the right on the part of minorities to create “ethnic, cultural, religious associations and societies, as well as political parties in the state”. Since said right is not qualified, “there is no limitation of the objects of the associations to the spheres of minority culture, religion and culture”. The final paragraph of Article 2 is concerned with “contact rights”. It says that minorities have the right to establish “without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious and linguistic ties”. This clause effectively paved the way for three-sided contact rights, namely: a) intra-minority contacts; b) inter-minority contacts, which would enable various minorities in society to share experiences and combine efforts (to join forces) for minorities rights advocacy; and c) across frontiers, which essentially means the right to nurture and maintain close contacts with their co-ethnics or “kin persons” in neighboring countries.

Article 3 of the Declaration complements the communal exercise of minority rights. In fact, it envisages that persons belonging to minorities may exercise their rights “individually as well as in community with other members of their group”. Eide noted that collective exercise of rights could be manifested “through associations, cultural manifestations or educational institutions, or in any other way”. Another important aspect of this article is that no disadvantage shall result for minorities from the exercise or non-exercise of these rights. Again, using Eide’s commentary, this basically means that states cannot “impose a particular ethnic identity on a given person”, nor can minorities as such “subject to disadvantage persons who on objective criteria may be held to form a part of their group but who subjectively do not want to belong to it”.

According to Thornberry, Article 4 uses “mandatory language to extend to members of minorities the promise that they may ‘fully and effectively’ exercise their human rights without discriminations and on basis on equality”. Its paragraph 2 goes further, stating that there is a need for states to take measures with a view to “create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions, customs, except where specific practices are in violation of national law and contrary to international standards”. In
respect to practices and customs that may contravene human rights, it is mandatory for domestic national legislation to comply with the requirements of international human rights law.  

Slightly weaker language is employed in paragraph 3 (Article 4), which establishes a duty on the part of states to ensure that minorities have the right to learn their mother language and to receive mother-language instruction. The use of the word ‘should’ instead of ‘shall’, and phrases such as ‘where appropriate’ and ‘whenever possible’, indicates hesitation on the part of the States to adopt stronger duties with respect to the educational and linguistic aspects of minority identity. According to Rodley, these qualifications “come close to obviating the basic goal”. Nevertheless, the duty on the part of the States to enrich educational curricula with lessons from the history and culture of minority groups presents an added value of the declaration. Concomitantly, in order for minority members to be aware of the society in which they live, a duty for providing an inter-cultural education is also presented in this article.

Finally, Article 8 states that exercise of the rights prescribed in the Declaration shall not prejudice the enjoyment of human rights and fundamental freedoms of others. Nonetheless, its paragraph 3 clearly stipulates that measures taken in accordance with the Declaration shall not be prima facie contrary to the principle of equality.

Though the document is designated a ‘declaration’, it should be reiterated that it was adopted by General Assembly with consensus. The effectiveness of a norm in international law depends, in many ways, on the states’ acceptance of and adherence to it, rather than its formal designation or the legal nature of any document that articulates it. Pentassuglia noted that some principles embodied in the Declaration might be viewed as “implicitly reaffirming customary law...or perhaps as customary law in statu nascendi”. The “reaffirming” aspect is almost exclusively about the physical existence of minorities, whereas the “statu nascendi” is about the article’s stipulation of essential aspects of minority identity, which widened the scope of the ICCPR Article 27 in considerably.

However, in spite of the importance of the Declaration, there are some deficiencies in the text that should be highlighted. To name but a few, the absence of a definition of minority, the lack of a comprehensive approach to education rights, and the omission of a right to use minority language before public authorities, are the most notorious areas where the Declaration failed to offer some “cautious advance”.

353 See: G. Pentassuglia, Minorities in International Law, supra note 60, p. 113.
354 N. Rodley, Conceptual Problems in the Protection of Minorities..., supra note 137, p. 57.
355 Commentary to the Declaration on the Rights of Minorities, supra note 335, paras. 66-68.
356 UN General Assembly, Declaration on the Rights of Minorities, supra note 333, Art. 8.
357 See: P. Hilpold, UN Standard – Setting in the Fields of Minority Rights, supra note 273, p. 188.
358 G. Pentassuglia, Minorities in International Law, supra note 60, pp. 114-115.
3. Procedures of the United Nations Bodies for Monitoring the Human Rights and Minority Rights Record of the Member–States

In previous sub-sections we have briefly reviewed the major legally binding and non-binding instruments enacted by UN organs which address, directly or indirectly, the rights of minorities. The review below will briefly assess various procedures that exist within the UN’s organizational framework for monitoring the enforcement of the aforementioned instruments by member-states. It is noteworthy that two of the bodies reviewed below are treaty-based, while the other two mechanisms were established by virtue of resolutions adopted by the General Assembly and the (now defunct) Commission on Human Rights. In the next chapter, the analysis continues with a detailed survey of minority protection in the countries that are of interest to this dissertation. Special attention will be paid to the reports issued by these bodies dealing with the enforcement of minority rights.

3.1. Universal Periodic Review by the Human Rights Council

In his proposal on the need to replace the Commission on Human Rights (now defunct), former UN Secretary-General Kofi Annan envisioned a ‘peer review function’ for the new body which “would give a concrete expression to the principle that human rights are universal and indivisible”.\(^{360}\) In less than a year, the General Assembly passed Resolution 60/251, with which it established the Human Rights Council as its own subsidiary organ to replace the Commission on Human Rights. The resolution defines the Human Rights Council as a body “responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind”.\(^{361}\) The most innovative and substantial change in the new body’s mandate, compared with its predecessor, is the task to “undertake a universal periodic review, based on objective and reliable information, of the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States”.\(^{362}\)

Although the original proposal was for a ‘peer review’, a term used throughout the negotiations, Resolution 60/251 imposed instead a ‘periodic review’. This wording change is important, since it renders

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\(^{362}\) *Ibid*, para. 5.

Operational details for the universal periodic review were determined by Human Rights Council Resolution 5/1 of 18 June 2007. The bases for the review are set of universal standards in the human rights area related to the states under review, particularly those stipulated in the UN Charter, UDHR, human rights instruments and treaties to which the states are parties and voluntary pledges and commitments made by them.\footnote{UN Human Rights Council, \textit{Resolution 5/1 Institution-building of the United Nations Human Rights Council}, 18 June 2007, para. 1.} As such, the salient feature of the review is that it complements rather than duplicating other human rights mechanisms, thus representing added value for the wider UN’s human rights process.

The review and the interactive dialogue for each UN member-state is conducted by Working Group, composed of all 47 Human Rights Council member-states. The whole process, especially the interactive dialogue and preparation of the outcome report is facilitated by a group of three rapporteurs (\textit{Troika}).\footnote{\textit{Ibid}, paras. 18-21.} The review for each country is based on: 1) a national report prepared by the State concerned, provided that it will not exceed 20 pages; 2) a compilation of 10 pages prepared by the Office of the High Commissioner for Human Rights (OHCHR) of the information contained in the reports of treaty bodies, special procedures and other relevant UN documents; and 3) a summary in maximum 10 pages prepared by the OHCHR regarding the credible and reliable information provided by other relevant stakeholders (NGOs).\footnote{\textit{Ibid}, paras. 15-17.}

The duration of the review is three hours for each country in the Working Group, and an additional hour for considering the outcome at a plenary of the Human Rights Council. The outcome of the review is a report consisting of a summary of the proceedings of the review process, accompanied with the conclusions and recommendations for the state concerned. The country under review is fully involved in the outcome and has an opportunity to express its views on the outcome of the review before the plenary takes action on it. Finally, the report adopted during the Working Group session needs to be confirmed by resolution or decision at the plenary session of the Human Rights Council.\footnote{\textit{Ibid}, paras. 26-32. It was not until 2011 that the Human Rights Council made slight modifications to the whole process. These changes mostly deal with general guidelines for preparing the second and subsequent cycles of review and moreover regarding the duration of the process, which was extended from the initial three hours for each country in the Working Group to three and a half hours, with seventy minutes prescribed for initial presentation, replies and concluding comments for the state under review. See: UN Human Rights Council, \textit{Decision 17/119. Follow-up to the HRC resolution 16/21 with regard to the universal periodic review}, A/HRC/DEC17/119, 19 July 2011, paras. 2-3.}

The substantial success of this new process, according to one commentator, can be seen in the fact that “\textit{no State used the first session of the UPR to challenge the universality of human rights, an}
argument often invoked in the past during debates on the human rights situation in individual countries”.

At the same time, we must recognize that “at its core, the UPR represents a new and as yet largely unproven forum in which states make policy recommendations to each other”.

UN Special Rapporteur on Minority Issues has analyzed questions related to minorities during the first cycle of Universal Periodic Review. The results from the survey were positive, due to fact that out of some 21,353 recommendations issued at the first cycle, exactly 895 or 4.2% of them referred to minorities. Moreover, in sum, minorities were the 9th most discussed topic during the review of country reports. The report’s recommendations cited the main areas of concern for minorities as: access to mother tongue education, discrimination in the field of citizenship, the need for protection of minority identity and its cultural heritage and rights, employment, the need to punish hate speech and acts of violence against them etc.

3.2. Reports and General Comments from the Human Rights Committee (HRC) and Committee on the Elimination of Racial Discrimination (CERD)

The rationale for the existence of treaty bodies is to supervise states’ compliance with particular human rights treaties. Within the UN human rights framework, HRC is a “general” treaty body that can address complaints relating to various civil and political rights set forth in the ICCPR, whereas CERD and the Committee against Torture (CAT) are more “specialized” bodies. Minority rights protection in various states can also be scrutinized and surveyed under the mechanisms of these treaty bodies, since HRC and CERD have adopted common reporting guidelines and in the process of examination of State reports they frequently are informed it about and have commented upon the minority situations in different countries.

a) Human Rights Committee (HRC)

HRC was established under provisions set forth in ICCPR. It is composed of 18 members, who by definition must be nationals of State parties to the Covenant, and persons of “high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the

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372 G. Alfredsson, Minority Rights: A Summary of Existing Practice, supra note 339, p. 79.
participation of some persons having legal experience”. Moreover, in the election of the Committee members, who each serve a four-year term, it is compulsory that “consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems”. Finally, in order to ensure the highest standards of politically impartial conduct of its members, the Committee has adopted ethical guidelines for them.

In carrying out its monitoring and supervisory functions, the HRC has “four major responsibilities”, which are:

1) to receive and examine reports from the State parties on the steps they have taken to give effect to the rights spelled out in the ICCPR;

Within a year of entry into the ICCPR, the State concerned undertakes a duty to submit an initial report to HRC on “the measures...adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights”. The initial report submitted by a State should be comprehensive and written on an article-by-article basis, with an emphasis on legal and practical measures adopted to give effect to ICCPR rights, and moreover on the factual situation and practical availability, effect and implementation of remedies for their violation.

Prior to the examination of the state report, the Committee should draw a list of issues on the basis of all information at its disposal, including those in the ‘shadow report’. The list of issues is promptly forwarded to the State with a view to its delegation being prepared for a discussion during the examination session. Once the inquiries and discussion are exhausted, the HRC proceeds with reaching its concluding observations, a practice established since 1992. Apart from highlighting the positive and negative aspects of the state’s implementation of the ICCPR, the concluding observations also set a date by which the state concerned should be obliged to submit subsequent periodic reports.

373 UN General Assembly, International Covenant on Civil and Political Rights, Article 28 (2).
374 Ibid, Article 31 (2).
377 UN General Assembly, International Covenant on Civil and Political Rights, Article 40 (1).
379 Civil society and non-governmental organizations have assumed an increasingly prominent role in the reporting process. Therefore, apart from the recommendations on the part of states to include civil society in the process of preparing its initial or periodic report, there is a possibility for the latter to submit its own report, also known as a ‘shadow report’ which reflect the views on the subject from various NGOs. See: A. Eide, Introduction: Mechanisms for Supervision and Remedial Action, supra note 274, p.16.
2) to elaborate general comments, which are designed to give effect to the provisions of the Covenant by providing greater detail regarding the substantive and procedural obligations of State parties;

The general comments and recommendations produced by the treaty bodies, according to Ramcharan, provide “invaluable guidance on the meaning of their respective treaties and on the obligations of State parties to give effect to them”. In the case of HRC, general comments express the Committee’s conceptual understanding of the content of a particular right stipulated in the Covenant and are of crucial importance for states when approaching submission of initial or periodic reports.

From the above quoted passages of the General Comment on the Rights of Minorities it was evident that HRC offered comprehensive understanding of the rights stipulated in Article 27, revealing nuances that scholars and states were not always eager to accept. Moreover, in positing cultural pluralism as advantageous for each society, HRC unequivocally declared “the protection of these rights is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole”.

General comment on issues relating to reservations of the ICCPR provisions states clearly, “provisions in the Covenant that represent customary international law...may not be the subject of reservations”. Referring to the rights stipulated in Article 27, the same paragraph continues, “accordingly, a State may not...deny to minorities to enjoy their own culture, profess their own religion, or use their own language”. It seems that such qualification of Article 27 as non-derogable provisions enhance the arguments of proponents who consider its principles to comprise, even partially, customary law.

Consequently, according to Akermark, general comments, accompanied by case law and annual reports of the HRC are the “primary means of interpretation of the ICCPR under Article 31 of the Vienna Convention on the Law of Treaties”.

3) to receive and consider individual complaints under the Optional Protocol lodged by individuals who claim violations of their rights by a State party;

The individual complaint procedure is optional, since its legal foundation lay in the Optional Protocol to the ICCPR, rather than the Covenant itself. Once a State ratifies the protocol, it recognizes

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383 UN HRC, General Comment No. 23: Article 27 (Rights of Minorities), supra note 85, para. 9.
384 UN Human Rights Committee (HRC), CCPR General Comment No. 24: Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant, 4 November 1994, CCPR/C/21/Rev.1/Add.6, para. 8.
385 A. S. Akermark, Justification of Minority Protection..., supra note 80, p. 127.
“the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation...of any of the rights set forth in the Covenant”.\textsuperscript{386} As is usual in international human rights law, there are preconditions and admissibility criteria that must be fulfilled before the Committee begins to consider individual complaints. If the Committee finds the case to be admissible, it then adopts views on the substance or merits of the complaint. These views “exhibit some important characteristics of a judicial decision”, since they are produced in a “judicial spirit, including the impartiality and independence of Committee members”.\textsuperscript{387}

With regard to the legal nature of the HRC’s views, Alfred de Zayas explains that “these decisions are quasi-judicial in nature and real like judgments, even if they are not legally binding”.\textsuperscript{388} It is of paramount significance that HRC could recommend the adoption of specific measures by a state as a remedy for a violation found in individual procedure, ranging from reopening the process that led to the violation of the Covenant to an amendment of the domestic laws that contravene it.\textsuperscript{389} Likewise, the views emanating from the HRC practice in minority-related cases have revealed that “substance of minority rights may be addressed under generally applicable provisions on universal human rights...so far as the monitoring body under the instrument in question is prepared to give a minority-sensitive reading to the provisions”.\textsuperscript{390}

4) to consider certain complaints made by a State party that another State party is not abiding by the obligations assumed under the ICCPR.

The optional inter-state complaint procedure is prescribed in Articles 41 and 42 of the Covenant and it could be activated when state parties have submitted declarations recognizing the competence of HRC to receive and consider inter-state complaints. Due to the fact that to date, no single inter-state complaint has ever been lodged with the HRC, scholars have deemed this procedure to be ‘meaningless’.\textsuperscript{391}

\textit{b) Committee on the Elimination of Racial Discrimination (CERD/C)}

\textsuperscript{386} Optional Protocol to the International Covenant on Civil and Political Rights, Article 1.


\textsuperscript{390} M. Scheinin, The UN ICCPR: Article 27 and other provisions..., \textit{supra} note 301, p. 42.

\textsuperscript{391} A. Morawa, The United Nations treaty monitoring bodies..., \textit{supra} note 380, at p.33
The working methods of CERD/C largely correspond to those prescribed to and implemented by the HRC.\textsuperscript{392} It has two peculiarities which differentiate it from HRC and other treaty bodies. Namely, in the \textit{country reporting procedure}, CERD/C adopts a \textit{list of themes} instead of a \textit{list of issues}, to which no responses are required. The list of themes is forwarded to the State whose report is being considered, but solely as a guide for the dialogue between its delegation and the CERD/C. Additionally, compared with the HRC's experience, individual communications are not so frequently used in the practice of CERD/C.\textsuperscript{393}

In its work, CERD/C deals with questions relevant to minorities and their needs. For instance, CERD/C has adopted general recommendations by which state parties to the UN Racial Convention are obliged to provide detailed demographic data of their population and information on the existence of racial and ethnic groups in each state particularly.\textsuperscript{394} Furthermore, in the monitoring process, there is a permanent focus of the “concept of substantive equality, a concept of particular significance to minorities, and one of the overriding goals of minority protection more generally”\textsuperscript{395}

In order to fulfill its mandate, the CERD/C in 1993 established an \textit{early warning and urgent action procedure}, with a view to preventing serious and gross violations of the rights enshrined in the UN Racial Convention. By using this innovative approach, CERD/C may seek information from state parties and express specific concerns which could be addressed to Human Rights Council and OHCHR, whilst in the later stage the matter could be brought to the attention of the Security Council.\textsuperscript{396}

\subsection*{3.3. Reports from UN Special Rapporteur on Minority Issues}

Special Rapporteur on Minority Issues (formerly Independent Expert) is part of the “\textit{considerable number thematic rapporteurs, special representatives or independent experts}” within the UN framework, appointed with a mandate to deal with particular human rights or minority rights issues.\textsuperscript{397} The main reason for appointing a special representative for minorities was the weak position and limited capacity of the former Working Group on Minorities (WGM) to respond properly to urgent situations involving national minorities and to their legitimate expectations from the global organization.\textsuperscript{398} Even though it provided a modest space for minority members to present grievances to which governments could reply,

\begin{footnotesize}
\textsuperscript{392} \textit{Ibid.}, at p.30.
\textsuperscript{393} \textit{P. Thornberry, Confronting Racial Discrimination…}, supra note 318, p.247.
\textsuperscript{395} \textit{Ibid.}, at p. 261.
\textsuperscript{396} UN OHCHR, \textit{Fact Sheet No.30…}, supra note 382, pp. 26, 34.
\textsuperscript{397} \textit{A. Eide, Introduction: Mechanisms for Supervision and Remedial Action}, supra note 274, p. 16.
\textsuperscript{398} Critical analysis for the work of this body is presented in Asbjorn Eide, \textit{The Role of the United Nations Working Group on Minorities}, in \textit{Mechanisms for the implementation…}, supra note 380, pp.55-69.
\end{footnotesize}
WGM wasn’t a mechanism with a prescribed process for handling complaints like the treaty-based bodies discussed above.\(^{399}\)

Debates about the need for a special representative for minorities were concomitant with the wholesale reform of the UN’s human rights mechanisms.\(^{400}\) There were numerous suggestions from various actors and stakeholders regarding the proper format of the new body, which reflected increased awareness about the fate of minorities. The role of the Minority Rights Group International (MRG) is recognized as crucial in this process.\(^{401}\) Finally, on 21 April 2005, Commission on Human Rights requested the UN High Commissioner for Human Rights (HCHR) to appoint an “independent expert on minority issues”. According to the resolution, the mandate of the new body, among other things, will be: a) to promote the implementation of the UN Declaration on Minorities, including through consultations with governments, taking into account existing international standards and national legislation concerning minorities; b) to cooperate closely, while avoiding duplication, with relevant UN bodies, mechanisms and regional organizations; e) to take into account the views of non-governmental organizations on matters pertaining to his/her mandate.\(^{402}\)

Taking this resolution into consideration, on 29 July 2005, HCHR appointed Gay McDougall as an independent expert on minority issues.\(^{403}\) The establishment of this new post was interpreted as a “most significant UN development in the field of minority rights”, by the independent expert itself.\(^{404}\) In April 2014, the mandate for what is now designated as “Special Rapporteur on Minority Issues” was extended and includes: a) to examine ways and means of overcoming existing obstacles to the effective realization of the rights of persons belonging to minorities; b) to guide the work of the Forum on Minority Issues, to report on its thematic recommendations; c) to submit an annual report on his/her activities to the Human Rights Council and to the General Assembly.\(^{405}\)

To perform its tasks, the Special Rapporteur employs multiple methods. One approach is to prepare an annual report to the Human Rights Council on activities undertaken, which usually includes recommendations regarding effective strategies for better implementing the rights of persons belonging to


\(^{401}\) MRG is one of the few international NGOs focusing on minority issues that consistently tried to raise them at the UN. See: Chris Chapman, Kathryn Ramsay, Two Campaigns to Strengthen United Nations Mechanisms on Minority Rights, International Journal on Minority and Group Rights, Vol.18, 2011, pp. 185-199, p. 187.

\(^{402}\) UN Commission on Human Rights, Human Rights Resolution 2005/79 – Rights of persons belonging to national or ethnic, religious and linguistic minorities, para. 6.


minorities. It goes without saying that collecting information from diverse sources is a desirable approach of the Special Rapporteur, and the possibility to discuss issues directly with minority representatives is of “considerable benefit.”\textsuperscript{406} Furthermore, with respect to implementing the UN Declaration on Minorities, the Special Rapporteur can communicate with authorities and ask for further consultations and information on good practices for minority issues, where appropriate.\textsuperscript{407}

In one of its annual reports, the Special Rapporteur identified “four broad areas of concern relating to minorities” around the world, based on the Declaration on Minorities and other relevant standards:

\begin{itemize}
  \item \textit{a)} Protecting a minority’s existence, including through protection of their physical integrity and the prevention of genocide;
  \item \textit{b)} Protecting and promoting cultural and social identity, including the right of individuals to choose which ethnic, linguistic or religious group they wish to be identified with, and the right of those groups to affirm and protect their collective identity and reject forced assimilation;
  \item \textit{c)} Ensuring effective non-discrimination and equality, including ending structural or systematic discrimination;
  \item \textit{d)} Ensuring effective participation of members of minorities in public life, especially with regard to decisions that affect them.\textsuperscript{408}
\end{itemize}

Probably its most effective method is country visits, which usually occur following an invitation from the respective government.\textsuperscript{409} The essence of country visits is to assess national legislation in area of minority rights and its implementation concerning minorities and other vulnerable groups, and moreover, to assess the practices of the authorities when dealing with minority oriented cases. The outcome of the country visits are reports presenting an overview of the minority rights in the country concerned, accompanied with recommendations for improvement of legislation, enforcement and/or judiciary practice.

In the first five years of its work, the Special Rapporteur visited countries which deny the existence of minorities in their territories, like Greece and France, as well as countries in which minorities face shocking levels of discrimination and persecution, like Dominican Republic and Ethiopia.\textsuperscript{410} In the next chapter, the findings and recommendations in the reports of the Special Rapporteur’s visits in

\textsuperscript{406} G. McDougall, \textit{Postscript: The United Nations…, supra} note 404, p.86.
\textsuperscript{407} UN Commission on Human Rights, \textit{Report of the independent expert…}, supra note 403, para. 35.
\textsuperscript{408} UN General Assembly, \textit{Effective Promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities: Note by the Secretary-General}, A/65/287, 12 August 2010, para. 3.
\textsuperscript{409} G. McDougall, \textit{Postscript: The United Nations…, supra} note 404, p.81.
\textsuperscript{410} C. Chapman et al, \textit{Two Campaigns to Strengthen…, supra} note 401, p.191.
Greece, Bulgaria and Hungary will be assessed to provide a comprehensive review of minority protection in these countries.

2.3. Protection of Minorities in Europe

A. Minority Rights in Europe: Contemporary Developments

This section intends to review the protection of minorities in Europe, through the prism of three key European international organizations, and indicating their contributions towards enhancing minority protection in individual countries. Marc Weller once noted that the European continent “considers itself the global champion of the legal provision for minorities”.\(^{411}\) This self-assessment is based on the fact that Council of Europe has managed to generate “the world’s only legally binding treaties on minority rights in general and on language rights in particular”.\(^{412}\)

As previously mentioned, the UN adopted a strategy of formulating ‘generic minority rights’ that are “intended to apply to all ethnocultural minorities”.\(^{413}\) In contrast, Kymlicka contends that various European instruments on minority protection prescribe ‘targeted minority rights’: “they are targeted at so-called ‘national’ minorities”.\(^{414}\) Indeed, the notion of 'national minority' is a predominantly European invention, and its presence in every minority-related instrument shows a considerable level of semantic cohesion among the international organizations in Europe concerning the use of the qualifier ‘national’ before the word ‘minority’. Originally, there was an assumption that 'national minority' mainly refers to traditional communities who were "losers in the process of European state formation", and consequently, "ended up on the wrong side of the border, cut off from their co-ethnics in a neighboring kin-state".\(^{415}\) In spite of this, the practice of various bodies supervising the implementation of minority instruments indicates that the term 'national minority' will, in the foreseeable future, become "an umbrella term for all ethnocultural groups, regardless of their historic presence in a state or degree of territorial concentration".\(^{416}\)

It goes without saying that the development of minority protection in Europe was not a linear process. In fact, since the creation of the Council of Europe and the European Economic Community, one can speak of three main periods in the field. Professor Turk characterizes these periods as:


\(^{412}\) Ibid.

\(^{413}\) W. Kymlicka, Multicultural Odysseys..., supra note, p. 199.

\(^{414}\) Ibid, p. 203.

\(^{415}\) Ibid.

\(^{416}\) Ibid, p. 217.
1) "the period of standstill" between 1945 and 1975, when minority issues were subsumed into the principle of non-discrimination;

2) “the period of slow progress”, which lasted from the adoption of CSCE’s Helsinki Final Act of 1975 to the Copenhagen Document on the Human Dimension of 1990; and

3) “the period of intensive search” after 1990, i.e. the revival during which numerous instruments for minority protection were adopted.417

The next section is organized in four sub-sections. Initially, activities of the Organization for Security and Cooperation in Europe (OSCE) are briefly examined. Particularly, provisions of the widely quoted Copenhagen Document devoted to minorities will be discussed as well as the work of the OSCE’s High Commissioner on National Minorities.

Particular emphasis is given to the Council of Europe’s work in the field. The three main treaties produced under the auspices of CoE and their respective articles will be analyzed. It should be noted that ECHR, despite being a non-specific minority instrument, is of crucial importance, since it proclaims individual human rights to all persons, both majorities and minorities alike. These human rights are essential for the development of just societies, societies that provide fertile ground for implementing various standards in the field of minority protection. It is only in such societies that minorities’ identities can flourish without state interference. In the same way, the ECtHR jurisprudence reveals the real impact of the ECHR’s rights for indirect protection of persons belonging to minorities.

A considerable portion of this section is devoted to two minority-specific treaties in Europe, namely the FCNM and ECRML. These two treaties are generally considered to be a milestone in the international protection of minorities. Their provisions of rights to persons belonging to national minorities (FCNM), and duties on the part of states in area of linguistic policies (ECRML) will be analyzed in more details. Their main deficiencies and shortcomings will not be neglected.

Furthermore, provisions in the treaties establishing the EU that prescribe human rights and its fundamental values will be examined, as well as those in the Charter of Fundamental Freedoms. Special attention is given to the conditionality of minority protection in the EU enlargement policy. The EU’s inability to develop cohesive minority policies, which apply equally in both internal and external relations, has drawn criticism for a ‘double-standard’ policy regarding the protection of minorities.

One innovative mechanism, which evolved in the 1990s, is the eruption of bilateral treaties for good neighborly relations especially among countries in Central and Eastern Europe. The majority of these treaties served to normalize bilateral relations between countries which previously had a history of disputes regarding contentious territories and population(s). Admittedly, in almost every case, issues related to minorities with ethno-cultural bonds to the neighboring country posed a burden on the bilateral

relations. Hence, it became a common practice that such treaties, apart from establishing legal frameworks for cooperation in various fields of common interest, simultaneously prescribed symmetric rights to kin-minorities, those persons who share ethno-cultural characteristics with the majority population in the neighboring country. The section will close with a brief assessment of the main characteristics and achievements of bilateral treaties on minority protection.

**B. Minority Issues on the OSCE's Agenda: A Brief Review**

Initially, the Conference for Security and Cooperation in Europe (CSCE) was designed with a view to easing tensions and facilitating communication between the main ideologically opposed countries during the Cold War. Its status was upgraded from a conference to a permanent international political organization in 1994, when its official designation became the Organization for Security and Cooperation in Europe (OSCE). Admittedly, the Cold War era, the security issues prevailed on the agenda of what was imagined at the time to be solely an international conference instead of a permanent international organization.\(^\text{418}\)

Concomitantly, though on the sidelines of this type of international engagement, human rights and rights of the persons belonging to minorities were not entirely neglected. These issues were embodied in the document with which the first conference was concluded, known as Helsinki Final Act of 1975. Among the ten basic principles postulated to guide relations between the states involved in the Helsinki process, the seventh principle was devoted to respect for human rights. Its paragraph 4 deals with minorities in an equality-oriented manner, reading:

> “The participating States on whose territories national minorities exist will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere”.\(^\text{419}\)

Prior to the promulgation of said document, the international community had more or less disregarded the pressing needs of minorities for almost three decades. Despite the ostensibly conceptual deficiencies in the quoted provision, this attempt to address the minority needs in the Cold War era was

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undoubtedly a significant breakthrough.\textsuperscript{420} More positive interpretation even implies that positive actions on the part of the States could be deduced from the provision’s content, basically with a view to ensuring equality in fact for members of minorities.\textsuperscript{421}

In later years, the Vienna Concluding Document of 1989 offered new perspectives in the field of minority rights. The prescribed duty of the States to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of national minorities on their territory was a considerable advancement in the field.\textsuperscript{422} In the words of Symonides, "for the first time in the CSCE process the positive obligation to preserve the rights of minorities - their...identity - was recognized".\textsuperscript{423}

1. The Copenhagen Concluding Document on Human Dimension of 1990

After the Cold War, the focus of the OSCE slowly shifted towards human rights and minority protection, although still from the perspective of their security impact in relations between various European countries. Or, as Helgesen pointed out, the minority question within the OSCE has “developed from a status of practically non-existence to a status of great importance and hyper-sensitivity”.\textsuperscript{424} Subsequently, the conferences on ‘human dimension’, which emerged as a result of the Vienna Concluding Document, enabled various issues related to human rights and minority rights to be treated within the frame of OSCE. In particular, the second conference, in Copenhagen, and the Document on the Human Dimension was a milestone for minorities in Europe.

A considerable part of the Copenhagen Document is dedicated to the rights of persons belonging to minorities. Of special importance is the proclamation that, “to belong to a national minority is a matter of person’s individual choice and no disadvantage may arise from the exercise of such choice”.\textsuperscript{425} After this proclamation, the often invoked 'state discretion' to determine whether some ethnic group could be qualified as a minority was highly disputed and even considered anachronistic.

Specific rights designed to address various aspects of minority identity are enumerated in the document.\textsuperscript{426} In essence, the bulk of them derive from the principles of non-discrimination and equality.

\textsuperscript{420} See: J. J. Preece, National Minorities and the European..., supra note 46, p. 117.
\textsuperscript{421} G. Petassuglia, Minorities in International Law: An Introductory Study, supra note 60, p. 140.
\textsuperscript{423} J. Symonides, The Legal Nature of Commitments Related..., supra note 359, pp. 308-309.
\textsuperscript{425} OSCE, Document on the Copenhagen of the Conference on the Human Dimension of the OSCE, 29 June 1990, Part IV, para. 32.
\textsuperscript{426} Ibid. The rights for persons belonging to minorities in the document includes: free use of mother tongue in private as well in public (para. 32.1), freedom of assembly (para.32.6), right to establish and maintain their own educational, cultural and religious associations (para. 32.2), the right to profess and practice their religion (para. 32.3), right to disseminate information in their
linguistic rights, including the possibility for pupils to obtain instruction in minority language, are carefully formulated quite tentatively.\textsuperscript{427} Specifically, qualifications such as 'whenever possible and necessary' or 'adequate opportunities' leave these duties highly susceptible to circumvention by the states.

The document notes that, by establishing “appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of...minorities”, the states could offer advanced protection to some traditional minorities, and simultaneously foster integration of those communities feeling alienated from the dominant group.\textsuperscript{428} At the same time, any activity contrary to the basic principles of the UN Charter, including the principle of territorial integrity, is strictly forbidden.

Nevertheless, Arie Bloed sees the Copenhagen Document as “undoubtedly still the most far-reaching international instrument in qualitative terms”, which actually “contains provisions which relate to all important aspects on the international protection of the rights of national minorities”.\textsuperscript{429} Conversely, without underestimating its significance, Preece is of the opinion that out of twelve articles pertaining to national minorities in the Copenhagen document, eight merely restated provisions of earlier human rights texts and hence did not go the prevailing global minimum standard.\textsuperscript{430}

Geneva expert meetings on national minorities offered some clarifications with respect to the rights stipulated in the Copenhagen Document. One excerpt of the meeting's report is widely quoted, namely the proclamation that "issues concerning national minorities, as well as compliance with international obligations and commitments concerning the rights of persons belonging to them, are matters of legitimate international concern and consequently do not constitute exclusively an internal affair of the respective State".\textsuperscript{431} These developments, taken in conjunction with a rising climate of internationalizing minority rights, added fuel to the argument, invoked by many countries, for the allegedly exclusive domestic jurisdiction of questions related to minorities to be clearly surpassed in the forthcoming years.

There are some peculiarities with respect to the legal status of the OSCE, arising mainly from the political character of the organization. First and foremost, it is clear that OSCE generated documents are politically binding rather than legally binding instruments. At the same time, as Pentassuglia noted, whereas “non-compliance with a non-legally binding commitment may not per se generate international legal responsibility, a violation of 'politically' binding agreements is thus as unacceptable as a violation

\footnotesize{mother tongue (para. 32.4) and the right to establish and maintain trans-frontier contacts with people with whom they are ethno-culturally related (para. 32.5).}


\textsuperscript{428} Copenhagen Document, supra note 425, para. 37.

\textsuperscript{429} A. Bloed, The OSCE and the Issue of National Minorities… supra note 427, p. 114.

\textsuperscript{430} J. J. Preece, National Minorities and the European..., supra note 46, p. 133.

Finally, we must acknowledge that the OSCE’s commitments “are not constructed primarily for individuals or private institutions, but represents a reference for state actors”.

2. High Commissioner on National Minorities

This part closes with some brief remarks on the mandate and work of the OSCE High Commissioner on National Minorities (HCNM). According to John Packer, the fierce civil wars in some of the former Yugoslav republics served as an impetus for OSCE’s countries to establish the HCNM, tasked with preventing these kinds of conflicts in other OSCE member states.

According to the Helsinki Document of 1992, with which the participating states established the High Commissioner, the mandate is to provide "'early warning and, as appropriate, 'early action' at the earliest possible stage in regard to tensions involving national minority issues which have not yet developed beyond an early warning stage, but, in the judgment of the High Commissioner, have the potential to develop into a conflict within the CSCE area, affecting peace, stability or relations between participating States".

A textual interpretation of the HCNM mandate, taking the ordinary meaning of its terminology, supports a view that its involvement "does not extend to all minority-related issues, but is limited to those having security aspects of implications". That is, rather than attempting to resolve ongoing conflicts involving national minorities, the role of the HCNM is to assess the situations involving minorities with a view to preventing a potential conflict in its pre-initial phase from developing into a large-scale conflict. To this end, High Commissioner can collect information from various sources, including NGOs. To collect information on national minorities, HCNM can visit countries, discuss the various issues with state representatives and minority activists and promote dialogue and confidence-building measures among them. It is worth noting that HCNM visited every post-socialist country in Europe faced with imminent minority problems.

The former HCNM, Max van Der Stoel, from its outset promoted a quite unique approach to developing working instruments that gave him a considerable scope for creativity and action possibilities.

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Such working instruments were: issuance of specific recommendations to governments, general recommendations with respect to abstract minority norms, issuing statements and hosting problem-solving workshops and projects in response to crises in majority/minority in a given state. The three well-known general recommendations issued on the request of HCNM, namely the Hague Recommendations regarding the Education Rights of National Minorities, the Oslo Recommendations regarding the Linguistic Rights of National Minorities and the Lund Recommendations on the Effective Participation of National Minorities in Public Life, though legally and politically non-binding documents, have revealed the underlying importance of these three targeted areas for unimpeded development of minorities and maintenance of their identities in the society as a whole.

C. Council of Europe and Protection of Minorities

The Council of Europe was established as an international organization in 1949 with the Treaty of London, also known as a Statute of the Council of Europe. Its main purpose was to secure democracy in Europe in the aftermath of the Second World War, and moreover, to prevent the reemergence of ideologies based on racial purity, which might pave the way toward gross human rights violations. As a result, Article 3 of the Statute stated clearly that members of Council of Europe (CoE) must accept “principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms”.

In the beginning, Council of Europe dogmatically adopted the UN approach, giving pre-eminence to individual human rights and the principle of non-discrimination, thus considering minority rights as issues not extremely urgent. The Parliamentary Assembly was the main minority-sensitive organ within the CoE’s structure and produced a considerable number of resolutions on the need for adopting additional protocols to the ECHR, which would prospectively secure rights to national minorities. In 1991, the European Commission for Democracy through Law (Venice Commission), acting in its role as advisory body to the CoE, adopted a comprehensive proposal for a European Convention for the Protection of Minorities. The proposal strongly promoted the right to political participation for minorities, their existence as well as the right to preserve and develop their identity.

439 C. Neukrich et al, Implementing Minority Rights..., supra note 418, pp. 165-166.
444 See: G. Petassuglia, Minorities in International Law, supra note 60, pp. 127-129.
1. European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)

ECHR affords rights formulated in a strictly individualistic manner. This is hardly surprising since, as mentioned, from the beginning Council of Europe followed the UNs human rights philosophy, and thus the ECHR was inevitably influenced by the UDHR, adopted only two years earlier.\(^{446}\) The ECHR does not prescribe minority rights. However, the notion of ‘national minority’ is present in the Convention, although only as impermissible grounds for discrimination against individuals in the enjoyment of the Convention’s rights and freedoms. As a result, Article 14 of the ECHR reads as follows:

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any 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”. \(^{447}\)

With respect to the possibility of affording genuine minority protection through civil and political rights enshrined in the ECHR, the ECtHR clearly stressed that “the protection of individual members of...minority is limited to the rights not to be discriminated in the enjoyment of the Convention rights on the grounds of their belonging to the minority (Article 14)”.\(^{448}\) This Article 14, however, “has an autonomous meaning without independent existence”, which means it is not a free-standing provision and cannot be invoked automatically by individuals claiming violation of their recognized rights under the ECHR.\(^{449}\) In other words, the non-discrimination clause in Article 14 only operates in conjunction with other substantive rights and freedoms guaranteed by the ECHR and its Protocols.

The jurisprudence of ECtHR constantly shows that, as Pentassuglia noted, for Article 14 to become applicable in a given context or case, “it suffices that the facts of the case fall within the ambit of another substantive provision of the ECHR or its protocols”.\(^{450}\) Furthermore, it is to be noted, in case a breach of substantive right has been found, the Court does not consider Article 14 and vice versa, that is to say, when a violation of a substantive right in conjunction with Article 14 is established, the Court does not assess a possible violation of a substantive right.

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\(^{449}\) A. Spiliopoulos, Justifications of Minority Protection in International Law, supra note 80, p. 205.

\(^{450}\) G. Petassuglia, Minorities in International Law, supra note 60, p. 124.
1.1. Approach of ECtHR in Minority Related Cases

Despite absence of minority provision within the ECHR, the Court in Denizci v. Cyprus underlined that States are obliged to uphold and respect “international standards in the field of protection of human and minority rights”. In that manner, some developments in ECtHR’s jurisprudence with respect to the application and interpretation of Convention rights of relevance for minorities need to be scrutinized in order to assess the real impact of the ECHR on minority protection in Europe.

a) Non-discrimination and equality issues. Belgian Linguistic case is widely quoted as a leading case where Article 14 and the principle of equality were interpreted at considerable length. Here, the Court gave preference to the concept of formal equality. Particularly, it stressed that “the principle of equality of treatment is violated if the distinction (in treatment among individuals - DT) has no objective and reasonable justification”, and the existence of such justification “must be assessed in relation to the aim and effects of the measure under consideration”.

In the Court’s view, principles derived from Article 14 are violated, “when it is clearly established that there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised”. We must recognize that the jurisprudential doctrine of ‘margin of appreciation’ is typically associated with the proportionality test. But, if used widely by the Court, the concept favors states and poses a threat to reduce the level of protection.

In its ruling in a leading case of Thlimmenos v. Greece, the Court significantly advanced its approach towards substantive equality, acknowledging that “the right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different”. Kristin Henrard contends that this statement, in addition to providing a starting point for “substantive equality considerations”, concomitantly necessitates “positive obligations on states” for promotion and adoption of “differential treatment and special measures”. Note that in the case of D.H. and others v. Czech Republic, the Court went further and for the first time in its jurisprudence referred to the notion of indirect discrimination. In doing so, it essentially "added an important opening towards substantive equality in minority context".

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453 Ibid.
455 European Court of Human Rights, *Case of Thlimmenos v. Greece*, 6 April, 2000, para. 44.
457 Ibid.
The overall significance of these principles, established by ECtHR’ jurisprudence, is that by providing special rights for minorities in various fields (e.g. mother tongue education, linguistic rights etc.), the State does not necessarily discriminate against the rest of population (majority). It goes without saying, such measures by definition need to accord with prescribed requirements for differential treatment in significantly different (majority/minority) situation.458

b) Minorities’ way of life, freedom of religion, freedom of expression. The traditional lifestyle of minority groups in considerable cases has been recognized as falling under the right to private and family life, stipulated in Article 8 of the ECHR. The vast majority of such cases concerned Roma communities in various countries. In one particular case, Chapman v. United Kingdom, the Court made a reference to FCNM and pointed to an “emerging international consensus amongst contracting States of the Council of Europe recognizing the special needs of minorities and an obligation to protect their security, identity and lifestyle”.459 In the following paragraph, though, the ECtHR retreated somewhat from this 'revolutionary statement', observing that such an 'emerging consensus' is not “sufficiently concrete for it to derive any guidance as to the conduct or standards which contracting states consider desirable in any particular situation”.460 In contrast, a more positive interpretation of Article 8 may derive positive duties on the part of the states to facilitate the minority way of life and improve their situation.

Occasionally, the Court approached some case-specific issues related with freedom of religion (Article 9), as well as the autonomy of religious groups in organizing communal affairs. In the case Hasan and Chaush v. Bulgaria, the Strasbourg Court stressed that “autonomous existence of religious communities is indispensable for pluralism in a democratic society and...directly concerns not only the organization of the community as such but also the effective enjoyment of the rights to freedom of religion by all its active members”.461 It is apparent that in its jurisprudence, the Court attaches particular importance to the freedom of religion, mutual coexistence of various religions in society and the possibility for their organizations to organize religious affairs without state’s interference.

Article 10 proclaims the universal right to freedom of expression. Freedom of expression, if applied regardless of ethnocultural affiliation, could significantly advance the promotion and protection of minority identity in a society. For instance, in numerous cases initiated by members of the Kurdish minority in Turkey, Strasbourg Court reiterated that "freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfillment".462 Subsequently, its argumentation in one case went further, proclaiming that

458 G. Petassuglia, Minorities in International Law, supra note 60, pp. 125-6.
460 Ibid, p. 249.
462 European Court of Human Rights, Case of Arslan v. Turkey, 8 July 1999, para. 44.
this freedom “may require positive measures of protection, even in relations between individuals”, i.e. horizontal protection.\(^{463}\) As for the prescribed restrictions of a general right contained in Article 10, in the case Özgür Gündem v Turkey, the Court courageously decided, the “mere fact that ‘information’ or ‘ideas’ offend, shock or disturb does not suffice to justify interference with the applicant’s rights to freedoms of expression”.\(^{464}\) Therefore, one scholar rightfully noted that minorities enjoy a “broad degree of freedom of expression...that might challenge state structures”.\(^{465}\)

c) Linguistic rights and right to education in minority language. Concerning the linguistic rights in ECHR, first, there is a need to distinguish between two categories of rights. First, the category of language rights for minorities includes: the freedom to speak and write in a minority language; the freedom to use minority language in religious activities and cultural practices; the freedom to use in private context local names and topographical designations in minority language; the freedom to have private media using minority language.\(^{466}\) Since many of these linguistic freedoms derive from the freedom of expression and principle of non-discrimination, it is no exaggeration to conclude that they are covered by the Convention.

The second category of language rights includes: the possibility for minority language to be used in judicial matters and, where appropriate, by public authorities.\(^{467}\) With respect to judicial matters, the ECHR provides for a detained person to be informed in his or her own language of the reasons for detention and any charges against him/her (Article 5), and provides the right of everyone charged with a criminal offence to have the free assistance of an interpreter in cases in which the accused cannot speak nor understand the language used in the court (Article 6). Unfortunately, these provisions, “which at first sight might afford some protection to linguistic minorities, have proved to be not relevant in practice”.\(^{468}\) This is evident in the case of K v. France, where former European Commission for Human Rights found that “a French court had lawfully denied the applicant the services of an interpreter to conduct his defence in the Breton language, since the record showed that the applicant was born in France and had no difficulty in understanding and speaking the French language”.\(^{469}\)

Article 2 of Protocol 1, in addition to enshrining the right to education, imposes an obligation for states to “respect the right of parents to ensure such education and teaching (for their children-DT) in


\(^{464}\) Ibid, p. 757.

\(^{465}\) Ibid, p. 761.


\(^{469}\) Ibid.
conformity with their own religious and philosophical convictions”.\textsuperscript{470} This provision has occasionally been invoked by minorities to support claims for the right of mother-tongue education. The ECtHR in Belgian Linguistic case clearly noted that Article 2 of Protocol 1 “does not require of States that they should, in the sphere of education or teaching, respect parents' linguistic preferences”.\textsuperscript{471} Moreover, it went further and confirmed unambiguously that “to interpret the terms "religious" and "philosophical" as covering linguistic preferences would amount to a distortion of their ordinary and usual meaning and to read into the Convention something which is not there”.\textsuperscript{472} Finally, the ECtHR stated unequivocally that a right to obtain mother-tongue education in state-provided educational system could not be derived even if Article 2 is read in conjunction with Article 14 (non-discrimination clause).\textsuperscript{473}

Conversely, in a well-known interstate case of Cyprus v. Turkey, the ECtHR accepted the claims that, by not providing a secondary level education in Greek language for members of the Greek Cypriot community, the respondent state (Turkey) had violated Article 2 of Protocol 1. In that manner, the educational facilities where a curriculum was available either in Turkish or English could not “correspond to the needs of the persons concerned who have legitimate wish to preserve their own ethnic and cultural identity”.\textsuperscript{474} Furthermore, whereas primary education through the medium of Greek language was available for children of Greek origin, “the failure of the authorities to make continuing provision for it in secondary school level must be considered in effect to be denial of the substances of the right at issue”.\textsuperscript{475} Having in mind the peculiar situation in Cyprus, one may not consider the Court’s reasoning in the case as generally applicable, since “such educational facilities in fact existed in the past and have been abolished by the Turkish Cypriot authorities”.\textsuperscript{476} Nonetheless, some commentators argue that this kind of protection might be afforded in similar cases concerning minority claims to once recognized and later deprived educational right(s) in minority language.\textsuperscript{477}

d) Freedom of association and participatory rights. To date, minorities have been very successful in seeking to exercise the freedom of association enshrined in Article 11. Freedom to establish organizations or political parties, “based on communal identities”, is rightfully considered to be an essential precondition for minorities to have opportunity to pursue their legitimate aims for protection and

\textsuperscript{471} ECtHR, \textit{Belgian Linguistic Case}, supra note 452, p. 29.
\textsuperscript{472} Ibid.
\textsuperscript{473} Ibid.
\textsuperscript{476} European Court of Human Rights, \textit{Case of Cyprus v. Turkey}, 10 May 2001, para. 278.
\textsuperscript{477} Ibid.

promotion of their particularities within the wider society.\textsuperscript{478} For instance, in \textit{Ouranio Toxo v. Greece}, the Court stressed that “pluralism is built on, for example, the genuine recognition of, and respect for, diversity and the dynamics of traditions and of ethnic and cultural identities.”\textsuperscript{479}

In another case involving Greece, initiated after several refusals by Greek courts to register cultural association of Macedonian minority, the ECtHR found that “even supposing that the founders of an association...assert a minority consciousness, the Document of the Copenhagen Meeting...of the CSCE...and the Charter of Paris for a New Europe – which Greece has signed – allow them to form associations to protect their cultural and spiritual heritage”.\textsuperscript{480} Scholars contend that reference to OSCE acts in this case is of paramount importance, in presupposing a ‘synergy approach’ in the interpretation of states’ duties under ECHR via their adherence to other international human rights instruments in the field.\textsuperscript{481}

The ECtHR gives equal importance to the right of minorities to organize themselves in political parties, with a view to actively participating in democratic processes and public life. Thus, in the case of \textit{Socialist party and others v. Turkey}, the Court clarified its position on the issue, emphasizing that “it is of the essence of democracy to allow diverse political programmes to be proposed and debated, even those that call into question the way a State is currently organised, provided that they do not harm democracy itself”.\textsuperscript{482} Therefore, one may conclude that the dissolution of political parties, representing minority populations in a society, would constitute a violation of freedom of association.\textsuperscript{483}

In general, states’s implementation of ECtHR’s judgments is another area where improvements are constantly needed and, hence, often advised by various actors. This is particularly true with regard to minority-related cases. Admittedly, practice has shown that judgments regarding the “registration of associations and political parties of ethnic minorities that official state policy does not recognise” are mostly ineffective.\textsuperscript{484} As will be demonstrated in the next chapter, this outcome is found typically in cases initiated by members of Macedonian and Turkish minorities in Greece, as well as by Macedonians in Bulgaria, where the ECtHR found breach of the freedom of association (Article 11).

\textsuperscript{478} See: K. Henrard, \textit{A Patchwork of ‘Successful’ and ‘Missed’ Synergies...}, \textit{supra} note 454, p. 334.

\textsuperscript{479} European Court of Human Rights, \textit{Case of Ouranio Toxo v. Greece}, 20 October 2005, para. 35.

\textsuperscript{480} R. Medda-Windischer, \textit{The European Court of Human Rights and...}, \textit{supra} note 468, pp. 250.

\textsuperscript{481} European Court of Human Rights, \textit{Case of Sidiropoulos and others v. Greece}, 10 July 1998, para. 44.

\textsuperscript{482} European Court of Human Rights, \textit{Case of Socialist Party and others v. Turkey}, 25 May 1998, para. 47.

\textsuperscript{483} R. Medda-Windischer, \textit{The European Court of Human Rights and...}, \textit{supra} note 468, pp. 261-262.

1.2. Protocol No. 12 to the ECHR and Its Possible Impact on Minorities

Protocol No. 12 to the ECHR considerably improves the scope of the principle of non-discrimination. Its Article 1 uses wording reminiscent of Article 14 of the ECHR, proclaiming that “the enjoyment of any right set forth by law shall be secured without discrimination on any ground such as...association with a national minority, property, birth or other status”.\(^{485}\) It is evident that the notion of ‘discrimination’ in Article 1 of Protocol 12 is intended to be identical to that of Article 14, and the same conclusion is reached in respect to the grounds on which discrimination is prohibited.\(^{386}\)

However, a general non-discrimination clause in Protocol 12 widens its scope, referring to ‘any right set forth by law’, whereas Article 14 only prohibits discrimination in relation to the “rights and freedoms set forth in the Convention”. Explanatory Report stressed that the additional protection under Protocol No. 12 covers cases where discrimination is prohibited in relation to “any right specifically granted to an individual under national law”, and with respect to a “right which may be inferred from a clear obligation of a public authority under national law”.\(^{487}\)

Another corrective in response to criticism of Article 14 is that Article 1 of Protocol 12 presents a free-standing provision. Hence, a logical conclusion is that there is no need for said provision to be invoked in conjunction with other substantive rights defined in the Convention or its Protocols.\(^{488}\) Additionally, one cannot rule out positive obligations arising on the part of states from said provision, although the extent of any such obligations is likely to be limited,\(^{489}\) since Protocol 12 merely imposes a negative obligation on the state parties, i.e., not to discriminate against individuals on the list of non-exhaustive grounds. Note, however, that De Varennes is of the opinion that the general prohibition of discrimination in Protocol 12 may in some cases presuppose the use of minority language by administrative and public authorities.\(^{490}\)

The first case in which the Strasbourg Court found a violation of Protocol 12 was Sejdic and Finci v. Bosnia and Herzegovina. In brief, the Court in this case declared a provision, which prevents persons who do not belong to one of three ‘constituent peoples’ in BiH to run in elections for the state’s collective Presidency, to be discriminatory within the meaning of Article 1 of Protocol 12. Indeed, the procedure in question was ‘set forth by law’, in accordance with a specific legal system based on a


\(^{487}\) Ibid, para. 21.


\(^{489}\) Explanatory Report to the Protocol No. 12, paras. 26-30.

\(^{490}\) F. Varennes, Using the European Court of Human Rights to Protect..., supra note 466, p. 97.
‘power-sharing’ arrangement between Bosniaks, Serbs and Croats in BiH.\(^{491}\) Therefore, despite the absence of explicit minority rights provisions, it seems that Protocol No. 12 in perspective could provide a path towards more effective protection of minorities against discrimination, possibly even encouraging the ECtHR to reconsider some of the positions previously expressed in minority-related cases.


2.1. General Overview of the Convention

The Council of Europe’s FCNM was adopted in 1994 and came into force in 1998, three months after the twelfth member state consented to be bound by its provisions.\(^{492}\) Considering previous international endeavors in the field, the FCNM is undoubtedly “the first legally binding, multilateral treaty to address the protection of national minorities in general”.\(^{493}\) It is worth noting that the vast majority of European countries are parties to the FCNM, with some notable exceptions, including Greece, which has signed but not ratified the Convention, and France and Turkey, which have neither signed nor ratified it.

The term framework’ in the title leads some authors to emphasize the FCNM’s allegedly soft status compared to other ‘hard law’ treaties. However, despite its vague terminology, reminiscent of the “economic, social and cultural rights tradition”,\(^{494}\) the FCNM nevertheless “creates obligation in international law; it cannot be treated as somehow less binding on account of its structure”.\(^{495}\) On this basis, its Explanatory Report clearly states that FCNM is composed of “mostly programme-type provisions setting out objectives which the Parties undertake to pursue”.\(^{496}\) In point of fact, these provisions are not directly applicable, and thus the Convention’s principles must be implemented “through national legislation and appropriate governmental policies”.\(^{497}\)


\(^{492}\) Council of Europe, Framework Convention for the Protection of National Minorities, 1 February 1995, ETS 157, Art. 28. With its adoption, the Council of Europe ceased efforts to produce an additional protocol to the ECHM which would provide individual rights for persons belonging to minorities in the cultural field.


\(^{495}\) P. Thornberry, An Unfinished Story of Minority Rights, supra note 294, p. 60.


\(^{497}\) Ibid, paras. 11, 13.
Article 1 of the FCNM proclaims that “the protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights”.\(^{498}\) This principle implies that the minority issue “does not fall within the reserved domain of States”.\(^{499}\)

FCNM does not offer a legally binding definition of the term ‘national minority’, despite its presence throughout the document. On the one hand, the adjective ‘national’ may refer to citizenship, thus making the application of the FCNM rights dependent on the possession of state party’ citizenship.\(^{500}\) Eide does not accept this interpretation though, since “nothing in the text of the FCNM...requires that persons belonging to minorities must be citizens”.\(^{501}\) Another possible interpretation associates the ‘national minority’ with the term ‘kin-state’, particularly a state whose population shares ethnic, linguistic and cultural features with the 'national minority' and its members.\(^{502}\) Apart from these two interpretations, as Heintze observed, “it is possible to find some elements of a definition in other provision of the FCNM”.\(^{503}\) Such elements are repeatedly indicated in the Convention’s articles and make references to the ethnic, cultural, linguistic and religious identities of persons belonging to minorities.

Article 3 enunciates two principles. The first proclaims the individual freedom to choose to be treated or not as belonging to a national minority. The Explanatory Report precludes the arbitrariness entailed in previous articulations of these rights, since the choice must be “inseparably linked to objective criteria relevant to a person’s identity”.\(^{504}\) At the same issue, Gilbert noted that “individuals cannot simply claim to be a national minority, while a state cannot simply deny national minority status to a minority group that it has refused to recognize officially”.\(^{505}\)

The second principle embedded in Article 3 states that persons belonging to national minorities may exercise the FCNM rights and freedoms “individually as well as in community with others”.\(^{506}\) This principle raises questions about whether the rights in the FCNM are individual or collective. The formulation ‘persons belonging to minorities’, echoing Article 27 of the ICCPR, implies that rights and freedoms belong to individual minority members rather than the collective as such.\(^{507}\) Heintze contends that the possibility for ‘persons belonging to national minorities’ to exercise prescribed rights jointly with other members of minority group (‘in community with others’) may be fulfilled through associations,

\(^{499}\) Explanatory Report, supra note 496, para. 30.  
\(^{502}\) See: Hans-Joachim Heintze, Article 1, supra note 500, pp. 83-84.  
\(^{503}\) Ibid, p. 84.  
\(^{504}\) Explanatory Report, supra note 496, para. 35.  
\(^{506}\) Framework Convention for the Protection of National Minorities, Art. 3.2.  
\(^{507}\) See: G. Gilbert, The Council of Europe and Minority Rights, supra note 505, p. 178.
cultural manifestations or educational institutions.\textsuperscript{508} Furthermore, he states that “\textit{without the protection of the group the individual cannot enjoy the freedom together with other persons belonging to the same group}”.\textsuperscript{509} Hence, the individualistic human rights approach of the FCNM concomitantly contains a collective/group dimension.

2.2. The Conventional Rights of Persons belonging to National Minorities

The Conventional rights are stipulated in Section II. Article 4, for instance, prescribes a duty on states to adopt ‘adequate measures’ in all fields with a view to achieving full and effective equality between those belonging to national minorities on the one side and members of the majority on the other. Special measures for minority protection are particularly suitable “\textit{when the basic rules of equal enjoyment and the equal exercise of human rights and of non-discrimination are insufficient}” to achieve full and effective equality in the society.\textsuperscript{510} However, these special measures need to be “\textit{in conformity with the proportionality principle, in order to avoid violation of the rights of others}”, and of particular importance is that “\textit{such measures do not extend, in time or in scope, beyond what is necessary in order to achieve the aim of full and effective equality}”.\textsuperscript{511}

The rights stipulated in Articles 7 to 9 are designed in a non-discriminatory fashion and actually “\textit{mirror rights in the ECHR}”.\textsuperscript{512} These articles particularly ensure the following rights and freedoms of persons belonging to national minorities: the right to freedom of peaceful assembly, association, expression, thought and conscience (Article 7); the right to religious affiliation and to establish religious institutions (Article 8); freedom to hold opinions and receive information in the minority language, including the possibility to create and use printed media, sound radio and television (Article 9).\textsuperscript{513} Apart from being of a “\textit{universal nature}”, these freedoms are at the same time “\textit{particularly relevant for the protection of national minorities}”, since they may imply states need undertake “\textit{certain positive obligations to protect the freedoms mentioned against violations which do not emanate from the State}”.\textsuperscript{514}

Article 5 is devoted to the essential characteristics of minority identity and somehow challenges the supposedly individual-centered approach of the Convention. Its paragraph 1 states:

\textsuperscript{509} \textit{Ibid}, p. 134.
\textsuperscript{511} \textit{Explanatory Report}, supra note 496, para. 39.
\textsuperscript{512} G. Gilbert, \textit{The Council of Europe and Minority Rights}, supra note 505, p. 181.
\textsuperscript{513} See: \textit{Framework Convention for the Protection of National Minorities}, Articles. 7-9.
\textsuperscript{514} \textit{Explanatory Report}, supra note 496, paras. 51-52.
"The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture and to preserve the essential elements of their identity, namely religion, language, traditions and cultural heritage".515

With this provision, which mirrors Article 27 of the ICCPR, the Convention surpasses some major drawbacks of the ECHM, such as the narrow interpretation of rights in the latter being insufficient to afford minority protection, and the states’ invoked broad leeway to rely on the doctrine of 'margin of appreciation' in minority related cases.516 A positive obligation for states may be derived from Article 5, with a view to a national minority and its members being actively involved “in the process of determining what the state has to do to promote the necessary conditions for those groups to flourish and an ultimate obligation to provide finance for such initiatives”.517 At the same time, financial assistance for the cultural activities of national minorities should “at least be proportional to the numbers of persons belonging to the minority concerned, seen against the total allocation to cultural activities within the country as a whole”.518

Articles 10 to 14 prescribe minority rights in the fields of language and education. Article 10 generally recognizes the right to free and unimpeded use of minority language, in private and in public, and opens the possibility for its usage in relations between national minority members and administrative authorities.519 The latter possibility is not absolute, though, since its implementation is conditioned by a “lexicon of qualifiers”, some of them quite ambiguous and susceptible to different interpretations.520 De Varennes, for example, observed that the right to use minority language with public authorities “is not yet a well-entrenched legal entitlement in legal terms at the international level”, which, allegedly, is why “the exact content where such right can arise is not always clear from its scattered presence in various instruments”.521 Nevertheless, the Advisory Committee has declared that “it is not necessary to have a substantial numbers (of speakers - DT) for the use of minority language by administrative authorities since the involvement of a ‘traditional area’ can be sufficient”.522

According to the first paragraph of Article 11, national minority members have the right to use their personal names in the national minority language. The Explanatory Report emphasized that those

515 Framework Convention for the Protection of National Minorities, Art. 5.1.
516 See: C. Furtado, Guess Who’s Coming to Dinner…, supra note 446, pp. 361-364.
520 P. Thornberry, An Unfinished Story of Minority Rights, supra note 294, at p. 63. Such qualifications for activation of the right to use minority language in relation with administrative authorities are: the area has to be inhabited by national minorities traditionally or in substantial numbers; the persons belonging to minorities must request said right; there must be a ‘real need’ for such a request; and, state parties “shall endeavor to ensure” this right for persons belonging to national minorities in so far as it is possible.
522 Ibid, p. 327.
who have changed their names due to coercion or forced assimilation have the right to reintroduce their names in the original form.\textsuperscript{523} Two notorious cases concerning a policy of forced personal name changes affecting national minorities are relate to the Macedonian minority in Greece in the 1920s and the Turkish minority in Bulgaria in 1980s.

Article 11, paragraph 3, provides that traditional local names, street names and other topographical indications, in those areas where traditionally or in substantial numbers persons belonging to national minorities live, may also be in the minority language. As in Article 10 (2), with which it is most closely connected, since it addresses the use of minority language by public authorities, this possibility is conditioned by many ‘escape clauses’. Moreover, Article 11 (3) is not intended as an individual right, but only prescribes states ‘to endeavor’ to enable the possibility for using minority language on public signage designating the local toponymy under certain conditions.\textsuperscript{524} The Advisory Committee has offered more positive interpretations, though, emphasizing that Article 11 (3) “\textit{imposes tangible legal obligations}” on states, in order to be flexible in determining the feasibility for usage of minority language in local names, and to promote such usage, adjusted to local conditions.\textsuperscript{525}

Furthermore, persons belonging to national minorities have a recognized right to establish and manage their own private educational institutions. Concurrently, states are obliged to promote intercultural education, by means of curriculum enriched with subjects from the history and culture of their national minorities.\textsuperscript{526}

The right to learn one’s mother language (Article 14.1) is considered to be indispensable for national minority members to preserve and assert their identity.\textsuperscript{527} Languages as a medium have a central role in people’s everyday life, through which they express themselves and communicate with others from their community. Despite being an ‘absolute right’,\textsuperscript{528} Explanatory Report explained that a right to learn minority language “\textit{does not imply positive action, notably of financial nature}” for the states parties to the Convention.\textsuperscript{529}

Article 14 also outlines two possibilities for persons belonging to national minorities to receive lessons in the minority language. One is to provide them with ample opportunity to be taught the minority language “\textit{in the same way as any other language, as a curriculum subject}”. The other is to receive instruction “\textit{through the medium of the minority language}”.\textsuperscript{530} Again, these obligations are subject to

\textsuperscript{523} Explanatory Report, supra note 496, para. 68.
\textsuperscript{524} Fernand de Varennes, \textit{Article 11}, in Marc Weller (ed.), \textit{The Rights of Minorities…}, supra note 126, pp. 329-363, p. 349
\textsuperscript{525} \textit{Ibid}, at pp. 358-359.
\textsuperscript{527} See: Explanatory Report, supra note 496, para. 74.
\textsuperscript{528} G. Gilbert, \textit{The Council of Europe and Minority Rights}, supra note 505, p. 184.
\textsuperscript{529} Explanatory Report, supra note 496, para. 74
numerous qualifications, which, when strictly interpreted, “would make the right in question almost impossible to exercise, stripping it of practical effect”. However, the Advisory Committee urged state parties to discuss educational issues with national minorities and to meet their demands for the inclusion of minority languages in the education system as far as possible. In this respect, Thornberry notes that states are required to balance between “integration and separation” in educational issues, and to avoid tendencies towards “assimilation and the disappearance of the minority as a distinct culture” on the one hand, and ghettoization of minority culture in society on the other.

Article 15 requires state parties to create the conditions necessary for national minority members’ effective participation in cultural, social and economic life and in public affairs. Particularly relevant are possibilities for national minority members to participate in decentralized or local forms of self-governance as well as in decision-making processes and elected bodies at both national and local levels. The involvement of national minority members in the public service (central or local administration, judiciary and police) is crucial, since, on the one hand, it inevitably enhances their effective participation, and on the other hand, it increases confidence in the public service. The bodies in charge of the FCNM implementation underlined that the right of effective participation for national minority members includes: “equal participation in the electoral process”, “adequate representation in parliament and other elected bodies”, “the establishment of effective consultative mechanisms” etc.

2.3. Implementation and Achievements

Council of Europe’s Committee of Ministers is formally responsible for monitoring the FCNM’s implementation, but a substantial part of the work is dealt with by the Advisory Committee, composed of 18 individual experts nominated by state parties. The core of the implementation procedure is periodic state report(s). The first report is required to be submitted within one year after the entry into force of the Convention for the state concerned, and subsequent reports regularly are submitted in five-year intervals. Importantly, the Advisory Committee may collect information on the state under review from various sources, and ‘shadow reports’ issued by NGOs in a given state tend to be valuable tools for establishing the extent to which the country concerned adheres to its obligations under FCNM. Another possibility for

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531 Ibid, pp. 427. The qualifications in Article 14 (2) indicate that: there has to be ‘sufficient demand’ by persons belonging to minorities for teaching in the minority language, and therefore the states ‘shall endeavor to ensure’ this opportunity for them ‘as far as possible’.
533 *Explanatory Report*, supra note 496, para. 80.
the Advisory Committee is to conduct country visits to hold separate discussions with government officials, representatives of national minorities and civil society. After examining the individual state report and the country visit, the Advisory Committee issues an opinion, The State is invited to comment on the opinion within four months. The opinions contain concluding remarks that may provide a basis for the Committee of Ministers to adopt recommendations for the country concerned.

The Council of Europe is criticized for adopting the state-reporting mechanism as a means of implementing the FCNM. Some authors contend that such a ‘weak system’ of treaty supervision undermines the achievements and perspectives of the Convention. They express concerns that opinions and recommendations issued by bodies responsible for the Convention’s implementation “may not really compel states to change their behavior”.

3. European Charter for Regional and Minority Languages: Summary of Its Significance for Minorities

ECRML was opened for signature on 5 November 1992, and came into force on 1 March 1998, after five member states ratified it. As such, this document is not a minority-specific instrument or even a human rights instrument. Instead, its creators opted for a different approach geared to providing legal protection “not to individuals (via human rights) nor to groups (on the basis of minorities’ rights), but to the languages themselves as collective cultural assets”. Indeed, the Explanatory Report quite clearly emphasizes that the Charter’s “overriding purpose is cultural”; it was designed to “protect and promote regional or minority languages as a threatened aspect of Europe’s cultural heritage”. Considering the inseparable bond between languages as such and speakers’ individual and collective developments, it is understandable that regional and minority languages were regarded as endangered cultural heritage eligible for protection via international convention.

538 C. Furtado, Guess Who’s Coming to Dinner…, supra note 446, p. 365.
539 Council of Europe, European Charter for Regional or Minority Languages, 4 November 1992, ETS 148. According to Woehrling, the Charter “came into being long before it actually came into force. The draft version prepared by a working group was finalized and approved by the Conference of Local and Regional Authorities in Europe in 1987. While the text was considered at length by an ad hoc committee between 1988 and 1992…the Charter already possessed its main characteristics in 1987”. Jean-Marie Woehrling, Introduction, in Alba Lopez, Eduardo Vieytez, Inigo Libarona (eds.), Shaping Language Rights: Commentary to European Charter for Regional or Minority Languages in Light of the Committee of Experts’ Evaluation, Council of Europe Publishing, 2012, pp. 11-31, p. 11.
541 J. Woehrling, Introduction…, supra note 539, p. 16.
542 Explanatory Report to the European Charter for Regional or Minority Languages, in National Minority Standards: A Compilation of OSCE and Council of Europe Texts, supra note 442, pp. 260-293, para. 10.
Notably, the ECRML main focus is to protect and promote regional and minority languages, not linguistic minorities. This instrument strictly avoids any reference to notions such as ‘minorities’ or ‘national minorities’. Instead, its provisions “impose obligations on states in respect of ‘users’ of regional or minority languages”.\(^{544}\) It follows that the ECRML “does not establish any individual or collective rights for the speakers of regional or minority languages”, even though implementation of the Charter’s measures “will have an obvious effect on the situation of the communities concerned and their individual members”.\(^{545}\) Arguably, however, “by protecting ‘languages’, as an emanation of culture which is dependent upon communicative arrangements”, the ECRML actually protects “‘linguistic communities’, or - if one wants to use the word – ‘minorities’”.\(^{546}\)

Article 1 defines ‘regional or minority languages’, which for the Charter’s purposes, covers languages that are “traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State’s population”.\(^{547}\) These languages must be distinguished from the state’s official language and its dialects and must be different from the languages of migrants. The question of whether a dialect or “different forms of expression constitute a separate language” remains unanswered in the ECRML, but not ignored. Rather, the ECRML stipulates that such questions cannot be determined exclusively on “strictly linguistic considerations, but also on psychosociological and political phenomena which may produce a different answer in each case”.\(^{548}\) In practice, the Committee of Experts has approached the problem of dialects and assessed “whether there has been serious discussion between the state and the speakers of the particular language/dialect, and on the depth of feeling of speakers of the language/dialect”.\(^{549}\)

Article 2 presupposes that there are two main parts of the ECRML: parts II and III. Part II is intended to apply to all minority or regional languages spoken within the territory of a given state. Particular languages that would benefit from its provisions must be determined objectively; the States “are not free to grant or to refuse a regional or minority language the status which is (already – DT) guaranteed under Part II”.\(^{550}\) The Committee of Experts unequivocally confirmed that “any language which complies with the basic criterion set out in Article 1 of the Charter...must be protected, as a minimum, by the principles and objectives set out in Part II of the Charter”.\(^{551}\) Accordingly, this Part of the ECRML automatically applies to all regional or minority languages in a state and “it is unnecessary to

\(^{544}\) R. Dunbar, The Council of Europe’s Charter…, supra note 540, p. 158.

\(^{545}\) Explanatory Report, supra note 542, para. 11.

\(^{546}\) Stefan Oeter, The European Charter for Regional or Minority Languages, in Mechanisms for the Implementation of Minority Rights, supra note 380, pp. 131-157, at p. 133.

\(^{547}\) European Charter for Regional or Minority Languages, Art. 1, para. 1, sub-para. i.

\(^{548}\) Explanatory Report, supra note 542, para. 32.

\(^{549}\) R. Dunbar, The Council of Europe’s Charter…, supra note 540, p. 163.

\(^{550}\) Explanatory Report, supra note 542, para. 40.

name or expressly identify any individual languages” in their instrument of ratification. Nevertheless, at least from the individual State’s perspective, “it would be better...to expressly indicate which...languages the Charter is to cover...and also in which areas they are spoken”.  

Article 7 stipulates that state parties “shall base their policies, legislation and practice” with respect to all minority or regional languages spoken within their territories on a number of objectives and principles. These objectives and principles are formulated quite broadly and phrased in abstract terms, such as “the recognition of the regional or minority language as an expression of cultural wealth”, “the need for resolute action to promote regional or minority languages in order to safeguard them”, “the facilitation and/or encouragement of the use of regional or minority languages, in speech and writing, in public and private life”, “the provision of appropriate forms and means for teaching and study of regional or minority languages at all appropriate stages”.

According to Dunbar, Article 7 is “the single most important provision in the Charter”, and its objectives and principles, at least for those languages not prescribed for protection under Part III, seem to constitute “front-line protection”. Oeter, however, notes that these principles and objectives are not directly applicable in domestic legal systems, but serve instead as a legal ground for assessing domestic linguistic policies. Another important provision of Article 7 is that states’ obligations must be interpreted and applied within the territories in which regional or minority languages are used, and moreover “according to the situation of each language”. This phrase has been taken to imply the sociolinguistic and demographic situation of a particular language, including the number of speakers, their proportion in the total population, the language’s vitality and its intergenerational transmission.

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552 Ibid, at p. 127. In the second report with respect to the application of the Charter in Slovenia, Committee of Experts quite clearly stated “...the application of Part II to all regional and minority languages may not be restricted and is automatic. Accordingly, the fact that a regional or minority language corresponding to the Charter’s definition is not expressly mentioned in the declaration(s) of a state party does not preclude the application of Part II of the Charter to that language”. See: Council of Europe, Application for the Charter in Slovenia - Second Monitoring Cycle, 20 June 2007, ECRML (2007) 4, para. 15.
553 Ibid.
554 European Charter for Regional or Minority Languages, Art. 7, para. 1.
555 With respect to the ‘recognition issue’, the Explanatory Report underlined that “admitting the existence of a language is a pre-condition for taking its specific features and needs into consideration and for action on its behalf”. Explanatory Report, supra note 542, para. 58.
556 European Charter for Regional or Minority Languages, Art. 7, para 1, sub-paras. a, c, d, f. Other objectives and principles stipulated in Article 7 include: the respect of the geographical area of each regional or minority language in order to ensure that existing or new administrative divisions do not constitute an obstacle to the promotion of the regional or minority language in question; the maintenance and development of links, in the fields covered by this Charter, between groups using a regional or minority language and other groups in the State employing a language in identical or similar form, as well as the establishment of cultural relations with other groups in the State using different language; the provision of facilities enabling non-speakers of a regional or minority language living in the area where it is used to learn if they so desire; the promotion of study and research on regional or minority languages at universities or equivalent institutions; and the promotion of appropriate types of transnational exchanges, in the fields covered by this Charter, for regional or minority languages used in identical or similar form in two or more States.
558 See: S. Oeter, The European Charter for Regional or Minority Languages, supra note 546, p. 134.
While these provisions enable the States “to design a policy tailored to the actual needs of each linguistic community”, they simultaneously presuppose “a wide margin of discretion in their application and interpretation, which makes it difficult to supervise their implementation and (consequently-DT) blurs their binding force”.  

Article 7 also stipulates that non-discrimination in the use of regional or minority languages “constitutes a minimum guarantee for the speakers of such language”, and prescribes the adoption of special measures in favor of regional or minority languages. “The ethos of substantive equality” means that the adoption of special measures aimed at promoting equality among the various languages in a society would not be regarded as an act of discrimination.

Part III of the ECRML provides a ‘menu’ of states’ obligations in regard to minority languages. These provisions are quite detailed, addressing the use of regional or minority languages in education, by judicial authorities, by administrative authorities and public services, in the media, in cultural activities and facilities, in economic and social life, and with regard to transfrontier exchanges. Unlike the ‘catch-all approach’ in Part II, the ECRML gives an option to states parties to indicate, in their instruments of ratification, to which languages the obligations stipulated in Part III would apply. Additionally, states must specify “which actual obligations they are accepting in connection with each of the languages they recognize”. The provisions of Charter’s Part III (Articles 8-14) comprise sixty-five paragraphs and subparagraphs, and its Article 2 stipulates, “in respect to each language specified at the time of ratification...each Party undertakes to apply a minimum of thirty-five paragraphs or sub-paragraphs chosen from among the provisions of Part III”.

Dunbar points out that despite being detailed and specific, the provisions of Part III simultaneously “offer the state a range of options, ranging from relatively heavy obligations to relatively light ones”. In education, for instance, these options vary from the possibility of providing a complete minority language education throughout the stages of the educational system, through the option “to make available a substantial part of...education in the relevant minority language”, to the modest commitment to provide one of the above "at least to those pupils whose families so request and whose numbers is

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561 Explanatory Report, supra note 542, para. 71.
564 European Charter for Regional or Minority Languages, Articles 8-14.
566 European Charter for Regional or Minority Languages, Article 2, para. 2. The state must choose at least three paragraphs or sub-paragraphs from each of Articles 8 (Education) and 12 (Cultural activities and facilities), and at least one from each of Articles 9 (Judicial authorities), 10 (Administrative authorities and public services), 11 (Media) and 13 (Economic and social life).
considered sufficient”.\(^{568}\) It goes without saying that ‘heavier obligations’ are more suitable for languages spoken by considerable numbers of speakers and vital language communities, whereas ‘weaker obligations’ may have to suffice for small language communities. Accordingly, in considering various options, states must abstain from arbitrariness, take into account of the "wide disparities in the de facto situation of regional or minority languages", and choose “the wording which best fits the characteristics and state of development of that language”.\(^{569}\)

The alleged vagueness of Article 7 (Part II) in contrast to the detailed provisions set forth in Part III is noteworthy. But we should also note that, "there are some 'objectives and principles' in Article 7 that cover issues not raised under Part III" by which Article 7 provides a "basic standard of protection for minority languages that...have been neglected in a member state, and which accordingly have not been included in the set of languages protected under Part III".\(^{570}\)

The Charter’s implementation incorporates a state reporting procedure quite similar to the one under the FCNM. Periodical reports on State’s policies pursued in accordance with Part II and on measures taken in application of Part III are submitted to the Secretary General of the Council of Europe and examined by Committee of Experts. State parties must submit initial reports within a year after the ECRML is adopted or ratified, and subsequent reports are submitted on a three-yearly basis.\(^{571}\)

4. European Commission against Racism and Intolerance (ECRI)

ECRI is a human rights monitoring body formed within the framework of Council of Europe in 1993. Its mandate is basically to combat against racism, xenophobia, discrimination and anti-Semitism in the member-states of the CoE from the perspective of protecting of human rights.\(^{572}\) To that end, it “works to prevent violence, discrimination and prejudice faced by persons or groups of persons on grounds of ‘race’, colour, language, religion, nationality and national or ethnic origin”.\(^{573}\)

These objectives are pursued via three main avenues: a country-by-country approach, work on general themes, and relations with civil societies in the member states. In the first approach, ECRI examines racism, xenophobia and racial discrimination in member states, analyses legislation and policies

\(^{568}\) European Charter for Regional or Minority Languages, Article 8 (Education).

\(^{569}\) Explanatory Report, supra note 542, para. 46.

\(^{570}\) S. Oeter, The European Charter for Regional or Minority Languages, supra note 546 p. 134.

\(^{571}\) See: European Charter for Regional or Minority Languages, Articles 15-16. Committee of Experts adopts a report on the implementation of the Charter by the state concerned accompanied with recommendation(s). Two of the methods implemented by the Committee of Experts are noteworthy, the possibility for NGOs to make submissions with respect to the policies and measures pursued by the state concerned, and the possibility for a delegation from the Committee of Experts to make ‘on-the-spot visits’ to the monitored state.


in the areas of its competence and conducts country visits. Country-specific reports and recommendations for improving human rights practices in individual countries are issued regularly. Work on general themes includes producing ECRI general policy recommendations on specific issues of its competence as well as dissemination of acclaimed ‘good practices’ in combating racism, discrimination, intolerance and anti-Semitism.574

Minorities by definition are vulnerable groups affected by deviant social phenomena such as racism or intolerance. In accordance with ECRI’s mandate, the country reports regularly assess the situation of minority rights in a society. Therefore, ECRI regularly encourages states: to establish and maintain legal provision for the recognition of minority languages; to support the introduction of legal provisions guaranteeing members of minority groups the right to establish cultural institutions and to participate in the resolution of matters connected with their cultural identity; to undertake initiatives aimed at encouraging members of minority groups to participate fully in national society; to provide bilingual classes as a means of enhancing interaction between children of majority and minority groups; to establish and maintain reliable systems of data collection to identify the situation of minority groups in all fields of life etc.575 In the following discussion on the protection of minorities in Balkan countries, the findings of ECRI’s reports on these countries will be briefly reviewed for insights into their minority rights practices.

Some of the general policy recommendations, such as those devoted to combatting discrimination targeting Roma, Jewish or various Muslim communities or the recommendations on racial discrimination in education and employment are also of particular importance for minorities.576 For example, General Policy Recommendation 7 on national legislation to combat racism and racial discrimination defines and prohibits direct and indirect discrimination and calls on states to prohibit private discrimination. As underlined elsewhere, a coherent system of minority protection must focus on and prohibit indirect discrimination, where formal equal application of “apparently neutral factor or rule” leads to inequality and disadvantages to “persons belonging to a group designated by a ground such as race, colour, language, religion, nationality or national or ethnic origin, unless this factor has an objective and reasonable justification”.577

575 M. Kelly, 10 Years of Combating Racism in Europe..., supra note 573, at pp. 25-26, 50, 60, 67.
5. Council of Europe’s Commissioner for Human Rights

Commissioner for Human Rights of the Council of Europe is an independent, impartial and non-judicial institution established in 1999. The founding resolution mandates the Commissioner to promote education and awareness of human rights in the member states, to foster the effective observance of human rights and assist states in their implementation of CoE human rights standards. Additionally, shortcomings in law and practice concerning human rights are regularly identified, and the Commissioner may facilitate the work of national ombudsmen and other human rights institutions. The activities of the Commissioner for Human Rights are centered in three main areas: country visits and dialogue with government and civil society, thematic reporting and advising on human rights implementation and awareness-raising activities.

The Commissioner for Human Rights’ reports following country visits usually assess minority protection in individual countries and note any inconsistencies between legal frameworks prescribing human rights for minorities and practices that contravene them. Occasionally, the need for tangible improvement in human rights protections necessitates drafting specific reports devoted to the human rights of minorities in individual countries. The general findings concerning national minorities and minority-related recommendations in reports on the countries analyzed for the purpose of the dissertation are briefly mentioned in the following sections.

D. European Union's Approach with Respect to Human Rights and Protection of Minorities

1. Minority Protection in the European Union through the Prism of Its Main Institutions

Unlike the situation in most individual countries, there is no clear majority in the European Union (EU) as a whole. In other words, "majorities thus exist at the Member state, not at the EU level".

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Conversely, the situation of minorities in the EU is quite diverse, since they could be ‘community minorities’, ‘third states’ minorities’ and ‘member states’ minorities’.  

Human rights and minority issues were absent from the initial treaties that established the European Economic Community (EC). Economic integration among nations in Europe was its main raison d’être, thus minorities and their needs were neglected. Concomitantly, “any consensus on this issue among the Members States is missing”, and unfortunately, even today, a “legal basis for minority protection action in the EU does not exist”.

However, European integration encapsulated numerous fields, and it was perhaps inevitable that, at least occasionally, the main EU institutions would venture into “the grey zone” of human rights issues and minority protection. It is worth noting that initially the European Parliament was the main minority-sensitive EU institution. It passed several resolutions with respect to linguistic and cultural minorities in member-states, and sporadically called for a more active role and resolute action across the EU. Its Resolutions on a Community Charter for Regional Languages and on a Charter for Rights of Ethnic Minorities from 1981 provided a pretext for the European Parliament to create a European Bureau for Lesser Uses Languages (EBLUL). In its 18 years of activity (1982-2010), EBLUL strongly promoted linguistic diversity within the EU, favoring linguistic rights for autochthonous communities in the member-states.

In contrast, the European Court of Justice (ECJ) in its early years adamantly rejected the possibility of interpreting EEC law through a human rights prism, due to the latter’s omission from basic treaties. However, the Court later began referring to treaties for the protection of human rights, and subsequently invoked the ECHR’s articles as an inspiration for developing a system of human rights protection in the EU. In the case of Bickel and Franc Case (1998), the ECJ went further and stated, for the first time, that protection of minorities may constitute a legitimate aim. Here the Court assessed whether linguistic rights granted to a particular minority in one EU member state may be enjoyed by nationals of other member states.

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Finally, we should note that the European Council in 1991 adopted a Declaration on Human Rights, giving particular importance to “respecting the cultural identity as well as rights enjoyed by members of minorities”.\textsuperscript{587}

2. Human Rights and Minority Protection within EU Law

The level of minority protection within the EU may be determined through analysis of several articles in basic EU treaties establishing principles and prescribing rights of relevance for minorities. First, we should recall the essential principles that lay the foundation of the EU. Article 2 of Treaty of the EU, after its amendment with the Treaty of Lisbon (Reform Treaty) (2007), reads as follows:

“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities”.\textsuperscript{588}

Clearly these ‘rights of persons belonging to minorities’ are derived from a wider notion of ‘human rights’ and are formulated in a strictly individualistic manner. The imposition of the “dreaded word ‘minorities’ into a text of primary EU law” marks a milestone in the history of European integration.\textsuperscript{589} Anyway, the effects of this provision for minorities in the EU are yet to be seen.

One scholar considers Article 151 of the EC Treaty to be “the only hard treaty law...even acknowledging the existence of minorities within the EC”.\textsuperscript{590} Its provisions instruct the EU to “contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore”.\textsuperscript{591} In other words, EU has a duty to respect and promote the diversity of cultures that exist in the member-states. To date, however, this promising provision does not appear to have been properly utilized for the benefits of minorities.

Furthermore, Article 13 of the Treaty of Amsterdam (1999) prescribes the EU to “take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief,
disability, age or sexual orientation”. The Council’s Directive 2000/43 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Race directive) is based on this provision. The Race directive, at its core, explicitly prohibits both direct and indirect discrimination on the ground of ethnic origin in the fields of employment, education, housing and social protection. It is crucial that Directive’s provisions are applied both vertically and horizontally, which means both public and private sectors are obliged to not discriminate in said fields. Though positive actions for disadvantaged ethnic or racial groups are not proscribed, “it is questionable whether far-reaching measures, like minority quotas for access to public employment or education, would be compatible with the Directive”. Nonetheless, considering the continuous negligence of minority rights across the EU, the Race directive presents a considerable advance in the human rights and non-discrimination framework in the EU’s legal system. As Kochenov observes, “the first component of minority protection (i.e. non-discrimination based on belonging to a minority) is incorporated into the Community legal order via the Race directive”. It appears that what is missing is the second pillar of minority protection, clear prescriptions of specific rights for the benefit of minorities.

Finally, note that Article I-8 of the Lisbon Treaty stipulates that “EU shall accede to the European Convention of Human Rights and Fundamental Freedoms”. Achieving this commitment would greatly enhance the possibilities for the EU to build a more coherent system of minority protection.

3. Charter of Fundamental Rights

The EU Charter of Fundamental Rights was solemnly proclaimed in December 2000, during the Nice European Council, after a year of work on the document by the EU’s main institutions. Among others, the Charter contains three articles, formulated in a non-discrimination manner, which might be and are of relevance for minorities within the EU.

Article 20, with its equality clause, proclaims that “everyone is equal before the law”. Article 21 is of special importance for minorities, enumerating the grounds on which discrimination is prohibited. It states that, “any discrimination based on any ground such as sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national

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592 Treaty of Amsterdam Amending the Treaty on European Union, Art. 11.
minority, property, birth, disability, age or sexual orientation shall be prohibited”. Kochenov cites Article 14 of the ECHR, as well Article 6 (2) of the EU Treaty and Article 13 of the EC Treaty as the main legal inspirations for this clause. Nevertheless, unlike the clause limiting application of Article 14 to the rights set forth in the ECHR, "the right to non-discrimination here applies within the whole framework of the treaties and is not confined to the provisions of the charter". A progressive interpretation was offered by Pentassuglia, who invoked the HRC’s reasoning on non-discrimination to argue that this Charter’s article might allow for differential treatment and even imply positive actions for persons belonging to minorities. Moreover, the use of the term ‘national minority’ rather than the more general ‘minority’ legally transposes the term into the EU law, rendering it subject to interpretation by the European Court of Justice.

Finally, Article 22 envisages that the EU shall respect cultural, religious and linguistic diversity. Despite its “strong minority-related genesis”, Toggenburg argues that it presents “a hopelessly vague provision that does not provide for any sort of right, either individual or collective”.

It is important to recognize that the Charter of Fundamental Rights was adopted as a legally non-binding document. However, in the Treaty of Lisbon, EU recognized the rights, freedoms and principles set out in the Charter to have the same legal value as other treaties.

4. Minority Protection and the EU’s Enlargement Process

The EU’s minority protection standards distinguish internal and external groups. While “the latter are broader in scope”, the former, according to Kochenov, are “hardly articulated”. Indeed, in the 1990s “minority protection ha[d] become a pillar in the human rights conditionality imposed on states that aspire to membership of the EU”.

Political criteria for countries wishing to join the EU were formulated by the Copenhagen European Council of 1993. It emphasized the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. By accepting the legacy of human rights law, the ‘rights of persons belonging to minorities’ in the prescribed values of the EU (Article 2 of the Treaty of the EU) are regarded unambiguously as part of a wider concept of human rights. Furthermore,

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598 Ibid, Art. 21.
599 D. Kochenov, An Outline of the EU’s Main Internal and External Approaches to Ethnic Minorities, supra note 595, p.11.
601 G. Petassuglia, Minorities in International Law, supra note 60, p. 150.
602 See G. Toggenburg, The EU’s Role via-a-via Minorities after the Enlargement Decade, supra note 589, p. 102.
603 Ibid.
605 D. Kochenov, An Outline of the EU’s Main Internal and External Approaches to Ethnic Minorities, supra note 595, p.48.
607 European Union, Copenhagen European Council, Conclusions of the Presidency, European Union Bulletin No. 6, at p. 13.
Drzewicki points out that “the Copenhagen criteria upgraded the position of the minorities issue by separating it and putting it on an equal footing with human rights”.

It is worth noting that issues of minority protection “first appeared in EU enlargement law during the fourth enlargement and dealt with the rights of the Sami people and, to a lesser extent, with the Swedish-speaking population of the Aland Islands”. Minority protection, as a general condition on which candidate countries are assessed, only began to be applied after the Copenhagen criteria were adopted. Thus, countries from Central and Eastern Europe, as well those of the Balkans that sought full-fledged membership in the EU, had to meet these conditions.

The European Commission is responsible for assessing the fulfillment of political criteria by candidate countries annually. Progress reports issued by the European Commission, among others, monitor the minority rights records for each candidate country. Minority rights issues such as those of Hungarian minorities in Hungary's neighboring countries, the situation of Roma communities, the Turkish minority in Bulgaria, the Albanian community in Macedonia etc. were regularly assessed in individual candidate countries’ progress reports. In these documents, the European Commission referred primarily to the rights and principles enshrined in ECHR, FCNM, Recommendation 1201(1993) of the Council of Europe’s Parliamentary Assembly as well as to some bilateral agreements on good neighborliness and cooperation. Article 27 of ICCPR and the UN’s Declaration on Minorities, although articulating global standards for minority protection, are omitted from this assessment process.

Some authors have argued that the European Commission failed to apply the conditionality to all candidate countries in an equal manner, and therefore some violations of minority rights were not completely resolved (human rights of the Russian-speaking minorities in Estonia and Latvia, the Macedonian minority in Bulgaria etc.).

The minority protection approach in EU external relations is often subject to criticism. Some authors contend that its approach establishes “double standards, since it entails requiring third states to comply with standards that the EU does not impose on its own member states”. Another criticism is that the pre-accession conditionality of minority protection means that the “EU could be less influential vis-à-vis the acceding countries once they have entered, than it was before they became full-fledged members”. At the same time, it does not prevent the possibility of ‘importing’ unresolved minority

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609 D. Kochenov, An Outline of the EU’s Main Internal and External Approaches to Ethnic Minorities, supra note 595, p. 17.
611 Ibid, p. 23.
612 D. Kochenov, An Outline of the EU’s Main Internal and External Approaches to Ethnic Minorities, supra note 595, pp. 22-48.
issues through EU’s enlargement process or the emergence of new majority-minority tensions within member-states.615

E. Bilateral Agreements and Minority Protection in Europe: Case of East/Southeast European Agreements

Bilateral agreements that prescribe minority rights are not new a phenomenon, at least not in Europe, as we saw in our discussion of the League of Nations system. There was a new wave of them following the Cold War, when numerous bilateral agreements on good neighborliness and cooperation were concluded, especially among former socialist countries. The German–Polish Treaty on Good Neighborly Relations and Friendly Cooperation, often designated as a ‘basic treaty’, served as a template for countless similar agreements between neighboring countries in Eastern, Central Europe as well among the Balkan countries.616 Long before this new wave of bilateral agreements, their usefulness to minorities was envisioned by Capotorti,617 and later recommended by Eide.618

In the 1990s, through an initiative named Pact of Stability, the EU promoted a policy for improving neighborly relations among Central and Eastern European countries via bilateral treaties that, among other things, prescribe minority rights.619 Bjorn Arp observes that a document from the OSCE’s Geneva expert meeting on national minorities, as well as the UN’s Declaration of Minorities and Recommendation 1492 (2001) of the CoE Parliamentary Assembly, provided the ‘legal grounds’ for this array of bilateral treaties.620

A final impetus in this process is FCNM, Article 18, which provided that “the Parties shall endeavour to conclude, where necessary, bilateral and multilateral agreements with other States, in

615 Ibid, p. 731.
617 Special rapporteur Capotorti back in 1979 envisioned that “bilateral agreements dealing with minority rights concluded between States where minorities live and the States from which such minorities originate (especially between neighboring countries) would be extremely useful”. F. Capotorti, Study on the Rights of Persons Belonging..., supra note 52, para. 618.
618 Asbjorn Eide went further, recommending that “the contents of provisions on minorities contained in such treaties and other bilateral arrangements should be based on universal and regional instruments on equality, non-discrimination and minority rights”. UN Sub-Commission on the Promotion and Protection of Human Rights, Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities: report/submitted by Asbjorn Eide., 11 August 1993, E/CN.4/Sub.2/1993/34/Add.4, para. 28.
620 See: B. Arp, International Norms and Standards for the Protection..., supra note 616, footnote n. 257, at p. 71. The OSCE’s Meeting of experts on national minorities encouraged “unilateral, bilateral and multilateral efforts by governments to explore avenues for enhancing the effectiveness of their implementation of CSCE commitments relating to national minorities”. The working group on minorities prescribed, in the Commentary to the UN Declaration on Minorities, among other things, that states “should, in their bilateral relations, engage in constructive cooperation to facilitate, on a reciprocal basis, the protection of equality and promotion of group identities”. Finally, Parliamentary Assembly of CoE in its Recommendation 1492 (2001) “call upon member states to improve and, where needed, further develop international cooperation in minority rights protection, both in their bilateral relations and at the level of European international organisations”.

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particular neighbouring States, in order to ensure the protection of persons belonging to the national minorities concerned". This provision might be indicative of an international awareness of a need for bilateral agreements dealing solely or in part with minority rights.

Defeis notes that bilateral agreements are particularly suitable “in those situations involving protection of minorities in the so-called near abroad, that is, a situation where ethnic minorities reside in States adjacent to or near their country of nationality”. For example the Hungarian and German minorities dispersed in the countries surrounding Hungary and Germany were driving force for both states to pursue bilateral agreements. In contrast, agreements solely intended to protect minorities are fewer than the ‘basic treaties’, “because it is quite difficult to negotiate this sort of treaty”. In most cases where states make recourse towards a minority agreement, they have already concluded a treaty on good neighborliness. The Hungarian-Slovenian and the Hungarian-Croatian minorities agreements, with their respective ‘basic treaties’ as a legal predecessors, are typical examples.

Minority provisions in bilateral agreements are typically prescribed in one or two comprehensive articles, following those explicating the general framework for cooperation between states. The Hungarian-Romanian treaty, however, significantly broadened the scope of minority provisions, with "fully one fourth of the text pertaining to national minorities, an issue of contention between the two countries". Minority provisions in these agreements proclaim various individual rights to persons belonging to kin-minorities, such as “the right to free expression, right to maintain and develop one’s ethnic, cultural, linguistic or religious identity in general, and linguistic rights, education rights, the rights to profess and practice one’s own religion, the right to establish organizations, the rights to effective participation in the decision-making procedures, in particular”. Beyond these individual rights, agreements that Hungary concluded separately with Slovenia and Croatia refer to group rights, and even group autonomy.

Many of these bilateral agreements refer to international standards on minority protection contained in various legally binding and non-binding documents. Particularly, they tend to reference the UDHR, ECHR, Article 27 of ICCPR, UN Declaration on Minorities, OSCE Copenhagen Document, FCNM as well as Recommendation 1201 (1993) of the Council of Europe’s Parliamentary Assembly. The incorporation of soft-law documents in these treaties is “nothing more than an element of State practice and their inclusion...can be described as a case of interaction between customary rules in the process of...”

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formation and treaty norms”. The latter can be seen in the provisions of treaties concluded between Germany and the Czech and Slovak Federal Republic as well as between Germany and Romania, both of which declare that state parties “should apply the minority rights laid down in the Copenhagen Document and other OSCE texts as legal obligations.” Recommendation 1201 (1993), Article 11 proclaims the possibility of granting special status and appropriate local and autonomous authorities for minorities in regions where they form clear majorities. To avoid any assumptions of autonomy and collective rights for Hungarian minorities in their territories, Romania and Slovakia explicitly stated that the agreement "does not...impose upon them the obligation to grant...any rights to a special status of territorial autonomy based on ethnic criteria”.

The practical implementation of bilateral agreements has revealed that intergovernmental committees are by far the most effective mechanism. These committees, beyond their responsibility to evaluate “the overall implementation of bilateral agreements in the field of minorities" and to issue recommendations to the respective governments, may also serve as a “forum for discussions where minority issues can be addressed”. The participation of minorities in such joint committees tends to be a ‘hot topic’ among the states. It is not surprising, as Gál observed, that “states with a larger minority community are reluctant to involve minorities in this work while the kin-states expressly enforce their involvement”. While bilateral agreements on minorities anticipate the participation of minority representatives in joint committees, such possibility is by and large not provided under treaties on good neighborliness. The Hungarian–Slovak Joint Commission for Minority Affairs, where, in fact, representatives of Slovak minority in Hungary and of Hungarian minority in Slovakia are granted a chance to participate in the monitoring process of the minority rights provisions stipulated in the ‘basic treaty’ is a positive exception to the ‘general rule’.

629 K. Gal, Bilateral Agreements in Central and Eastern Europe, supra note 619, p. 11.
630 Ibid, p. 12.
631 Ibid, pp. 13-14. Other possibilities for dispute resolutions are initiation of procedure before the International Conciliation and Arbitration Court (Art. 16 of the final document of the Pact on Stability in Europe), or use of domestic remedies in the form of court proceedings. The latter option would be suitable in case the bilateral agreements are directly applicable into the domestic law and the provisions of a given agreement contain ‘self-executing rights’ that could be invoked and claimed before domestic courts.
632 Emma Lantschner, Bilateral Agreements and Their Implementation, in Mechanisms for Implementations of Minority Rights, supra note 380, pp. 203-224, pp. 204-205.
635 See: E. Lantschner, Bilateral Agreements and Their Implementation, supra note 632, p. 207.
Scholars agree that a bilateral approach has the potential to ease tension between neighboring states on minority issues, although, as Wippman notes, such arrangements also “run the risk of encouraging kin-state involvement in the internal affairs of neighboring states”. As Arp points out, bilateral agreements that prescribe minority rights can contribute to progressive development of international law, and their proliferation could eventually lead to the states’ acceptance of new customary norms. The primary deficiencies of this approach are the absence of minority representatives in the negotiations prior to conclusion of treaties, their minor role in or exclusion from the joint commissions, and a lack of effective sanctions for the undue postponement of treaty implementation.

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III. PROTECTION OF MINORITIES WITHIN SELECTED BALKAN AND CENTRAL EUROPEAN COUNTRIES

This chapter assesses minority rights protection in seven Balkan and Central European countries. Prior to approaching the main subject of this dissertation, the position and rights of Macedonian minorities in the countries neighboring the Republic of Macedonia, we will outline the situation in other countries to provide a point of comparison. Our aim is to reveal both the uniqueness and similarities of the systems of minority protection in various countries. Note, too, that although Slovenia is a Central European rather than Balkan country, it experienced similar challenges as the other former Yugoslav republics on its path to independence and democratization. This shared experience makes Slovenia a candidate for inclusion in this study. We will also conduct detailed assessments of minority protection practices and provisions in Croatia, Hungary and Romania, while somewhat more cursory accounts outline the situations in Montenegro, Bosnia and Herzegovina and Turkey.

The majority of countries surveyed share certain general features of their minority rights legal frameworks. This comes as no surprise, since the international community had conditioned the recognition of countries that emerged from the dissolution of Yugoslavia on their prior adherence to several fundamental principles. The member states of the European Community issued a Declaration on the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union, which, among other things, required these 'new states' to prescribe "guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the CSCE". At a later stage, domestic provisions for minority rights in Slovenia, Croatia and Bosnia and Herzegovina were examined by the Badinter Arbitration Commission, composed of the presidents of the constitutional courts of several European Community countries. Thus, for example, in the case of Croatia, upon receiving the Arbitration Commission’s report, state authorities drafted new legislation enhancing the rights to self-government and political participation of its Serbian minority.

According to Will Kymlicka, in respect to their minority situations, two key social conditions differentiated post-communist countries from those in the western part of Europe in the early 1990s. Partly as a legacy of communism, and partly a consequence of different historical contexts, countries emerging from disintegrating multinational federations lacked: a) any reliable human rights protection; and b) any mechanisms that promote “the desecuritization of ethnic relations”. Furthermore, there were no regional security organization at the time capable of anticipating and prospectively neutralizing

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640 T. Musgrave, Self-Determination and National Minorities, supra note 217, p. 112.
disputes between ethnic groups and states in the process of democratic transition. These differences essentially explain the conditions under which new states were adamant about empowering minorities with some collective rights or even autonomy. To be precise, “dominant groups lacked confidence that they would be fairly treated within self-government minority regions”, since in cases where minorities “established their own autonomous governments, the results were often various forms of discrimination and harassment against anyone who didn’t belong to the minority, if not outright ethnic cleansing”.  

These concerns were even stronger in the case of kin-minorities whose co-ethnics formed a clear majority in a neighboring country, for such minorities were suspected of having higher loyalty to their kin-state. Additionally, historical experiences of one group (often present day minorities) dominating another group fueled a sense ‘historical injustice’ which in turn perpetuated mutual distrust. Despite the many obstacles, the processes of democratization, supervised by the CoE and EU, gradually softened the tensions, and minority rights frameworks were advanced. Eventually, bilateral treaties for protection of kin-minorities were concluded between countries which had originally held mutually exclusive positions on the issues.

To address minority rights, Central European and Balkan countries have typically adopted a “general law on minorities” or “specific acts, such as language law, education law or law of local self-government”. Again, where general laws of minorities have been adopted, their provisions were previewed by the CoE, and in most cases, by the Venice Commission. This section reviews their implementation of the right to education in minority languages, other language rights, and the right to effective participation in public affairs. The right to effective participation is crucial, since it requires “not just that members of minorities can vote or run for office, but that they actually achieve some degree of representation in legislature”. The most advanced, and most complex, model of effective participation is the power-sharing formula such as the one adopted by Bosnia and Herzegovina (BiH). This power-sharing system, installed by the Dayton Agreement, concomitantly recognizes the right of Serbs to internal self-determination within existing borders (the entity Republika Srpska).

All in all, “those post-communist countries without significant minority nationalisms have democratized successfully (Czech Republic, Hungary, Slovenia, Poland); those countries with powerful

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644 Ibid, p. 182. In the Abkhazia region of Georgia, ethnic Georgians were expelled after the region declared its autonomy. In a similar vein, ethnic Croats were pushed out of Serbian occupied regions of Croatia when the so-called Republic of Serbian Krajina was proclaimed unilaterally. In the same manner, ethnic Serbs were pushed out of Kosovo when ethnic Albanians proclaimed sovereignty.


646 G. Pentassuglia, Minorities in International Law…, supra note 60, p. 235.

647 W. Kymlicka, Multicultural Odysseys…, supra note 159, p. 240.

minority nationalisms are having a more difficult time (Slovakia, Ukraine, Romania, Serbia, Macedonia, Georgia)".  

3.1 Minority Protection in Hungary

Hungary is home of several traditional minorities that, along with the Hungarian majority, have a centuries-long experience of coexistence. The most recent census found that ethnic Hungarians compose 84.6 % of the total population, while some 6.5 % or 644,524 persons identified themselves as and claimed to belong to one of the ‘nationalities’. Note, too, that around 7.9 % of Hungarian population refused to declare their ethnocultural and linguistic identity, a not uncommon practice in the post-communist countries. Alongside the ethnic Romanians, Germans, Slovenians and Slovaks who have lived in the country for centuries, today the Roma constitute by far the biggest ethnic minority in Hungary, with some 315,583 persons identifying as such. This minority, however, is composed of several distinct linguistic groups, originating from various regions and countries. In general, minorities are geographically dispersed throughout the country, with exception of “only 14,000 people (who - DT) live in ethnically nearly homogeneous milieus”.  

With its democracy restored in the 1990s, Hungary promptly departed from its “traditional individual rights approach”, revealing an inclination to adopt “a new theory of human rights based upon collective rights”. To this end, the Hungarian Parliament in 1993 promulgated “a general law on minorities” that prospectively established “a special regime of minority protection in the form of a certain type of minority self-government”. The key characteristic of the collective rights guaranteed with this Act was the empowerment of minorities as collective units to launch and organize "a network of

649 W. Kymlicka, Multicultural Odysseys ..., supra note 159, p. 194.
651 For instance, the most recent census in the Czech Republic found a large increase in the number of persons refusing to declare their ethnicity, and who consequently are recorded as ‘undeclared’ or ‘undetermined’. According to the Czech government “while there were only 22,017 persons (0.21%) who did not declare any nationality in 1991, almost 173,000 (1.7%) and over 2.6 mil. persons (almost one fourth of all inhabitants of the Czech Republic) did not claim any nationality in 2001 and 2011, respectively”. See: Council of Europe, Fourth Report Submitted by the Czech Republic Pursuant to Article 25, Paragraph 2 of the Framework Convention for the Protection of National Minorities, Strasbourg, 29 July 2014, p. 28.
652 Three major Roma groups with two native languages (Romanian and Beash) coexist in Hungary, namely the ‘Magyar Cigány’, Vlachs and Beash. According to various sources the ‘Magyar Cigány’ constitutes “probably around 80 per cent or more of Hungary’s total Roma population”. Those designated as Vlachs originally came from Romania and are estimated to number around 100,000. The Vlachs are considered to be “culturally very different, often maintaining traditional, patriarchal communities headed by a single male community leader”. Finally, the Beash are the smallest sub-cultural Roma community in Hungary, with an estimated 40,000 people. See: UN Human Rights Council, Report of the Independent Expert on Minority Issues: Addendum: Mission to Hungary, 4 January 2007, para. 29.
educational, scientific and cultural institutions across the country, the creation and maintenance of direct international relations by the minority...and preferential treatment to increase minority representation at parliamentary level".\textsuperscript{656} The new Constitution (Fundamental Law) of 2011 introduced the term ‘nationalities’ to replace the previous ‘national or ethnic minorities’, used in the title of the former Act on the Rights of National and Ethnic Minorities. Thus, acting upon the constitutional obligation to promulgate "a cardinal act" that prescribes "detailed rules for the rights of nationalities living in Hungary", the National Assembly in December 2011 adopted the Act on the Rights of Nationalities.\textsuperscript{657} Through the provisions of this Act, Hungary attempted "to accommodate the legitimate concerns of minorities, by allowing them to have both control, albeit limited, and say over the their cultural, linguistic, educational and political affairs".\textsuperscript{658}

The Act on the Rights of Nationalities defines ‘nationalities’ in a similar fashion as its legal predecessor, proclaiming that:

“All ethnic groups resident in Hungary for at least one century are nationalities which are in numerical minority amongst the population of the State, are distinguished from the rest of the population by their own language, culture and traditions and manifest a sense of cohesion that is aimed at the preservation of these and at the expression and protection of the interests of their historically established communities".\textsuperscript{659}

The Venice Commission noted that prescribed centennial time of residence in the country is “a rather restrictive condition”, which covers only “historical or autochthonous minorities” and strictly excludes “new minorities”.\textsuperscript{660} Hungary nevertheless stands by its position to recognize as ‘nationalities’ only those ethnic groups that meet the established criteria. Hence, exactly 13 ethnic groups in the country are recognized as ‘nationalities’: Armenians, Bulgarians, Croats, Germans, Greeks, Poles, Ruthenians, Slovaks, Slovenes, Roma, Romanians, Serbs and Ukrainians.\textsuperscript{661} As for the other groups that claim minority/nationality status, the Act provides that “minimum one thousand electors forming part of that

\textsuperscript{656} G. Edwards, Hungarian National Minorities..., supra note 653, pp. 349-350.
\textsuperscript{659} European Commission for Democracy through Law (Venice Commission), Act on the Rights of Nationalities of Hungary, Strasbourg, 10 May 2012, Art. 1, para. 1.
\textsuperscript{660} European Commission for Democracy through Law (Venice Commission), Opinion on the Act on the Rights of Nationalities of Hungary (Opinion No.671/2012), Strasbourg, 19 June 2012, para. 33. In addition the Commission noted that "the protection of the minorities is strictly connected to the territory and implies relations with the national and local levels of government which are specifically regulated by the Act". Therefore, in the Commission's assessment, the difficulties may raise "in respect of some minority groups, such as the Roma, which is made up by many groups having different territorial origins and a long history of collective movements in all Central-Eastern Europe".
\textsuperscript{661} See: Council of Europe: European Commission against Racism and Intolerance (ECRI), Third Report on Hungary, Adopted on 5 December 2003, 8 June 2004, para. 57.
nationality may initiate that the nationality be declared an ethnic group native to Hungary”. Failure to meet this condition was the main reason for the National Assembly to reject the motions for recognition of Macedonian and Russian minorities.

A. Minority Self-Government in Hungary

By virtue of Article 2 of the Act on the Rights of Nationalities, minority/nationality self-government is via an organization established “by way of democratic elections that operates as a legal entity, in the form of a body, fulfils nationality public service duties as defined by law and is established for the enforcement of the rights of nationality communities, the protection and representation of the interests of nationalities and the independent administration of the nationality public affairs falling into its scope of responsibilities and competence at a local, regional or national level”. The essence of this system is that minorities in Hungary, as “geographically dispersed entities”, are empowered “not with territorial autonomy, but instead with cultural autonomy and the resources to establish self-governments”. When functioning appropriately, without distinguishing any of the recognized minority groups, the system enables citizens affiliated with minority groups to “feel that they form a genuine component of the population, whereby their concerns and opinions play a real and coherent role in the decision-making procedures of the State”. Indeed, the nationality self-government units are guaranteed “the right of consultation...on the most important issues concerning the life of the community (education, culture and use of language)”, and considerable “functional and financial autonomy” is granted to them with respect to “the establishment, running and managing of educational and cultural institutions”. This provision appears to imply that nationality self-governments established at national, regional and local level receive budget allocations for realizing their goals. In particular, these entities may establish private cultural and education institutions (theatres, museums, libraries), they regularly run radio programs broadcast in minority languages, publish newspapers and periodicals in their respective languages. It is noteworthy that nationality self-governments are entitled to maintain contacts with their kin-states, which are designated as ‘mother’ or ‘home countries’ in the Act on Nationalities. For example,

664 Venice Commission, *Act on the Rights of Nationalities of Hungary*, supra note 659, Art. 2 para. 2. Nationality self-governments are established at local, regional and national levels. Persons representing their nationality in these self-governments are elected every five years, during the regular local elections, from electors recorded in the nationality register.
666 Ibid.
the National Self-Government of Slovaks maintains close contacts with Office of Slovaks Living Abroad, the one of Slovenes is closely associated with the Office Responsible for Slovenians Abroad etc.  

B. Right to Education in Minority Languages

An important characteristic of the constitutionally enshrined ‘cultural autonomy’ is that the form of education for minority students is at parental discretion. Options vary from complete education in mother tongue, through bilingual education, to the possibility of learning the mother tongue via minority language classes. Let us briefly survey the situation of minority language education in minority kindergartens and minority primary schools in the academic year 2013/2014. Some 402 minority kindergartens were active in Hungary that year with 18,672 children, from German, Slovak, Croatian, Romanian, Serbian, Slovenian and Bulgarian minorities. Upon request of the parents, in 44 of them, with some 1,566 students, the education process was conducted wholly in minority languages, whereas bilingual education was provided in 323 institutions, with 15,822 students. The supplemental education process was serviced in 35 kindergartens with 1,284 students. In the same academic year, some 521 minority primary schools with 58,252 students were active in Hungary. Complete education in minority languages was granted for 1,644 students in 18 primary schools, while 7,843 students received bilingual education in 57 primary schools. The last modality, namely learning the mother tongue via minority language classes, was accessed by 48,253 students in 438 primary schools, with supplemental minority education provided to 228 students in 8 primary schools.

A crucial advantage arises from the possibility for minority self-government units to take over the operations of public education institutions, from both the national government and local government, on the condition that a considerable proportion of pupils enrolled take part in the minority education. On this basis, the minority self-governments units of Serbs and Romanians took over the operation of two elementary schools and kindergartens in 2011, one each, while those of Slovenes, Roma, Romanians, Croats and Greeks took over the operation of ten schools between them, respectively, in 2012. From this perspective, it appears that the right to self-government may enhance minorities’ ability to exercise other rights necessary for nurturing minority identity, such as educational, linguistic and cultural rights.

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669 Ibid, pp. 117-118.
670 Venice Commission, Act on the Rights of Nationalities of Hungary, supra note 659, Art. 22 para. 3.
672 Ibid, p. 58.
C. Participation of Hungarian Minorities in Public Life

Some authors contend that the right to establish a nationality self-government unit might qualify simultaneously as a right to political participation, since “it is a mechanism through which political participation can be more effectively carried out”. Nonetheless, human rights bodies have issued numerous recommendations to the Hungarian government on the need to “to open the way...for national and ethnic minorities to exercise their legally guaranteed right to be represented in Parliament”. In response, following the promulgation of a new Constitution, legislation was passed which for the first time guarantees real parliamentary participation for minorities. This legislation introduced a preferential quota for nationalities, enabling a representative of a nationality to obtain a parliamentary seat with one-quarter of the votes that are otherwise required for entrance in the National Assembly. In the case no representative of a given nationality passes this threshold and fails to enter the National Assembly, the community may "delegate a nationality advocate", with the right to address the “issues concerning the nationalities in the sessions of the National Assembly and...participate in the committee for the representation of nationalities with right to vote”. Additional affirmative action or positive discrimination for minority groups is provided by legislation concerning the election of mayors and councilors of local government units (districts and counties). Here, it is possible for minorities to obtain a preferential mandate as councilors in the representative bodies.

D. Domestic Human Rights Bodies and Bilateral Agreements with Neighboring Countries

Two other bodies that may enhance overall minority protection in Hungary will be mentioned in brief. Equal Treatment Authority (EAT) is a leading government body that investigates upon request or ex officio, with a view to assessing possible breaches of the principle of non-discrimination by both governmental and private institutions. In its work, this body considers 19 factors that constitute direct or indirect discrimination, stipulated as such in the Act on Equal Treatment and the Promotion of Equal Opportunities. The vast majority of complaints submitted to EAT originated from the Roma minority or organizations representing and defending the rights and interests of this community. Furthermore, the Commissioner for Fundamental Rights and his Deputy responsible for minorities monitor the implementation of recognized minority rights and investigate possible abuses or infringements. The

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675 Ibid.
678 Ibid, p. 43.
Commissioner may initiate proceedings before the Constitutional Court in cases of established unconstitutional practices in the field, submitted by public institutions or minority organizations.\textsuperscript{680}

Some authors argue that system of minority protection in Hungary is, in many ways, interrelated with the country’s commitment to the rights of Hungarians in neighboring countries.\textsuperscript{681} In other words, the focus on collective rights for minorities was inspired mainly from the ‘plight’ of Hungarians abroad and from the country’s “\textit{strident effort to assure collective rights belonging to Hungarian minorities}” in the respective countries where they reside.\textsuperscript{682} This is a clear case in which the protection of kin-minorities served as an impetus for a country to pursue bilateral treaties with its neighbors.\textsuperscript{683} Some treaties were designed to regulate the overall bilateral relations between the countries and minority provisions were just one part, whereas other agreements were devoted solely to protection of kin-minorities. It is crucial that minorities are represented in almost every joint commission that supervises treaties compliance. Upon the recommendation of minority representatives of such commissions, for instance, a Croatian school and language department was been opened in the city of Pecs, kindergartens and mother tongue education for Romanian pupils are continuously subsidized by the Hungarian government etc.\textsuperscript{684}

\section*{3.2. Minority Protection in Romania}

Romania is the seventh most populous country in the European Union, and by far the largest of the countries assessed here. Due to its geographic location and specific history, several ethno-historical regions (Transylvania, Bukovina, Dobrudja), in whole or in part, were included in the territory of Romania, some of which had been the subject of past disputes between Romanians and neighboring peoples.\textsuperscript{685} Today, Romania is home to numerous national minorities that coexist peacefully with the

\begin{thebibliography}{9}
\item Council of Europe, \textit{Fourth Report Submitted by Hungary...}, \textit{supra} note 657, p. 46.
\item In the Treaty of Trianon (1920), the borders of Hungary were redrawn such that it lost 59 \% of its territory and approximately 13 million people. Subsequently, some 3 million Hungarians became minorities in the new formed states of Czechoslovakia, Romania and Kingdom of Yugoslavia. Occasionally, the ‘diaspora engagement politics’ with respect to the Hungarian communities in neighboring countries dominated Hungarian society. Note that in 1998 the Hungarian Parliament passed the so-called Status Law, which provided for “\textit{visa free entry, limited employment opportunities and access to educational institutions in Hungary available for ethnic Hungarians in neighboring states}”. Furthermore, the new Fundamental Law of 2011 stipulated that Hungary “shall bear responsibility for the fate of Hungarians living beyond its borders”, with support for the establishment of “their community self-govern ment” and “the assertion of their individual and collective rights”. In the period that followed, some 600,000 non-resident Hungarians originating from the neighboring countries had acquired Hungarian citizenship, and a considerable portion of these new Hungarian citizens registered in the voters lists as non-resident voters. See: Szabolc Pogonyi, \textit{Transborder Kin-Minority as Symbolic Recourse in Hungary}, Journal of Ethnopolitics and Minority Issue in Europe, Vol. 14, No. 3, 2015, pp. 73-98.
\item See: M. Geroe, T. Gump, \textit{Hungary and a New Paradigm for the Protection...}, \textit{supra} note 654, p. 687.
\item E. Lantschner, \textit{Bilateral Agreements and Their Implementation}, \textit{supra} note 632, pp. 211-214.
\end{thebibliography}
Romanian majority. Officially, the state recognizes 19 national minorities, with ethnic Hungarians and Roma being the largest among them.⁶⁸⁶

On the basis of the 2011 census, Hungarians number 1.22 million and make up 6.5% of Romania’s total population, while the Roma number 621,573 or 3.3% of the population.⁶⁸⁷ Traditionally, the Hungarian stronghold in Romania is the region of Transylvania rather than the border areas with Hungary.⁶⁸⁸ In the counties Harghita (85%) and Covasna (74%) they form a large majority. Other counties with substantial Hungarian communities are Mures (38%), Satu Mare (35%), Bihor (25%), Salaj (24%) and Cluj (16%). Several cultural and regional Hungarian identities exists here, “first and foremost the Szekely, the Csango, whose relation with Hungarian minority is much disputed, and finally those Hungarians of Romania, who see themselves as Hungarians without having any significant ethnic (sub-) identities”.⁶⁸⁹ Szeklers are natives of Szekely land located in Transylvania, whilst Csangos are found in both Romania and Moldavia. The vast majority of Csangos today are monolingual Romanian speakers, while approximately 1.500 of them regularly use their traditional Hungarian-related vernacular.⁶⁹⁰

Ceausescu’s regime in Romania lasted almost a quarter-century and was renowned for its repressions and human rights abuses. This legacy significantly shaped the country’s international image following the collapse of communism, with scholars arguing that “Romania was rated among the worst countries in the world in terms of civil and political rights and as one of the least promising for democratic consolidation”.⁶⁹¹ Note that the pre-1989 Romanian legal system strictly adhered to the term

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⁶⁸⁶ An interesting case is the situation of Aromanians (Vlachs) in Romania, which in other Balkan countries are recognized as a separate ethnic or linguistic minority distinct from ethnic Romanians. The Romanian government does not recognize this group’s distinctiveness, considering them only as “a branch of the Romanian people, who set up relatively compact settlements, after being pushed in the south of the Danube by the nomadic tribes in the migration period”. In that manner, on each occasion the government underscores its position that "no historical, linguistic or cultural elements allow for extension of the protection granted by the Framework Convention and the Charter for Regional or Minority Languages in respect to the Aromanian community". Council of Europe, Fourth Report Submitted by Romania Pursuant to Article 25, Paragraph 2 of the Framework Convention for the Protection of National Minorities, Strasbourg, 1 February 2016, p. 15.

⁶⁸⁷ Ibid, p. 16. According to the 1992 census, 1,620,199 persons or 7.1 % of the population declared themselves to belong to the Hungarian minority. The next census conducted some nine years later in 2001 witnessed a significant decrease on the part of Hungarians, since only 1,431,807 persons were registered as Hungarians. Hence, if one compares these numbers, it comes out that Hungarian community was reduced by one third in less than 20 years. However, the Romanian government outlined that this was a general trend affecting the overall population of Romania, “which entails a similar trend as regards the number of persons belonging to national minorities”. A positive exception of this trend, with permanent population increase, is noted as regards the Roma community, mostly, due to high fertility rate among Roma women.


⁶⁹³ Melanie Ram, Romania: From Laggard to Leader?, in Bernd Rechel (ed.), Minority Rights in Central and Eastern Europe, Routledge, 2009, p. 180-194, p. 180. The violence between Romanians and Hungarians in the city of Tîrgu Măres on 19-20 March 1990 resulted in 6 people killed and over 200 injured. With such a tragic outbreak of ethnically motivated clashes, Romania became "the first place in post-communist Europe where inter-ethnic differences led to deadly conflict". Furthermore, "violence also emerged early on against the Roma in Romania, including attacks in the early 1990s that led to several deaths, the destruction of Roma houses, and entire Roma communities being driven from their hometowns".

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“cohabiting nationalities” rather than the widely accepted ‘national or ethnic minorities’.\(^{692}\) After this position was "heavily contested", new legislation was adopted in the 1990s which dropped the former and introduced the latter. Likewise, the new Romanian Constitution proclaimed that persons belonging to national minorities have the right to preserve, express and develop their own ethnic, cultural and linguistic identity.\(^{693}\) Nevertheless, members of the Hungarian community resented the notion of ‘national state’ expressed in the Constitution's fundamental values.\(^{694}\) Another area where government and the country's biggest minority found themselves diametrically opposed was the question of individual versus collective rights. On that issue, Edwards noted that “the Romanian Constitution follows closely the French concept of the unitary state, with the implication that the goal for society is homogeneity”.\(^{695}\)

Since the very beginning of the democratic transition in Romania, national minorities and their organizations sought for Parliament to adopt general legislation on national minorities.\(^{696}\) After several consecutive proposals were put forward by both minority organizations and the government, the Senate in 2005 rejected the draft, "on the account of its introducing the right to cultural autonomy, i.e., organizing minorities in clusters of associated persons and so recognizing for them collective rights".\(^{697}\) However, the national minorities continued to agitate for change, producing numerous recommendations on the need for amendments to the Draft Law on the Status of National Minorities to be adopted without delay. The ECRI urged the Romanian authorities to reconsider those provisions of the draft law which, according to their assessment, “might impinge on the right of members of national/ethnic minorities to choose their political representatives”\(^{698}\). Nevertheless, the revised version of the Draft Law "is still underway within the Chamber of Deputies".\(^{699}\) Supposedly, the ‘regionalization process’ sought by ethnic Hungarians serves as a ground for these endless postponements of the Draft Law’s adoption. Yet, the Democratic Union of Hungarians in Romania (UDMR) persists in its efforts to negotiate a special status of Szekely land, with an aim "to bring all Hungarians together in one historical region where they would form the majority and decide on their destiny".\(^{700}\)

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\(^{698}\) Council of Europe: European Commission Against Racism and Intolerance (ECRI), *ECRI Report on Romania (fourth monitoring cycle*, 3 June 2014, para. 16.


A. The Right to Participation in Public and Political Life in Practice

With the principle of proportional representation deeply enshrined in the Romanian electoral system, various authors have observed that this system is “favourable to minority empowerment from several aspects”. With the principle of proportional representation deeply enshrined in the Romanian electoral system, various authors have observed that this system is “favourable to minority empowerment from several aspects". On one hand, parliamentary representation is conditional upon national minorities meeting the general electoral threshold that political parties seeking to represent national minorities must win 5% of the total national vote in order to get seats in both houses, the Chamber of Deputies and the Senate. On the other hand, an alternative electoral threshold for the participation of minorities is applicable, provided they “win a relative majority in six electoral districts for the election of deputies and three districts for the election of senators, simultaneously”. In addition, wide and comprehensive minority representation in the lower house (Chamber of Deputies) is ensured with Article 62 of the Constitution providing that “the organizations of citizens belonging to national minority who failed to obtain the required number of votes to be represented in Parliament are entitled to one deputy seat each”. Accordingly, in the current Parliament (2012-2016), the Democratic Union of Hungarians in Romania (UDMR) has parliamentary representatives in both houses, with 18 MPs in the Chamber of Deputies and 8 Senators. Concurrently, with a prescribed preferential quota for smaller minorities, the other national minorities are represented in the lower house by 18 deputies. These deputies represent their respective national minorities' organizations, namely the Armenians, Albanians, Bulgarians, Croats, Greeks, Jews, Germans, Italians, Roma, Poles, Lipovan-Russians, Serbs, Slovaks, Turks, Tatars, Ukrainians, Macedonians and Ruthenians. Furthermore, national minorities are represented at the EU level, with two Hungarians and one Roma elected as MEPs in the 2014 European Parliament elections.

Apart from parliamentary representation, starting from 1996, the Democratic Union of Hungarians in Romania has been included in almost every coalition government. The initial decision for including the main political organization of ethnic Hungarians in the government coalition “was prompted in part by concern for Romania’s international reputation and EU membership chances”. In subsequent years, the EU, Council of Europe and the OSCE High Commissioner on National Minorities...

702 Ibid.
703 Council of Europe, Fourth Report Submitted by Romania…, supra note 686, p. 47.
705 After the 2000 elections the UDMR did not join the new government, but made an agreement with the ruling PDSR party which was renewed annually. According to this agreement, “the UDMR would vote for the government on all important issues in return for government support of legislation proposed by the UDMR”. See: J. Skovgaard, Towards ‘Consociationalism Light’?…, supra note 689, p. 9.
continuously urged all political parties “to continue having the Hungarian party involved in governing coalitions, even if the government changed and did not necessarily rely on the Hungarian party’s votes”. 707 Through such agreements, UDMR members have held high positions and ministerial posts, such as Vice-Prime Minister, Minister of Culture as well as State Secretaries in various ministries since 1996. It seems that representation at governmental or executive level for country’s biggest minority may indeed be appropriate and satisfactory.

In a similar vein, since a respectable number of mayors and city counselors in areas traditionally inhabited by ethnic Hungarians and Roma are elected from their lists, their participation in the decision-making process at the local level seems promising.708 One special consultative mechanism is the Council for National Minorities, which serves as an advisory body to the government, “bringing together representatives of...minorities and a number of State bodies”.709 Those minority organizations that have deputies in the lower house are concomitantly represented in the Council of National Minorities. It has become established practice for the Romanian government to grant financial support to minority organizations that are members of the Council of National Minorities, through its Department for Interethnic Relations.

B. Educational and Linguistic Rights of Minorities

Regarding mother tongue education, the Law on National Education of 2011 offers additional advantages for national minorities. At first, it reaffirms the right of persons belonging to national minorities “to be educated in their mother tongue at all levels, types and forms of pre-university education”.710 It is required that minority language classes or schools are established upon request of parents, though the number of children requesting this type of education may be lower than the average class-size prescribed for education in Romanian. It is also possible for pupils belonging to national minority to receive a complete minority language education, "whereby all subjects matters are studied in the native language except for the 'Romanian language and literature'.711 Likewise, if they attend

707 J. Skovgaard, Towards 'Consociationalism Light'?..., supra note 689, p. 9.
708 The results of the local elections in 2012 showed that all three Hungarian organizations that sought office obtained "a total of 2 mandates for county councils presidents, 212 mandates for mayors, 2741 mandates of local counselors, and 102 mandates of county counselors". In the same elections, three Roma affiliated organizations managed to gain 1 mandate for mayor and 161 mandates of local counselors. See: Council of Europe, Fourth Report Submitted by Romania..., supra note 686, p. 49.
709 UN Human Rights Committee (HRC), Consideration of reports submitted by States parties under article 40 of the Covenant: International Covenant on Civil and Political Rights: Fourth periodic reports of States parties: Romania, 26 April, 1996, para. 236.
710 Council of Europe, European Charter for Regional or Minority Languages, Second Periodical Report Presented to the Secretary General of the Council of Europe in Accordance with Article 15 of the Charter: Romania, Strasbourg, 2 March 2016, p. 21.
711 Council of Europe, Fourth Report Submitted by Romania..., supra note 686, p. 44.
schools with instruction in the Romanian language, upon request they may study "their native language and literature, as well the history and traditions of their respective national minority".\textsuperscript{712}

The effective scope of this legislation can be seen in the number of pupils who received mother tongue education in the 2013/14 school year. For instance, education in Hungarian language is available in 17 (of 42) counties, with "a total number of 165,130 students studying in the 2013-2014 school year in Hungarian".\textsuperscript{713} Breaking these numbers down by level of education, the situation is as follows: "in the preschool education there are 35,375 students, in the primary education there are 53,346 students, in the secondary education there are 75,474 students, in the technical pre-university education there are 935 students. There are 3957 students studying in Hungarian in schools with teaching in Romanian and 15,978 teachers involved in this system".\textsuperscript{714}

German language is taught as mother tongue in 216 schools at pre-university level. In the 2013/14 school year, there were total of 22,158 pupils studying in German as a mother tongue and 531 teachers.\textsuperscript{715} As to the Roma community, each school year approximately 220,000 to 260,000 Roma pupils attend pre-university schools, including the kindergartens, but only a portion of them, or some 32,158 students study the subject ‘Romani language and literature’ in schools or classes where they are taught in either Romanian or Hungarian.\textsuperscript{716}

Minority empowerment might be further assessed through the implementation of legislation concerning the use of minority languages in communication with local public authorities and with respect to the use of bilingual signs. It should be emphasized that enjoyment of said rights is conditional, dependent on the share of minorities in the population of the respective municipality or county. Accordingly, when national minority exceeds the established 20% threshold of population, its members are eligible for unimpeded exercise of these rights.\textsuperscript{717} Note, too, that the ‘vested rights doctrine’ is embedded in legislation providing linguistic rights. In other words, even in cases of demographic decline, the affected minority population "will enjoy the most favorable linguistic status granted by the law".\textsuperscript{718} On this basis, bilingual signs are maintained in a considerable number of villages and cities in the counties of Sibiu, Timis (14 localities), Constanta (2), Arad (13) and Bacau (4), despite the demographic decline of minorities (Hungarians, Germans, Turks) resulting in their falling beneath the prescribed 20% threshold.\textsuperscript{719}

\begin{itemize}
\item \textsuperscript{712} Ibid.
\item \textsuperscript{713} ECRML, Second Periodical Report: Romania, supra note 710, p. 166.
\item \textsuperscript{714} Ibid.
\item \textsuperscript{715} Ibid., p. 144.
\item \textsuperscript{716} Council of Europe, Fourth Report Submitted by Romania…, supra note 686, p. 44.
\item \textsuperscript{717} S. Constantin, Linguistic Policy and National Minorities…, supra note 694, pp. 8-10.
\item \textsuperscript{718} ECRML, Second Periodical Report: Romania, supra note 710, p. 14.
\item \textsuperscript{719} Ibid., p. 15.
\end{itemize}
However, the implementation of minority language rights is significantly different in counties where ethnic Hungarians are a clear majority, compared with those where they are considerable minority. It goes without saying that engagement and proactive efforts on the part of minority advocates, for utilizing the prescribed rights at central and local level, is fundamental. Nonetheless, in those counties where Hungarians are in the minority, due to their “lower presence...in the county councils...legislation is interpreted in a strict way as referring mainly to bilingual signs, while communication in the minority language is considered to be implemented automatically through the de facto presence of Hungarian officials in agencies subordinated to the councils”.  

C. Hungarian – Romanian Bilateral Agreement

This review will close with several notes regarding the bilateral agreement on the good neighborliness and cooperation among Romania and Hungary. The agreement, apart from provisions regulating the complete relations and perspectives for close cooperation in various fields of mutual interest, contains a comprehensive article on minority rights. On the one hand, the need for desecuritization of minority rights and both countries’ perspectives for full fledged EU and NATO membership contributed towards conclusion of this agreement. In spite of this, both countries had quite different stances on the nature of rights that should be ascribed to their kin-minorities. Hungary, with its own devotion on collective rights and the established system of minority self-government, intended to export these domestic values and undisputed achievements into the agreement. Conversely, Romania, faced with its sizeable Hungarian minority and their ambitions for autonomy in Transylvania, unequivocally opposed on these tendencies, and its leadership qualified it as being capable to endanger the state's unitary character. At the end, "rather than collective rights, the Romanian-Hungarian Basic Treaty enumerated human rights of minorities in both countries, noting (the far reaching-DT) Recommendation 1201 but not stipulating adherence to it". Finally, it is an established fact that recommendations issued by the Hungarian-Romanian special committee, established under the terms of the agreement in particular, engendered the advancement of minority rights’ legal framework in Romania.

721 M. Ram, Romania: From Laggard to Leader?..., supra note 706, pp. 187-188.
723 E. Lantschner, Bilateral Agreements and Their Implementation, supra note 632, pp. 203-224.
3.3. Minority Protection in Croatia

Republic of Croatia declared its independence on 25 June 1991, following a referendum held in May 1991, when around 94% of citizens voted in favor of an independent and sovereign Croatia. The newly adopted Constitution proclaimed that Republic of Croatia is established as "the national State of the Croatian nation and a State of members of other nations and minorities who are its citizens: Serbs, Muslims, Slovenes, Czechs, Slovaks, Italians, Hungarians, Jews and others". However, Serbs, both in Serbia and Croatia, considered that this formulation effectively suspended the 'constitutive nation' status of the Serbian community, granted in the former SFRY, significantly lowering their status to that of a 'national minority'. Consequently, Milosevic's (Serbian) government vehemently opposed the international recognition of Croatia, and used the 'plight' of the Serbian minority as a pretext for military aggression against Croatia. As a result, from 1992 until 1995, approximately one third of Croatian territory was occupied and under Serbian control. With support from Belgrade, Serbs in Croatia proclaimed the so-called 'Republika Srpska Krajina' and commenced the mass expulsion of non-Serbs from areas effectively controlled by Serbian paramilitary units. Several peace initiatives, that envisioned reintegrating the occupied territories into Croatia in exchange for concessions allowing far-reaching collective rights and autonomy for Serb-populated areas, were drafted by the international community. None, however, were acceptable to the belligerents. Ultimately, “during the military operations ‘Flash’ and ‘Storm’ carried out by the Croatian army for the restoration of governmental control in the Republic of Serbian Krajina, nearly one third of the pre-war total of some 581,000 Serbs fled from Croatia to neighboring countries".

The first post-war census in Croatia was conducted in 2001. The results showed out that "the total population had dropped by 6 per cent, while the [proportion of the] ethnic Croat population had grown by 12 per cent to 90 per cent of the total". The share of minority population as a whole decreased significantly, by almost 7.5 %. By far the most sizeable drop was registered in the Serbian minority, whose share fell by 65% or almost two-thirds from 1991 (from 581,663 to 201,631). Simultaneously, there were significant reductions in the numbers of those registered as Montenegrins (49%), Slovenians

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727 S. Trifunovska, Minority Rights in Croatia..., supra note 724, p. 474. Note, however, that the Serbs in Eastern Slavonia, accepted the Erdut Agreement proposed by the international community. Under its provisions, "demilitarization was to be carried out under the Serbs' control, while a two-year transition period, under UN auspices, initiated the process of the peaceful reintegration of Baranja, Eastern Slavonia and Western Sirmium into the Republic of Croatia". Thus did the Serbs in that part of Croatia avoid the tragic fate of their compatriots in Krajina. See: MRG, Minorities in Croatia..., supra note 726, p. 10.
728 MRG, Minorities in Croatia..., supra note 726, p. 14.
729 Ibid, p. 5
(41%), Macedonians (32%), Ruthenians (28%), Hungarians (25%), Ukrainians (20%) and Italians (15%), whereas there were sizeable increases in the numbers of Roma (41%), Albanians (25%) and Germans (10%). According to the 2011 census, Serbs remain the country's largest minority, making up 4.36% of the total population, followed by Italians, Hungarians, Slovenes, Bosniaks, Albanians, Montenegrins, and Macedonians.

When the war was over, the security dilemma combined with minority protection considerations served as an impetus for international community engagement in improving the domestic legal framework prescribing minority rights. Adopting the Constitution Act on the Rights of National Minorities was "one of Croatia's international obligations upon entry into the Council of Europe (CoE)", as was "an imperative for implementation of the European Union Association and Stabilization Agreement". In that vein, Croatia, like Hungary, is a member of that group of states that regulate the position and rights of minorities through special law. The Venice Commission noted that despite the title, "in some of its wording the Constitutional Law seems to concern human rights in general as well as specific rights of national minorities", but concomitantly, it welcomed the provisions stipulating "positive measures in favor of national minorities notwithstanding the prohibition of discrimination". With its all-embracing nature, the Constitutional Act guarantees on an equal footing the rights of first generation, the second generation (education, language, culture), and the third generation (participation in public life and representation in the representative bodies).

Moreover, there are other laws that clarify the right to education in mother tongue as well as the right to use minority languages in municipalities and counties. Various institutions are responsible for the practical implementation of minority rights, although some of them are only effective if the national minority organizations actively participate and advocate for utilizing the prescribed rights. It is also worth noting that Croatia has concluded several bilateral agreements for minority protection with neighboring countries. Hence, we may conclude that "the model of cultural autonomy promotes the integration of national minorities and not their assimilation into the Croatian society".

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735 Hungary, Italy, Serbia, and Macedonia are the countries with whom Croatia concluded bilateral agreement on the protection of kin-minorities. Minority representatives are regularly appointed to the joint commissions formed to discuss the practical realization of the rights stipulated in the agreements and to issue recommendations to the governments on how to rectify issues where inconsistencies are noted. See: E. Lantschner, Bilateral Agreements and Their Implementation, supra note 632, pp. 205-207.
736 S. Tatalovic, National Minorities and Croatian..., supra note 730, p. 49.
minority problem that remains unresolved is that of the Serbs who fled the country during the war. On demonstrating that this issue remains unresolved, ECRI noted that some 132,872 Serbs, “mostly elderly”, had returned to Croatia by 2005, thus "representing more than half of those who fled the country during the conflict of 1991-1995".737

A. Educational Rights and Language Rights of Minorities

*Constitutional Act on the Rights of National Minorities* guarantees in general the right of national minorities to be educated in their mother tongue, which is further detailed in the *Act on Education in the Languages and Scripts of National Minorities*. Formally recognized as an indispensable right for free and unimpeded maintenance of minority identity, right to education in minority language is "realized in preschool, elementary school and secondary school education".738 In practice, mother tongue education in Croatia is provided in three models, such that minority language instruction varies from gradually introducing and cultivating minority language to the whole of education in mother tongue.

Model A promotes whole of education in minority language, effectively providing that all school subjects are taught in a minority language, “with obligatory learning of the Croatian language in the amount of hours equal to that of the minority language classes”.739 Model A is provided in both primary and secondary schools for pupils belonging to Serbian, Italian and Hungarian national minorities, whereas for the Czech national minority, this model is available only in primary schools. Model B facilitates bilingual education, such that “natural science subjects are taught in the Croatian language and the humanistic sciences subjects in the language of the members of a national minority”.740 Such education is available in primary schools for pupils belonging to Serbian, Hungarian and Czech national minorities, and in secondary schools for pupils belonging to Serbian and Czech national minorities. In Model C - “Fostering Language and Culture” - minority language and culture are nurtured and taught “in addition to regular classes in the Croatian language, in the amount of two to five hours a week, whereby students learn the language and the literature of the national minority, geography, history, music and art”.741 In primary schools, this option is available to the Albanian, Czech, Serbian, Slovak, Slovenian, Hungarian, Macedonian, German, Austrian, Ukrainian, Ruthenian, Russian and Jewish national minorities, while in

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740 Ibid.
741 Ibid.
secondary schools, it is available for students belonging to the Czech, Russian, Slovak, Slovenian, Serbian and Italian minorities.\footnote{See: Council of Europe, \textit{Fourth Report Submitted by Croatia...}, supra note 734, p. 76.}

At first glance, this educational framework seems to largely satisfy the needs of national minorities. However, its real effect depends mostly on factors determining the number and distribution of minority pupils and on the continuity of minority classes offered only with prescribed minimum number of pupils. In school year 2011/2012, a total of 10,329 children were encompassed with previous described three models. A slight increase was noted in the academic year 2012/2013 when total of 10,592 children received some form of mother tongue education in preschool, primary and secondary school education.\footnote{ECRML, \textit{Fifth Periodical Report: Croatia}, supra note 731, p. 42; Council of Europe, \textit{Fourth Report Submitted by Croatia...}, supra note 734, p. 76.}

Obviously, not all minority pupils are provided for with these three modalities. Thus, special forms of partial education in mother tongue are organized in cases where there are too few minority pupils to qualify for the provision of any of these models. Accordingly, summer and winter schools and distance learning are alternative ways for teaching / learning minority languages. In a situation like one discussed here, "\textit{the second aspect of the ethnic rights}" comes to the surface, since their enforcement is "\textit{fostered through the activities of the national minorities' nongovernmental organizations, thus additionally ensuring the protection from assimilation}".\footnote{S. Tatalović, \textit{National Minorities and Croatian...}, supra note 730, p. 49. Within this context, the 'second aspect of the ethnic rights' refers to a case where the State is not providing the resources, services, institutions to promote minority culture, and the onus falls on the minority communities themselves, relying on their right to association and forming service institutions.}

The right to the official use of minority languages in local government is stipulated in the Constitutional Act on the Rights of National Minorities, as well in the Act on the Use of Languages and Scripts of National Minorities. Article 12 of the Constitutional Act guarantees this right when members of a particular national minority comprise at least one third of the population in a local government unit.\footnote{A. Petričušić, \textit{Constitutional Law on the Rights of National...}, supra note 732, p. 615.}

This linguistic right has also been stipulated in treaties ratified by Croatia and in the charters of local government units. According to the 2011 census, the demographic criteria for invoking this status of minority languages are fulfilled in 27 local self-government units. More precisely, the Serbian national minority constitutes at least a third of the population in 23 units, while the Czech, Hungarian, Slovak and Italian minorities meet this criteria in one unit each.\footnote{ECRML, \textit{Fifth Periodical Report: Croatia}, supra note 731, p. 39.}

Furthermore, the charters of another 28 local self-government units proclaim that national minority languages are in official use, regardless of the proportion of these minority groups in the population.\footnote{Council of Europe, \textit{Fourth Report Submitted by Croatia...}, supra note 734, p. 66.} The Act on the Use of Languages and Scripts of National Minorities envisages that national minorities in these local government units may use their
languages before state administrative bodies located there and, upon the request of citizens belonging to such minorities, authorities may issue bilingual public documents.748

However, serious problems have arisen in the exercise of the right to official use of Serbian language and its Cyrillic script in the city of Vukovar. Initially, local authorities refused to adjust the municipality charter and recognize the official status of Serbian language, despite the fact that Serbs make up 34.87% of total population.749 This issue became highly politicized, exacerbating divisions along ethnic lines. Mass rallies protested against the promotion of bilingualism in this city, which had been devastated during the war in the 1990s. These feelings continue to run deep, with bilingual signs posted in front of various state administrative bodies in Vukovar being regularly vandalised by individuals or groups who consider them to be offensive and provocative.750

B. Political Representation of National Minorities in the Croatian Parliament and in the Local and Regional Representative Bodies

At independence, Croatia embraced a “policy of reserved places for members of national minorities in legislative and other bodies of government and local and self-government units”.751 Quite equitably, the number of seats in national and local representative bodies was determined by the share of a given national minority in the country’s or municipality’s total population. Prior to its amendment, the Constitutional Act on the Rights of National Minorities had prescribed proportional representation in the Parliament and Government for national minorities numbering more than 8% of total population. In the late 1990s, though, this provision proved to be impractical, due to the sudden decrease in the number of Serbs during and after the war.752

Today, Croatian legislation guarantees a total of eight seats in Parliament (Sabor) for representatives of national minorities. They are elected on the basis of general suffrage in a separate constituency, with persons belonging to national minorities registered on a separate voters list. Three seats are reserved for national minorities that comprise more than 1.5% of the population, while the smaller communities elect the five remaining representatives.753 Thus, the Serbian national minority is entitled to elect three representatives, the Hungarian and Italian national minorities elect one each, the Czech and

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748 A. Petričušić, Constitutional Law on the Rights of National..., supra note 732, p. 615.
749 Council of Europe, Fourth Report Submitted by Croatia..., supra note 734, p. 65.
751 S. Tatalovic, National Minorities and Croatian..., supra note 730, p. 54.
752 S. Trifunovska, Minority Rights in Croatia..., supra note 724, p. 474. The author notes, “according to the Croatian Government, the departure of a large number of the Serbian population from the Croatian territory rendered inoperative the provisions on the special self-rule for the Croatian Serbs in some of the Croatian districts, as well as the proportional representation in the Croatian Parliament”.
753 S. Tatalovic, National Minorities and Croatian..., supra note 730, p. 54.
Slovak national minority elect one representative between them, one person is elected to represent the combined Austrian, Bulgarian, German, Polish, Roma, Romanian, Russian, Turkish, Ukrainian, Vlach and Jewish national minorities, while another is to represent the Albanian, Bosniak, Montenegrin, Macedonian and Slovenian national minorities. 754

The very presence of national minorities in Parliament opens opportunities to voice minority demands and to contribute towards the post-war rebuilding of civil society and rapprochement between ethnic communities. Nevertheless, the limited number of minorities’ representatives in the Sabor provides scope for the claim that, in reality, "they have a largely symbolic influence over state policy". 755 Whether this is the case or not, there is no doubt that in Croatia, "legal entitlement of national minorities to political representation in the Parliament will be needed as long as the Croatian society has not evolved to the point in which there will be no fear of the political marginalization of non-Croats in the representative bodies on all levels of government". 756

At local and regional level, special formulae are applied concerning the proportional representation of national minorities. Accordingly, the share of national minorities in the total population of a local government unit is multiplied "with the number of members of a representative body of the unit, and the result so obtained rounded to nearest whole number" to determine the number of seats for minorities in local or regional representative bodies. 757 In accordance with most recent redistribution in the Local Elections Act, national minorities nationwide are entitled to elect 309 members of representative bodies in 154 local or regional units. These seats are distributed among the minority groups as follows: Serbs are entitled to elect 203 members of the local and regional representative units, Italians 38 members, Hungarians 18, Bosniaks and Roma 13 each, Czechs 12, Slovaks 7, Ruthenians 3 etc. 758

C. National Minority Councils and the Council for National Minorities

Several points should be about the institutions known as 'national minority councils', which are envisioned in the Constitutional Act on the Rights of National Minorities. National minority councils are elected from among minority members who live within a municipality or county. These councils, of course, have implications for the improvement, preservation and protection of the national minorities in society. 759 In accordance with Constitutional Act, national minorities elect minority councils in local

755 MRG, Minorities in Croatia..., supra note 726, p. 21.
756 S. Tatalovic, National Minorities and Croatian..., supra note 730, pp. 54-55.
757 Council of Europe, Fourth Report Submitted by Croatia..., supra note 734, p. 88. When minority that numbers minimum 5% of the population does not obtain "the proper representation in a representative body as stated above, such minority has the right to one member of a representative body".
758 Ibid. p. 89.
government units where they comprise at least 1.5% of total population, in municipalities where more than 200 minority members are living and in regional self-government units (counties) with more than 500 minority members.\textsuperscript{760} Where there are less than 500 but at least 100 members of a national minority in the electorate, a minority representative is elected to those local units. Importantly, national minorities may form national level bodies that coordinate the activities of the minority councils at local and regional levels. Associations of this type include the Serbian National Council, Union of Hungarian Associations, Roma National Council etc.\textsuperscript{761}

The Croatian government’s report on the implementation of FCNM noted that “by the end of 2013, a total of 243 national minority councils, 145 representatives and 8 coordinating bodies, to which registration certificates were issued, were entered in the Register”.\textsuperscript{762} The Constitutional Act enshrined the national minority councils’ consultative role, enabling them to propose measures for improving the level of minority protection and to be regularly informed of the agenda of representative bodies, particularly on cultural and legislative matters pertaining to minorities.\textsuperscript{763}

Finally, the \textit{Council for National Minorities} is an advisory body whose members are appointed by the government for a four-year term. It is composed of three different types of national minority representatives. Seven members are nominated from national minority councils, five members are elect from among distinguished scientific, cultural and religious national minority members in the society and eight minority representatives in the Parliament are automatically members of the Council.\textsuperscript{764} Council for National Minority may initiate discussions regarding national minorities and their needs in the Parliament and is empowered to give opinions and proposals about public radio and television programs as well as proposals for economic, social and other measures in regions traditionally or predominantly inhabited by national minorities.\textsuperscript{765}

\section*{3.4. Minority Protection in Slovenia}

Republic of Slovenia suffered a brief war on its path to independence, during which there were clashes between the Slovenian Territorial Defense and the Yugoslav People's Army.\textsuperscript{766} Once its statehood was recognized internationally, the Slovenian independent state faced several challenges.\textsuperscript{767} Above all, as minority issues reappeared and fierce wars were being fought along ethnic lines in the remnants of the

\begin{itemize}
\item \textsuperscript{760} Ibid.
\item \textsuperscript{761} ECRML, \textit{Fifth Periodical Report: Croatia}, supra note 731, pp. 85-87.
\item \textsuperscript{762} Council of Europe, \textit{Fourth Report Submitted by Croatia...}, supra note 734, p. 103.
\item \textsuperscript{763} A. Petričušić, \textit{Constitutional Law on the Rights of National...}, supra note 732, p. 622.
\item \textsuperscript{764} MRG, \textit{Minorities in Croatia...}, supra note 726, p. 22.
\item \textsuperscript{765} S. Tatalović, \textit{National Minorities and Croatian...}, supra note 730, p. 57.
\item \textsuperscript{766} T. Musgrave, \textit{Self-Determination and National Minorities}, supra note 217, p. 115.
\item \textsuperscript{767} See: R. Caplan, \textit{Europe and the Recognition of New States...}, supra note 725, pp. 99-106.
\end{itemize}
former Yugoslavia, the position of various ethnic communities proved to be of fundamental concern. Hence, essential contours of minority protection were proclaimed in several articles of the new Constitution.

Slovenia is commonly seen as an “ethnically homogeneous country”, since ethnic Slovenes once comprised 97% of the total population. Over the past fifty years, though, this relative homogeneity gradually eroded, with a steady increase in the proportion of people belonging to minority groups in the country, from 3% in 1953 to almost 17% in 2002. Today Slovenia is home to numerous ethnic groups, including Hungarians, Italians, Romani, Croats, Serbs, Bosniaks, Macedonians, Albanians, Germans etc. However, rather than wide and comprehensive recognition of different minority groups dispersed throughout the various regions, Slovenian leadership opted to differentiate various groups on the basis of their historical presence in the country. To this end, Article 64 of the Slovenian Constitution recognizes ethnic Hungarians and Italians as “autochthonous national communities”, and consequently, ascribes an array of rights to their members. Article 65 accords special status to the Romany community as an historic ethnic minority, but provides that its position and rights shall be further elaborated in special law. Conversely, persons and communities originating from the five other former Yugoslav republics were “retroactively defined as new minorities or migrants”, and consequently no special status or rights were provided for them. It is worth noting that these ‘non-autochthonous’ communities, as a whole, significantly outnumber the three ‘old’ minorities. Clearly, the bulk of them arrived in Slovenia in the 1960s and ’70s seeking jobs or other economic advantage. Hence, from the perspective of the dichotomy old vs. new minorities, the fact that the vast majority of these ‘non-autochthonous’ communities were

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770 Mitja Ţagar, Polozaj i Prava nacionalnih manjina u Republici Sloveniji, Politička misao, Vol. 38, No. 3, 2002, pp. 106-121, pp. 109-118. Professor Ţagar noted that Slovenia is a rare country in which the Roma community is considered to be an autochthonous ethnic group. However, not all members of the Roma community benefit from this constitutionally recognized status, since rights derived from the special status apply solely to those members of the community who are considered to be autochthonous, whereas those who immigrated or were settled as refugees in the 1990s, are not entitled to any special protection beyond those rights stemming from the principles of equal protection and non-discrimination. Likewise, some other small ethnic groups may claim an autochthonous status, including a small numbers of Jews and a tiny German-speaking community dispersed across the country. Finally, small numbers of Croats and Serbs in Bela Krajina trace their presence there to the middle ages, but as is the case with other members of these two groups, the constitution does not provide special rights or protection for them.
772 On the basis of the 2002 census of, some 7% of the total Slovenian population belongs to the non-dominant ethnic groups in the society. Of these, 6,243 persons or 0.32% are Hungarians, 2,258 or 0.11% Italians and 3,246 persons or 0.17 are Roma. As discussed, these three ethnic communities are recognized as autochthonous in Slovenia. However, data from the same census revealed that members of the 'nations' and 'nationalities' of former Yugoslavia constitute much larger communities than previously mentioned. Namely, 35,642 persons or 1.81% declared themselves as Croats, 38,964 or 1.98% as Serbs, 6,186 or 0.31% as Albanians, 3,972 or 0.20% as Macedonians, 21,542 or 1.10% as Bosniaks and 2,667 or 0.14% as Montenegrins. In spite of these numerous discrepancies, the 'three pillar system' for minority protection that exclude 'newly arrived' minorities from the possibility of being accorded special status and collective rights granted to autochthonous communities remains in force. See: Practice of Minority Protection in Central Europe, Legal Country Study: Slovenia, EURAC, Bolzano, 2010, p. 1.
settled in Slovenia prior to its independence would seem to preclude subsuming these ethnic groups under the category of new minorities.\footnote{773}{The notion of ‘old minorities’, in the words of Will Kymlicka, encompasses those groups in the Western countries “which were settled on their territory prior to its becoming part of a larger, independent country”, while ‘new minorities’ are those that were “admitted to a country as immigrants after it achieved legal independence”. See: W. Kymlicka, The Internationalization of Minority Rights, supra note 152, p. 7. In a similar vein Asbjorn Eide made a clear distinction between these two categories of minorities. He contends that “old minorities are composed of persons who lived, or whose ancestors lived, in the country or a part of it before the state became independent or before the boundaries were drawn in the way they are now. New minorities are composed of persons who have come in after the state became independent”. See: G. Guliyeva, The Rights of Minorities in the European Union..., supra note 63, pp. 136-144.}

Regardless of such semantic differences and various labels for non-dominant groups, though, three models of protection were envisaged for different minority groups, corresponding to their status as ‘autochthonous’ or ‘newly emerged’ minorities.\footnote{774}{M. Žagar, Polozaj i Prava nacionalnih manjina u Republici Sloveniji, supra note 770, pp. 109-113.}

Ethnic Hungarians and Italians, as constitutionally recognized “historical ethnic minorities”, are entitled to “the relatively complete legal protection...comprising, apart from constitutional regulations, approximately eighty laws and provisions covering different fields of minorities’ life”; the Romani community are protected with “selective scope of regulations”; and finally, only “the rudimental (legal) model for the protection” is ascribed to the newly-formed national minorities.\footnote{775}{M. Ţagar, Polozaj i Prava nacionalnih manjina u Republici Sloveniji, supra note 770, pp. 109-113.}

Nevertheless, the prescribed protection for these 'new minorities' encompasses “basic generic rights” stemming from the principles of equality and non-discrimination.\footnote{776}{J. Sardelic, Constructing “New” Minorities..., supra note 771, p. 110.}

In other words, persons belonging to these ethnic groups enjoy the right to express their national affiliation, the right to use mother tongue and script as well the freedom to assembly and association. If one compares these generic rights with the collective rights guaranteed to autochthonous minorities, it appears that ‘new minorities’ are (only) deprived of "the opportunity to found their political parties, to have their own deputies in the parliament and at the local community level, to have special national communities in the areas in which they live, to create independent schools, to have the right to use their own national symbols".\footnote{777}{Alenka Kuhelj, Rise of Xenophobic Nationalism in Europe: A Case of Slovenia, Communist and Post-Communist Studies, Vol. 44, 2011, p. 271-282, p. 274.}

As a matter of fact, this distinction among various ethnic groups in the highest legal act has been severely criticized by both legal scholars and human rights bodies for being based on “insufficiently defined concepts - such as that of ‘autochthonous’”.\footnote{778}{Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Slovenia, Strasbourg, 1 December 2005, para. 38.}

The Advisory Committee of FCNM, for instance, strongly recommended Slovene authorities adopt a “more inclusive approach in order to better respond to the established reality on the ground, reflected inter alia in the results of the last population census”.\footnote{779}{Ibid, para. 39.}
the rights of the Italian and Hungarian communities (since they had already been protected in the 1974 Constitution of the SRS), but to exclude all other potential claims for minority protection.\footnote{780}

In the 1990s, members of former Yugoslav constitutive nations and nationalities holding permanent residence status in Slovenia could opt for Slovenian citizenship, albeit through a procedure that differed from the one applied to ethnic Slovenes.\footnote{781} However, this option was only available for a limited period of time, resulting in some people being denied the possibility of citizenship. Subsequently, approximately 10,000 persons left the country, while some 18,305 persons were erased from the register of permanent residents.\footnote{782} This issue was assessed by the ECtHR in a case initiated by eight persons from this group where. The Court found that several articles of the ECHR had been violated.\footnote{783}

In order to show its devotion towards the equal protection of all ethnic groups notwithstanding their qualification as either old or new minorities, in February 2011 the National Assembly adopted the Declaration on the Status of National Communities of the Members of the former SFRY Nation in the Republic of Slovenia. Apart from the right to self-identification, the declaration prescribes that members of these ethnic groups in Slovenia have a right to "self-organization on an ethnic basis which may enable them to enjoy and develop the culture of their nation, cultivate the language and script, maintain their history, organize their presence in the public domain."\footnote{784} With this declaration, the state conceded that Serbs, Croats, Bosniaks, Macedonians and Albanians whose origins are traced to former Yugoslav republics "have a special minority status that cannot be equated with the status of other immigrants".\footnote{785} However, the practical effect of the declaration is yet to be seen.

\footnote{780}{J. Sardelic, Constructing “New” Minorities..., supra note 771, p. 109.}
\footnote{781}{J. Zorn, Slovenia: Ethnic Exclusion in..., supra note 768, p. 213. According to the author, “the ius sanguinis principle ensured that ethnic Slovenes automatically became Slovene citizens in 1991. It derived from the Citizenship Act of the Socialist Republic of Slovenia of 1976, which introduced republican citizenship, a kind of sub-citizenship which had no meaning at the time...In 1991, however, this citizenship became relevant”. Conversely, with respect to those permanent residents in Slovenia who had immigrated from other Yugoslav republics, “the second method for obtaining citizenship” was applied, i.e. ius domicili. In other words, “they were required to obtain citizenship in a manner that differed from the procedure for ethnic Slovenes. National belonging in ethnic terms became decisive”.}

\footnote{782}{However, as it was underscored in the ECRI’s fourth report on Slovenia, after the revision of the whole process of erasure by the Slovenian government much higher number was established. Therefore, it is now accepted that in 1992, as a result of the measure adopted by the then Ministry of Interior, 25,671 persons were erased from the register of permanent residents. Between 10,000 and 11,000 persons of this group regulated their legal status "by obtaining permanent residence or Slovenian citizenship...Between 1000 and 2000 have since deceased. Therefore there are still some 13,000 people who are unaccounted for and whose status in Slovenia is still not regulated". Council of Europe: European Commission Against Racism and Intolerance (ECRI), ECRI Report on Slovenia (fourth monitoring cycle), 16 September, 2014, para. 122.}
\footnote{783}{Ibid, para. 126. It is worth recalling the Court’s reasoning that “the differential treatment between “real” aliens and those who had been citizens of the former federal State (later the “erased”) was based on the national origin of the persons concerned and that it did not pursue a legitimate aim and therefore lacked an objective and reasonable justification”.}
\footnote{784}{Council of Europe, European Charter for Regional or Minority Languages, Fourth Periodical Report Presented to the Secretary General of the Council of Europe in Accordance with Article 15 of the Charter: Slovenia, Strasbourg, 16 September 2013, p. 21.}
\footnote{785}{J. Sardelic, Constructing “New” Minorities..., supra note 771, p. 113.}
A. Constitutional and Legal Framework for the Protection of Minorities

The Slovenian legal framework for the protection of Italian and Hungarian national communities is based mainly on two principles. The first is the principle of territoriality, "which stipulates that the special rights guaranteed to national minorities are exercised in their autochthonous settlements". The second accords collective rights to these communities, which are granted, regardless of their numerical strength in ethnically mixed areas.

More specifically, the Constitution guarantees special rights to persons belonging to Italian and Hungarian minorities in the ethnically mixed areas of Prekmurje and Slovenian Istria, including: the right to freely use their national symbols (hoisting the flag, playing the anthem), the right to establish minority organizations, the right to education in minority language, the right to maintain contacts with their kin-state and with organizations representing their respective communities in other states, the right to establish minority self-governing communities at local and national level, the right to representation in municipal councils and the National Assembly. These and other rights ascribed to minorities are further detailed in other laws and regulations. The rights to political participation, education in mother language and the use of minority language will be briefly assessed below.

Finally, it is worth mentioning that Slovenia and Hungary concluded a bilateral convention for the protection and granting of special rights to the Hungarian national community in Slovenia and the Slovenian minority in Hungary. Furthermore, Slovenia consented to abide to the provisions of the Osimo treaty of 1975, which provided mutual obligations for protection of the Italian minority in Slovenia and the Slovenian minority in Italy.

787 The Constitutional Court’s reasoning on permitting minority communities to use another country’s national flag as their own national symbol is notable. In this case, Italian and Hungarian national community use the symbolism of the national flags of Italy and Hungary. Concerns were raised over the possible ‘dual sovereignty’ of such practices. The petitioners in one case challenged the constitutionality of provisions in the Act on the Coat-of-Arms, Flag and National Anthem of the Republic of Slovenia and on the Flag of the Slovenian Nation, claiming that ”using the symbols of another State on the territory of the Republic of Slovenia allegedly represents an encroachment on the sovereignty of the Republic of Slovenia". In their submission, they argued that, "the symbols of national communities must be distinguished from the symbols of another sovereign State", and therefore, the legal act "which allows the symbols of the autochthonous national communities to be identical with the symbols of another sovereign State, are...unconstitutional". However, the Court rejected these claims, counter-arguing that "the phrase ‘their national symbols’ itself already indicates that it is a matter of symbols of nations of which the Italian and Hungarian ethnic communities are a part, that is, the symbols of the Italian and Hungarian nation. But the nature of the symbols of the Italian and Hungarian nations are extant and cannot be left to someone’s choice. These national symbols were, as such, formed during the history of the Italian and Hungarian nations. The autochthonous Italian and Hungarian ethnic communities and their members thus have the (constitutionally based) right to use as their own the Italian or Hungarian national symbols, irrespective of whether these are identical with the symbols of the Italian or Hungarian state". See: Constitutional Court of the Republic of Slovenia, Decision U-I-296/94, 28 January 1999, Off. Gaz. of the Republic of Slovenia, No. 14/99 and Collection of Decisions, VIII, 21, paras. 1, 10.
789 See: A. Petrucusic, Slovenian Legislative System for..., supra note 786, p. 5.
B. Enforcement of Rights Prescribed for Autochthonous Minorities

1. Education

In recent decades, Republic of Slovenia has created a unique system of minority language education in ethnically mixed areas, where members of Italian and Hungarian communities coexist amicably with the Slovene majority and other minority groups. The basic features of this minority education system were established in the years following WWII. Despite its longevity, though, the Slovenian system is not completely uniform, since it envisages different modalities for the Italian and Hungarian national communities. In particular, "compulsory bilingual education system" is provided for the Hungarian community in five municipalities of the Prekmurje area, whereas "monolingual schools" are maintained for ethnic Italians in three coastal municipalities of the Slovenian Istria.790

For the Hungarian community, bilingual education in Hungarian and Slovenian is conducted in the kindergartens, elementary and secondary schools located in ethnically mixed area along the border with Hungary, i.e. the municipalities of Hodoš, Šalovei, Moravske Toplice, Dobrovnik and Lendava.791 Here, the Hungarian language is taught as either mother tongue or second language, while in schools outside the Prekmurje area, “it may be included as a second language in the final part of the primary schools syllabus”.792 What principally distinguishes this model is its rather inclusive scope. Namely, "bilingual education has been introduced for all children: the students of both nationalities attend classes together and the classes are held in parallel in both languages".793 Through this bilingual education Slovene pupils learn about the language, history and cultural contributions of the Hungarian community. Thus the model fosters mutual understanding and coexistence. It is worth noting, in 2011/2012 school year, 293 Hungarian pupils attended bilingual pre-school institutions, 781 in elementary schools and 307 students received bilingual education at the Lendava Bilingual Secondary School.794

Concerning the other modality, monolingual kindergartens and schools with Italian as the language of instruction operate in the three Istrian municipalities of Koper/Capodistria, Isola/Izola and Piran/Pirano.795 These education facilities "are primarily intended for the schooling of children of the Italian ethnic community", though, for reasons of their maintenance, “children of non-Italian background may also enroll".796 Understandably, Slovene language is a compulsory subject for students receiving the

790 M. Komac, Protection of Ethnic Minorities in Slovenia..., supra note 775, p. 37.
793 S. Lipott, The Hungarian National Minority in Slovenia..., supra note 769, p. 72.
796 M. Komac, Protection of Ethnic Minorities in Slovenia..., supra note 775, p. 43.
bulk of their education in Italian. In a similar vein, “teaching Italian and Slovene as first and second languages in the ethnically mixed area of the Slovene part of Istria is compulsory in primary school education”. In the 2011/2012 school year, 438 Italian children attended the three kindergartens with Italian as the principal language of instruction, 389 pupils in elementary schools and 142 students in secondary schools.

2. Use of Minority Languages

In those areas where persons belonging to Hungarian and Italian national minorities traditionally live, in addition to the Slovene language, the only nationwide official language, the Constitution guarantees official language status to the Hungarian and Italian languages respectively. The status of local level official language presupposes that state bodies, administrative and judicial authorities conduct their regular activities and procedures bilingually. It also requires that administrative officials be proficient in minority languages.

Topographical signs as well street names in municipalities of the Prekmurje area and the Slovenian Istria are required to be written in both official languages (Slovene and Hungarian/ Slovene and Italian). Moreover, authorities in these ethnically mixed areas must issue bilingual personal documents (ID cards, passports, birth certificates, driver’s license, medical insurance cards etc.) to all inhabitants regardless of their ethno-cultural affiliation.

3. Right to Participation in Public Affairs

Article 80 of the Constitution stipulates that "one deputy of the Italian and one deputy of the Hungarian national communities shall always be elected to the National Assembly." Again, this right is granted regardless their gross numbers and proportion of the country’s population. These deputies are elected according to majority rule, whereas other seats are elected by proportional representation. To this end, members of national communities have dual voting rights which apply to both parliamentary elections and elections for municipal councils. This means that “out of two votes they cast – one is for an election of the representative of the autochthonous national community and the second one for an election of other delegates or members of the municipal council or the National Assembly.” Simultaneously, the

799 S. Lipott, The Hungarian National Minority in Slovenia..., supra note 769, pp. 72-73.
800 M. Komac, Protection of Ethnic Minorities in Slovenia..., supra note 775, p. 53.
801 Council of Europe, Third Report Submitted by Slovenia..., supra note 788, pp. 16.
802 A. Petrucusic, Slovenian Legislative System for..., supra note 786, p. 5.
Constitution empowers minorities with veto right at national and local level for legal acts and matters affecting the exercise of their ascribed rights.803

At the local and regional level, Italians and Hungarians have a right to elect at least one municipal councilor in the ethnically mixed areas of Prekmurje and Slovenian Istria. Members of Italian and Hungarian national communities who reside in such municipalities are enrolled in special electoral lists.804 However, unlike the representative mandate possessed by the minorities' deputies at national level, representatives elected at local level have a ‘imperative mandate’ in relation to issues affecting their special rights. In other words, minority councilors must follow decisions and guidelines issued by their respective self-governing national communities.805 Note that dual voting rights at the local level are also granted to members of the Roma community. In concrete terms, Roma have the right to elect at least one councilor in twenty municipalities where they are traditionally settled.806

In one case, the constitutionally enshrined dual voting right of minority members was challenged before the Constitutional Court. The Constitutional Court, “in its land-mark decision, U-I-283/94”, stated noticeably that though one may qualify special voting rights as "a double departure from the principle of equality of voting rights, however, such a departure is foreseen and demanded in the Constitution itself as a form of the so-called positive discrimination”.807

4. Self-Governing Ethnic Communities

Slovenia affords Italian and Hungarian national communities the right to self-governance with an aim to promoting minority needs and fostering their participation in public affairs. To begin, Italians and Hungarians create municipal self-governing ethnic communities in the areas of their autochthonous settlements, and then integrated them with other Italian and Hungarian self-governing ethnic communities in the Republic of Slovenia.808 These institutions are recognized as legal persons who can “decide about

803 Article 64, paragraph 5 of the Constitution stipulates “laws, regulations and other general acts that concern the exercise of constitutionally provided rights and the position of national communities exclusively may not be adopted without the consent of representatives of these national communities”. See: Council of Europe, Third Report Submitted by Slovenia..., supra note 788, pp. 16.
804 M. Komac, Protection of Ethnic Minorities in Slovenia..., supra note 775, pp. 22-23.
805 Ibid, p. 27.
806 Council of Europe, Third Report Submitted by Slovenia..., supra note 788 p. 20. The Advisory Committee on the FCNM noted that “the system of elected Roma councilors applies only to the 20 designated municipalities in which the Roma are considered to be ‘autochthonous’”. However, by emphasizing the need for Slovenian authorities to ensure proper and consistent participation of Roma in public affairs at the local level, it recommended expanding “the list of municipalities in which Roma communities are entitled to elect representatives in local councils”. See: CoE, Advisory Committee on the FCNM, Third Opinion on Slovenia, Strasbourg, 28 October 2011, para. 123.
808 Practice of Minority Protection in Central Europe, Legal Country Study: Slovenia, supra note 772, p. 29.
internal problems of their groups”, and at the national level “participate in the full range of decision-making on issues concerning the entire community”. 809

It is to be noted that the self-governing ethnic communities are “so important that no decision can be taken without their consensus, which indicates even certain elements of local autonomy: they decide autonomously on matters within their competence, whereas on matters concerning the protection of special rights of ethnic communities they give their consent”. 810 Self-governing ethnic communities may propose various initiatives and suggestions on issues concerning their position and rights to the National Assembly, the government and municipal authorities. Their activities at national and local levels are financed via the central or municipal budget, respectively. It is therefore essential that self-governing ethnic communities have the right to cooperate and maintain close relations with their kin-states and to participate in negotiations concerning bilateral agreements designed solely for the protection of minority rights. 811

3.5. Protection of Minorities in Montenegro

Montenegro is a parliamentary republic that restored its independence following a successful referendum of independence in 2006. Unlike other republics of the former Yugoslavia, Montenegro’s fate in the 1990s was bound to that of Serbia, initially through the Federal Republic of Yugoslavia, and afterwards, from 2003 to 2006, via the Union of Serbia and Montenegro. The wars of the 1990s, namely the aggression towards Croatia, civil war in Bosnia and Herzegovina as well Kosovo’s conflict, unavoidably had a significant impact on the population of Montenegro. 812 Indeed, ‘shifting loyalties’ in self-identification by Montenegro’s population might be explained by spreading nationalism, initially imposed from Serbia and subsequently entrenched in Montenegrin society. Afterwards, when tensions eased, as Džankić observed, “the appeal to minorities was crucial in the quest for Montenegrin independence, and has induced the ‘instrumentalisation of minorities’ by the pro-independence camp”. 813

One peculiarity of Montenegro is that no single ethnic group constitutes a clear numerical majority, at least according to the two most recent censuses. In point of fact, ethnic Montenegrins are 45% of the total population, followed by those identifying as Serbs (28.73%), Bosniak (8.65%), Muslims

810 S. Lipott, *The Hungarian National Minority in Slovenia…*, supra note 769, p. 75. Law on Self-Governing Ethnic Communities of the Republic of Slovenia, Article 15, stipulates that “when state bodies decide on matters referring to the position of members of national communities, they must first acquire the opinion of the self-governing national communities”.
811 Practice of Minority Protection in Central Europe, Legal Country Study: Slovenia, supra note 772, pp. 29-30.
(3.31 %), Albanians (4.91 %), and Croats (0.97 %). Domestic legislation has adopted the labels ‘minority nations’ and ‘other national minority communities’ to refer to the country’s non-dominant ethnic groups. Particularly, they are legally defined as “any group of citizens of Montenegro numerically smaller than the rest of 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”.

It is evident that the minority status for those claiming special rights presupposes citizenship, although the Constitution does not provide an explicit link between citizenship and minority status.

Of the 158 provisions in the Montenegro’s Constitution, 68 directly prescribe human rights and freedoms, thus providing “a legislative confirmation of their importance” for building a just society of equal citizens. Additionally, the Constitution guarantees special minority rights that can be exercised by persons belonging to minorities either individually or collectively. Concomitantly, there is an obligation on the part of the state “to protect members of minority nations and other minority national communities from all forms of forced assimilation”. These special rights and freedoms are formulated in more general form and cover all essential aspects of the minority identity. An important feature is that ‘participation rights’ are thoroughly elaborated. Special arrangements for minorities include: the right to authentic representation in the Parliament and assemblies of the local self-government units in which they represent a significant share in the population, according to the principle of affirmative action; and the right to proportional representation in public services, state authorities and local self-government bodies.

Much of these constitutionally enshrined rights and principles are further elaborated in the Law on Minority Rights and Freedoms. Despite the possibility for minorities to establish institutions or associations for their own needs, this Law enables them to form minority councils with special powers. Such minority councils by-and-large reflect the pressing needs of various minorities for “a kind...of self governance, all with aim to improve minorities’ freedoms and rights”. It is understandable that “one minority may have only one council, and a council consists of members according to their functions...and

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815 Ibid. Initially, within the Montenegrin legal system, the term ‘minority peoples’, designating the so-called autochthonous minorities in the society (Serbs, Albanians, Muslims, Croats), was clearly distinguished from the term ‘ethnic groups’, used mainly to denote non-traditional minority groups, such as Macedonians, Slovenians, Hungarians.
816 J. Đžankić, Montenegro’s Minorities in the..., supra note 813, p. 44.
818 UN Human Rights Committee (HRC), Consideration of reports submitted by States parties under article 40 of the Covenant: International Covenant on Civil and Political Rights: initial reports of States parties: Montenegro, 22 January 2013, CCPR/C/MNE/1, para. 293.
of members elected on electoral assembly.". Furthermore, in response to an initiative of the Montenegrin government in 2008, the Parliament established a Fund for the Protection and Promotion of Minority Rights. This Fund supports activities for nurturing various aspects of minority identity through the allocation of grants to NGOs and other legal entities representing different minority groups in the country.

As for linguistic rights in Montenegro, the Constitution proclaims the Montenegrin language to be the official language, while Bosnian, Croatian, Serbian and Albanian are languages in ‘official use’. Such status is prescribed for minority languages spoken by more than 1% of the country’s population. However, reported mother tongue usage of Montenegrin citizens does not directly correspond to the proportions of the country’s ethnic composition. According to the most recent census, the use of the Serbian language (42.88%) clearly surpassed the use of the Montenegrin language (36.97%) as a mother tongue. But this seemingly odd situation arises more from semantics and categories than from real differences in language use. After all, “Montenegrins, Serbs, Croats, Muslims and Bosniaks, use an almost identical language and have been educated using the same curricula in the official Serbian language”. Furthermore, on the issue of language rights, “although the Constitution...recognizes the right of the members of national and ethnic groups to be educated in their mother tongue, only members of the Albanian minority can exercise this right”. Therefore, with respect to Part III of ECRML, the government accepted to apply measures specific to Albanian and Roma languages. As previously discussed, Part III is composed of provisions detailing the use of regional or minority languages in: education, the judiciary and administration, public services, the media, cultural activities, economics and social life.

From a legal point of view, Montenegro’s legal framework appears to have the potential to offer appropriate minority protection. However, if one considers “the politicization of the Montenegrin society” and moreover “the unclear lines between languages and cultures”, one might conclude that such legislation is “too complex to realize in practice”.

821 Ibid.
823 See: J. Džankić, Montenegro’s Minorities in the..., supra note 813, p. 50.
826 Ibid
828 See: J. Džankić, Montenegro’s Minorities..., supra note 813, p. 55.
3.6. Protection of Minorities in Bosnia and Herzegovina

The Dayton Peace Agreement of 1995 ended hostilities and concluded four years fierce and bloody civil war in Bosnia and Herzegovina (BiH), which left approximately 200,000 dead and hundreds of thousands refugees and internally displaced persons. This agreement established “a complex four-level power-sharing structure, comprising the state of Bosnia and Herzegovina with a few common institutions, the two ‘Entities’ (Federation of Bosnia and Herzegovina and the Republika Srpska), cantons in the federation, and municipalities in both the Federation and the Republika Srpska”. Therefore, this new state structure balanced power between the country’s three main ethnic groups, namely Bosniaks, Serbs and Croats. Whereas each of these ethnic groups speaks their own distinct, albeit closely related languages, it is religious beliefs that most sharply distinguish Bosniaks (Muslims) from Serbs (Orthodox Christians) and Croats (Roman Catholics). As was noted by UN experts on minority issues, “ethnicity, religion and language are prominent group markers and dividing lines in society, which were accentuated by the conflict and subsequent segregation of communities into separate ethnoreligious areas”.

The Law on the Protection of National Minorities prescribes that “national minority shall be a part of the population–citizens of BiH that does not belong to any of three constituent peoples and it shall include people of the same or similar ethnic origin, same or similar tradition, customs, religion, language, culture and spirituality and close or related history and other characteristics”. Seventeen national minorities are recognized and protected at the state level, which are expressly stipulated in the aforementioned Law on Minorities. Recognized minorities include: Albanians, Montenegrins, Czechs, Italians, Jews, Hungarians, Macedonians, Germans, Poles, Roma, Slovaks, Slovenians and Ukrainians. The Constitution employs the umbrella term ‘others’ to designate minorities, thus differentiating these non-dominant ethnic communities from Bosniaks, Croats and Serbs as a “constituent peoples and holders

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831 In 2013, after several postponements and negotiations among the three main ethnic groups, a general census was conducted in Bosnia and Herzegovina for the first time since the civil war. However, the country’s ethnic composition was not revealed, due to the political importance of such issues by three main ethnic groups and the high probability that some of them would reject or repute the census’ results as unacceptable and biased. Thus, still today, we must rely on the pre-war census conducted in 1991 for guidance to assess the ethnoreligious composition of the Bosnian population. According to 1991 census, the Bosnian population was comprised of Bosniaks (44%), Bosnian Serbs (31%), Bosnian Croats (17 %), Yugoslavs (5.5%), national minorities and ‘others’ (2.5%). It goes without saying that mass displacements, deportations and ethnic cleansings that took place during the civil war affected these numbers, and still today there are more than 100,000 internally displaced persons. See: UN Human Rights Council, Report of the Independent Expert on minority issues, Addendum: Mission to Bosnia and Herzegovina, 31 December 2012, para. 2.
832 Council of Europe European Charter for Regional and Minority Languages, Initial Periodical Report presented to the Secretary General of the Council of Europe in Accordance with Article 15 of the Charter: Bosnia and Herzegovina, Strasbourg, 30 July 2012, p. 4.
of constitutionalism in post-Dayton BiH statehood”. Nevertheless, the term ‘others’ is quite indeterminate and may implicitly encompasses “persons who do not wish to identify themselves with any single constituent people or national minority (for example children of mixed marriages), many of whom self-identify as Bosnians”.

Another peculiarity which is unique for BiH is that minority rights protection might apply even to persons belonging to one of the three constituent peoples. This happens when such persons find themselves in “the situation of being de facto minorities in the autonomous entities or cantons in which they live and where they face significant challenges and marginalization, often as returnee communities”. In most cases, returnees have developed peaceful relations with the majority population and rarely face violence or discrimination on the grounds of their ethnic origin. Many minority returnees do, however, face obstacles “in access to health care, pensions and other forms of social protection”, and “experience difficulty in accessing both public and private sector employment”. Finally, compared with pre-war conditions, returnee communities today are far from vibrant, with very few young people among them and, in general, they are heavily dependent on small-scale agriculture.

Participation rights are construed such that if a given minority group constitutes at least 3% of population at the municipal level, it is automatically granted at least one seat in the municipalities’ assemblies/councils. This population criteria is, however, intentionally high, and not many minorities meet this requirement. Therefore, these measures might be effectively meaningless. Furthermore, minorities are differentially treated in the possibility for representation in the legislative and executive branch of both state and autonomous entities. On the one hand, due to the power-sharing system between the three constituent peoples, minorities are “restricted from standing for election as a member of State presidency or House of Peoples”. On the other hand, Federation of Bosnia and Herzegovina reserves seven seats in its House of Peoples for communities designated as ‘others’, whereas the Republika Srpska’s Constitution guarantees that four seats in its Council of Peoples will be allocated to minorities.

835 Council of Europe: European Commission Against Racism and Intolerance (ECRI), ECRI Report on Bosnia and Herzegovina (fourth monitoring cycle): Adopted on 7 December 2010, 8 February 2011, para. 141.
837 ECRI, ECRI Report on Bosnia and Herzegovina (fourth monitoring cycle)…, supra note 835, p. 8.
838 Council of Europe, Third Report Submitted by Bosnia and Herzegovina…, supra note 834, para. 145.
839 See: CoE, Advisory Committee on the FCNM, Third Opinion on Bosnia and Herzegovina, Strasbourg, 7 April 2014, para. 153; ECRI, ECRI Report on Bosnia and Herzegovina (fourth monitoring cycle)…, supra note 835, para. 11.
840 UN HRC, Report of the Independent Expert on Minority Issues: Mission to Bosnia and Herzegovina, supra note 832, para. 26. Such legally imposed restriction that strongly effects on the minorities right to effective participation in political life was successfully challenged before the European Court of Human Rights. It was the case Sejdic and Finci v. Bosnia and Herzegovina where the Court, on the issue of ineligibility of ‘others’ in BiH to stand for election, for the first time found violation of the general prohibition on discrimination established under Protocol No. 12 to ECHR. See above: p. 94.
841 Ibid, para. 30.
The Law on National Minorities envisioned the creation of a *State Council of National Minorities*, a body composed of individuals nominated by national minority associations following a public call. In spite of its designation as an advisory body to the Parliamentary Assembly, the State Council of National Minorities does not have “direct access to the Parliamentary Assembly; rather, its reports and opinions are first vetted by the Human Rights Committee of the Assembly”. Similar councils of national minorities were established in both entities, once their respective legislative assemblies prescribed them in compliance with general state law.

In education and language rights there are several challenges, both in general and specifically with regard to national minorities. The most visible and acute problem is the segregation along ethnic lines that result from the existence of mono-ethnic schools and the system of so-called ‘two-schools-under-one-roof’. Ironically, the latter were initially imagined to prospectively ease the integration of returnee communities with the majority population. Unfortunately, in practice, the system sent children of different ethnicities to same educational facilities, but taught them different curricula.

Regarding duties derived from the ECRML, the government formulated several arguments in an attempt to justify the limited implementation of the Charter’s provisions in the fields of education in minority languages. One line of argument was that the small numbers of national minorities in particular Bosnian regions, and the small percentage of those who fluently speak their native tongues, precludes the need to include minority languages in the education system. Thus, in primary education, only Ukrainian and Italian are taught in several municipalities where Ukrainians and Italians are traditionally present. No minority languages are included in secondary schools or universities curricula, though. Finally, due to limited scope of minority language education at state level, councils of national minorities launched their own initiatives to organize courses and classes, thus enabling their members to learn mother languages. These initiatives are frequently supported by embassies representing the national minorities’ ‘kin-states’.

### 3.7. Protection of Minorities in Turkey

Turkey probably has the poorest minority rights record of the countries included in this survey. First and foremost, Turkey, like Greece, derives its general approach to minority groups mainly from bilateral treaties concluded in the aftermath of WWI. The Lausanne Treaty of 1923 concluded between Turkey and Greece under the auspices of League of Nations prescribed a duty on the part of Turkey to

842 *Ibid*, para. 15.
afford protection to its non-Muslim minorities. The notion of minority here basically “echoes in effect the Ottoman millet system that categorized non-dominant communities on the basis of their religious affiliation”. Despite being a wide umbrella term referring to scores of non-visible communities, in practice, the label ‘non-Muslim minorities’ encompassed only the Greek, Armenian and Jewish minorities. Basically, different ethnocultural Muslim minorities, such as Kurds, Circassians (Caucasian), Laz, Alevi (non-Sunni Muslim) and Roma, despite being a significant portion of the Turkish population, are not officially recognized as minorities by the Turkish authorities. Accordingly, the ‘millet system’ legacy, which recognizes only non-Muslim minorities, presupposes that the term ‘minority’ does not encompass Muslim Turkish citizens of various ethnic origins. Though the Turkish authorities have implicitly acknowledged that there are Turkish citizens of Kurdish and Roma origin in its territory, the members of these minorities do not enjoy the rights prescribed in the Lausanne Treaty.

Turkey’s general approach to treaties prescribing minority rights, according to Minority Rights Group, is that “if the treaty in question is specifically on minority rights, the policy is one of non-signature”. Indeed, to date, Turkey has neither signed nor ratified the FCNM. In cases where the treaty is not wholly concerned with minorities, but nevertheless contains provisions granting minority rights, “the policy is one of signature with reservations with respect to such provisions”. This can be seen in Turkey’s express reservations to the minority article of the ICCPR, proclaiming that it “reserves the right to interpret and apply the provisions of Article 27...in accordance with the related provisions and rules of the Constitution...and the Treaty of Lausanne”. Such reservations clearly contradicts the essence of Article 27, and ECRI has several times urged Turkish authorities to reconsider their position and withdraw this reservation.

848 Ibid, paras. 5-6. Other non-Muslim minorities not covered by arrangements derived from the Lausanne Treaty are Assyrians (Syriacs), Arab-speaking Christians, some other small Christian communities (Bulgarian Orthodox, Catholics etc.) and Yezidis.
849 Turkey does not collect data on a person’s ethnic and linguistic background, thus any assessment of the state’s ethnic and linguistic composition is based on field research, and/or on earlier censuses that included data on the person’s mother tongue. According to various estimates based on different sources, Kurds are the largest ethno-cultural minority group, estimated to number around 12-15 million, or somewhere between 10 and 23 % of the population. Other sizeable minority groups are Alevi (estimates range between 4 and 24 million, or between 5.7 and 33 %), a religious minority composed of persons from different ethnic and linguistic background, but whose members predominantly speak Kurdish and/or Turkish language. Roma are estimated to number around 2,750,000 persons, Caucasians of various ethnic background (predominantly Circassians) are projected at 3 million people, and field research estimates the Laz to number between 750,000 and 1.5 million persons. See: Minority Rights Group, A Quest for Equality: Minorities in Turkey, London, 2007, pp. 11-14.
850 Council of Europe: European Commission Against Racism and Intolerance (ECRI), ECRI Report on Turkey (fourth monitoring cycle), Adopted on 10 December 2010, 8 February 2011, para. 82.
851 MRG, A Quest for Equality: Minorities in Turkey, supra note 849, p. 10.
852 Ibid.
854 Ibid., para. 6.
The state system in Turkey is based on “the principle of constitutional/territorial nationalism”, as defined in Article 66 of the Constitution, which provides that “everybody bound to the Turkish state through the bond of citizenship is a Turk”.\(^{855}\) According to state officials, the term ‘Turk’ reflects “the national identity of all citizens in Turkey irrespective of their origins”, since it allegedly defines “the common identity on the nationhood and conscience on territorial (and not on blood) basis”.\(^{856}\) However, these claims have been described as a pretext for a nation-building process that seeks “cultural homogenization and the introduction of super culture at the expense of differences among the society”.\(^{857}\)

A governmental body designated the Minority Issues Assessment Board was established in 2004. Its main aim is to address and seek solutions “to difficulties which citizens belonging to non-Muslim minorities may encounter in their daily lives”.\(^{858}\) However, the state denies legal person-status to their religious institutions, though amendments in 2003 allowed registered religious foundations to purchase property.\(^{859}\) One particular problem for the Greek Orthodox community, is that its Theological Seminary has been closed since 1971, and “there is a risk that there may not be a suitable candidate to succeed Patriarch upon his death”.\(^{860}\) A parallel problem for the Alevi and other non-Sunni Muslims is that they are not represented in the religious affairs body of Muslims in Turkey, called Diyanet, and their places of worship (cemevis) are not recognized as such by the state.\(^{861}\)

Public education in Turkey is provided exclusively in Turkish language. However, the Lausanne Treaty allows that non-Muslim minorities may establish, manage and control private education institutions. Forty-seven such primary and secondary schools exist in Turkey, in which the whole courses except for the subjects Turkish language and Turkish culture are taught in minority languages.\(^{862}\) In addition, in 2003 domestic legislation allowed for launching private courses for teaching minority languages. Private courses in Kurdish language were opened in several cities, but all were soon closed due to “bureaucratic restrictions and people’s reluctance to pay to learn their mother tongue”.\(^{863}\) One positive development that affected the Kurdish minority was the establishment of “a multilingual TV channel (TRT-6)…which on 1 January 2009 started to broadcast 24 hours a day, 7 days a week in the

\(^{856}\) Ibid.
\(^{858}\) UN HRC, *Initial Reports of State Parties: Turkey…*, supra note 855, para. 421.
\(^{860}\) MRG, *A Quest for Equality: Minorities in Turkey*, supra note 849, at p. 21. Whereas the authorities insist that priests and patriarchs need to be Turkish nationals, the absence of theological institutions to educate clergyman could prove to be an obstacle for the small Greek minority in Turkey.
\(^{861}\) Ibid.
\(^{862}\) CoE, Commissioner for Human Rights, *Report on Turkey…*, supra note 847, p. 15, para 24. But, see para. 29 in the same report, where Commissioner for Human Rights expressed its concerns about "the persistent obligation of pupils in public and private primary schools, including the Lausanne minority schools, to read daily an oath beginning with 'I am a Turk' and ending with 'Happy is the person who says "I am a Turk"'."
\(^{863}\) MRG, *A Quest for Equality: Minorities in Turkey*, supra note 849, at p. 16.
Kurmanji (Kurdish - DT) dialect”, and “broadcasts in Zaza and Sorani dialects” were announced for the foreseeable future.\textsuperscript{864}

The Law on Political Parties precludes such entities from recognizing the existence of minorities and expressly prohibits political parties from using minority languages in meetings, in their statutes, and during election campaigns.\textsuperscript{865} There are also other obstacles that prevent the effective participation of minorities in public life. For example, the Electoral Law prescribes a threshold of 10% for parties to win seats in the national parliament, which is an insurmountable burden for political parties representing minorities.\textsuperscript{866} In a sizable number of cases initiated by members of the Kurdish minority, the ECtHR found a violation of the freedom of expression and association guaranteed by Articles 10 and 11 of the ECHR. A systematic problem in domestic legislation and practice was detected in eight ‘repetitive cases’ on the dissolution of political parties whose programs made reference to the Kurdish people and proclaimed their right to self-determination. In all of these cases, the Court unanimously found that Turkey had violated Article 11 of ECHR.\textsuperscript{867}

All in all, the essence of Turkey’s approach to the protection of minorities is “the universal citizenship” that is blind to ethno-cultural and linguistic differences among citizens, accompanied with “the principle of equality in political culture”, and the over-restricted “official recognition only to (particular-DT) non-Muslims as minority groups”.\textsuperscript{868} Thus, it would be proper to stress that much is yet to be done in the field, starting from redefinition of the very notion of minority in accordance with contemporary international law, and abandonment of the approach that gives preference to bilateral treaties concluded almost century ago instead of contemporary treaties designed to protect minorities.

\textsuperscript{864} CoE, Commissioner for Human Rights, \textit{Report on Turkey...}, supra note 847, p. 9.
\textsuperscript{865} MRG, \textit{A Quest for Equality: Minorities in Turkey}, supra note 849, at p. 24.
\textsuperscript{866} CoE, Commissioner for Human Rights, \textit{Report on Turkey...}, supra note 847, p. 15.
\textsuperscript{868} S. Toktas, \textit{EU Enlargement Conditions and Minority...}, supra note 857, p. 490.
IV. CURRENT POSITION OF MACEDONIAN MINORITIES IN THE NEIGHBORING COUNTRIES OF THE REPUBLIC OF MACEDONIA: PRESENT CHALLENGES FOR FUTURE DEVELOPMENTS

The fourth chapter of the dissertation intends to present a comprehensive analysis of the position and rights of Macedonian minorities in the countries neighboring the Republic of Macedonia, i.e. Albania, Bulgaria, Greece, Serbia and Kosovo. The topic is conducive for wide and in-depth research from the perspective of human rights law, because, as the sections of this chapter demonstrate, each of these countries has a unique approach to understanding and promoting or opposing the rights of minorities in general, and the Macedonian minority in particular. Moreover, in some of the countries neighboring the Republic of Macedonia, the issues of non-recognition and denial of ethnocultural identity are basic problems faced by persons belonging to Macedonian national minorities. These issues are inseparable from bilateral relations between Republic of Macedonia and its neighbors, which will therefore be thoroughly assessed, mainly through the prism of their reflection on the position and status of Macedonian minorities in respective countries.

The written presentation of each country analysis is similar, with each section divided in two subsections. The first, which is rather general, typically reviews the legal framework concerning minorities in each country, using the method of content analysis. In addition, specific areas of the domestic legal framework are assessed; areas which are crucial for maintaining minority identity, such as mother tongue education, linguistic rights and the participation of minorities in public life.

The second sub-section is more context-specific, analyzing the present position and status of Macedonian national minorities in individual countries, employing several analytical methods. Here, the focus is on those human rights areas that could provide comprehensive and coherent insights. For instance, the sections devoted to analyzing the situation in Greece and Bulgaria use case study analysis, focused particularly on ECtHR judgments in cases initiated by persons belonging to Macedonian minorities concerning violation of freedom of association, freedom of expression, right to a fair trial as well the right to not be discriminated against in the enjoyment of rights and freedoms stipulated in ECHR. For Serbia, though, the only neighbor with which Macedonia has concluded a bilateral agreement for the protection of kin-minorities, the focus will be the effective realization of the rights and freedoms enshrined in the agreement by the Macedonian minority in Serbia through content analysis. Finally, the need for qualitative data and first hand evidence required field research and in-depth interviews with minority activists and representatives of NGOs in all countries included in the survey.
4.1. Macedonian National Minority in the Republic of Albania

A. Review of the Albanian System of Minority Protection

1. Brief Historical Review on Minority Protection in Albania

Republic of Albania declared its independence from the Ottoman Empire on 28 November 1912 and was internationally recognized less than a year later, at a conference in London on July 19, 1913. Having succeeded in remaining independent after WWII, Albania, unlike other countries in the Western Balkans, cannot be considered to be a ‘new emerged state’.

The first attempt to introduce minority rights principles in the Albanian legal system dates from the time of the League of Nations. In essence, legal arrangements in respect to its minority population was a pre-condition for Albania’s admission to the League of Nations. Thus, on 2 October 1921, Albania “made a special declaration…before the Council, through which it pledged itself to protect and respect the rights of national minorities within its territory”. The declaration guaranteed the same rights as those enshrined in minorities treaties concluded with new Balkan states, and contained additional provisions in respect to the ‘kin minority issue’ between Greece and Albania and to the Muslim population in the country (their religious and educational institutions). The right of the Greek minority to open private schools in order to educate in their own language was assessed by the PCIJ in the case Minority Schools in Albania. The Court found such rights to be unconditional and that constitutional amendments limiting the realization of private education in minority language was not in accordance with the spirit of the declaration.

The situation for minorities in Albania became less secure in the aftermath of WWII. The communist regime of Enver Hoxha, which lasted four decades, was notorious for its isolationism and poor human rights record. Formally, the post-war Albanian constitution guaranteed equality to all its citizens, cultural development of national minorities and the free use of minority languages. However, authorities imposed rather severe measures equally and indiscriminately on all citizens, violating both human rights and the rights of national minorities. These measures included closing all religious buildings, including churches, mosques and monasteries, accompanied by prohibitions on religion, and

872 J. Jackson Preece, National Minorities and the European…, supra note 870, p. 77.
874 V. Ortakovski, Minorities in the Balkans, supra note 869, p. 300.
campaigns to change the names of persons and “geographic names with religious connotations”.\textsuperscript{875} Among the more extreme measures was internment of those supposedly presenting a danger to social order. Regardless of the veracity of the charges, mass internment amounted to \textit{de facto} resettlement policies which directly impacted minority groups by dispersing them throughout the country.\textsuperscript{876}

When democratization occurred in Albania, all these measures and practices were abandoned. Albania today is a parliamentary republic, based on separation of powers, free and democratic elections and universal suffrage.\textsuperscript{877} Therefore, the analysis below primarily addresses the legislation and practices following the first multiparty elections in Albania.

2. Status and Numerical Strength of Minorities in Albania

Albania’s domestic legal framework makes a rather artificial distinction between two types of minorities, namely ‘national minorities’ and ‘ethno-linguistic minorities’.\textsuperscript{878} In the government's view, in order to be recognized as a national minority, “\textit{a group of individuals should have a kinship state, share a common language other than Albanian, a national identity, distinct culture and traditions}”.\textsuperscript{879} This understanding enables the state to differentiate between those eligible to be subsumed under the notion of 'national minority' and others, which in the Albanian context are designated as ethno-linguistic minorities. Greeks, Macedonians and 'Serb-Montenegrins' are recognized as national minorities, while Roma and Aromanians/Vlachs as ethno-linguistic minorities.\textsuperscript{880} Simultaneously, other ethnic communities in the country lack the status of national or ethno-linguistic minorities, and are thus denied the rights designed solely for persons belonging to minorities. Supposedly, this ‘objective’ distinction between various ethnic groups in no way limits the scope of rights ascribed to persons belonging to minorities, which are applied equally to both national and ethno-linguistic minority communities.\textsuperscript{881} However, Aromanians/Vlachs contend that different labels, in essence, perpetuate their inferior-status compared to those recognized as national minorities, and have joined together with other ethnic communities not recognized by the two-layered typology, like Bosniaks and Egyptians, to convince authorities to provide equal possibilities for mother tongue education.\textsuperscript{882}

\begin{footnotesize}
\begin{enumerate}
\item See: V. Ortakovski, \textit{Minorities in the Balkans}, supra note 869, p. 301.
\item Council of Europe, \textit{Report by the Commissioner for Human Rights, Mr Thomas Hammarberg, on his visit to Albania 27 October-2 November 2007}, 18 June 2008, para. 44.
\item S. Wolff et al., \textit{Minority Rights in the Western Balkans…}, supra note 878, pp. 12-13.
\item European Commission Against Racism and Intolerance (ECRI), \textit{ECRI Report on Albania (fourth monitoring cycle)}, 2 March 2010, para. 101. As to the motion for recognizing the minority status of these two communities, the government stressed that it
\end{enumerate}
\end{footnotesize}
Note, too, that the new legislation retained the concept of 'minority zones', inherited from the communist regime, which refer to geographical areas and municipalities inhabited by substantial numbers of persons belonging to the Greek and Macedonian national minorities. The practical implementation of this policy designated the districts of Gjirokasta, Saranda and Delvina as 'minority zones' for the Greek national minority, whereas persons belonging to the Macedonian national minority were recognized as such solely in the area of Mala Prespa (district of Korca) and the village of Vernik (district of Devoll).883 Birth certificates of persons belonging to these national minorities concentrated in 'minority zones' must indicate their ethnic origin, not based on the principle of free ethnic self-identification, but on documenting their parentage instead.884 The government claims that the concept of 'minority zones' was abandoned some 25 years ago, but the practice of documenting ethnicity in birth certificates continued until 2011.885 However, as explained below, the data in these birth certificates is being extensively used to verify citizens' replies to questions of ethnicity in the census. Consequently, the non-recognition of national minority status to the members of these two communities who reside outside the 'minority zones' is, in point of fact, a legacy of the concept of 'minority zones'.

Various projections and estimates are given for the number and percentage of minorities as a whole and for each individual ethnic group. The 2001 census did not provide updated statistics on the various minorities in the country, because it did not include any questions about ethnic origin or religious affiliations.886 Following pressure from various international organizations, the question of ethnic origin was included in the 2011 census, but it was not possible for citizens to provide multiple answers in respect to their ethnicity and mother tongue.887 The census revealed an overall decrease of the total population in Albania, which inevitably impacts on the numbers belonging to minority groups. According to the official reports of the Albanian Institute of Statistics, recognized national and ethno-linguistic minorities comprise some 1.9% of the population, or 52,700 persons. Disaggregated among five minority

883 Within the former district of Saranda, 35 of 64 villages are mostly inhabited by ethnic Greeks. In addition, until 1990 ethnic Greeks comprised approximately 40-45 % of the population in the town of Saranda. It is generally believed that after the democratization of Albania and with preferential measures offered by the Greek government to its co-ethnics in Albania, around 50 % of the former Greek population in this area has migrated to Greece. In the former district of Delvina persons belonging to the Greek national minorities live in 22 villages, of which four have mixed populations (Greeks and Albanians), while the rest are predominantly Greek villages. As in Saranda, the Greek community in the city of Delvina has halved in the past 25 years, from 8,000 to 4,000, whereas in the villages the emigration rate of the Greek ethnic element was even higher. In the district of Gjirokaster, the border region of Dropulli is composed of 34 Greek villages. These villages, until the redrawing of administrative divisions of the country from 2014, were organized in three municipalities, namely Dropulli i Poshtem, Dropulli i Siperm and Pogon. Finally, there are two ethnic Greek villages in the municipality of Permet. See: Council of Europe, Report Submitted by Albania Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities, Strasbourg, 26 July 2001, pp. 12-15.


886 ECRI, ECRI Report on Albania (fourth monitoring cycle)..., supra note 882, p. 49.

887 Advisory Committee on the FCNM, Third Opinion on Albania, supra note 884, para. 43.
groups, the situation is as follows: 24,243 Greeks, 5,512 Macedonians, 366 Montenegrins, 142 Serbs, 8,266 Aromanians/Vlachs and 8,301 Roma.\footnote{People’s Advocate (Ombudsman), \textit{Special Report on Minority Rights in Albania}, Tirana, December 2014, p. 10.} Compared to the 1989 census, the Greek national minority is significantly reduced from the previous 58,758 persons, whereas a slight increase is recorded in the Macedonian national minority, which numbered only 4,697 persons in 1989.\footnote{M. Xhaxho, \textit{Minority Rights and the Republic of Albania…}, supra note 871, p. 30.}

A serious question about the accuracy of this census arises from legislation passed only three months prior to its survey, which authorized fining citizens who provided 'incorrect replies' to the question about their ethnicity, especially if the answers did not correspond to the civil registry. As suggested above, ‘persons belonging to the Greek and Macedonian minorities residing outside the former ‘minority zones’, whose ethnicity was not entered or was entered incorrectly in their birth certificates, and persons belonging to other minorities, in particular the ‘ethno-linguistic’ ones whose ethnicity was never recorded, have not been granted the right to declare freely their ethnic origin’.\footnote{Advisory Committee on the FCNM, \textit{Third Opinion on Albania}, supra note 884, para. 45.} Exacerbating the inaccuracies of the data thus generated, organizations representing national and ethno-linguistic minorities boycotted the census and issued a joint statement rejecting the census results as misleading and non-objective.\footnote{Interview with Niko Kitani, representative of Macedonian national minority in the State Committee for Minorities, conducted on 12 September 2016.} With all these developments, the Advisory Committee to the FCNM stressed that "the results of the census must be viewed with the utmost caution and calls on the authorities not to rely exclusively on the data of nationality collected during the census in determining its policy on national minorities".\footnote{Advisory Committee on the FCNM, \textit{Third Opinion on Albania}, supra note 884, para. 46.}

Greek minority organizations claim that the number of Greeks in Albania is much larger than the census found, amounting to around 400,000 members.\footnote{V. Ortakovski, \textit{Minorities in the Balkans}, supra note 869, p. 299.} These figures are dismissed by government officials, who counter that it includes all of the Orthodox Christians of different ethno-cultural backgrounds in the southern part of the country, not only those of Greek ethnic origin.\footnote{H. Poulton, \textit{The Balkans: Minorities and States in Conflict}, supra note 875, p. 198. Poulton points out that this figure is based on "historical accounts of Greeks in Albania, Greek schools and churches in Albania and individuals registered with the Autocephalous Orthodox Church of Albania…It includes all those who are Greek Orthodox by religion – Slavs (Macedonians and Montenegrins), Albanians, Vlachs, as well as Greeks – and would therefore, appear to be very unreliable for assessing the ethnic Greek population".} In a similar vein, Roma activists estimate their numbers to exceed 100,000 persons. Domestic and external sources provide significantly different estimations of the number of Aromanians/Vlachs in the country. The official census only recognizes several thousand members, but other researchers estimate that around 139,000 Aromanian lives in Albania.\footnote{Ombudsman, \textit{Special Report on Minority Rights…}, supra note 888, p. 15. On the one hand, it is undisputed that Aromanians/Vlachs lives in various regions and cities in Albania, but on the other hand, as the Ombudsman stressed, “there are still some urban centers in which there is a distinct Vlach community. So we can mention cities like Tirana, Elbasan, Korca, Gjirokastra, Vlora, Selenica, Fier, Gramsh, but also historically known villages as Voskopoja, Grabova (Gramsh), Andon Poci etc.”.} Likewise, organizations advocating for the rights of Serbs and
Montenegrins claim that their communities count some 30,000 members, while the Albanian Helsinki Committee researchers estimate their number to be around 2,000 people.896

3. Legal Framework Presupposing Minority Rights in Albania

The Albanian legal system has no special law detailing the rights and freedoms of minorities. Several constitutional articles directly or indirectly address minorities and stipulate their right to identity, but they leave a large legislative gap in the area. Article 3 prescribes the fundamental values of the Albanian state, and emphasizes, among other things, that "coexistence with, and understanding of Albanians for, minorities are the bases of this state".897 Article 18 thoroughly elaborates the principle of equality and non-discrimination, but the list of prohibited grounds for discrimination is indicative rather than exhaustive. It is generally accepted that this article could provide a basis for advancing minority rights, since it “provides for the possibility to apply a positive discrimination in adopting favourable specific measures, and offering special chances of treatment or support to individuals or set categories of individuals or groups, when reasonable and objective grounds exist”.898 Furthermore, it is worth mentioning Article 20, which is devoted solely to national minorities and reads:

1. Persons who belong to national minorities exercise the human rights and freedoms in full equality before the law.
2. They have the right freely to express, without prohibition or compulsion, their ethnic, cultural, religious and linguistic belonging. They have the right to preserve and develop them, to study and to be taught in their mother tongue, and to unite in organizations and associations for the protection of their interests and identity.899

This article is explicitly restricted to persons belonging to national minorities, which again “creates a debate on the extended recognition by the state of the category of ethno-linguistic minorities”.900 The domestic legal framework contains several other laws and regulations relevant to minorities, such as Law No. 7952 dated 21 June 1995 “On the Pre-University Education System”, as well two decisions issued by the Council of Ministers from 1994 and 1996, “On the Primary and Secondary Education”.

896 M. Xhaxho, Minority Rights and the Republic of Albania..., supra note 871, p. 21. The government contends that the Serb-Montenegrin national minority lives mostly in several small villages located in the area of Vraka (villages Gril, Omaraj, Borici i Vogel), which is adjacent to the city of Shkodra. Nevertheless, persons belonging to this minority also live in Lezha, Durres, Tirana, Fier, Elbasan. See: Ombudsman, Special Report on Minority Rights..., supra note 888, p. 13,
898 M. Xhaxho, Minority Rights and the Republic of Albania..., supra note 871, pp. 63-64.
900 Ombudsman, Special Report on Minority Rights..., supra note 888, p. 3.
(8-year) Education of Minorities in their Native Tongue”. Importantly, Albania's National Plan for Implementation of Stabilisation and Association Agreement (2007-2012) indicated that improvement of legislative framework concerning minorities is among the country's middle- and long-term priorities. This plan stipulated that two fundamental laws in compliance with FCNM would be approved in the prescribed period, namely the draft-law “On the protection of national minorities’ rights and freedoms in the Republic of Albania” and “On the education in languages of the national minorities in the Republic of Albania”. 901 The progress is being made with enactment of the Law on Protection from Discrimination, which established a separate institution, the Commissioner for Protection from Discrimination. The Commissioner is empowered to examine complaints from both individuals and groups who claim to have been discriminated against and to encourage the principles of equality and non-discrimination, "especially by increasing awareness and informing about these issues, including the provision of written information, among other related to this law, in Albanian language, in the language of minorities and also in such format that can be easily used by disabled people”. 902 In particular, the Commissioner has the power to examine and trace the occurrence of several types of discrimination against persons belonging to minorities, including direct discrimination, indirect discrimination, instruction to discriminate, annoyance, and denial of reasonable adjustment. 903 Nevertheless, the overall legislative framework concerning minorities remains inadequate, since the proposed laws mentioned are not yet enacted and the second one, concerning the education of minorities, is not even being considered. 904 Their adoption is highly recommended, not only because such legislation would “fill the existing gap in the legal and institutional framework”, but it would also “help to clarify Albania’s policy towards its minorities in particular by establishing proper legal criteria required for recognition as a national minority”. 905

Finally, it is peculiar that Albania has not pursued bilateral agreements on minority protection, despite the fact that sizeable Albanian communities are found in almost every neighboring country. It is only in the Treaty of Friendship, Cooperation and Good-Neighborly Relations, concluded between Albania and Greece in 1996, where the "Greek minority in Albania and the Albanian immigrants in Greece" are expressly mentioned, but solely as a "bridge of the ongoing development of relations between both parties". 906

903 Commissioner for Protection from Discrimination, Protection of Minorities in Albania pursuant to the Law for Protection from Discrimination, Tirana 2013, pp. 7-9.
904 Interview with Niko Kitani, representative of Macedonian national minority in the State Committee for Minorities, conducted on 12 September 2016.
905 Advisory Committee on the FCNM, Third Opinion on Albania, supra note 884, para. 33.
906 Ombudsman, Special Report on Minority Rights..., supra note 888, p. 11.
4. Linguistic Rights and System of Mother Tongue Education in Albania

Legislation in force in Albania does not allow the possibility for minority languages to be granted the status of ‘language in official use’ at the local level, not even in areas with considerable minority presence. Moreover, in such localities, all documents and correspondence between persons belonging to minorities and municipal or other (deconcentrated) administrative units are conducted in Albanian, the sole official language in the country. The result is that minority members can use their mother tongue only in verbal communication with civil servants who just happen to speak the same language.907 Some progress is observable in this area, with a Council of Ministers' decision of March 2008 stipulating that signboards in areas where national minorities live are written in two languages, with same dimensions of letters in both languages; but the same decision falls short of addressing the issue of naming towns and villages in minority languages.908

The domestic legal framework is clearly short of legislation devoted to the use of minority languages, and at present there seem to be only limited possibilities for improving the situation. The gap could be filled with ratification of ECRML, but Albania has not even signed it. Indeed, human rights’ and treaty bodies constantly urge the authorities to adhere to the ECRML, which is a rather flexible instrument and might be easily adapted to local circumstances. The government claims, though, that the absence of an official request from minority communities to adopt the ECRML, combined with "administrative and financial burdens related to the implementation of this legal instrument", prevents them from proceeding further with its adoption.909

The situation of mother tongue education for recognized minorities is more promising than the recognition of language rights. Basically, national minorities in Albania have a constitutionally guaranteed right to study and be taught in their mother tongues. For example, Article 10 of the Law on Pre-University Education System elucidates this right:

Opportunities shall be created for persons belonging to national minorities to study and be taught in their mother tongue, to learn their history and culture within the framework of the school curricula.910

The primary education model for Greek and Macedonian national minority is organized in a manner that 90 % of subjects in the first four years (I-IV grade) are taught in minority language and the

908 Advisory Committee on the FCNM, Third Opinion on Albania, supra note 884, para. 139.
909 ECRI, ECRI Report on Albania (fourth monitoring cycle)…, supra note 882, p. 47.
rest in Albanian, with the ratio gradually equalizing in the following five years (V-IX grade), with some 60% of subjects taught in minority language and 40% in Albanian. In the first two years of secondary education, minority language and literature subjects (‘Greek language and literature’ and ‘Macedonian language’) are compulsory for pupils belonging to these two national minorities.\textsuperscript{911} The syllabus is drawn up by the Ministry of Education and Science in cooperation with representatives from national minorities. The textbooks for History and Geography subjects for minority pupils are prepared by minorities themselves.\textsuperscript{912}

In other areas where national minorities traditionally live (outside the ‘minority zones’), minority pupils could study their mother languages as an ‘optional subject’ within the regular educational system, if there is a request supported by a sufficient number of parents. Applications for such classes are regularly submitted to the respective District Education Directorate, while decision is rendered by the prefect and is finally approved by the Minister of Education.\textsuperscript{913} However, as it will be shown below, almost every initiative for introduction of such optional classes in settlements outside of former ‘minority zones’ are dismissed by authorities on various grounds.

Nevertheless, in its third report on its implementation of FCNM, the government stressed that 21 schools for minorities are operating nationwide, of which “\textit{in Gjirokastra, 10 schools for minorities are operating, with 252 pupils, in 27 classes; in Korca, there are 6 schools with 221 pupils, in 19 classes; and in Vlora, there are 5 schools, with 74 pupils, in 10 classes}”.\textsuperscript{914} In accordance with domestic legislation, three private Albanian–Greek schools also operate in the country: a pre-university college “Arsakeio” in Tirana and elementary schools “Omiros” in Himara and Korca, where some of the classes are taught in Greek.\textsuperscript{915}

Other minority groups’ “\textit{requests to open classes providing instruction in minority languages have so far been ignored by the authorities}”.\textsuperscript{916} Hence, these groups are deprived of the possibility to study their respective languages in the compulsory educational system. Bosniaks, despite being officially a non-recognized minority, can learn the Bosnian language at the elementary school "Adem Sabli" in the city of Shijak. Similarly faced with the gradual erosion of its native speakers, an organization of the Serb-Montenegrin national minority launched a private language course in the area of Vraka, near the city of Shkodra.\textsuperscript{917} Finally, the Albanian government adopted a strategy for improvement of overall situation of the Roma as an ethno-linguistic minority, but illiteracy among this community remains very high at more

\textsuperscript{911} Council of Europe, \textit{Third Report Submitted by Albania…}, supra note 881, p. 50.
\textsuperscript{912} See: M. Xhaxho, \textit{Minority Rights and the Republic of Albania…}, supra note 871, pp. 86.
\textsuperscript{914} Council of Europe, \textit{Third Report Submitted by Albania…}, supra note 881, p. 52.
\textsuperscript{916} Advisory Committee on the FCNM, \textit{Third Opinion on Albania, supra note 884}, para. 159.
\textsuperscript{917} Ombudsman, \textit{Special Report on Minority Rights…}, supra note 888, pp. 21, 24.
than 50 %. Essentially, "the lack of education infrastructure, school books in native language, a bilingual primer book, programs and low quality of education process" perpetuates the problems facing Roma in Albania. \(^ {918} \)

5. Participation of Minorities in Public Life and the Role of State Committee for Minorities

Minorities in Albania may freely participate in the election process and establish their own political parties. The proportional representation system provides a 3% threshold at national elections for political parties and 5% for pre-election coalitions of parties. It is notable that minority political parties are not exempted from said threshold, and nor are any seats reserved for minority groups in the Parliament. Thus, although the Greek national minority’s political party, Human Rights Union Party, has won seats in the legislative body, no other minority group is represented therein. Ethnic Greeks have also held various posts in the government, such as Deputy Minister of Labor and Social Affairs and the Deputy Minister of Justice. \(^ {919} \)

The first draft of the Law on Administrative and Territorial Division of the Local Government Units in the Republic of Albania from 2014 reorganized municipalities in such a manner that all units in which Greeks or Macedonians formed a clear majority were to be merged with predominantly ethnic Albanian municipal units. After pressure from both minority organizations and international bodies, the latest version of the redistribution law rendered the ethnic Greeks a clear majority in three of 61 municipalities nationwide (Dropulli, Finiq, Himara), and the ethnic Macedonians a majority in only one (Pustec). \(^ {920} \) Subsequently, in the 2015 local elections, ethnic Greeks were represented by two political parties, the aforementioned Human Rights Union Party and the Greek Ethnic Minority for the Future (MEGA). \(^ {921} \) The latter won the mayor’s office in the municipality of Finiq, while in two other Greek-dominated municipalities ethnic Greeks affiliated with mainstream political parties were elected mayors. The case of ethnic Macedonians will be analyzed in detail below.

The State Committee for Minorities was set up in 2004 as an advisory body answering directly to the Prime Minister. It is composed of five representatives, one from each of the national minorities (Greek, Macedonian and Serb-Montenegrin) and the ethno-linguistic minorities (Roma, Vlachs/Aromanians), chaired by the representative of the Greek national minority, as country’s most

\(^ {919} \) S. Wolff et al., *Minority Rights in the Western Balkans…*, supra note 878, pp. 13-14.  
numerous minority group. As well as being an advisory body, then, the composition of this Committee makes it a quasi-representative body. Nonetheless, the process of selecting members’ for this body is highly disputed by minority groups, who allege they are not adequately consulted prior to the Prime Minister’s appointment of members who supposedly “represent” their groups. Commenting on these objections, ECRI observed, “if this body is perceived by the minorities as incapable of representing their interests, it will be unable fully to play its role, which depends in part on the trust placed in it by the groups it is intended to represent”.

The State Committee’s main tasks are to recommend that state authorities address issues of particular importance for minorities, derived from their legally enshrined rights and freedoms. It is also focused on close cooperation with central and local authorities in efforts to improve general standards in dealing with minority rights. The Committee may propose concrete economic, cultural and educational measures for the wellbeing of minorities and the unimpeded maintenance of minority identities. In recent years, the State Committee for Minorities actively contributed to drafting a special law devoted to the protection of rights and freedoms of national minorities in Albania. Therefore, the draft law is particularly focused on ensuring the right to freedom of ethnic and linguistic self-identification in order to overcome the distinction between recognized national and ethno-linguistic minorities and those communities not recognized as such; to provide legal conditions under which minority languages would be used before administrative authorities; to widen the scope of minority students receiving instruction in minority language and studying their respective languages; to establish special funds for supporting projects in areas of minority culture, education, use of language and media; to guarantee equal representation of minorities in institutions at both the national and local levels, particularly in the Parliament, civil service, army, and police, based on their proportion of the total population and under the principle of equity.

However, despite its quasi-representative status, the Committee is only an advisory body, lacking the power to issue binding decision. The Advisory Committee to FCNM therefore urges the authorities to review "the composition and the functioning of the institutional bodies responsible for minority issues, with a view to establish regular dialogue and effective decision-making between, on the one hand, a government body enjoying decision-making power and, on the other hand, organizations which truly represent the various national minorities".

923 ECRI, ECRI Report on Albania (fourth monitoring cycle)..., supra note 882, p. 37.
925 Interview with Niko Kitani, representative of Macedonian national minority in the State Committee for Minorities, conducted on 12 September 2016.
926 Advisory Committee on the FCNM, Third Opinion on Albania, supra note 884, para. 171.
B. Macedonian National Minority in the Republic of Albania

1. Geographical Distribution of the Macedonian National Minority and Its Numbers

Macedonians in Albania are an autochthonous ethnic group whose members traditionally occupy several border regions. Keith Brown observes that “there are two small pockets of territory considered by some analysts as historically Macedonian within modern Albania, around the Prespa lakes and at Golo Brdo. The region known as Gora is home to Macedonian-speakers.” All three of these traditionally Macedonian ethno-historical regions are today divided between two or three neighboring countries. The Prespa area is divided between Macedonia, Albania and Greece; Gora is divided between Kosovo, Albania and Macedonia; while Golo Brdo is divided between Albania and Macedonia. The area of Mala Prespa and the village of Vernik were incorporated in Albania in 1923 in a bilateral agreement redrawing the borders between Greece and Albania. Similarly, in accordance with the agreement between Albania and the Kingdom of Serbs, Croats and Slovenes in 1923, some 21 villages of the region known as Golo Brdo were ceded to Albania in exchange for the monastery of St. Naum at the shore of the Ohrid lake, an important Christian Slavic site which was incorporated into the new South Slavic state. A further demarcation of the border between Albania and the Kingdom of Serbs, Croats and Slovenes in 1923, ceded another nine villages in the ethno-historical region Gora to the territory of Albania.

Ethnic Macedonians also form concentrated populations in other regions along the Macedonian–Albanian and Albanian–Greek borders. Historians indicate that ethnic Macedonians are intermingled with

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928 Тошо Поповски, *Македонското национално малцинство во Бугарија, Грција и Албанија*, [Tosho Popovski, *Macedonian National Minority in Bulgaria, Greece and Albania*], Makedonska Kniga, Skopje, 1981, p. 240. Back in 1913, fourteen ethnic Macedonian villages, included in the process of border change of 1923, firstly became part of then-expanded Greek kingdom in accordance with provisions in the Treaty of Bucharest. Of them, nine villages until 1923 were part of the Florina/Lerin county in Greece. These are the villages of Globoce, Gorna Gorica, Dolna Gorica, Tuminec, Celje, Shulin, Pustec, Leska and Zrnosko, which at present days forms the area Mala Prespa in Albania and municipality of Pustec. As to the other five villages included in the agreement, namely Vernik, Zagradec, Vidojca, Kapeshnica and Trestenik, in the period when they were under Greek rule (1913–1923) administratively belonged to the Kastoria/Kostur county. Nowadays, all of them are part of the Devoll area in Albania.
930 *Ibid*, p. 149. Shishtavec, Oreshek, Crnolevo, Borje, Orgosta, Pakishta, Zapod, Ochikle and Kosharishta are villages of the region of Gora that in 1925 became part of Albania. Some observers note that another 12 villages belonging to historically the wider region of Gora are also in Albania, but for various reasons the inhabitants speak almost exclusively Albanian, which can be seen in the toponyms that designate surrounding places.
Albanians in: the area of Gorica, adjacent to the city of Korca, with some 15 villages;\(^931\) the western area of the city of Podgradec, encompassing around 15 villages with mixed populations;\(^932\) and several villages in Diber county, where massive emigration has reduced once prosperous Macedonian communities to a handful of elderly families.\(^933\) At the same time, as a result of internal migration, small Macedonian communities are also found in the cities of Korca, Bilisht, Pogradec, Elbasan, Kukes, Tirana, Durrës, Berat etc.\(^934\)

Depending on where they live, the religious affiliation of Macedonians in Albania is either Orthodox Christianity or Islam. In the region of Mala Prespa the whole population is Orthodox Christian, while conversely, Islam is the religious affiliation of almost every person living in the Gora region. In Golo Brdo, historical records show that some 70 % of the population is Muslim, while the remaining 30 % are Orthodox Christians.\(^935\) There is evidence that due to migration and other factors, the ratio between Muslims and Christians in Golo Brdo is is increasingly shifting towards the former. Overall, it seems reasonable to assert that approximately 75 % of ethnic Macedonians and Macedonian-speakers in Albania are Muslims and the remaining 25 % are Orthodox Christians.\(^936\)

Estimates of the number of Macedonians in Albania vary. On the one hand, the official data from several consecutive censuses indicate a rather small number, namely 4,697 Macedonians in 1989 and 5,512 in 2011. As we have seen, though, the census figures are distorted by the official policy of only recognizing a Macedonian national minority in the region of Mala Prespa and one settlement in Devol, and thus “cannot be considered to be reliable and accurate” and “should be viewed with the utmost caution”.\(^937\) As discussed, the most recent census denied minority members residing outside of 'minority zones' the right to ethnic and linguistic self-identification by requiring that their answers to questions of ethnic origin corresponded to what is shown in their birth certificates. While the birth certificates of Macedonians living in designated ‘minority zones’ indicate their correct ethnicity, simultaneously, persons residing in Golo Brdo, Gora and other regions were, until recently, automatically documented as being 'Albanian'.\(^938\)

Albania’s official assessments of the numerical strength of Macedonian national minority are occasionally disputed even by state institutions. For example, a document from the Albanian Ministry of

\(^931\) See: Фросина Тацевска Ременски, Македонското национално малцинство во соседните земји: современа состојба [Frosina Tasevska Remenski, Macedonian National Minority in the Neighboring Countries: Contemporary Situation], 2 August, 2007, p. 129.

\(^932\) Peter Hill, Macedonians in Greece and Albania: A Comparative Study of Recent Developments, Nationalities Papers, No. 1, 199, pp. 17-30, p. 25.

\(^933\) See: K. Todoroska, Macedonians in Albania (1912-1991), supra note 929, pp. 146-149.

\(^934\) Ombudsman, Special Report on Minority Rights…, supra note 888, p. 12.


\(^936\) Ibid.

\(^937\) Advisory Committee on the FCNM, Third Opinion on Albania, supra note 884, paras. 16-17.

\(^938\) Ibid, para. 17.
Education reveals that “in 1935-1936, there were 11,459 inhabitants, whose mother tongue was Macedonian, or else called Bulgarophiles”⁹³⁹ Numerous scholars of various backgrounds have examined the issue and produced estimates of the total number of Macedonians in Albania. Ortakovski, points out that the 1961 census reported approximately 15,000 Macedonians and Montenegrins in Albania at that time.⁹⁴⁰ Hugh Poulton, writing on the subject in 1992, reported that "most, non-Yugoslav, observers put the figure at between 10,000 and 20,000".⁹⁴¹ Others, however, argue that the figure is much higher. Aggregating the numbers for various regions in Albania where ethnic Macedonians traditionally live, accompanied with demographic indicators and natural changes in the population, they claim, produces much higher results. In 1981, Popovski estimated that there were around 45,000 Macedonians in Albania, unevenly distributed across several regions and cities.⁹⁴² Ilievski reviews the work of several scholars in the field and puts the number at between 45,000 and 60,000.⁹⁴³ Similar figures, “somewhere around 50,000-60,000”, were provided by Kiselinovski and Stavovi-Kavka in their 2004 survey of minorities in the Balkans.⁹⁴⁴ In a more recent study, the historian Todoroska, relying on data from various sources, argued that the “most objective assessment would be the figure of over 100,000 persons belonging to Macedonian national minority living in Albania”.⁹⁴⁵

Center of Ethnic Research, led by Kimet Fetahu, a prominent figure of the Macedonian national minority, conducted a survey of ethnic origins in Albania and found that minorities nationwide numbered almost one million people or 35% of the total population, of whom roughly 150,000 are ethnic Macedonians.⁹⁴⁶ Finally, we must note that projections by other community members are much higher, with claims of up to 300,000 Macedonians living in different regions throughout Albania.⁹⁴⁷

2. Review of the Present Situation of Macedonians in Albania

The position and status of Macedonians in the Republic of Albania has fluctuated over the past century as a consequence of changes in official policies in different historical contexts. In the aftermath of its independence, Albania “did not recognize the Macedonians their status as a minority in accordance with the Declaration it made before the League of Nations”, and thus "prevented them from enjoying the

⁹⁴⁰ V. Ortakovski, minorities in the Balkans, supra note 869, p. 299.
⁹⁴¹ H. Poulton, The Balkans: Minorities and States..., supra note 875, p. 201.
⁹⁴² T. Popovski, Macedonian National Minority in Bulgaria, Greece and Albania, supra note 928, p. 247.
⁹⁴³ Трајче Илиевски, Малцинства и междуполошно право [Trajche Ilievski, Minorities and the International Law], NIO Studentski Zbor, Skopje, 1993, p. 166.
⁹⁴⁴ S. Kiselinovski, I. Stavovi Kavka, Minorities in the Balkans..., supra note 935, p. 213.
⁹⁴⁶ See: One third of Albanian population belongs to minorities (in Macedonian), 2 October 2004. The article is available online at: http://vecer.mk/makedonija/tretina-albanijamalcinstva (retrieved on 14 October 2016).
⁹⁴⁷ F. Tasevska Remenski, Macedonian National Minority in the Neighboring Countries..., supra note 931, p. 326.
rights and the protection arising from it”. The period of non-recognition lasted until the end of WWII, when a new ‘evolutionary phase’ in the authorities’ attitude of towards this minority began. More specifically, following the Yugoslav–Albanian rapprochement produced close cooperation in several areas, from 1945 until 1948, “the Macedonian minority was officially recognized in the area of Prespa, in the area of Golloberda and in the village Vernik, in Devoll area”. Among other things, its members were thus granted the right to education in their mother language. Shortly after the deterioration of relations between Yugoslavia and other communist countries in 1948, though, all rights ascribed to ethnic Macedonians were repealed. In the following decades, only those living in Mala Prespa and the village of Vernik (minority zone) had the opportunity to learn Macedonian, and only in the first two grades of elementary education.

Today, as a democratic state based on human rights, Albania officially recognizes ethnic Macedonians as a ‘national minority’, whose members are granted several minority-specific rights. But it remains a very restricted recognition, since in the government’s view, “the Macedonian national minority is concentrated in the area of Prespa”, encompassing “nine villages...and a village in Devoll”. Thus, persons of Macedonian origin who live in other regions are deined the status of national minority, and thus denied the rights specially designated for minorities.

Quite separate to the regional issues, the ethnic origin of Macedonians with Islamic religion has never been recognized by the Albanian state. For most of Albania’s modern history, they have been considered and recorded as ‘Albanians’. And another separate issue arises in the regions of Golo Brdo and Gora, where, being isolated from educational and cultural processes of their own community, ethnic Macedonians and Macedonian speakers were more susceptible to assimilation than those in the ‘minority zone’ of Mala Prespa. Nevertheless, despite the lack of any institutional support for the maintenance of their language and the cultivation of culture and local traditions, the vast majority of Macedonians here have succeeded in preserving their linguistic and ethno-cultural identity. In another case, alienation from both Macedonian and Albanian narratives is visible in Gora, where Macedonian-related dialect, referred also as ‘Nashinski, as well rich local folklore and traditions, makes people more eager to express their ethnic identity as ‘Gorani’ rather than Macedonian.

3. Perceptions of Macedonians in Albanian Society and Cases of Discrimination

Human rights and tolerance are acclaimed as basic values of the Albanian society today. However, like many other countries, Albanian society is not immune to various prejudices and stereotypes of non-dominant ethnic groups, which potentially open the door for different types of discrimination. In our case, as Peter Hill notes, "the Albanian majority refer to the Macedonians in popular speech derogatorily as Shule". On the surface, the term appears to derive from the name of the village of Shulin, in the Prespa area, and is used to refer to all inhabitants in the area. But in fact, the term is quite offensive, and really means a primitive or foolish man. Ethnic Macedonians consider this attitude to be deeply rooted in the decades-long perception of national minorities in Albania as ‘alien elements’, possibly aligned with the interests of neighboring countries. Indeed, the term Shule is occasionally used in the media and by political parties. In one case, an article in the newspaper Shqiptarja called the population in the municipality of Pustec as “Shule”, invoking alleged ‘uncertainties’ in their ethnicity, stating that “it is not very clear whether they are Macedonians or Bulgarians”, and characterizing their language as “Slavo-Macedonian”. The Commissioner for Protection from Discrimination urged the newspaper to abide by the principle of ethnic and linguistic self-identification, to use the proper terminology under which national and ethno-linguistic minorities are recognized in the country, and to prevent dissemination of texts imposing offensive or disrespectful language, which could affect the dignity of these communities.

An recent case is indicative of hate speech in public discourse against the Macedonian national minority. Namely, “on 27 November 2012 the Red and Black Alliance, later registered as a political party, initiated a campaign against the use of the Macedonian language on information boards and on street signs in Pustec, which is largely inhabited by the Macedonian minority”. In particular, supporters of the nationalistic Red and Black Alliance gathered in front of the municipal office and the secondary school in the village, chanting nationalist songs and shouting slogans, such as "This is Albanian soil", "Slavs are not welcome in Albania" etc. After a complaint was lodged with the Commissioner for Protection from Discrimination, the Commission ordered the Red and Black Alliance to publicly

955 P. Hill, Macedonians in Greece and Albania..., supra note 932, p. 29.
958 Republika e Shqipërisë, Komisioneri për Mbrojten nga Diskriminimi, Vendim, Nr. 29, Datë 04 /04 /2013, p. 5.
959 Council of Europe: European Commission Against Racism and Intolerance (ECRI), ECRI Report on Albania (fifth monitoring cycle), 9 June 2015, p. 17.
apologize for harassment of the ethnic Macedonian population and to pay a fine of 60,000 Albanian leks.\textsuperscript{961}

4. Freedom of Association

In general, freedom of association is satisfactorily respected and no serious obstacles are noted in cases initiated from representatives of the Macedonian national minority.\textsuperscript{962} It goes without saying that only applies for the period after the fall of communism, since previously, any activities and associations by minorities were strictly controlled, if not coordinated, by authorities. Here, the most important organizations are briefly mentioned.

The motion for registration of the cultural organization “Prespa” was approved by the Ministry of Justice on 4 April 1991, becoming the first officially recognized organization of the Macedonian national minority in the countries neighboring the Republic of Macedonia.\textsuperscript{963} Among other things, “Prespa” sought to have areas where minorities are traditionally concentrated declared as 'special election zones' in order to secure their representation in the Parliament. In the settlement of Vernik, the Macedonian Aegean Society “MED” was established with the primary aim of maintaining local Macedonian folklore and the cultural heritage of Macedonians originating from the Kastoria/Kostur area in Greece. Similarly, members of Macedonian minority living in the capital Tirana have established the “Association of the Macedonians in Tirana” with the aim of encouraging and supporting community members to undertake activities in the fields of culture and mother tongue education.\textsuperscript{964} Additionally, the cultural societies “Mir”, "Bratstvo” and "Gora" were duly registered in the areas of Golo Brdo and Gora, with branches in various places, including Tirana.\textsuperscript{965} However, the initiative of ethnic Macedonians living in Elbasan to found the organization ‘DOMNUA’ (Democratic Organization of Macedonian National Unity in Albania) was dismissed by the Ministry of Culture, a decision confirmed by the Supreme Court.\textsuperscript{966} The two associations “Most” and “Ilinden”, founded in the past few years, have managed to attract younger generations into their minority rights’ activism. Finally, it was only on 30 October 2004 that four organizations and cultural societies representing people from various regions signed an agreement to join together under an

\textsuperscript{961} Republika e Shqipërisë, Komisioneri për Mbrojtjen nga Diskriminimi, Vendim, Nr. 75, Datë 01/07/2013, p. 2.
\textsuperscript{963} T. Ilievski, Minorities and the International Law, supra note 943, p. 171.
\textsuperscript{964} F. Tasevska Remenski, Macedonian National Minority in the Neighboring Countries…, supra note 931, pp. 338.
\textsuperscript{965} S. Kiselnovski, I. Stavovi Kavka, Minorities in the Balkans…, supra note 935, p. 217.
\textsuperscript{966} K. Todoroska, Macedonians in Albania (1912-1991), supra note 929, pp. 86-88. Allegedly, officials from the Ministry of Justice have suggested that the founding committee from Elbasan should merge with the cultural association “Prespa”.
umbrella organization called “Association of Macedonians in Albania”. Such a move may foreshadow the formation of a political party representing the Macedonian national minority in Albania.

5. Linguistic Rights and Free Use of Minority Language

Considering the weak legislation in Albania in respect to linguistic rights and use of minority languages, several points should be underlined here. Regarding the free use of Macedonian language, the Ombudsman noted that “in the areas of Prespa, Gora and Golloberda, the language used in the everyday private and public life is the Macedonian language. Likewise, it is claimed that children in these areas until the age of 7 do not speak Albanian and begin to learn it in school”. It appears that, despite not being recognized in Golo Brdo and Gora, linguistic identity of ethnic Macedonians and Macedonian-speakers in these regions is not at risk, due to their geographical proximity to Macedonia (Golo Brdo) and Kosovo (Gora). Indeed, local inhabitants nurture close contacts and cooperation with neighboring people, with whom they share ethnic and linguistic origins. Therefore, it seems Friedman is right to say that, "the isolation of the region has been conducive to preserving the language, and small children are still monolingual in Macedonian".

Particularly, the richness of the Macedonian-related Gorani dialect in Albania can be seen in the first Gorani-Albanian dictionary, which includes more than 43,000 words and phrases. The author of this dictionary, Nazif Dokle, spent years of research collecting invaluable linguistic material. Similarly, Cvetan Mazniku edited six volumes of the book "Golobrdski folklor", devoted to the linguistic and cultural heritage of the region of Golo Brdo. The situation is not so promising, though, for those living in urban areas or scattered throughout the various regions of Albania, intermingled with the dominant group. Here, the process of ‘language replacement’ is more visible, and potentially irreversible. Therefore, private initiatives for organizing language courses in these places, accompanied with possibilities for younger generations to study at universities in Macedonia, are crucial for these communities to develop resilience and preserve their particularities.

Moreover, in the municipality of Pustec, verbal communication between the local administration and citizens is conducted in Macedonian, since almost all civil servants and inhabitants are ethnic Macedonians. Likewise, Macedonian language is used in meetings of municipal council and the mayor.

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969 Ombudsman, Special Report on Minority Rights…, supra note 888, pp. 20.
971 V. Friedman, The Macedonian Dialects of Albania…, supra note 953, p. 635.
Nevertheless, all official municipal acts and documents, meeting minutes etc. are written in Albanian, as the sole official language in the country.\textsuperscript{973}

6. Right to Personal Identity (Name and Surname) and Right to Designate Topographical Signs in Minority Language

Several events in this field should be mentioned in order to clearly outline the present situation. In 1975, with administrative Decree No. 5339, the government ordered “name-changes for citizens who have inappropriate names and offensive surnames from a political, ideological and moral standpoint”.\textsuperscript{974} The aim was to eliminate any purported ‘alien influence’ in the names and surnames of citizens, which authorities believed their 'enemies' would surely use as a pretext to spreading 'misleading information' about the ethnic and religious origin of the population of Albania. The list of ‘acceptable names’ has already been circulated to civil servants to ensure the personal data in the registries complied with the provisions of the decree.\textsuperscript{975} Moreover, Decree No. 225 concerning changes to geographical place names of a religious nature came into effect at around the same time.

Ortakovski notes that these acts had “an effect to a large degree on the Macedonians, on their names and surnames, as well as in the obliteration of the geographical signs of places which had from ancient times been Macedonian”.\textsuperscript{976} Personal names were changed in a way that, for example Krste became Kristo, Sofija in the civil registry was renamed to Sonia, Nikola to Genti, Gligor became Ligor etc.\textsuperscript{977} In a similar vein, traditional form of surnames (partronyms) were modified in the respective Albanian version.\textsuperscript{978} Simultaneously, by invoking the provisions enshrined in these laws, the government in 1973 changed the names of all settlements in the region of Mala Prespa, giving them ‘proper Albanian names’. Therefore, Pustec became Liqenas, Zrnosko was renamed Zaroshke, Leska became Lajtizhe, Shulin to Diellas, Tuminec to Kallamas, Globocani to Gollomboc etc.\textsuperscript{979} Note, too, that the renaming campaign only affected settlements located in the officially recognized 'minority zone'. The names of settlements in other regions with a traditional presence of ethnic Macedonians or Macedonian-speakers, such as Golo Brdo and Gora, were not changed, although their etymological and semantic origin were indisputably 'foreign' if not ‘purely Slavic’.

\textsuperscript{973} Interview with Niko Kitani, representative of Macedonian national minority in the State Committee for Minorities, conducted on 12 September 2016.
\textsuperscript{974} H. Poulton, \textit{The Balkans: Minorities and States…}, supra note 875, p. 199.
\textsuperscript{975} P. Hill, \textit{Macedonians in Greece and Albania…}, supra note 932, p. 28.
\textsuperscript{976} V. Ortakovski, \textit{Minorities in the Balkans…}, supra note 869, p. 303.
\textsuperscript{977} See: K. Todoroska, \textit{Macedonians in Albania (1912-1991)}, supra note 929, p. 134
\textsuperscript{978} T. Popovski, \textit{Macedonian National Minority in Bulgaria, Greece and Albania, supra note 928}, p. 250.
\textsuperscript{979} F. Tasevska Remenski, \textit{Macedonian National Minority in the Neighboring Countries…}, supra note 931, p. 346.
Since then, the municipality of Pustec has several times initiated procedures for restoring its original name, and its municipal council has voted in favor of reintroducing Macedonian toponyms in the municipality. Nevertheless, such decisions have been repeatedly repealed by the Korca prefectural authorities. Finally, an agreement was reached on this issue between the Macedonian Alliance for European Integration and three major political parties, and on 18 March 2013 the Albanian Parliament passed the Law on Restoring Authentic Toponym of the Municipal Seat from Liqenas to Pustec. Shortly afterwards, the municipal council voted to revert to Macedonian toponyms in the region of Mala Prespa, and the decision was approved by the prefecture of Korca. Since 2011, all topographical indications for local names, street names, names of squares etc. in the municipality of Pustec are bilingual, written in Albanian and Macedonian, with the same size of letters in both languages.

As to the right to bear traditional name and surname, "Act No. 9229, passed on 29 April 2004...now allows people to change the name under which they are registered by means of a straightforward administrative procedure (rather than a judicial procedure, as was previously the case)". Henceforth, minority members can revert their names and surnames and as these in personal identification documents and in all civil registries. This intervention in Albanian legislation fully complies with the spirit of Article 11 of the FCNM, which requires that those who have changed their names due to coercion or forced assimilation should have the right to reinstate their names in the original form. However, “registration is done in accordance with the minority language phonetic pronunciation, but always is based on the orthography of Latin alphabet, as the Albanian language is written”.

7. Implementation of the Right to Receive Education in Mother Tongue

a) Brief Historical Review of the Educational Rights of Ethnic Macedonians in Albania

In the aftermath of WWII, former Yugoslavia and Albania, being newly proclaimed socialist countries, nurtured close bilateral relations. This profoundly affected the position and status of ethnic Macedonians in Albania, who were, for the first time, recognized as a national minority. In addition to

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981 Municipal Council of Pustec Voted to Restore Macedonian Toponyms for Settlements in Municipality of Pustec, 15 April 2013. The article is available online at: http://makedonium.net/?p=584 (retrieved on 12 October 2016)
other rights, schools with instruction in Macedonian language were opened in several areas and regions where ethnic Macedonians comprised a majority. However, lack of professional and skilled teachers and adequate textbooks in Macedonian language made the practical implementation of mother tongue education for Macedonians almost impossible.985

Concurrently, bilateral treaties between Yugoslavia and Albania in the late 1940s envisaged the two countries exchanging researchers, professors, teachers and students.986 Under these circumstances, the Albanian government asked the nascent Macedonian republic within the Yugoslav federation to send teachers and textbooks for schools where instruction in Macedonian language had been introduced. In response, Yugoslav and Macedonian authorities selected 13 teachers, assigning nine to teach Macedonian language classes in the villages of the region of Mala Prespa, three in the region of Golo Brdo (Vrnica, Pasinki, Gorno Krcista)987 and one in the village of Vernik/Vrbnik, in the Devol area.988 These Macedonian teachers facilitated the operation of minority schools, where Albanian was taught for only two hours a week in fourth grade.989

The sudden severance of relations between Yugoslavia and other communist countries in 1948 negatively impacted the system of mother tongue education for the Macedonian national minority. Initially, all but two of the teachers returned to Macedonia and some schools were closed. The two teachers who remained continued to work in harsh conditions in Mala Prespa (‘minority zone’), while Macedonian language education in Golo Brdo was completely abolished.990 In Prespa, the curriculum was readjusted such that instruction in Macedonian was provided in the first two grades, and in the third and fourth grade the Macedonian language was studied only as a subject.991

b) Present Situation in the Field

The educational model for pupils of Macedonian and Greek origin has been explained above. Generally, in areas where Macedonians are recognized as a national minority, Mala Prespa and the village

988 Writings by Macedonian teachers in Albania disclose the unwillingness of authorities to accord be wide and non-selective in granting the right of the Macedonian national minority to receive instruction in mother language. For instance, despite being adjacent to the city of Korca, the administrative center for the region of Mala Prespa (‘minority zone’), ethnic Macedonian villages Boboshtica and Drenovo were not among the places where Macedonian language classes would be provided. In another case, one teacher from Macedonia initially held classes for pupils in the coastal village of Lin, located on the shore of lake Ohrid, about half way between the Macedonian city of Struga and the Albanian city of Pogradec. Allegedly, pupils’ low proficiency of Macedonian vernacular as a consequence of a decades-long process of linguistic assimilation necessitated the teacher's transfer to the village of Cerje, located in the ‘minority zone’. Finally, a Macedonian teacher in the largest settlement in the region of Golo Brdo, Trebishte, was only assigned in June 1948, a few weeks before 15 July 1948, when all teachers from Macedonia were expelled from Albania. K. Todoroska, *Macedonians in Albania (1912-1991)*, supra note 929, pp. 217-237.
of Vernik, legislation provides that pupils shall receive a significant proportion of their elementary education (lasting nine years) in Macedonian. Furthermore, in the first two years of secondary education, ‘Macedonian language’ is a compulsory subject for pupils belonging to the Macedonian national minority. Today there are four primary schools and one high school with Macedonian as language of instruction; three less than there were at the beginning of the 2000s. On the one hand, minority pupils in the area have unrestricted access their minority language and culture in the state education system. The ‘History of Macedonia’ subject has recently been introduced to the curriculum for pupils of Macedonian ethnicity to learn about their people’s history, culture and religion. Since there is no department of Macedonian Language or Macedonian Studies at the University of Tirana, the teachers in these national minority schools have typically received their qualifications from institutions in the Republic of Macedonia. To put it more bluntly, the Albanian education system lacks "adequate training for teaching the languages of these minorities, particularly Macedonian", and aspiring teachers must therefore "undergo training in the teaching in/of their languages offered either in or by their 'kin-state' through the secondment of teachers".

A general lack of textbooks for subjects in Macedonian language presents another serious obstacle to the effective realization of the right to mother tongue education for students belonging to Macedonian minority. An Ombudsman’s report suggests there is little real effort by the authorities to rectify this situation, finding that “from 55 textbooks the Ministry of Education and Sports should publish in Macedonian language, only 22 texts were published, 8 are prepared but not published, while 33 textbooks are neither prepared nor published”. Therefore, contrary to the approved curriculum, Albanian language textbooks are currently being used for some of the subjects that should be taught in Macedonian. With this, legally proclaimed 60/40 ratio between subjects that should be taught in Macedonian and Albanian is significantly impeded. Furthermore, those textbooks that have been prepared and are being "used by Macedonian pupils at present are apparently unsuitable, and in some cases are merely translations of Albanian textbooks".

The progressive decline in the numbers of Macedonian pupils attending classes in elementary schools with Macedonian as language of instruction is another problem affecting the whole community. One may invoke several reasons, namely migration into urban areas of inner Albania or to the Republic of Macedonia, but other demographic indicators should also be taken in consideration, such as low fertility rate. For example, 522 pupils and 215 children attended classes in elementary schools and kindergartens

995 Advisory Committee on the FCNM, Second Opinion on Albania, supra note 982, para. 162.
997 Advisory Committee on the FCNM, Second Opinion on Albania, supra note 982, para. 157.
in Mala Prespa and Vernik in the academic year 1999/2000. That same year, 182 students studied Macedonian language as a separate subject in two secondary schools in Prespa.\footnote{Council of Europe, \textit{Initial Report Submitted by Albania...}, supra note 883, pp. 50-51.} Subsequently, due to massive migration and the small number of pupils enrolled, the elementary school in Vernik was closed. Moreover, in the academic year 2010/2011 only 211 pupils attended classes in elementary and secondary schools where they either received instruction in Macedonian language or studied their mother language as a separate subject.\footnote{Council of Europe, \textit{Third Report Submitted by Albania...}, supra note 881, p. 52.}

In other historical regions where ethnic Macedonians traditionally live, Golo Brdo and Gora, there is no instruction in Macedonian language nor is the subject ‘Macedonian language’ included in the primary curriculum.\footnote{V. Friedman, \textit{The Macedonian Dialects of Albania...}, supra note 953, p. 635.} After the withdrawal of Macedonian teachers from the schools in three villages in Golo Brdo in 1948, the official policy was to only provide mother tongue education to minority pupils in the ‘minority zones’. Since the country’s democratization in 1991, extending the network of schools where Macedonian language would be taught was never seriously considered, despite occasional requests from different organizations representing the Macedonian national minority.\footnote{See: P. Hill, \textit{Macedonians in Greece and Albania...}, supra note932, p. 27.}

As mentioned, legislation provides the possibility minority for languages to be offered as an ‘optional subject’ for minority pupils where no minority language education is available for them. On 11 January 2013 the Macedonian association 'Most' submitted a petition, signed by the parents of 50 pupils attending classes at an elementary school in the village of Trebishtë, Golo Brdo, asking for the subject 'Macedonian language and literature' to be included in the curriculum.\footnote{See: Macedonians of Golo Brdo with petition addressed to respective Albanian authorities seeks introduction of Macedonian language in the formal education (in Macedonian), 12 January 2013. The article is available online at: \texttt{http://makedonium.net/?p=423} (retrieved on 12 October 2016).} The Regional Education Department in Bulqizë denied the request, declaring that, "in accordance with the Law on Pre-University Education System, classes in English, as mandatory foreign language, starts in the third grade, while lessons in the second foreign language are included optionally in the seventh grade".\footnote{The quote is from the reply to a petition for the introduction of Macedonian language in an elementary school in the village of Trebishtë, issued by the Regional Education Department in Bulqizë. Personal copy of the document owned by author.} Unfortunately, this mandate is not automatically enforced; petitions and requests are initially assessed by the school management. They might propose classes in second foreign language to the respective Regional Education Department, which decides on the basis of available resources, both human and financial. In other words, the procedure for offering classes in minority languages is “overly complicated”, and “subject to different requirements depending on whether teaching of the language in question is compulsory or optional, language teaching having been introduced into the new school curricula as an
optional subject in order to cover areas that are not ‘minority zones’.”. Hence, in reality pupils of Macedonian ethnicity Golo Brdo are denied the right to an education in Macedonian language in the formal state education system.

In another case, Advisory Committee noted that “a request signed by 70 parents asking for the instruction of Macedonian language classes in the local school in Bilishta was refused”. Again, it is noteworthy that city of Bilishta is located outside of the ‘minority zone’, thus such a response is virtually preordained. In respect to these two cases, it should be recalled that the Law on the Protection for Discrimination provides protection in the area of education in a manner that “prohibits any distinction, restriction or exception in the establishment of educational institutions, financing of education and the treatment of students”. Nevertheless, the administrative decisions in these two cases clearly contravene the principles enshrined in the legislation concerning education and prohibition of discrimination on the grounds of ethnic origin.

The organizations affiliated with the Association of the Macedonians in Albania organize private language courses for pupils belonging to the Macedonian national minority in several settlements and regions. For instance, the societies ‘Ilinden’ and ‘Most’ several years ago started offering private language courses in the villages of Golo Brdo, the society ‘MED’ does likewise in the city of Bilishta, the societies of ‘Prespa’ and ‘Pregor’ are active in the city of Podgradec, while the society of ‘Gora’ is facing difficulties in maintaining private courses in the villages of Gora. In the city of Korca, private Macedonian language lessons are continuously provided within the frame of the Macedonian cultural center ‘Sonce’. It is noteworthy that none of these activities are financially supported by either central or municipal budgets. Predominantly, they are realized as initiatives supported by the Ministry of Foreign Affairs of Macedonia. However, Albanian authorities have tried to discourage private Macedonian language courses, such as the case in 2009 when it banned courses in Golo Brdo, attended by more than 200 children of Macedonian ethnicity.

8. Effective Participation of the Macedonian National Minority in Public Life at Central and Local Level

It is an accepted fact that Albanian legislation guarantees participation of Macedonian and Greek national minorities in the electoral process. The government officially proclaims that “Albanian law

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1004 Advisory Committee on the FCNM, Second Opinion on Albania, supra note 982, para. 181.
1005 Advisory Committee on the FCNM, Third Opinion on Albania, supra note 884, para. 159.
1006 Protection of Minorities in Albania pursuant to the Law for Protection from Discrimination, supra note 903, p. 11.
1007 Interview with Vasil Sterjovski, Secretary General of the Macedonian Alliance for European Integration, conducted on 30 September 2016 in Korca, Albania.
1008 Advisory Committee on the FCNM, Third Opinion on Albania, supra note 884, para. 160.
1009 S. Wolff et al., Minority Rights in the Western Balkans..., supra note 878, p. 13.
doesn’t forbid the establishment of political parties on ethnic basis”.\textsuperscript{1010} This is a relatively new situation, beginning only in 2000, after the Law on Political Parties abolished the previous act which had deprived national minorities of the right to establish their own political parties.\textsuperscript{1011} In accordance with this new law, in 2005 ethnic Macedonians formed a political party called Macedonian Alliance for European Integration, which pursues their interests and priorities in the multiparty political spectrum. Since 2007, this party has participated in every parliamentary and local election held in Albania, mainly in coalition with mainstream political parties. Another political party, the Party for Democratic Prosperity, was formed by representatives of the Macedonian national minority in 1991, but since minorities at the time were denied the right to organize themselves in political parties on ethnic lines, it was more of a civic organization than a political party.\textsuperscript{1012}

Unlike the main Greek political party, the Macedonian Alliance for European Integration has failed to win a seat at the Parliament. However, in the first multi-party elections in Albania, held in 1991, an ethnic Macedonian (Mitre Nedelko) was elected as a member of the Parliament, as a member of the Albanian Workers Party.\textsuperscript{1013} In effect, the proportional election model in Albania is not promising for increasing the participation of national minorities in the main legislative body. That’s why persons belonging to Macedonian national minority repeatedly ask the government to take 'specific measures', "such as lowering the threshold to enter Parliament or introducing special seats, in order to ensure national minority representation in Parliament".\textsuperscript{1014} For the time being, though, there is no indication that such measures will be taken in the near future.

At the same time, a pre-election coalition agreement between the Democratic Party of Albania and the Macedonian Alliance for European Integration, concluded prior to the 2013 parliamentary elections, contained provisions by which the ruling party committed itself to improving the general position of the Macedonian national minority in all regions where they traditionally live. Continuing assessment of this agreement is desirable, since it could have a long-term effect on policies in respect to the Macedonian minority. Specifically, the agreement envisaged that if the coalition wins the election, the Democratic Party led government:

- will support ethnic Macedonians to receive senior positions at central and local level;
- will support ethnic Macedonian candidates for mayors of municipalities of Pustec and Trebishte on local elections of 2015;

\textsuperscript{1010} Council of Europe, Third Report Submitted by Albania..., supra note 881, p. 52.\textsuperscript{1011} F. Tasevska Remenski, Macedonian National Minority in the Neighboring Countries..., supra note 931, pp. 338-339.\textsuperscript{1012} In the words of Vasil Sterjovski, “most of the time Party for Democratic Prosperity remained inactive, and only recently, in the period prior parliamentary elections of 2013 was shortly renewed, but its leadership allowed to be involved in activities that on long term definitely alienated them from the wider Macedonian community”. Interview with Vasil Sterjovski, Secretary General of the Macedonian Alliance for European Integration, conducted on 30 September 2016 in Korca, Albania.\textsuperscript{1013} K. Todoroska, Macedonians in Albania (1912-1991), supra note 929, p. 85.\textsuperscript{1014} Advisory Committee on the FCNM, Second Opinion on Albania, supra note 982, para. 201.
- will invest in infrastructure projects and education in the areas of Mala Prespa, Golo Brdo and Gora;
- will facilitate the introduction of instruction in Macedonian language and of the subject 'Macedonian language' in places where conditions determined with legislation in the field of education are fulfilled;
- will take all necessary steps to introduce the subject 'Macedonian language' as an optional subject in the elementary school in Trebishte by September 2013; and
- will engage itself to solve problems emerging from the lack of textbooks in Macedonian.\footnote{1015}

Ethnic Macedonians consider this agreement to be the only document where a mainstream political party expressly acknowledges the existence of the Macedonian national minority beyond the roughly determined ‘minority zone’.\footnote{1016} And yet, there have been few noticeable improvements in these fields since the agreement was made. The election outcome no doubt contributes a lot to the standstill – the Socialist Party won the elections and formed the new government. Meanwhile, the absorption of the municipality of Trebishte into the expanded municipality of Bulqize probably prevented the Macedonian party from winning its second mayor. And for good measure, the repeated request for Macedonian language in the elementary schools in Trebishte remains without reply from the competent authority.\footnote{1017}

Additionally, several points should be made in respect to the political participation of ethnic Macedonians at the local level. In its first version, the \textit{Law on Administrative and Territorial Division} of 2014 envisaged all existing municipal units where ethnic Macedonians comprised a majority would be merged into new municipal units, where they would comprise a small minority.\footnote{1018} Until recently, Golo Brdo was subdivided into the rural municipalities of Trebishte, Ostreni and Steblevo, while Gora was composed of the municipalities of Shishtavec and Zapod. The first draft of the new law envisioned amalgamating the municipality of Pustec (5,200 inhabitants) with municipalities of Pojan and Vreshtas to create the new municipality Pojan, with around 42,000 people.\footnote{1019} Similarly, Golo Brdo's municipalities Trebishte, Ostreni and Steblevo were planned to be merged into much bigger municipalities of Librazhd.
(Steblevo) and Bulqize (Trebishte and Ostreni), while two Gora’s municipalities Shistavec and Zapod to be incorporated into the newly expanded municipality of Kukes. Macedonian organizations have opposed the draft law and proposed, if present situation is not sustainable, the municipality of Pustec to retain its status, whereas three municipalities in the region of Golo Brdo to be unified in a single municipality and same modality to be applied in respect to the two municipalities in the region of Gora.

In its final version, only municipality of Pustec has retained its status and gained equal position as other 60 local government units. The Ministry of Local Governance explained that these new criteria for the administrative-territorial division of local government units “will not apply for local government units where ethnic minorities represent the majority of the population, if they violate the principles of international conventions”. Nonetheless, despite being ‘local government units where ethnic minorities represent the majority’, five rural municipalities in Golo Brdo and Gora were not exempted from the formal application of principles for administrative and territorial division of the country, and hence, ceased to exist. It seems that the supposedly abandoned concept of ‘minority zone’ was also relevant to the enactment of this new law, and resistance to creating municipal units where national minorities would represent the majority were similar to the treatment of the Greek national minority.

At the 2015 local elections, the Macedonian Alliance for European Integration won the mayoralty of the municipality of Pustec as well ten municipal councilors, eight in Pustec and one each in Podgradec and Mali. It is worth noting that in the previous two local elections, in 2007 and 2011, a Macedonian party won seats as councilors in the former municipalities of Bilishta, Qender Bilisht and Trebishte. Also, in 2011, the party’s candidate for mayor of Trebishte lost the election by only 20 votes.

9. Cultural Activities and Access to Information in Mother Language

Another sector for supporting the cultural activities of minorities and diaspora was established within the organizational framework of the Ministry of Tourism, Culture and Sports in 2010, with the intention of protecting the cultural identity of minorities. And yet, a special report on minority rights in Albania prepared by the Ombudsman notes a worrisome tendency that, since its inception, this sector has not supported a single application by organizations representing the Macedonian minority. In 2016, around 5% of the Ministry of Culture’s budget was distributed as financial grants for projects submitted

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1020 See: Makedonium, Pustec retains its municipal status, those in Golo Brdo and Gora to be abolished (in Macedonian), 19 May 2014. The article is available online at: http://makedonium.net/?p=1507 (retrieved on 12 October 2016)


1023 Interview with Vasil Sterjovski, Secretary General of the Macedonian Alliance for European Integration, conducted on 30 September 2016 in Korca, Albania.

1024 See: Council of Europe, Third Report Submitted by Albania..., supra note 881, p. 36.

by organization of national minorities. And still, the single proposal made by a particular Macedonian organization, the “Ilinden” society, has been rejected on formal grounds.\textsuperscript{1026}

Despite the lack of financial support and a general absence of “special funds to promote minority culture identities”,\textsuperscript{1027} organizations representing the Macedonian minority continuously realize projects in the area of culture. These initiatives are supported either from the municipality of Pustec or from minority’s kin-state, Republic of Macedonia. Indeed, a traditional folklore festival “Prespa” was renewed with financial support from both the municipality of Pustec and the Ministry of Culture of the Republic of Macedonia and same model was applied to support a music festival in Golo Brdo. There are also cultural centers in some of the villages of Mala Prespa, “which provide a domain for cultivating the folk heritage”.\textsuperscript{1028} Recently, the Macedonian Cultural Center “Sonce” was opened in Korca, with financial support from the Macedonian Ministry of Foreign Affairs.

Albanian legislation guarantees freedom of expression and enables free access to information in the mother tongue. Thus, the Association of Macedonians in Albania periodically publishes the newspaper “Prespa”, while the Macedonian association “Sonce” publishes the bilingual newspaper “Makedonium” online.\textsuperscript{1029} For a brief period, the association “Mir” published a newspaper of the same name, by using a Latin script, due to unfamiliarity with Cyrillic script (the official written form of Macedonian language) on the part of ethnic Macedonians living in the area of Golo Brdo.\textsuperscript{1030} Several years ago, another Macedonian language newspaper called “Ilinden” was launched in Tirana.\textsuperscript{1031} None of these initiatives have financial support from Albanian state institutions, yet none of these newspapers could be maintained without the financial support of the Republic of Macedonia.

With regard to electronic media, the Law on Public and Private Television in Albania prescribes that minority languages shall be used on “programs intended specifically for national minorities and programs of local radio-television subjects licensed to broadcast in the language of minorities”.\textsuperscript{1032} However, the presence of minority languages on national broadcasting service is rather small and nonsatisfactory. Ethnic Macedonians operate a private radio “Prespa” in Pustec, which broadcasts program in Macedonian language, and a local radio of Korca, which broadcasts program of 60 minutes in Macedonian, five times per a week.\textsuperscript{1033} Additionally, privately owned local television “Sonce”, based in Korca, broadcasts a full program in Macedonian.

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\textsuperscript{1026} Interview with Niko Kitani, representative of Macedonian national minority in the State Committee for Minorities, conducted on 12 September 2016.
\textsuperscript{1027} Advisory Committee on the FCNM, \textit{Third Opinion on Albania}, supra note 884, para. 79.
\textsuperscript{1028} P. Hill, \textit{Macedonians in Greece and Albania}..., supra note 932, p. 27.
\textsuperscript{1029} Ombudsman, \textit{Special Report on Minority Rights}..., supra note 888, pp. 20.
\textsuperscript{1030} S. Kiselinovski, I. Stavovi Kavka, \textit{Minorities in the Balkans}..., supra note 935, p. 217.
\textsuperscript{1031} See: Advisory Committee on the FCNM, \textit{Third Opinion on Albania}, supra note 884, para. 122.
\textsuperscript{1032} M. Xhaxho, \textit{Minority Rights and the Republic of Albania}..., supra note 871, p. 75.
\textsuperscript{1033} F. Tasevska Remenski, \textit{Macedonian National Minority in the Neighboring Countries}..., supra note 931, p. 342.
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This section intends to thoroughly review the system of minority protection in the Republic of Bulgaria in general, and the situation concerning the human rights and minority rights of persons belonging to the Macedonian national minority in particular. Therefore, the section is presented in two parts. The first follows the pattern established in previous sub-sections, surveying the demographic composition of Bulgaria and numerical strength of minority groups, and then analyzing the legal framework pertaining to minorities and its enforcement in various fields, such as language rights, mother tongue education and participation of minorities in public life. The second part examines the position and status of the Macedonian national minority in Bulgaria, emphasizing those fields that, hopefully, give a comprehensive and coherent review on this issue which, apart from its legal implications, also has political consequences, and continues to burden bilateral relations between Macedonia and Bulgaria today.

A. Overview of the System for Protection of Human Rights and Minorities in Bulgaria

1. Brief Historical Review of Minority Protection in Bulgaria

The early phases of Bulgarian statehood entailed some nascent forms of minority protection. The initial recognition of the Principality of Bulgaria by the Great Powers in the Treaty of Berlin of 1878 was conditional upon the acceptance of a modest minority rights regime. Acting to meet these conditions, the first Bulgarian Constitution of 1879 provided autonomy for religious communities to regulate their internal affairs, and granted some cultural rights for minority groups in the country, such as schools with Turkish as language of instruction. Additional minority rights were imposed by treaty in the aftermath of WWI. In fact, one section of the Peace Treaty between the Allied and Associated Powers and Bulgaria of 1919, composed of eight articles, was entirely devoted to the protection of minorities. However, a previously unknown and radical mechanism for resolving minority problems emerged with the conclusion of other treaties under the auspices of League of Nations. This new mechanism can be seen

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1034 Preece observes that Article IV of the Treaty of Berlin of 1878 "pertaining to the independence of Bulgaria is also noteworthy since it ensured that the interests of all national groups – Turkish, Romanian and Greek, and others as well as ethnic Bulgarians – would be taken into consideration when drafting electoral regulations and the "Organic Law of the Principality". J. J. Preece, National Minorities and the European Nation–States System, supra note 870, p. 65.
1035 See: Marko Hajdinjak, Thou Shall Not Take the Names Ethnic or Minority, And I Will Bless Thee: Political Participation of Minorities in Bulgaria, in Political Parties and Minority Participation, Friedrich Ebert Stiftung, 2008, pp. 87-125, p. 96. In addition, even political participation of non-dominant groups was secured at the time, with representatives from Turkish, Jewish and Greek minorities selected as deputies of the constituent assembly.
in the *Convention between Greece and Bulgaria concerning Reciprocal Emigration of Population*, concluded at the same time as the Peace Treaty with Bulgaria, which engendered the right of “nationals belonging to racial, religious and linguistic minorities” to emigrate into the territory of the neighboring country on a ‘voluntary basis’.1037 One practical outcome of this treaty was that almost the entire Greek-speaking population of Bulgaria resettled in Greece, while a considerable portion of Macedonian speakers from the easternmost and central regions of what is known as Greek (Aegean) Macedonia emigrated into Bulgaria, although contra the treaty, some coercive measures were employed by Greece.1038

When the Communist party (BCP) established its regime in Bulgaria in the mid-1940s, the country’s two biggest national minorities, Turks and Macedonians, were granted ‘cultural autonomy’.1039 This ‘cultural autonomy’ encompassed some wide ranging minority rights in the field of mother tongue education, publications in their respective languages and the creation of cultural institutions. Nonetheless, “the initial phase of ‘communist internationalism’ was followed in the mid-1950s by a phase of ‘communist nationalism’ which increasingly pursued the assimilation of minorities”.1040 A decision of the April 1956 plenum of the BCP effectively repealed all privileges for minority communities (Turks and Macedonians). The concept of a "unified Bulgarian socialist nation" began to be promoted from 1974 onwards, after which authorities officially proclaimed that Bulgaria supposedly "was almost completely of one ethnic type and [was] moving toward complete national homogeneity".1041

Various assimilationist campaigns were employed along these lines, including the "the extreme measure of changing Muslim personal names to more 'Bulgarian-sounding' names".1042 These name-changing campaigns first affected Roma and Tatars (1962-1964), and later were directed against Pomaks (1971-1974).1043 The so-called ‘Revival Process’ of 1984-1985 was the peak of discriminatory practices, during the course of which personal names of almost 1 million ethnic Turks were Bulgarianized, and the promotion of Turkish language and Muslim culture was strictly prohibited. All these developments derived from the “most extreme nationalist undertaking in the Eastern Europe in the 1980s”, and ultimately resulted in the massive exodus of over 300,000 Bulgarian Turks to Turkey.1044

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1039 M. Hajdinjak, *Thou Shall Not Take the Names Ethnic or Minority…*, supra note 1035, pp. 96-97.
1043 B. Rechel, *The Long Way Back…*, supra note 1040, p. 120.
1044 Ibid, p. 127.
2. Status and Numerical Strength of Minorities in Bulgaria

The notion ‘national minority’ is not defined within the Bulgarian legal system. In fact, until recently, the term ‘minority’ was completely absent from the legal framework, a communist legacy of non-recognition of minority groups. However, the Bulgarian Assembly ratified FCNM in 1999, and the government has subsequently claimed that it applies “to all Bulgarian citizens who identify themselves as belonging to one of the country’s ethnic, religious or linguistic minorities and have freely expressed the wish to be treated as such”. Historically, the largest national minority in Bulgaria is ethnic Turks, followed by Roma, Pomaks and Macedonians. There are many other ethnic groups that have long-occupied particular settlements or regions in Bulgaria, such as Armenians, Jews, Romanians, Vlachs, Russians, Karakachani, Greeks etc. It is to be noted that the communist legacy continues to have repercussions today, as Bulgarian authorities still dispute the existence of Macedonian and Pomak minorities in the country. Essentially, they do not recognize these two minorities, since, purportedly, “there are no objective criteria for distinguishing persons belonging to the Macedonian and Pomak communities from the majority population”. In case of Pomaks, they are generally considered to be Bulgarian-speaking Muslims, descendants of Bulgarian Christians converted to Islam during the Ottoman Empire. Accordingly, labels such as 'Bulgarian Muslims' or 'Bulgarian Mohammedans' are used for denoting them, rather than the self-ascribed term Pomaks. The non-recognition of ethnic Macedonians in Bulgaria will be discussed separately in the following sub-section.

The Turkish minority in Bulgaria is geographically concentrated in compact rural settlements located in the south eastern and north eastern regions of Bulgaria. In the south of the country, Turks live predominantly in the Maritsa (Arda) river basin and the Rhodope Mountains, particularly in the district of Kardzhali, where they are the majority (66% of the population). In the north-eastern part of the country, Turks are mainly concentrated in the districts of Razgrad (50% of the population), Targovishte (35,80%), Silistra (36%) and Shumen (30%), while some smaller Turkish communities are also found in districts of Ruse (14%) and Dobrich (13,50%). In contrast, the Roma minority is scattered across all regions and districts, and due to the community’s historical development and way of life, this minority is rather diverse in respect to issues of mother tongue, religious affiliation and the identity of its

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1046 H. Poulton, The Balkans: Minorities and States in Conflict, supra note 875, pp. 116-118.
1047 Advisory Committee on the FCNM, Second Opinion on Bulgaria, supra note 1045, para. 36.
1049 H. Poulton, The Balkans: Minorities and States in Conflict, supra note 875, p. 119.
members.\footnote{B. Rechel, The Long Way Back..., supra note 1040, p. 96.} Pomaks live in the Rhodope Mountains and around the Mesta River in the Pirin region, encompassing the administrative borders of present day districts of Kardzhali, Smolian, Pazardzhik and Blagoevgrad.\footnote{H. Poulton, The Balkans: Minorities..., supra note 875, p. 111.} Finally, ethnic Macedonians are mainly concentrated in the Pirin region, whereas descendants of the Macedonian emigrants, originating from present day Greece and Republic of Macedonia, are found in almost every city and region in Bulgaria.\footnote{Stefan Troebst, Ethnopolitics in Bulgaria: The Turkish, Macedonian, Pomak and Gypsy Minorities, Helsinki Monitor, Vol. 5, No. 32, 1994, pp. 32-42, p. 33.} The census of 2011 registered 7.37 million inhabitants in Bulgaria, a significant population decrease from the late eighties, when the Bulgarian population peaked at around 9 millions. This negative demographic trend more or less affects all national minorities, though in respect to the Turkish minority, the greatest impact on its size were several state-sponsored waves of emigration to Turkey and the mass exodus of 1989.\footnote{See: B. Rechel, The Long Way Back..., supra note 1040, pp. 121-129.} Smaller minority groups in Bulgaria expressed dissatisfaction that the census questionnaire listed only “three pre-defined groups (Bulgarians, Turks and Roma)” on the question of 'ethnic origin', and hence excluded other ethno-cultural groups, including Macedonians and Pomaks.\footnote{Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities, Third Opinion on Bulgaria, Strasbourg, 30 July 2014, para. 33.} The disclosed census results revealed that 588,318 Turks live in Bulgaria, representing 8% of the total population, while 325,343 persons or some 4.4% declared as Roma.\footnote{See: Council of Europe, Third Report Submitted by Bulgaria Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities, Strasbourg, 23 November 2012, p. 22.} Nonetheless, breaches of the right to self-identification were noted during the 2011 census in cases concerning the Macedonian and Pomak minority. Namely, in some cases, where census-takers collected personal data from members of these two minorities, members of the respective minorities observed that many of the census officials automatically recorded ‘Bulgarian’ on the census form for ethnic origin, without first posing the question.\footnote{See: UMO Ilinden PIRIN et al., Report on the Census in Bulgaria 2011, 2012, pp. 18-22. The article is available online at: http://www.omoilindenpirin.org/documents/report.pdf (retrieved on 15 November 2016)} At the same time, the Advisory Committee noted that around 10% of persons avoided responding to the optional question on ethnic background, a tremendous increase from previous census, when less than 1% of respondents skipped this question.\footnote{Advisory Committee on the FCNM, Third Opinion on Bulgaria, supra note 1055, para. 34.} Commentators frequently observe that considerable numbers of Roma and Pomaks identify themselves as ‘Turks’, which of course means that the numbers of the Turkish minority in Bulgaria are actually smaller than the census results indicate.\footnote{B. Rechel, Ethnic Diversity in Bulgaria..., supra note 1036, p. 333.} Conversely, the Roma minority is assumed to be much larger than the 2011 census indicates. Some assessments have projected the Roma minority to be
twice as large as the official figure, somewhere between 700,000 and 800,000. The Bulgarian authorities, in fact, estimate that an additional 350,000 persons to those declared as Roma live in Bulgaria and “share the same social characteristics, but identify themselves as Turks, Bulgarians and, to a lesser degree, Romanians”.

Since Pomaks are not recognized as a distinct ethnic group, and therefore are not listed on the census form, it is not possible to determine their exact numbers. Some authors estimate that there are 130,000 Bulgarian-speaking Muslims, while a 1989 projection prepared by the Ministry of Interior estimated that there were around 270,000 Pomaks in Bulgaria at the time. Using a cross tabulation approach, though, it is possible to extract the category of persons identified as ethnic Bulgarians practicing Islam from the census data. In the 2001 census, of 966,978 Muslims of all ethno-cultural groups in Bulgaria, some 131,531 declared themselves as ethnically 'Bulgarians' and only 49,764 as 'Bulgarian Muslims'. However, even these may not prove accurate, since various self-identification trends are noticed in different areas where Pomaks traditionally live, largely dependent on what other ethnic groups live nearby, and their mutual relations.

Uncertainties about the number of Macedonians in Bulgaria are discussed below.

3. Legal Framework Pertaining to Minority Rights in Bulgaria

The new Constitution of Bulgaria, adopted on 12 July 1991, "painfully avoided the term 'minorities'". Many of the basic constitutional principles in Bulgaria were determined with the adoption of 'Declaration on the National Question' by the National Assembly on 15 January 1990. In particular, the legacy of assimilatory practices affecting minority population and the notion of a 'unified Bulgarian socialist nation' implied that the term of 'minorities' was at odds with the proclaimed principles of 'territorial integrity' and the 'unitary character' of the Bulgarian state. Indeed, “in the early 1990s, the Bulgarian public and political elite continued to be opposed to the notion that minorities existed in Bulgaria at all". Instead, strictly adhering to an individual human rights-based approach, the

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1062 M. Hajdinjak, *Thou Shall Not Take the Names Ethnic or Minority...*, supra note 1035, p. 92.
1063 Advisory Committee on the FCNM, Second Opinion on Bulgaria, supra note 1045, p. 15.
1064 Rechel observes that in the Eastern Rhodopes, where Pomaks are surrounded by Turks, they tend to identify as Bulgarians, whereas in the Western Rhodopes, where they coexist with ethnic Bulgarians, Pomaks are more inclined to accept the label 'Turks'. Finally, in the Central Rhodopes, where Pomaks comprise a clear majority, self-identification as Pomaks is more common than in the other regions. See: B. Rechel, *The Long Way Back...*, supra note 1040, p. 91.
1066 *Ibid*, p. 196. Among other things, the Declaration clearly condemned previous harsh assimilation campaigns against a "part of the Bulgarian citizens", while intentionally avoiding the word 'minorities'. It further stated that every Bulgarian citizen has the right of personal identity (name and surname), but strictly underscored the preservation of territorial integrity as of highest importance and therefore unequivocally banned organization involved in activities that threatened "territorial integrity, the unity of the nation or aiming at the separation of parts of its territory on the basis of religious, ethnic or other principles".
constitution solemnly proclaims that "all citizens shall be equal before the law", and indisputably prohibits any "privileges or restriction of rights on the grounds of race, nationality, ethnic self-identify, sex, origin, religion".\textsuperscript{1068}

Nevertheless, persons belonging to minorities are tacitly mentioned in Article 36 as "citizens whose mother tongue is not Bulgarian", which specifically deals with their right to use and study their mother tongues via the formal education system.\textsuperscript{1069} In addition, Article 54 guarantees the a modest right to cultural identity to all citizens. It reads:

\textit{Everyone shall have the right to avail himself of the national and universal human cultural values and to develop his own culture in accordance with his ethnic self-identification, which shall be recognized and guaranteed by the law.}\textsuperscript{1070}

Effectively, this means that members of different ethnic groups in the country “\textit{are regarded as part of the Bulgarian nation and according to the constitution have no collective minority rights, but only individual ones}”.\textsuperscript{1071} Furthermore, particular individual rights are neither absolute nor unlimited, such as freedom of conscience and religion, since these rights "\textit{shall not be practised to the detriment of national security}".\textsuperscript{1072} The Venice Commission has assessed various restrictions in the Constitution related to general human rights, such as those limiting the freedom of association, in case it endangers the 'core values' of the constitutional system, namely territorial integrity or national unity. Considering the importance of these rights and freedoms for the maintenance of minority identity, the Venice Commission has suggested that the authorities "\textit{amend some of the above mentioned provisions in the Constitution by softening their wording in order to convey an open attitude towards minorities also in the language used in the Constitution}".\textsuperscript{1073}

On the one hand, Constitutional Court has stressed that "\textit{the Constitution of the Republic of Bulgaria recognizes the existence respectively of religious, linguistic and ethnic differences and the bearers of such differences}".\textsuperscript{1074} On the other hand, a more objective evaluation found that, on the whole, the Constitution "\textit{did not recognize the existence of minorities in Bulgaria, allowed for only limited minority rights and contained a number of provisions aimed at preventing their political...}"

\textsuperscript{1068} National Assembly of the Republic of Bulgaria, Constitution of the Republic of Bulgaria, Art. 6, para. 2.
\textsuperscript{1069} \textit{Ibid}, Art. 36, para. 2.
\textsuperscript{1070} \textit{Ibid, Art. 54, para. 1.}
\textsuperscript{1071} M. Hajdinjak, \textit{Thou Shall Not Take the Names Ethnic or Minority...}, supra note 1035, p. 88.
\textsuperscript{1072} See: B. Rechel, \textit{The Long Way Back...}, supra note 1040, p. 223.
\textsuperscript{1074} International Covenant on Civil and Political Rights, Human Rights Committee, Third Periodic Reports of States Parties: Bulgaria, 4 December 2009, para. 529.
Similarly, the Venice Commission, expressing its opinion on the 2007 constitutional changes in Bulgaria, stated that the Constitution should expressly take into account the rights of minorities rather than relying on the general principles of equality and non-discrimination. Finally, the Advisory Committee to the FCNM, in its most recent opinion, observed that “the authorities’ overall approach to the implementation of minority rights is often passive and restrictive”, since they fail “to promote the peaceful co-existence of different groups while still enabling them to express publicly their different cultural and linguistic identities”.

There is no comprehensive legislation concerning minorities in Bulgaria. However, guided by the principles of individual human rights, it adopted the Law on the Protection from Discrimination in 2004. This act prohibits discrimination on various grounds, including minority-related ones, such as nationality, ethnicity and origin, and moreover, "authorizes affirmative action or special measures benefiting disadvantaged persons or groups". Minority members might be the primary beneficiaries of such special measures, especially if they acknowledge culture and language as crucial elements of minority identity. The Commissioner for Protection against Discrimination is empowered to prevent and protect against discrimination by assessing individual complaints claiming discriminatory practices in various fields and to ensure equal opportunities for participation in public life, another area of great importance for national minorities.

As mentioned, Bulgaria ratified the FCNM in 1999, as a part of a ‘reform package’ arising from accession negotiations with EU. Note, however, that during the period between the signature and ratification of FCNM there was an increasing incidence of denial of recognition of national minorities in the country. Nevertheless, one might contend that in accepting this treaty the Bulgarian authorities effectively recognized the national minority status of the non-dominant ethnic groups in the country. The term ‘minorities’ was reintroduced in Bulgarian legislation only a year after the National Assembly ratified the FCNM. Conversely, Bulgaria has neither signed nor ratified the ECRML, and it

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1079 See: M. Hajdinjak, *Thou Shall Not Take the Names Ethnic or Minority…*, supra note 1035, p. 89.
1081 A draft declaration prepared by the Ministry of Foreign Affairs upon the signature of FCNM stated that "ethnic, cultural, linguistic and religious difference in the composition of the population in the Republic of Bulgaria did not lead to the creation of national minorities". Moreover, two political parties (Bulgarian Socialist Party and VMRO - Bulgarian National Movement) have addressed the Constitutional Court for assessment of the Convention’s compliance with the Constitution, emphasizing the ‘incursion’ of the term national minority into the Bulgarian legal system. Nonetheless, the Court found that FCNM complies with the Constitution. This decision opened the path for its ratification in the National Assembly. See: B. Rechel, *Ethnic Diversity in Bulgaria…*, supra note 1036, p. 338.
1082 Ibid, p. 335.
continues to reject recommendations to adopt Protocol No. 12 of the ECHR. The response to such recommendations is neither surprising, nor a violation of its obligations, since “accession to Protocol No 12 to the ECHR is a matter of sovereign choice for each Member State... (which - DT) is free to decide whether to accede to any international legal instrument or not”. \(^{1084}\)

Considering the dominant understanding of minority rights in Bulgaria, concluding bilateral treaties for protection of kin-minorities with neighbors has never been seriously considered necessary by authorities, despite creating institutional mechanisms that care for the Bulgarian minorities in surrounding countries (e.g. State Agency for Bulgarians Abroad).

4. **Linguistic Rights of Persons belonging to Minorities**

Within the domestic legislation, there is a notable shortage of provisions favorable for minority languages and their speakers. Bulgarian is the only official language in the country, and minority languages cannot be declared as 'languages in official use' in municipal units regardless of how high the percentage of minority population. Furthermore, “there are over 100 laws, decrees and provisions about the obligatory use of Bulgarian by public citizens and in the activities of political parties, the military and in judicial proceedings” \(^{1085}\).

Persons belonging to minorities might use their mother tongue in dealings with administrative authorities only in oral communication, and only if the civil servants are of same ethno-linguistic origin. Otherwise, all formal procedures are conducted solely in Bulgarian. \(^{1086}\) Since this regressive practice raises various issues under Article 10 of FCNM, the government invokes its ‘wide discretion’ to determine the ‘real need’ for use of minority languages in relations with administrative authorities. \(^{1087}\)

Hence, the Advisory Committee to the FCNM underlined that the failure of authorities to prescribe “clear criteria and transparent procedures on how and when to institute the use of minority language, including in written form”, may rightfully be considered by minorities “as a sign of unwillingness on the part of authorities to protect their rights, lack of respect for their identities or at best indifference to their situation”. \(^{1088}\)

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\(^{1084}\) European Commission against Racism and Intolerance (ECRI), *ECRI Report on Bulgaria (fifth monitoring cycle)*, 16 September 2014, p. 45.


\(^{1088}\) Advisory Committee on the FCNM, *Third Opinion on Bulgaria*, supra note 1055, paras. 103-104.
One may observe a similar tendency in respect to the use of minority language for topographical nomenclature and other places inscriptions in areas with traditional minority presence. According to the Bulgarian Helsinki Committee, Decree 1315 of 1975 still determines the procedure for naming and renaming of local places, streets etc. On this basis, “the names of objects with a ‘local significance’ (streets, gardens, schools, neighbourhoods, etc.) are given by the Municipal Councils”, but nevertheless, they have to satisfy the condition to "reflect the wealth and beauty of the Bulgarian language”.\textsuperscript{1089} The practical implementation of this provision resulted in the rejection of municipal decisions for renaming of such things in administrative units where the Turkish minority traditionally live. As a result, there is not a single municipal unit, city or settlement in Bulgaria where bilingual topographical signage is installed, in spite of requests for such measures by human rights bodies.\textsuperscript{1090}

5. System of Minority Language Education in Bulgaria

The legal basis for minority language education in Bulgaria is Article 36 (2) of the Constitution, which stipulates that “citizens whose mother tongue is not Bulgarian shall have the right to study and use their own language alongside the compulsory study of the Bulgarian language”. By further elaborating this constitutional provision, the National Education Act guarantees that "students, whose mother tongue is not Bulgarian” have the right to study their mother language, from grades 1 to 8 of primary and secondary school, “under the protection and supervision of the state”.\textsuperscript{1091} The formal application of these provisions, beginning with the re-introduction of Turkish language classes in early 1990s, has been postponed several times, due to protests by ethnic Bulgarians in areas where such classes would have to be established.\textsuperscript{1092} Eventually, Turkish language was introduced as a mother tongue subject in primary schools, up to 4 hours per week, but only as a 'free elective subject'. Effectively, this meant that minority language classes for Turkish pupils was provided as an extra-curricular subject and those enrolled were not formally evaluated.\textsuperscript{1093}

The minority language subject was upgraded to a 'compulsory optional subject' in 1999, when it entered the school curriculum, encompassing grades 1-12 of primary and secondary education, with exactly four hours per week are prescribed. However, in this context, the mother tongue subject remains outside the general compulsory curriculum, and those four hours per week are split among other optional subjects, such as foreign language or religion.\textsuperscript{1094} As a consequence, “minority student wishing to study

\textsuperscript{1089} BHC, Alternative Report to the Report Submitted by Bulgaria…, supra note 1086, p. 27.
\textsuperscript{1090} Advisory Committee on the FCNM, Second Opinion on Bulgaria, supra note 1045, para. 152.
\textsuperscript{1091} BHC, Alternative Report to the Report Submitted by Bulgaria…, supra note 1086, p. 31.
\textsuperscript{1093} Ibid, p. 203.
\textsuperscript{1094} BHC, Alternative Report to the Report Submitted by Bulgaria…, supra note 1086, pp. 32-33.
English, French, Spanish or German, for example, or wishing to take choreography classes, can do this at the expense of his/her mother tongue classes, which will decrease proportionately to the number of foreign language and/or choreography classes added”.  

Thus possibilities for mother tongue instruction at secondary school level are even more restricted, since the four hours per week for ‘compulsory optional subjects’ are shared between mother tongue and eight other fields of study.  

The real scope of mother tongue education in Bulgaria can be seen in data provided by the Ministry of Education. In the 2012/2013 school year, "a total of 9268 pupils were taking Turkish mother language classes, 158 Armenian, 32 Arabic and 26 Greek". These figures indicate a substantial reduction in the number of pupils studying their mother language. This worrisome tendency is especially visible in the figures for Turkish and Romani pupils. In the early 90s the number of Turkish pupils enrolled in such classes was up to 114.000, dropping to around 35,000 pupils per year at the beginning of the 2000s, and 24,185 pupils in 2009. Over the same period, mother tongue classes in Romani language have totally ceased to exist, although one survey found that "Roma pupils account for 19.7% of all pupils in grades I to IV, but in some regions they may reach over 40%”.  

Another deficiency in the system of minority language education derives from Decree No. 2/2009, which prohibits teachers from speaking in minority language with pupils outside of the minority language classes. This ban effectively prohibits minority members from publicly expressing themselves in their mother tongue, which is a fundamental identity marker upon which depends the minority's resilience to sustain and preserve its cultural vitality.  

Teaching other subjects through the medium of minority languages and bilingual education does not exist in Bulgaria. Since a bilingual education “would enable children to become proficient in their mother tongue as well as in Bulgarian”, the Special Rapporteur on Minority Issues urged the authorities to introduce this modality for minority pupils and to ratify the ECRML. The government counters, however, that teaching other subjects in minority languages is not strictly outlawed in Bulgaria. At the same time, it maintains that Article 14 (2) of FCNM, which prescribes the right of minorities to receive instruction in their mother language, is not a self-executing provision and thus its enforcement is subject to several preconditions.
6. Political Participation of Minorities in Bulgaria

It is generally understood that in its transition to democracy, Bulgaria, unlike other Central/Eastern European countries, adopted a restrictive policy concerning the political participation of minorities.\textsuperscript{1105} Basically, this understanding is based on the constitutional Article 11 (4), which proclaims that "there shall be no political parties on ethnic, racial or religious lines". In fact, the 1990 ‘Declaration on the National Question’, in many respects, had preordained that constitutional provisions should impede the political participation of minorities.\textsuperscript{1106} Another provision that interferes with the minorities' right to participate in public life is stipulated in the Law on Political Parties, which obliges political parties to present all documents and conduct all activities exclusively in the Bulgarian language.\textsuperscript{1107}

Despite these restrictions, Bulgarian scholars contend that “most voters belonging to Bulgarian minorities are represented and feel represented both on central and local level of government”.\textsuperscript{1108} This might be true for the Turkish minority and the political party Movement for Rights and Freedoms, whose electoral base is predominantly Turks, but also Roma, Pomaks; in fact, even ethnic Bulgarians can be found in some of the party’s local branches. Movement for Rights and Freedoms (MRF) was registered as a political party in 1990, but faced various legal obstacles to participating in the 1991 parliamentary elections. After international organizations exerted pressure on the Bulgarian authorities, the Central Election Committee finally allowed MRF to contest the elections.\textsuperscript{1109} After the election, 93 MPs requested the Constitutional Court to declare this party to be unconstitutional. With a fierce political storm as the backdrop to its proceedings, the Court found in favor of this Turk-dominated political party by a mere one vote. Since then, MRF has grown as a third political force in the country, but it took several years for the party to achieve wider acceptance, and before its inclusion as a coalition partner in several consecutive ruling coalitions. Among other things, in order to secure its place in the Bulgarian political arena, the MRF had to "disassociate itself from any possible separatist agendas, strongly rejecting even the claims for some sort of territorial autonomy for Turkish populated areas".\textsuperscript{1110} Essentially, “the state control of minorities did not allow the formulation of radical demands”, and in practice has guided the party’s modest human rights approach.\textsuperscript{1111}

\begin{itemize}
  \item \textsuperscript{1107} Venice Commission, Draft Amendments to the Law on Political Parties in Bulgaria (Opinion No. 505/2008), Strasbourg, 26 November 2008, p. 2.
  \item \textsuperscript{1108} M. Hajdinjak, Thou Shall Not Take the Names Ethnic or Minority…, supra note 1035, p. 102.
  \item \textsuperscript{1109} B. Rechel, The Long Way Back…, supra note 1040, p. 227.
  \item \textsuperscript{1110} M. Hajdinjak, Thou Shall Not Take the Names Ethnic or Minority…, supra note 1035, p. 115.
  \item \textsuperscript{1111} B. Rechel, State Control of Minorities in Bulgaria, supra note 1105, p. 361.
\end{itemize}
Turks in Bulgaria have established other political parties, too. For instance, the National Movement for Rights and Freedoms won a number of seats in municipal councils in 2003 and 2007. The Turkish Democratic Party, in contrast, has adopted a radical political platform, and the Bulgarian courts have rejected its for registration. For the Roma minority, despite having established a number of civil parties, such as Euroroma and Movement for an Equal Public Model, they "remain largely sidelined from the legislative and executive spheres". The FCNM Advisory Committee recently noted that "the number of Roma elected at local level has reportedly decreased severely, from 81 local councilors elected in 1999 from parties representing the interests of Roma to only 17 in the 2011 local elections". Perhaps the main reason for the weak political participation of the country’s second largest minority group is that they have failed “to unify behind one Roma party and send it into the National Assembly, despite potentially having more than enough voters to do so”. Whatever the reason, since the 1990s, persons of Roma origin are increasingly affiliated with either MRF or other multi-ethnic political parties.

For those ethnic communities that Bulgaria refuses to recognize as minorities, Macedonians and Pomaks, there are clearly discernible difference in their members’ experiences of political participation. Pomaks have managed to register a political party, the Democratic Party of Labour, without explicitly mentioning its ‘Pomakness’ in official party documents. This party has failed, however, to mobilize the Pomak community, which has predominantly supported MRF since democratization. The situation of ethnic Macedonians is more thoroughly analyzed below.

National Council for Cooperation on Ethnic and Integration Issues (NCCEI) is the main advisory body and consultative mechanism for safeguarding the participation of minorities. Its activities are directed mainly at the promotion of equal opportunities, prevention of discrimination based on ethnicity, and preservation of the cultural, religious and linguistic identity of minorities. NCCEI is composed of representatives of ministries, agencies of the state, and the country’s recognized minority communities via their NGOs. In its third report on FCNM, authorities underlined that in 2012 some 44 NGOs representing Armenian, Aromanian, Vlach, Jewish, Karakachan, Roma and Turkish minorities participated in the work of the National Council. The Council has expressed its willingness to widen its membership to include organizations representing ‘newly established minorities’ in the country, but the inclusion of non-recognized minorities, such as Macedonians and Pomaks, is not open to discussion.

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1112 See: M. Hajdinjak, Thou Shall Not Take the Names Ethnic or Minority..., supra note 1035, pp. 114-115.
1113 Advisory Committee on the FCNM, Third Opinion on Bulgaria, supra note 1055, para. 138.
1114 Ibid.
1115 M. Hajdinjak, Thou Shall Not Take the Names Ethnic or Minority..., supra note 1035, p. 119.
1116 B. Rechel, State Control of Minorities in Bulgaria, supra note 1105, p. 362.
1117 Council of Europe, Third Report Submitted by Bulgaria..., supra note 1056, p. 50.
1118 See: Advisory Committee on the FCNM, Third Opinion on Bulgaria, supra note 1055, para. 145.
bodies have therefore recommended that Bulgarian authorities should “strengthen the national machinery responsible for minority issues, either by setting up a new body or reinforcing the National Council”.

B. Macedonian National Minority in the Republic of Bulgaria

This part is devoted to the status and rights of ethnic Macedonians in Bulgaria. It includes a brief review of the Bulgarian stance on the ‘Macedonian question’ in general, and more specifically in respect to Macedonian ethno-cultural identity and language. Then the bilateral relations between Macedonia and Bulgaria are assessed, via the ‘language dispute’ and its reflection on the Macedonian national minority in Bulgaria. I contend that the present challenges facing the Macedonian minority in Bulgaria can not be properly comprehended without a clear understanding of these issues. Hence, before commencing the review of the main issue, I endeavor to demonstrate the interdependence between these seemingly different and unassociated issues.

a) “Macedonian Question” and the Bulgarian National Narrative

We have mentioned that Bulgaria has not recognized the existence of Macedonian minority for more than six decades. To begin to understand this official attitude, we need to briefly consider the basic premise of the 'Macedonian question' in Bulgarian nationalism. In one case before the ECtHR, the Bulgarian government argued that "historically, the Bulgarian nation consolidated within several geographical regions, one of them being the geographical region of Macedonia". Consequently, the Bulgarian national narrative has portrayed Macedonia as a "part of traditional Bulgarian lands, and its population as overwhelmingy Bulgarian - a category that included all the Slav population independently of religious and political orientation". Accordingly, its relationship with Macedonia has been stated in “moral terms, as the natural right of Bulgaria over Bulgarian land and people”.

The crucial event that made Macedonia an inseparable part of the Bulgarian national narrative for one-hundred and thirty years, was the formation of the short-lived Bulgarian state created by the 1878 Treaty of San Stefano. This Russian-sponsored state was envisioned to encompass a much wider geographical region than present day Bulgaria, extending beyond the westernmost areas of the ethno-historical region Macedonia, into present day Albania, and a considerable part of southern Macedonian

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1119 ECRI, ECRI Report on Bulgaria (fifth monitoring cycle)…, supra note 1084, para. 39.
t erritories, which would later become known as Greek Macedonia.\textsuperscript{1123} Other major powers reacted promptly and, with the Treaty of Berlin, concluded later that year, redrew the Bulgarian state in a manner that proclaimed its northern part to be a Bulgarian principality under Ottoman suzerainty, while the southern part, Eastern Roumelia, would remained an autonomous territory within the Ottoman Empire with a Christian Governor-General. In the same treaty, Macedonia and Thrace were returned to Ottoman power. Ever since, the ‘San Stefano dream’ of a greatly enlarged national territory has dominated Bulgarian foreign policy, and the state took various measures to reacquire the Macedonian territories, including during the Balkan Wars of 1912-1913 and during the WWI and WWII.\textsuperscript{1124} Bulgarian historiography interprets these events in a way that “between 1878 and 1913 the Bulgarian population of Macedonia organized five unsuccessful uprisings seeking liberation from Turkish rule and the union with Bulgaria”.\textsuperscript{1125} In sum, since 1878, Bulgaria has fought four wars, with a view to 'liberating' Macedonia, and each time suffered huge human losses amid military defeats.\textsuperscript{1126}

Against this backdrop, while propagating the idea that “the nation is an organic and static entity that cannot change and evolve”, Bulgaria disputes the historical foundations of the Macedonian ethnocultural nation and its essential features.\textsuperscript{1127} In their understanding, the Macedonian nation is "nothing more than an ideological construct of the Cold War and Tito's efforts to expand his reach into the southern Balkans”.\textsuperscript{1128} As Aarbakke vividly described it, for Bulgarian nationalism, "the idea of Macedonian nation was traditionally viewed as a Serbian ruse to wrest Macedonia away from Bulgaria".\textsuperscript{1129} The 'Bulgarian cause' in Macedonia was supposedly most severely undermined with the Resolution of the Communist International on the Macedonian Question of 1934, by which, "the so-called 'Macedonian nation was proclaimed for first time", since prior to that date "no historical source had ever mentioned any Slavic population in the region other than the Bulgarian population".\textsuperscript{1130} Despite these historic objections, however, in the aftermath of WWII, Bulgaria, for a short period of time, officially recognized the existence of both the Macedonian nation and language. In less than a decade, though, Bulgarian authorities had reverted to the previous position, stating that "the process by which Macedonian national consciousness is developing", in what at that time was the Socialist Republic of Macedonia, was being conducted on an exclusively "anti-Bulgarian basis, through the falsification of generally known

\textsuperscript{1123} Ibid.


\textsuperscript{1125} ECtHR, Case of Stankov and the United Macedonian Organization Ilinden v. Bulgaria, supra note 1120, para. 47.


\textsuperscript{1128} V. Roudometoff, Collective Memory, National Identity..., supra note 1122, p. 41.

\textsuperscript{1129} V. Aarbakke, Who Can Mend A Broken Heart?,..., supra note 1121, p. 185.

\textsuperscript{1130} ECtHR, Case of Stankov and the UMO Ilinden v. Bulgaria, supra note 1120, para. 47.
historical facts". As a consequence of this legacy, official policy appears to be unable to accept the existence of the Macedonian ethno-cultural nation. As the Bulgarian scholar Kojouharov explains, there is a belief that Macedonia supposedly “claimed a part of Bulgarian history, hence recognizing the nation would mean giving up a part of Bulgarian national historical identity. And in this sense the nationalistic struggle between Bulgaria and Macedonia becomes the struggle between Macedonia’s ‘invented traditions’ and Bulgaria’s factual and established history and identity”.

b) The ‘Language Dispute’ between Bulgaria and Macedonia and Its Reflections on the Macedonian Minority in Bulgaria

On 8 September 1991, in a referendum, Macedonian citizens voted in favor of independence from Yugoslavia. Bulgaria was the first state that recognized the independence of Macedonia, and moreover, its president Zhelyu Zhelev convinced the then Russian president, Boris Yeltsin, to follow the Bulgarian step and recognize Macedonia. Bilateral relations rapidly deteriorated, though, when Bulgaria expressed clearly that recognizing the independent State did not imply recognition of Macedonian ethno-cultural nation and the Macedonian language. In substance, the dispute over the Macedonian language is “one of the most controversial issues in the relations between Bulgaria and Macedonia, which, in turn, is reflected in Bulgaria’s relation to the Macedonian minority”. At its core, the Bulgarian position was that, "what is known as the Macedonian literary language", could not qualify itself for a separate language, since it is “a mere dialect which has artificially been turned into a language by the Yugoslav Communists”. Furthermore, and on this same basis, the recognition of Macedonia as an independent country does not affect the Bulgarian understanding of the ‘Macedonian question’, "since regardless of their citizenship Bulgarians and Macedonians…would remain Bulgarians”.

The ‘language dispute’ in bilateral relations flared up in 1994, when Bulgaria refused to sign bilateral agreements with Macedonia, since the agreements would have to be signed in both languages, Bulgarian and Macedonian. This issue has become an insurmountable burden in normal communication between the two countries and more than 20 bilateral agreements have been stuck in political limbo.

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1131 Tchavdar Marinov, La question macédonienne de 1944 à nos jours: Communisme et nationalisme dans les Balkans, Harmattan, October 2010, pp. 91, 107.
1132 A. Kojouharov, Bulgarian “Macedonian” Nationalism, supra note 1126, pp. 288-289.
1134 See: Who Can Mend A Broken Heart?..., supra note 1121, p. 201.
1136 Ivan Kochev, Otto Krosteiner, Ivan Alexandrov, The Fathering of What is Known as the Macedonian Literary Language, Sofia, 1994; M. Lenkova, Macedonians of Bulgaria..., supra note 1135, p. 25.
1137 A. Kojouharov, Bulgaria’s ‘Macedonian’ Nationalism..., supra note 1126, p. 290.
The international community exerted pressure on both sides to resolve the dispute, “making it clear that serious talks on EU and NATO accession will not take place until the ‘language issue’ is solved”. Finally, the dispute was resolved in 1999, in a way that has indirectly influenced the Macedonian minority in Bulgaria and the position of the Republic of Macedonia as a 'kin-state'. Thus, in accordance with the Joint Declaration of both Prime Ministers, Bulgaria recognized the Macedonian language, but only as an official language “according to the Constitution of the Republic of Macedonia”, a formulation which has proved to be susceptible to various interpretations. In exchange, Macedonia accepted that "nothing in its Constitution can or should be interpreted - now or ever - as basis for interference in the internal affairs of the Republic of Bulgaria with the aim of protecting the status of the rights of persons who are not citizens of the Republic of Macedonia". The latter was required due to constitutional provisions obliging Macedonian authorities to take care of the status and rights of Macedonian national minorities in neighboring countries. Arguably, this provision in the Joint Declaration is redundant, since the constitutional amendments of 1992 clarified that, while expressing interest for its co-ethnics in surrounding countries, Macedonia abstains from interfering in the domestic affairs of other states and conducts its affairs in accordance with international law. Regardless, since this kind of provision is stipulated in the Joint Declaration, it is almost certain that "no official recognition of Macedonian speakers in Bulgaria will occur in the near future".

1. Present Position and Status of the Macedonian National Minority in Bulgaria

This section provides a short historical review and thorough analysis of the present status of Macedonian national minority in Bulgaria in several fields. As we have seen, our problem begins with the very understanding of the term 'Macedonians' in Bulgarian politics today. Hopefully, the findings of several anthropological and sociopolitical surveys on the subject will clarify this contentious question. The format for this section necessarily is different than for the discussions of other countries where Macedonians are recognized as national minorities. This section is context-specific, emphasizing specific issues that will accurately depict the situation of persons belonging to the Macedonian national minority in Bulgaria. The effect is that some of the fields that were central to understanding the situation in other countries will not be addressed here (i.e., mother tongue education), or will be mentioned only in brief (language rights). Our primary focus is instead on the right to freedom of association and the political

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1140 Joint Declaration of the Prime Minister of the Republic of Bulgaria and the Prime Minister of the Republic of Macedonia, 22 February 1999, Sofia.
1141 See: S. Giannakos, Bulgaria's Macedonian Dilemma, supra note 1124, p. 165.
1142 See: Assembly of the Republic of Macedonia, Constitution of the Republic of Macedonia, Amendment II.
participation of ethnic Macedonians in public life, evidenced mainly through the findings in several judgments by the ECtHR.


In less than fifteen years following WWII, the position and status of ethnic Macedonians in Bulgaria did an about-face, from recognition to negation, and, each turn was due to regional and geopolitical events rather than any legal principles that formed the official state attitude towards persons with Macedonian ethnic identity.

Shortly after WWII, the Bulgarian state departed from its traditional view on the ‘Macedonian Question’ and recognized the existence of the Macedonian people and Macedonian language both in the neighboring Macedonian People’s Republic and in the Bulgarian region of Pirin Macedonia (Blagoevrad Province). Essentially, this recognition of the Macedonian minority emanated from the short-lived Yugoslav-Bulgarian rapprochement after the war. The intensive development of their bilateral relations reached its peak with the Bled Agreement of 1947.\(^{1144}\) In essence, this agreement opened the door to a future Yugoslav-Bulgarian federation, envisaged a custom union and prescribed the future unification of the People’s Republic of Macedonia and the Pirin Macedonia region in Bulgaria.\(^{1145}\) However, the two countries had quite different conceptions of the ways and means that should be employed to efficiently realize these radical changes, and progress soon became completely unachievable.\(^{1146}\)

The improving position of Macedonians in Bulgaria in this period continued unabated, as ‘cultural autonomy’ was promulgated for the region of Pirin Macedonia.\(^{1147}\) Consequently, members of the Macedonian minority enjoyed several rights and freedoms that guaranteed them full and substantial equality with majority group. Of these, the right to nurture unimpeded contacts with the People's Republic of Macedonia was of utmost importance.\(^{1148}\) Education in Macedonian literary language and Macedonian history was provided for pupils of Macedonian ethnicity in the primary schools and gymnasia in the region.\(^{1149}\) Additionally, 'cultural autonomy' opened the way to the emergence of various cultural and

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\(^{1146}\) In Poulton’s words, “Dimitrov opposed immediate formal union until after the proposed Yugoslav-Bulgarian federation had been realized. This proved to be something of a stumbling block as Tito wanted Bulgaria to join on a basis of equality with the other constituent republics of Yugoslavia (e.g. Serbia) while Bulgarians wanted equal status with Yugoslavia” as a whole. See: Hugh Poulton, *Who are the Macedonians?*, C. Hurst & Co. Ltd, London, 1995, p. 107.


educational institutions in the region with governmental support, including: the *Macedonian People’s Theater* in Blagoevgrad, publishing enterprise ‘Makedonska kniga’ and numerous bookstores with editions in Macedonian.\textsuperscript{1150} The public use of Macedonian language was also stimulated via the local newspaper ‘Pirinsko delo’.

Between 1948 and 1956, due to deteriorating neighborly relations, Bulgarian authorities reversed their position towards the Macedonian minority, denouncing previously prescribed minority rights and revoking the ‘cultural autonomy’ of the Pirin region.\textsuperscript{1151} Note, though, that this did not happen all at once. The rights granted the Macedonian minority were gradually weakened in 1948 and before being completely suspended eight years later. In the end, pupils of Macedonian ethnicity were deprived of the right to mother tongue education and and were denied any possibility to learn Macedonian literary language via formal educational system beyond one non-compulsory subject.\textsuperscript{1152} Moreover, all other cultural institutions were gradually closed down. Some authors have suggested that Bulgaria, in the period 1948-1956, pursued a ‘dual policy’ in respect to its Macedonian minority, as formal recognition was accompanied by the gradual repeal of all rights attached to the once acclaimed ‘cultural autonomy’.\textsuperscript{1153}

In the following decades, the authorities moved towards negating the very existence of the Macedonian minority. Some people were subjected to political trials, charged with spreading ‘Macedonian nationalism’ and propagating ‘anti-state agitation and propaganda’ for advocating the needs and rights of their community.\textsuperscript{1154} When the *People’s Militia Law* empowered authorities to impose punitive measures without a trial, some Macedonian families were forcibly resettled in other regions of the country.\textsuperscript{1155} Note also that Bulgarian officials in the 1980s reacted strongly at various international forums and human rights bodies every time the question of Macedonian minority was raised.\textsuperscript{1156}

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{1150} T. Popovski, *Macedonian National Minority in Bulgaria, Greece and Albania*, supra note 928, pp. 145-146.
  \item \textsuperscript{1152} C. Kramer, *Partitioning Language Policy and Status Planning in Macedonia…*, supra note 1149, p. 234.
  \item \textsuperscript{1153} T. Popovski, *Macedonian National Minority in Bulgaria, Greece and Albania*, supra note 928, p. 147-154.
  \item \textsuperscript{1155} *Ibid.*
  \item \textsuperscript{1156} Purportedly, in their view, all self-declared Macedonians during the censuses of 1940s and 1950s "nowadays...declared themselves to be Bulgarians" and therefore the "persistent attempts to question the reality" are harmful to friendly relations between nations, Bulgaria and Yugoslavia, and did not contribute to the fruitful work of CERD. See: Patrick Thornberry, *International Law and the Rights of Minorities*, Oxford Clarendon Press, 1992, p. 278; Professor Turk noted that during the debates at the Committee on the Elimination of Racial Discrimination, “the question of minorities in Bulgaria (Gypsies, Armenians, Macedonians and Turks) gradually became the main question in discussions on the periodic reports of this country; which has overtly denied the existence of the Macedonian minority (since the beginning of the 1970s) and which apparently pursues the policy of integration and ‘homogenisation’ of its population”. Danilo Turk, *Protection of Minorities in Europe, Academy of European Law* (ed.), *Collected Courses of the Academy of European Law*, Vol III, Book 2, pp. 142-206, p. 181.
\end{itemize}
\end{footnotesize}
1.2. Present Status of Macedonian Minority in Bulgaria

At present, Bulgarian authorities typically invoke two main arguments against the need for official recognition of the Macedonian minority. The first was invoked by the former Bulgarian Minister of foreign affairs, Nikolay Mladenov, during an official visit to the Republic of Macedonia in 2010, when he stated:

"There is no Macedonian minority in Bulgaria. In Bulgaria there are no minorities of any sort, however there are people who have human rights and our constitution is based on the individual rights of people and not collective rights".\textsuperscript{1157}

Clearly, this statement conforms to the dominant individual-oriented approach to rights and freedoms ascribed to all persons regardless of the various ethnic groups in a society.

The second argument seemingly acknowledges the right to freedom of ethnic self-identification, but undermines its power to force the explicit recognition of minority groups, by invoking 'objective' criteria. From this perspective, the authorities have reiterated several times that "subjective criteria should not be assigned decisive significance, while the objective criteria could not be disregarded practically, especially given the unstable dynamics of the subjective criteria (i.e. different self-identification of the same person in changing circumstances)".\textsuperscript{1158} Ostensibly, whereas persons belonging to Macedonian minority have the right to self-identification (subjective criteria), concurrently there is no objective criteria for distinguishing them from the majority population, and hence there is no need to recognize them as a minority group.\textsuperscript{1159}

On this point, representatives of the Macedonian minority concede that "some linguistic and cultural proximity with Bulgarians is evident, but this itself is not enough for a denial of the national identity".\textsuperscript{1160} Moreover, while the cultural and linguistic proximity in this case is in part a "phenomenon of the globalization of culture", it is also a result of "specific state policy that aims to claim all peculiarities of the language and the culture of the Macedonians are actually Bulgarian".\textsuperscript{1161}

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{1157} Australian Macedonian Human Rights Committee, AMHRC/ MHRMI Condemn Bulgarian Foreign Minister’s statement that no Macedonian minority exists in Bulgaria, 10 May 2010. The original statement is available online at: http://www.macedonianhr.org.au/contents/88 (retrieved on 22 November 2016)
  \item \textsuperscript{1158} Council of Europe, Comments of the Government of Bulgaria on the Second Opinion of the Advisory Committee on the Implementation of the FCNM by Bulgaria, 23 January 2012, p. 51.
  \item \textsuperscript{1159} See: Advisory Committee on the FCNM, Second Opinion on Bulgaria, supra note 1045, para. 24.
  \item \textsuperscript{1160} OMO Ilinden PIRIN, Report on the Situation of the Macedonian Minority in Bulgaria, November 2013, p. 3. The report is available online at: http://www.omoilindenpirin.org/news/2013/report.pdf (retrieved on 22 November 2016)
  \item \textsuperscript{1161} Ibid.
\end{itemize}
\end{footnotesize}
2. Geographical Distribution and Size of Macedonian Minority in Bulgaria with emphasis on the Right to Ethnic Self-Identification

A significant proportion of Macedonians in Bulgaria are a native population whose members live mostly in the south-western part of the country, in the region known as Pirin Macedonia. This part of wider ethno-historical region Macedonia was incorporated in Bulgaria in the aftermath of Balkan Wars, in accordance with provisions of the Treaty of Bucharest of 1913, by which Macedonia was subdivided amongst Greece, Serbia and Bulgaria. Additionally, thousands of Macedonians emigrated, either voluntarily or by force, from two other Macedonian regions which were merged with Greece and Serbia (later Kingdom of Serbs, Croats and Slovenes) at the same time, and were settled in Bulgaria. The Macedonian-speaking population inhabiting the easternmost and central areas of the region of Greek (Aegean) Macedonia, were 'voluntarily resettled' into the then Kingdom of Bulgaria by the Convention between Greece and Bulgaria concerning Reciprocal Emigration of 1919. Hence, separate from the local population in the Pirin region, the descendants of these emigrants are found in most of Bulgaria's larger towns.

Various sources offer substantially different estimates of the numerical strength of Macedonians in Bulgaria, with numbers ranging from an almost insignificant 10,000 people up to 250,000. Unfortunately, the results of all Bulgarian population censuses over past 70 years are subject to similar inaccuracies. The first post-war census of 1946 occurred at time when Bulgarian authorities recognized the minority status of ethnic Macedonians, going so far as to encourage the expression "Macedonian self-awareness among the population in the Pirin region". In that census, some 70% of the population

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1162 See: Andrew Rossos, The Balkan Wars (1912-1913) and the Partition of Macedonia: A Historical Perspective, in J. Hlavac, V. Friedman (eds.), On Macedonian Matters..., supra note 970, pp. 3-30.
1164 S. Troebst, Ethnopolitics in Bulgaria..., supra note 1053, p. 33.
1165 Cleary, estimating the real number of ethnic Macedonians in Bulgaria is a difficult task. Bulgarian Helsinki Committee as well other individual human rights researchers of Bulgarian background indicates that "the number of people in Pirin Macedonia who identify themselves as Macedonians ranges from 10,000 to 25,000". (M. Lenkova, Macedonians of Bulgaria..., supra note 1135, p. 32). The Center for Study of Democracy, a Sofia based think tank, conducted a survey in 1991 on ethnic self-identification in the Blagoevgrad Province, the region Pirin Macedonia. They reported that only 4.4% of people in the region identified themselves as ethnic Macedonians and a further 0.5% as Macedonian Bulgarians (V. Roudometoff, Collective Memory, National Identity..., supra note 1122, n. 25 at p. 150). In contrast, Minority Rights Group in the 1990s arrived at a much higher number, claiming that approximately 250,000 Macedonians live in the country. This estimate was supported by the CIA World Factbook of 1996, which reported that some 2.5% of population in Bulgaria are of Macedonian ethnic origin. (B. Rechel, The Long Way Back..., supra note 1040, p. 85). Popovski reached a similar figure in 1985, beginning with the 1948 and 1956 census data, when Macedonians were identified as a separate ethnic group, and considering natural population increase and other demographic indicators, he concluded that there were about 232,000 persons with Macedonian ethno-cultural identity in the Pirin region (See: T. Popovski, Macedonian National Minority in Bulgaria, Greece and Albania, supra note 928, p. 130). Finally, when criticizing the skewed results of the 1992 census, Macedonian organizations in Bulgaria had anticipated a number of around 225,000 persons to be declared as Macedonians, rather than the official number of 10,803 (See: OMO Ilinden PIRIN et al., Report on the Census in Bulgaria 2011, 2012, p. 3).
1166 BHC, Alternative Report to the Report Submitted by Bulgaria..., supra note 1086, p. 3.
in the region of Pirin Macedonia, or 169,544 persons identified as Macedonians. Some authors, though, claim that the real number of self-identified Macedonians was much higher, or 252,908 persons. Some Bulgarian authors, in contrast, argue that the 1946 census results were skewed the other way, claiming that the Bulgarian Communist Party forced people in the Pirin region, who purportedly by then were fully integrated into the Bulgarian nation, to identify as Macedonians in a spirit of neighborly relations with Yugoslavia. Other scholars counter that this was, in fact, the "most honest census ever held in Bulgaria", since almost one-third of the population in the region declared as Bulgarians, and if the Communist Party had been exerting pressure for people to 'invent' a new ethnicity, the number of Bulgarians would have been much smaller.

The 1956 census was conducted in a climate of deteriorating inter-ethnic relations, with Macedonians having lost their minority status in society and being considered as Bulgarians. Nonetheless, the census reported that some 187,789 persons nationwide identified as ethnic Macedonians, of whom 178,662 lived in the Pirin region, where they comprised 63.7% of population. By the 1965 census, the number of Macedonians in Bulgaria had fallen to 9,636 persons. Subsequent censuses until 1992 were conducted under domestic policies opposed to collecting data on minority groups.

Despite the democratic changes of the early 1990s, both before and after the census of 1992, “both central and local authorities led a campaign for the denunciation of the existence of a Macedonian minority in Bulgaria”. Specifically, different proclamations were disseminated among the population in the Pirin region via local media, stressing “the danger which the great number of declared as Macedonians represents”. Hence, the number dropped to a meagre 10,803 persons during the census in 1992, though these results have never been officially published. As Troebst argues, this figure is "definitely too low and has to be considered largely the result of intimidation by local authorities who force Macedonians to declare themselves ethnically as Bulgarians".

By imposing similar measures to discourage others from expressing a Macedonian self-identity, the authorities have achieved a further
decrease in number of ethnic Macedonians in the 2001 census, when only 5,071 such persons were registered in the whole country.\textsuperscript{1177}

Similar practices that apparently violate the right to freedom of ethnic self-identification were noted at the 2011 census. During the trial census, the initial questionnaire included a drop-down menu in the column ‘others’, in which specialists of the National Statistics Institute had included ‘Macedonian’ and ‘Macedonian language’ as categories of ethnic affiliation and mother tongue.\textsuperscript{1178} However, this implied recognition of Macedonians and Pomaks in the census form, provoked strong reactions both media and political parties. Hence, in its final version, the census questionnaire listed only three pre-defined groups (Bulgarians, Turks and Roma), but the census enumerators were nevertheless instructed to record properly chosen ethnic affiliations of respondents which differed from the three indicated in separate columns.\textsuperscript{1179} Notwithstanding these instructions, a distressing tendency was noted during the course of the census, even beyond the fact that Macedonians and Pomaks “\textit{were actively discouraged or even prevented from declaring these affiliations}”.\textsuperscript{1180} There were numerous reported cases in which “census enumerators filled in individuals’ ethnic affiliation as Bulgarian on their own initiative, skipped over ethnic affiliation and related question in areas where Macedonians and Pomaks live, filled in census forms in pencil or sought to convince respondents, sometimes thorough threats, that the identity they wished to declare did not exist”.\textsuperscript{1181} As a result, the 2011 census registered only 1,654 Macedonians. This figure is disputed by community members, who “\textit{claim that true population is many times higher}”.\textsuperscript{1182}

\textbf{2.1. Interpretation of the Term ‘Macedonian’ in the Bulgarian Discourse}

The meaning of the term (noun) ‘Macedonian’ is ambiguous in Bulgaria generally and particularly in the region of Pirin Macedonia, where the vast majority of ethnic Macedonians live. In accordance with the dominant stance on the ‘Macedonian Question’ and the essentialist approach to ethnicity, ordinary Bulgarians, “\textit{when talking about a “Macedonian” in their everyday speech, they simply mean a Bulgarian, which originated from the geographical area of Macedonia. They are generally accepted in the same way that one from Plovdiv, Varna, etc. region is}”.\textsuperscript{1183} This stance is hardened by the historical legacy that "\textit{throughout the years, refugees from all three parts of Macedonia, which now belong to three

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\textsuperscript{1177} BHC, \textit{Alternative Report to the Report Submitted by Bulgaria…}, supra note 1086, p. 5.
\textsuperscript{1179} Advisory Committee on the FCNM, \textit{Third Opinion on Bulgaria}, supra note 1055, para. 32.
\textsuperscript{1180} Ibid, para. 34.
\textsuperscript{1181} Ibid.
\end{flushleft}
different states, incl. Bulgaria, and Macedonia itself, have resettled all over the country”. Nevertheless, one survey of a general Bulgarian audience disclosed that there is no nationwide consensus on perception(s) about the label (noun) 'Macedonian'. Responses varied between 'person from Pirin Macedonia', 'citizen of the Republic of Macedonia' and 'Bulgarian from Macedonia'.

In this context, cultivation of Macedonian regional, but not ethno-cultural, identity is not publicly outlawed in Bulgaria, but policies of non-recognition of the Macedonian national minority keep open the possibility for this kind of regionalism to be superseded through gradual assimilation of local Macedonians into the dominant group. In other words, “there is not a problem for one to espouse Macedonian identity within a Bulgarian one. However, any form of national Macedonian self-identification continues to be prohibited, although the penalties for breaking this ban have been greatly reduced”.

The findings of an ethnological field survey, conducted among inhabitants in the Pirin region, could offer some insight into the ethnic identity of the local population, which cannot be derived simply from census data. Bulgarian scholar Bonka Boneva observed three major ‘social representations’ or perceptions of the term ‘Macedonian’ among people from the Pirin region. Adherents of the first social representation hold that, “all so-called Macedonians are in fact Bulgarians, even those in the Republic of Macedonia”. The second social representation is diametrically opposed to that, with persons belonging to this group claiming that “we are Macedonians, different from the Bulgarians, and part of the Macedonian nation”. The third social representation, on its own, transposes labels reflecting people’s citizenship in Bulgaria and Macedonia in a mutually exclusive ethnic sense, and thus completely ignores the effects of ‘othering’ those whose culture deviates from majority’s proclaimed national identity. From this perspective, “although we are called Macedonians, the population in the Pirin region are all Bulgarians. We are different from the people who live in the Republic of Macedonia, who are real Macedonians”. As we can see, the labels employed in ethnic differentiations are more than semantics, and apart from mutually exclusive narratives, they are always accompanied by contested claims over ‘historical right’ and the precedence of claims by one people against others.

Several authors have indicated that Macedonians in Pirin Macedonia can be divided into three groups, although there are few identity markers that justify any clear ethnic or sub-cultural differentiation

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1184 Ibid. The author continues by stressing: “Ironically enough, nobody seems to look at them as "foreigners", as it should be in the case of the other neighboring or more distant ethnicities: Turks, Greeks, Romanians, Serbs, Russians, Poles, etc”.
1185 See: V. Roudometoff, Collective Memory; National Identity..., supra note 1122, p. 140-141.
1186 M. Lenkova, Macedonians of Bulgaria..., supra note 1135, p. 18.
1188 Ibid.
1189 Ibid.
1190 See also: V. Aarbakke, Who Can Mend A Broken Heart?..., supra note 1121, p. 199.
or delineation. The three groups are: 1) those who have Bulgarian national identity and Macedonian regional identity; 2) those ones who have Macedonian national identity; and 3) those equally alienated from the other two groups and not inclined to speak about national identity.\footnote{1191} In fact, various intelligible socio-political and cultural-historical factors in Bulgarian context enable "many people to see themselves as 'Macedonians', regardless of what national identity they have".\footnote{1192} Roudometof characterizes this three-layered division of Macedonians in Bulgaria as the coexistence of those assimilated or acculturated into the national culture (Bulgarians), those who maintain a sense of distinction (ethnic Macedonians), and those who reject any assimilation (strong regional Macedonian identity).\footnote{1193} In effect, the extended non-recognition of the Macedonian national minority, hand in hand with the repeated suppression of people who publicly advocate rights and just treatment for ethnic Macedonians, deter members of the third group from attempts to transform "this regionalism into a full-fledged rival identity".\footnote{1194}

Although eligibility for minority protection is hardly dependent on the number of persons identifying with particular minority group, considering all the factors discussed with respect to the censuses and the number of ethnic Macedonians, as well as socio-political and anthropological perceptions of ethnicity in the Pirin region and Bulgaria as a whole, we will accept Troebst’s estimate of around 150,000 ethnic Macedonians in Bulgaria.\footnote{1195}

3. Situation in the Field of Language Rights and Mother Tongue Education

3.1. Historical Review on the Linguistic and Educational Rights of Ethnic Macedonians

As previously mentioned, the right to be educated in Macedonian literary language and to learn Macedonian history was part of the short-lived ‘cultural autonomy’ of ethnic Macedonians in the Pirin region. The inclusion of Macedonian language in elementary and high schools in the region allowed by Article 79 of the post-war Constitution, "the only Bulgarian constitution ever to directly mention 'national minorities'".\footnote{1196} Article 79 clearly stipulated that “national minorities have the right to study their mother tongue and develop their national culture, in addition to the compulsory study of Bulgarian”.\footnote{1197}

However, as in Albania, a general shortage of skilled teachers in Macedonian language, literature and history created a need for support from the neighboring People's Republic of Macedonia. Hence, almost immediately after WWII, some 93 teachers from the latter were assigned to teach ‘Macedonian

\footnotesize{\begin{itemize}
\item \footnote{1191} M. Lenkova, Macedonians of Bulgaria..., supra note 1135, p. 14.
\item \footnote{1192} Z. Daskalovski, Human Rights in the Balkans..., supra note 1145, p. 149.
\item \footnote{1193} V. Roudometoff, Collective Memory, National Identity..., supra note 1122, p. 144.
\item \footnote{1194} Ibid.
\item \footnote{1195} S. Troebst, Ethnopolitics in Bulgaria..., supra note 1053, p. 33.
\item \footnote{1196} M. Hajdinjak, Thou Shall Not Take the Names Ethnic or Minority..., supra note 1035, p. 97.
\item \footnote{1197} B. Rechel, The Long Way Back..., supra note 1040, p. 119.
\end{itemize}}
literary language’ and ‘Macedonian history’ subjects to pupils of Macedonian ethnicity in the region. A great step forward, but still inadequate to meet the needs of almost 35,000 pupils in the elementary schools who identified as Macedonians in the 1946/1947 school year. The overall process was facilitated by teachers’ training courses organized in the PR Macedonia that enrolled 135 would-be teachers. A further 148 pupils from Pirin were enrolled in secondary schools in neighboring Macedonia in order to acquire the necessary professional teaching qualifications and finally, with scholarships provided by Macedonian authorities, 149 students were invited to study at the University “St. Cyril and Methodius” in Skopje.

The schism between communist countries in 1948 layed the path towards repealing Macedonian language education, although this did not happen immediately. For a period, the Macedonian language subject in elementary schools was downgraded from compulsory to optional. Soon thereafter, it was completely abolished, and the Macedonian language has never been reinstated into Bulgarian educational system.

3.2. Present Situation of Macedonian Language in Bulgaria

The dominant position in Bulgaria, that all “who call themselves Macedonians in an ethnic sense are in fact ethnopolitically disoriented Bulgarians”, precludes any possibility for recognition of Macedonian language as a minority language and its inclusion in the compulsory education curriculum. Moreover, even if Bulgaria ratified ECRML or introduced the option of bilingual education for minority pupils, although positive, these steps would not automatically improve the position of Macedonians, unless the dominant perception of the Macedonian minority is fundamentally changed too.

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1198 See: T. Popovski, Macedonian National Minority in Bulgaria, Greece and Albania, supra note 928, p. 145; T. Marinov, La question macédonienne de 1944..., supra note 1131; Чавдар Маринов, От „интернационализъм” към национализъм: Комunistическит режим, македонският въпрос и политиката към етническите и религиозни общности, [Chavdar Marinov, From “Internationalism” to Nationalism: Communist Regime, the Macedonian Question and the Policies toward Ethnic and Religious Communities], Liberal Review, Sofia, 2013, p. 9.

1199 C. Kramer, Partitioning Language Policy and Status Planning in Macedonia..., supra note 1149, p. 234; T. Ilievski, Minorities and the International Law, supra note 943, p. 229. According to information provided by Macedonian organizations in Bulgaria concerning the ethnic origin of pupils in that period, “from the general number of 43,920 pupils in the district, 35,184 (77.51%) declared themselves as Macedonians. Declared as Macedonian Muslims were 4,538 (10.33%), the declared as Bulgarians 3,148 (7.25%) and the rest altogether (Roma, Turks, Jews and others) were 1,014 (2.31%)”. See: Report on the Census in Bulgaria 2011, supra note 1174, p. 1.

1200 Ibid; T. Marinov, From “Internationalism” to Nationalism..., supra note 1198, p. 9.

1201 T. Popovski, Macedonian National Minority in Bulgaria, Greece and Albania, supra note 928, p. 151; C. Kramer, Partitioning Language Policy and Status Planning in Macedonia..., supra note 1149, p. 234.

1202 S. Troebst, Ethnopolitics in Bulgaria..., supra note 1053, p. 37.

Linguists argue that Macedonians in the region of Pirin seem “likely...to know their native Macedonian as well as standard Bulgarian”.  

Certainly, their local dialects might be considered to be a blend of Macedonian and Bulgarian languages, but the century-long interference and the official status of the latter has produced noticeable inclination towards standard Bulgarian. But even that is not uniform, as Lenkova observed: "Macedonians in Pirin Macedonia speak many Bulgaro-Macedonian dialects: the Maleshevska dialect (spoken also in the Republic of Macedonia); the Seres-Nevrokop dialect; the Shtip dialect", which is also dialect of a Macedonian language. Considering these interrelationships between local dialects and official Bulgarian, Lenkova concludes that, “there is hardly any objective practical need for the introduction of literary Macedonian in the villages and towns of Pirin Macedonia”. And yet, not long ago the state produced a series of handbooks “for teachers of standard Bulgarian to assist them in detecting and correcting non-standard usage among their students” in the region, and these handbooks themselves stand as “telling evidence of the types of interference most likely to occur from inter-language contact”.

4. **Freedom to Association of Ethnic Macedonians in Bulgaria through the Prism of Domestic Courts’ Attitude and ECtHR Judgments concerning Macedonian Organizations**

Effective enjoyment of the right to form cultural associations is of fundamental importance for minorities. It is through such entities that minorities express their distinctiveness as well maintain and promote their cultural identity. The review below outlines the attempts of various organizations representing the Macedonian national minority to be registered as such and to pursue their objectives. The case of the cultural organization UMO Ilinden will be the most thoroughly considered case, considering that ECtHR in two judgments assessed whether its non-registration and Bulgarian courts’ practice complied with Article 11 of the ECHR.

The *Independent Macedonian Association “Ilinden”* was founded on 14 November 1989 in Sofia. Its main goals were to secure freedom of thought and expression for ethnic Macedonians in Bulgaria, their recognition as a separate ethnic group, respect of minority rights prescribed in domestic legislation and international law and to oppose by peaceful means those government practices that contravene the principles of democracy and human rights. On 11 March 1990 they wrote a petition to the Bulgarian Assembly, expressing dissatisfaction with the deprivation of rights of “thousands of citizens...

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1208 T. Ilievski, *Minorities and the International Law,* supra note 943, pp. 243-244.
of Pirin Macedonia to declare themselves as Macedonians”.

This activity did not go unnoticed by authorities, and in a decision of 15 May 1990 the Sofia City Prosecutor ordered that “according to Art. 13 (4) of the Political Parties Act, the organization should either stop its activities, or register as a political party within a month”. Only a week later the Prosecutor declared the organization illegal and should cease all activities.

In the following months, the organization was renamed Traditional Macedonian Organization–VMRO Independent “Ilinden”, and on 29 June 1992 the Sofia City Court responded positively to its request for registration. Again, the Chief Prosecutor challenged this decision, and the court suspended the organization on formal grounds, ordering its president to abide by the ruling. A 1993 US Government human rights report for Bulgaria states that, “the suspension was justified on the basis that elements of the group’s statutes failed to conform with the law, although the Chief Prosecutor’s public statements suggested it was actually because of the group’s alleged separatist activities”. Subsequently, Georgi Solunski, the president of TMO–VMRO Independent Ilinden, managed to register the organization for the second time on 3 June 1998.

Other organizations were also formed by persons belonging to the Macedonian minority in the 1990s. The Solidarity and Struggle Committee of Pirin Macedonians emerged in public for the first time on March 1990 and claimed to represent some 250,000 Pirin Macedonians. Other organizations formed in the Pirin region in this period were: Union for Prosperity of Pirin Macedonia, Orthodox Priests’ Brotherhood “St. Prophet Iliya”, Cultural Society “Sandanski” from the village of Mikrevo, Association of Repressed Macedonians, The Committee for Defense of the Rights of the Pirin Macedonians, Independent Macedonian Democratic Alliance, The People’s Academy of Pirin Macedonia, The Union for Prosperity of Pirin Macedonia etc. The common thread between these Macedonian organizations of the 1990s was that they “put forward three major demands: (1) They want to be recognized as a separate ethnic group and no longer to be treated as ‘pure Bulgarians’; (2) they demand restoration of so-called ‘Dimitrov period’ from 1944 to 1949 – Macedonian elementary schools, publishing houses, newspapers, theaters, scientific institutions etc.; and (3) they seek unrestricted cultural

1210 V. Ortakovski, Minorities in the Balkans, supra note 869, p. 272.
1211 M. Lenkova, Macedonians of Bulgaria..., supra note 1135, p. 10.
1213 M. Lenkova, Macedonians of Bulgaria..., supra note 1135, p. 10.
1214 Z. Daskalovski, Human Rights in the Balkan..., supra note 1145, p. 152.
1215 M. Lenkova, Macedonians of Bulgaria..., supra note 1135, p. 10; B. Rechel, Long Way Back to Europe, supra note 1040, p. 235. The Bulgarian Helsinki Committee indicated that “the program of the Organization will be directed towards cultural activities, and will use democratic means to fight for the protection of the rights, freedoms and identity of the Macedonians in Bulgaria, as well as for the cultural and spiritual bonding of all Macedonians in the world”.
1217 M. Lenkova, Macedonians of Bulgaria..., supra note 1135, p. 13; T. Ilievski, Minorities and the International Law, supra note 943, p. 249.
exchange with the neighboring Republic of Macedonia”.

However, motions for registration in vast majority of cases were rejected by the courts, as has been the practice for the past 25 years.

In the past few years, three associations were denied registration because their statutes indicate that the protection of the rights and freedoms of Macedonians in Bulgaria is among their main objectives. This was made quite explicit in the decision rejecting registration of the Macedonian Cultural and Educational Association “Nikola Vapcarov”. The court on 7 May 2009 found that since applicants claim that a Macedonian minority exists in Bulgaria, “they represent actions against the unity of the Bulgarian nation and its territorial integrity”.

In a similar vein, the Blagoevgrad City Court in 2010 rejected a request for registration of the Association of Repressed Macedonians, because “activity of the registrant structure will affect the unity of the Bulgarian nation”. Moreover, it found that the association essentially ignores “the Bulgarian character of certain geographic regions”, thus representing “an association which goals and name are against the law”. Finally, in the case of the Macedonian Club for Ethnic Tolerance the judicial authorities reiterated that “there is no Macedonian ethnic minority in the Republic of Bulgaria...That's why the designation of such minority through non-profit association...in reality it doesn’t protect their rights...but cultivates a different ethnic identity among a certain part of the Bulgarian population, identity which was not formed in a natural historic way and therefore is aimed against the unity of the nation, which is not allowed according to Art. 44 par. 2 of the Constitution”.

4.1. The Case of Cultural Association UMO Ilinden

The United Macedonian Organization Ilinden was established on 14 April 1990 in the city of Sandanski, a coalescence of several of the above mentioned associations. The main aim of UMO Ilinden, as stipulated in its Statute, was to “unite all Macedonians, citizens of Bulgaria, on a regional and cultural basis”, and to achieve this objective, it was supposed to accept the “territorial principle”, that is to say creation of local sections of the organization in settlements where ethnic Macedonians live. Moreover, several articles from the Statute envisaged that the organization does not have territorial claims and rejects any form of secessionism, nationalism and chauvinism. Its short program provided that UMO Ilinden will endeavor to promote Macedonian history and culture, to protect the Macedonian cultural heritage and traditions through education and scientific projects, to nurture close cooperation with

1218 S. Troebst, Ethnopolitics in Bulgaria..., supra note 1053, p. 36.
1219 Judicial Verdicts by Bulgarian Courts Regarding the Macedonian Minority. The article is available online at: http://www.omoilindenpirin.org/news/2013/judicialverdicts.pdf (retrieved on 18 November 2016)
1220 Ibid.
1221 Ibid.
1223 T. Ilievski, Minorities and the International Law, supra note 943, pp. 249.
1224 M. Lenkova, Macedonians of Bulgaria..., supra note 1135, p. 11.
organizations of diaspora Macedonians, and to open a dialogue with official institutions and mainstream political parties.\textsuperscript{1225}

At its first rally, held on 22 April 1990 at the Monastery of Rozhen, OMO Ilinden promoted itself to ethnic Macedonians, where despite the ban imposed by local authorities, around 10,000 people showed up. The declaration adopted at the rally included some moderate demands, such as introduction of Macedonian language classes as well as radio and television programs in Macedonian language, and a fundamental change in the dominant Bulgarian narrative that denies the very existence of a Macedonian ethnicity different to a Bulgarian one. However, the final demands were far-reaching and completely outdated, such as the "unification of Macedonia under the auspices of UN".\textsuperscript{1226} Of course, this demand provided the grounds for the Bulgarian administrative and judicial authorities to refuse registration of UMO Ilinden.

Bell noted that UMO Ilinden "provoked a strong reaction from the state authorities, who moved to counter the organization’s activities".\textsuperscript{1227} Therefore, the Blagoevgrad Regional Court rejected its request for registration. After examining the organization’s main acts the Court found these documents to be "directed against the unity of the nation, that it advocated national and ethnic hatred, and that it was dangerous for the territorial integrity of Bulgaria".\textsuperscript{1228} The Supreme Court upheld the lower courts’ decision, and among other things, stated that "the applicant association seeks to disseminate the ideas of Macedonianism among the Bulgarian population...Those ideas presuppose the ‘denationalisation’ of the Bulgarian population and its conversion into a Macedonian population".\textsuperscript{1229} Concomitantly, the Blagoevgrad Prosecutor issued a stark warning to the UMO Ilinden leaders, based on Article 162 of the Penal Code, stressing that any future involvement in counter-constitutional activities might result in imprisonment for up to six years. Subsequently, some of them endured harassment and their passport were confiscated by police to prevent them from travelling to the Republic of Macedonia.\textsuperscript{1230}

4.2. Case of UMO Ilinden and others v. Bulgaria (1 & 2)

UMO Ilinden reapplied for registration in 1998, following meetings of the founding members in which new statutes were adopted. Their stated goals were slightly toned down, but there remained an express intention for the organization to “defend the civil, political, national, social and economic rights of...Macedonians living in Bulgaria”, and to prospectively demand “the recognition of a status of cultural

\begin{itemize}
  \item[\textsuperscript{1225}] T. Ilievski, \textit{Minorities and the International Law}, supra note 943, pp. 249.
  \item[\textsuperscript{1226}] \textit{Ibid}, p. 251.
  \item[\textsuperscript{1228}] ECHR, \textit{Case of Stankov and the UMO Ilinden v. Bulgaria}, supra note 1120, para. 12.
  \item[\textsuperscript{1229}] \textit{Ibid}, para. 13.
  \item[\textsuperscript{1230}] H. Poulton, \textit{The Balkans: Minorities...}, supra note 875, pp. 109-110.
\end{itemize}
autonomy of Pirin Macedonia [in order to] halt the process of assimilation of the Macedonians”.

1231 The Blagoevgrad Regional Court rejected the application, enumerating various arguments supporting its decision, most notably lack of signatures at the minutes of subject the founding meeting as well at the organization’s statute. Furthermore, it found that a number of clauses in the statute contravened domestic legislation. According to the Court’s interpretation, since the applicants define themselves as "successors of fighters fallen victim”, it would be reasonable to deduce that they allegedly “intend to lead a ‘national liberation struggle’ on the territory of Bulgaria through uprisings, which process is expected to lead to victims”. Continuing this line of reasoning, the Court found that UMO Ilinden would potentially conduct a “political activity” as defined according to Article 11 of the Constitution and section 11 of the Political Parties Act. It based this finding on the clause in the Statute prescribing that applicants’ organization will “organize peaceful assemblies, meetings, marches and demonstrations with demands for political rights and that it will participate in elections”. Higher courts upheld these findings and, after domestic avenues of redress were exhausted, the application was lodged with the ECtHR in 2000.

The applicants argued before the ECtHR that registration was denied based mainly on "deliberately erroneous findings in respect of the relevant facts and a misconstruction of the applicable law". Furthermore, they argued that the formal deficiencies identified by the Court in the first instance (Blagoevgrad Regional Court) were rectified at later stage, during the appeal procedure at the Sofia Court of Appeals. Finally, they argued, their association is founded as a cultural one and they reject the allegations about pursuing political activities, since "holding of meetings and the participation in elections were not the privileges of political parties only".

The government’s arguments reiterated the domestic courts’ findings. Furthermore, the government defended the measures as consistent with the pursuit of “a wide range of legitimate aims”, such as protection of national security, because “the true aim of the organization” is “to seek the secession of Pirin Macedonia from the territory of Bulgaria”. Accordingly, the government argued that the applicants’ motion for registration had been rejected “due to a pressing social need and had been proportionate to the legitimate aims pursued”.

1231 European Court of Human Rights, Case of the United Macedonian Organisation Ilinden and others v. Bulgaria, Strasbourg, 19 January 2006, para. 15. It is worth noting that organization quite provocatively defined itself as “the successor and the continuer of the national liberation struggle of the Macedonian nation…and of the Macedonian fighters who have fallen victim to the Bulgarian State terrorism and genocide”.

1232 M. Lenkova, Macedonians of Bulgaria…, supra note 1135, p. 11.

1233 ECtHR, Case of UMO and others v. Bulgaria, supra note 1231, para. 16.

1234 Ibid., para. 17.

1235 Ibid, para. 34.

1236 Ibid, para. 39.

1237 Ibid, para. 45.

1238 Ibid, para. 46.
The ECtHR pointed out that the freedom of association enshrined in Article 11 of ECHR is broad in its scope and encompasses associations, "including those protecting cultural or spiritual heritage", and ones "seeking an ethnic identity or asserting a minority consciousness", which are essential for the democracy itself.\textsuperscript{1239} It observed that the higher Bulgarian courts had failed to consider the revised copy of minutes of the founding meeting and a signed statute. Therefore, they could not rely on the arguments of the lower court to deny registration. As for allegations of UMO Ilinden’s intended political activities, the ECtHR interpreted Article 12 of the Constitution and accepted that it does indeed presuppose that “only parties may participate in elections as such”, but then observed that this does not mean that “an organization not registered as a political party may not support independent candidates for elections, which seems to be a routine occurrence in Bulgarian politics”.\textsuperscript{1240} Likewise, arguments to the effect of UMO Ilinden’s alleged separatist views were deemed insufficient to justify obstructing the applicants’ right to association to protect the rights and freedoms of the ‘majority of the population in Pirin region’. In other words, “however shocking and unacceptable certain views or words used might have appeared to the authorities and the majority of the population”, the domestic courts’ were not justified in rejecting the application for registration. Essentially, the ECtHR found that the government’s approach pre-emptively deprived UMO Ilinden of any chance to pursue its stated goals, and in fact, to conduct any activity whatsoever. These proved sufficient grounds for the ECtHR to declare that Bulgaria violated Article 11 of the ECHR.\textsuperscript{1241} For the reasons that will be discussed below, supervision of the enforcement of this judgment by the Committee of Ministers is still pending.

The case of UMO Ilinden and others v. Bulgaria (2) of 2011 reveals pretty much the same factual situation as UMO Ilinden and others v. Bulgaria (1), outlined above. Namely, applicants lodged a request to register a non-profit association with the Blagoevgrad Regional Court in 2002, based on the Law on Non-Profit Legal Persons. The courts once again refused to register the association due to its alleged political character and its ‘distortion of historical truth at expense of Bulgarian nation’.

The ECtHR in this ‘repetitive case’ recalled some milestone quotes from its jurisprudence. Thus, it highlighted that even if "community becomes divided" over the emergence of some unpopular association, domestic authorities have no excuse "to remove the cause of that tension by eliminating pluralism, but to ensure that the competing groups tolerate each other".\textsuperscript{1242} Moreover, the ECtHR noted that “it was quite conceivable” that domestic courts were in position to qualify and define “any goals which were in some way related to the normal functioning of a democratic society as ‘political’”, and hence to oblige various legal entities seeking registration as non-profit associations to register as political

\begin{footnotes}
\item[1239] Ibid, para. 58.
\item[1240] Ibid, para. 73.
\item[1241] Ibid, para. 81.
\item[1242] European Court of Human Rights, Case of the United Macedonian Organisation Ilinden and others v. Bulgaria (No.2), Strasbourg, 18 October 2011, para. 34.
\end{footnotes}
parties instead. \textsuperscript{1243} However, if it is allowed, then such legal entities would have to take “a legal shape its founders did not seek”. Therefore, it was concluded that allegations for ‘political activities’ of UMO Ilinden were not “sufficient grounds” for all three levels of judiciary in Bulgaria to refuse its registration. \textsuperscript{1244}

The execution in practice of these two judgments currently is supervised by the main Council of Europe’s decision-making body, namely the Council of Ministers. Evidently, the ECtHR’s approach in both cases confirms that it is “extremely cautious to expressly recognize the existence of structural, chronic problems in respondent states, despite delivery of numerous repetitive judgments concerning…national minorities”. \textsuperscript{1245} Besides, it delivered ‘declaratory judgments’ by identifying violation of rights enshrined in the ECHR, but such judgments in many minority-related cases "leave the victims of human rights violations without medium- or long-term redress and in fact allow recurrence of similar violations to happen". \textsuperscript{1246}

Recently, a ‘general measure’ was adopted in Bulgaria in order to accommodate domestic legislation with the main findings of these repetitive judgments. Namely, on 8 September 2016, the Bulgarian Assembly passed the revised Law on Non-Profit Legal Entities. \textsuperscript{1247} With this reform, the competence to register non-profit associations transfers from the courts to the newly formed Registration Agency, within the Ministry of Justice, in a procedure that it is believed to be much simpler than the previous one. Bulgarian authorities claim that the new law ensures impartiality and objectivity of the registration procedure, and provides the possibility for legal entities seeking to register as associations to use documents submitted in prior cases of refusal. \textsuperscript{1248} However, the main concern derived from newly revised law is the 16 month prescribed transition period from its adoption to the date of entry into force, which leaves considerable time for domestic courts to continue to refuse similar cases.

\textsuperscript{1243} Ibid, para. 39.
\textsuperscript{1244} Ibid.
\textsuperscript{1245} Nicholas Sitaropoulos, Implementation of the European Court of Human Rights’ judgments concerning national minorities or why declaratory adjudication does not help, European Society of International Law, Tallinn Research Forum, 26-28 May 2011, p. 4.
\textsuperscript{1246} Ibid, p. 5.
\textsuperscript{1248} Council of Europe, Secretariat General, DH-DD (2016)1190, Action Plan in the cases of UMO Ilinden and others and UMO Ilinden and others v. Bulgaria (No.2), 2 November 2016, pp. 8-9. The action plan is available online at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806b596e (retrieved on 20 November 2016)
5. Review on ECtHR Judgments concerning Freedom to Hold Peaceful Assemblies

Several judgments by the ECtHR deal particularly with interference on the part of Bulgarian authorities in cases where different Macedonian organizations intended to hold peaceful rallies and meetings. Three cases were initiated by representatives of the unregistered association UMO Ilinden, while in two cases the ECtHR assessed applications from persons affiliated with the dissolved political party UMO Ilinden PIRIN. Due to limited space and considering the similarities in each of five cases, we will outline only the main findings in all of them. However, due to the importance of the first judgment, on the basis of which the Court has subsequently developed its own practice in all ‘repetitive cases’, the initial case will be analyzed more closely.

5.1. Case of Stankov and UMO Ilinden v. Bulgaria of 2001

In the initial case of Stankov and UMO Ilinden v. Bulgaria, the applicants disputed bans imposed by the authorities on their meetings and rallies intended to commemorate various historical events and figures of importance for Macedonians in Bulgaria. Applicants’ allegations in the case encompassed prohibitions and refusals to hold five rallies and commemorative meetings in the period from 1994 to 1997, among which they were intending to commemorate the anniversary of the death of the Macedonian revolutionary Jane Sandanski at his grave at the Monastery of Rozhen, and a historic event at the site Samuilova Krepost, near the city of Petrich. As in the previous cases, mayors and courts of different jurisdictions outright refused to permit the rallies and commemorative meetings to be held. Various reasons were provided to support these decisions, such as the lack of registration or the 'illegitimacy' of the applicant’s organization, the alleged danger to public order, infringement of the rights of others or a prior authorization for commemoration of the same historical event to other subjects.

In their submission to ECtHR, applicants contended that their activities were entirely peaceful and would not endanger public order at all. Contrary to the values on which plural democratic society should be based, they stressed, the main aim of the bans on the part of authorities “had been to suppress dissemination of the idea that a Macedonian minority existed in Bulgaria”.

In response, the government reiterated its doubts about the peaceful character of events organized by applicants and submitted additional documents to support their concerns. Although on the basis of

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1249 ECtHR, Case of Stankov and the UMO Ilinden v. Bulgaria, supra note 1120, paras. 19-31.
1250 Ibid.
1251 Ibid, para. 64.
1252 In particular, the government presented excerpts from a declaration adopted at the first meeting at the Rozhen Monastery on 20 April 1991, where UMO Ilinden expressed publicly its demands addressed to Bulgarian authorities, where among others they sought autonomy of the region of Pirin Macedonia. In addition, the Memorandum addressed to the United Nations was also
the Meeting and Marches Act, “an unregistered organization would undoubtedly be free to organize meetings”, in the government’s view, "the applicant association’s activities had been prohibited” in conformity with the law.1253 Accordingly, their argumentation continues, “Iliminden infringed the rights and freedoms of others because it aspired to create a Macedonian nation among people belonging to the Bulgarian nation and demanded the imposition of a Macedonian identity and institutions in the region of Pirin to the exclusion of all Bulgarian institutions".1254 Therefore, activities of UMO Iliminden, purportedly, were not directed towards protecting minority rights, but at “converting the Bulgarian population into a Macedonian one and then separating the region from the country”.

The ECtHR noted that the imposition of bans on public events organized by applicants and their unregistered organization has continued almost uninterruptedly since 1992.1256 Hence, it established that there has been interference with the applicants’ rights and freedoms under Article 11 of ECHR.1257 Furthermore, while noting inconsistencies in reasons presupposing the necessity for prohibiting applicants' meetings, the Court unambiguously reiterated that ‘lack of registration’ may not serve as legal ground for banning meetings. Nonetheless, since the authorities invoked the alleged danger to public order, it accepted that previously determined “interference with the applicants’ freedom of assembly may be regarded as being 'prescribed by law'”.

Furthermore, the ECtHR recalled its own jurisprudence and underscored that Article 11 should be considered in light of Article 10 (freedom of expression), in a manner that freedom to express opinion, including in the form of a public speech during a rally, is among the goals of the freedom of association.1259 By accepting this reasoning, one could rightfully deduce that freedom of assembly in this case “protects demonstrations that might annoy or offend”.1260 Therefore, even if authorities could argue that some persons affiliated with an applicant association “harboured separatist views and had a political agenda that included the notion of autonomy for the region of Pirin Macedonia”, this fact could not "justify a prohibition of its assemblies".1261 Accordingly, “demanding territorial changes in speeches and demonstrations does not automatically amount to a threat to the country’s territorial integrity and
national security”\textsuperscript{1262}. Applying the principles derived from its impeccable case law, the ECtHR argued that "sweeping measures of a preventive nature to suppress freedom of assembly and expression other than in case of incitement to violence and rejection of democratic principles...do a disservice to democracy and often even endanger it"\textsuperscript{1263}. In sum, the ECtHR rejected the government’s arguments that if the disputed meetings had been allowed, the applicants would have used them as a pretext for propagating violence and rejecting democracy. Finally, it concluded that “authorities overstepped their margin of appreciation”, thus the bans on the commemorative meetings “were not necessary in a democratic society”.\textsuperscript{1264} Consequently, Bulgaria has breached Article 11 of ECHR (freedoms of assembly and association).

Note that a supervision process on the enforcement of this judgment from the Council of Ministers (CM) ended in 2004. The arguments presented from the Bulgarian mission, namely that reportedly since 2001 there has never been an absolute prohibitions on events organized by UMO Ilinden, were accepted and examination on the judgment's enforcement ended.\textsuperscript{1265}

\textbf{5.2. Case of UMO Ilinden and Ivanov v. Bulgaria (1 & 2)}

Notwithstanding assurances that courts and mayors will refrain from further violations of Article 11, in the following years, ECtHR issued several additional judgments by which it sanctioned similar practices in cases concerning the UMO Ilinden.\textsuperscript{1266} The case of UMO Ilinden and Ivanov v. Bulgaria of 2005 was initiated as a consequence of several prohibitions for holding rallies and commemorative meetings, planned by UMO Ilinden in the period 1998-2003. In almost every occasion, both mayors and courts invoked similar legal grounds as in the previous case, thus continuing the practice of hindering the public events organized by this entity.\textsuperscript{1267}

The Court in Strasbourg in this case noted that the government’s position differed from the previous case and was no longer disputing “the peaceful character of the meetings organized by Ilinden”.\textsuperscript{1268} Nevertheless, it was evident from the facts presented that “authorities persisted in their efforts to impede the holding of the commemorative events which Ilinden sought to organize”, and, with a few exceptions, the domestic administrative practice remained the same as during the period 1994-97.\textsuperscript{1269} Moreover, in those few cases where no direct bans were imposed and the events partially were held, the

\begin{itemize}
\item \textsuperscript{1262} Ibid, para. 97.
\item \textsuperscript{1263} Ibid.
\item \textsuperscript{1264} Ibid, para. 112.
\item \textsuperscript{1265} N. Sitaropoulos, Implementation of the European Court of Human Rights ‘... supra note 1245, p. 6.
\item \textsuperscript{1266} See: BHC, Alternative Report to the Report Submitted by Bulgaria..., supra note 1086, p. 17.
\item \textsuperscript{1267} European Court of Human Rights, Case of the United Macedonian Organisation Ilinden and Ivanov v. Bulgaria, Strasbourg, 20 October 2005, paras. 12-71.
\item \textsuperscript{1268} Ibid, para. 99.
\item \textsuperscript{1269} Ibid, para. 114.
\end{itemize}
authorities failed to protect UMO Ilinden followers from insults and attacks from counter-demonstrators openly hostile to them. Accordingly, “the Court made a very important point”\textsuperscript{1270}, reiterating its argumentation from its jurisprudence, and underlining that “effective freedom of peaceful assembly cannot be reduced to a mere duty on the part of the State not to interfere; it is the duty of Contracting States to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully”.\textsuperscript{1271}

Hence, the ECtHR “indirectly but clearly noted its discontent at this situation” and found a violation of Article 11.\textsuperscript{1272}

The supervision of the enforcement in practice of this judgment from the CM ended in June 2011, after the legislative amendments from 2010 were deemed satisfactory and no further general measures were considered necessary.\textsuperscript{1273} In addition, CM underlined that neither individual measures were deemed indispensable, since, purportedly, from 2008 onwards, no hindrances on UMO Ilinden's rallies were imposed. Hence, the process of examination was closed.

The case of \textit{UMO Ilinden and Ivanov v. Bulgaria (No.2)} of 2011, in fact, cover events planned to take place in the period from 2004 to 2009. The ECtHR observed that mayors of different towns in the region of Pirin were ‘pattern-attached’ in respect to their answers on requests submitted from persons affiliated with UMO Ilinden to hold rallies, and predominantly provided exactly the same or similar replies. That is to say, each time UMO Ilinden applied to organize a rally or to commemorate historic figures “the Mayor of Sandanski imposed restrictions on the timing and manner of organization of its events”, “the Mayor of Petrich systematically banned or imposed restrictions on the events which Ilinden sought to organize in the Samuilova Krepost area”, and the mayor of Blagoevgrad “systematically banned the events planned by Ilinden”.\textsuperscript{1274} Essentially, the ECtHR expressed its concerns that “in three consecutive judgments it has found interferences identical to those in the present case not to be necessary in a democratic society and thus to be in breach of Article 11”.\textsuperscript{1275} Even though the instances in which local authorities had effectively impeded the planned meetings “present no material difference”, an indicative and troublesome tendency was noted in cases where police “toughened their approach, (by-DT) arresting participants in Ilinden’s rallies without citing any grounds for the arrests and without any violent behavior warranting such measures, and on one occasion, fining them”.\textsuperscript{1276}

\begin{enumerate}
  \item \textsuperscript{1270} \cite{Chubric2005}
  \item \textsuperscript{1271} \cite{ECtHR2011a}
  \item \textsuperscript{1272} \cite{Sitaropoulos2014}, p. 6.
  \item \textsuperscript{1273} \textsuperscript{Ibid}, p. 6.
  \item \textsuperscript{1274} \textsuperscript{European Court of Human Rights, Case of the United Macedonian Organisation Ilinden and Ivanov v. Bulgaria (No.2), Strasbourg, 18 October 2011, para. 126.}
  \item \textsuperscript{1275} \textsuperscript{Ibid}, para. 132.
  \item \textsuperscript{1276} \textsuperscript{Ibid}, para. 135.
\end{enumerate}
5.3. Other Cases Where Similar Breaches Were Found

In two additional cases, originated by persons affiliated with the outlawed political party UMO Ilinden–PIRIN, the Court sanctioned the authorities, which despite previous judgments, continued to restrict public events where ethnic Macedonians intended to promote their culture. For instance, an additional aspect has been revealed in the case Ivanov and others v. Bulgaria, that is to say the “firm trend of rejecting, on various grounds, the applications for judicial review of the mayoral bans on meetings organised by Ilinden”. Unlike previous cases, the two banned meetings of UMO Ilinden PIRIN in this case were planned to take place in the country's capital Sofia, in August and September 1998 respectively. Since the motion for judicial review of the mayor's ban on the second event was redirected to a non-existent body, and the final decision from the Supreme Court of Cassation was rendered with a four and a half year delay, the ECtHR here simultaneously found breach of Article 13 (right to effective remedy). As to the Article 11, it did not elaborate, but merely recalled its reasoning from previous cases. In other words, the Court underlined that even if authorities were pursuing legitimate aims “it can hardly be concluded that (they-DT)...gave relevant and sufficient reasons justifying the prohibitions of the rallies, substantiating their finding that there was a risk to public order, and that the bans were thus necessary in a democratic society.”

The request by members of the UMO Ilinden PIRIN to hold commemorative meeting at the Monastery of Rozhen on 22 April 2007 was initially approved by the mayor of Sandanski, although applicants were informed that the proposed timeframe for the event had to be shortened, from six hours to two hours. However, invoking the applicants’ lack of registration and alleged danger to public order, the Regional Governor of Blagoevgrad overturned the mayor’s decision and asked the police to act upon his orders. Since this decision relied on grounds that in several occasions were declared in violation of with Article 11 of ECHR, the ECtHR in the case Singartiyski and others v. Bulgaria found “troubling disregard” by the Regional Governor for the previous judgments, and declared a repetitive violation of the applicants' right to freedom of assembly.

6. Political Participation of Ethnic Macedonians in Public Life

This sub-section deals at more length with the case of the political party UMO Ilinden PIRIN, and more specifically with two judgments rendered by ECtHR directly related with it. At first, it should be

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1277 European Court of Human Rights, Case of Ivanov and others v. Bulgaria, Strasbourg, 24 November 2005, para. 44.
1278 Ibid, paras. 70-76.
1279 Ibid, para. 63.
1280 European Court of Human Rights, Case of Singartiyski and others v. Bulgaria, Strasbourg, 18 October 2011, paras. 7-11.
1281 Ibid, para. 46.
reiterated that Article 11 (4) of the Constitution, which states that “there shall be no political parties on ethnic, racial or religious lines”, is the main legal obstacle that prevents effective participation of national minorities and their political parties into the public life and political processes in Bulgaria. As noted by Rechel, “Macedonian minority has faced greatest resistance by the Bulgarian state when striving for political participation”, so one is not surprised that since 1989, “the Bulgarian authorities were very reluctant to allow Macedonian parties”.

6.1. Case of UMO Ilinden PIRIN v. Bulgaria

Political party UMO Ilinden - PIRIN (Party for Economic Development and Integration of the Population) was initially founded in 1998, unifying two moderate wings affiliated with the cultural association UMO Ilinden. Shortly afterwards, on 12 February 1999, it applied successfully for registration as a political party at the Sofia City Court. According to its founding documents, the main aim of the political party is to “voice and defend the rights, freedoms and interest of the population in Pirin Macedonia and in the other parts of Bulgaria, regardless of their religion, gender, social status and origin”. Soon after its registration, the party applied with its electoral lists for local elections in 1999. Though initially the Central Commission for Local Elections refused to allow the lists submitted by UMO Ilinden PIRIN to participate at the elections, a decision by the Supreme Administrative Court granted their first appearance before the electorate in the region of Pirin. Consequently, the party ran in 9 municipalities, “receiving a total of 3,069 votes, winning three seats in three different municipal councils (Goce Delchev, Razlog, Hadzidimovo) and two positions of village mayors (both in Goce Delchev municipality)”.

As a whole, results from both rounds of the elections showed that UMO Ilinden PIRIN obtained a total of 5,838 votes. However, on 4 March 1999, exactly 61 deputies in the Bulgarian Assembly lodged a petition with the Constitutional Court to declare the political party UMO Ilinden PIRIN unconstitutional, as being allegedly contrary to Articles 11 (4) and 44 (2) of the Constitution of 1991. Allegations for the party’s non-compliance with Article 11 (4) are noteworthy, since petitioners contended that "UMO Ilinden is

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1286 M. Lenkova, Macedonians of Bulgaria..., supra note 1135, p. 12.
1288 M. Hajdinjak, Thou Shall Not Take the Names Ethnic or Minority..., supra note 1035, p. 121.
1289 B. Rechel, State Control of Minorities in Bulgaria, supra note 1105, p. 365. Article 44 paragraph 2 reads: “The organization/ s activity shall not be contrary to the country's sovereignty and national integrity, or the unity of the nation, nor shall it incite racial, national, ethnic or religious enmity or an encroachment on the rights and freedoms of citizens”.
actually founded on ethnic basis, though there is no such ethnic group in Bulgaria”.\textsuperscript{1290} As such, this case confirmed the legitimacy of concerns exposed by the Venice Commission that Article 11 (4), in reality, "could be used to prevent minority linguistic, ethnic or religious groups from organising themselves at all".\textsuperscript{1291}

The Constitutional Court ruled that UMO Ilinden PIRIN was not “a novel organization, but was closely connected with the former unregistered association UMO Ilinden”.\textsuperscript{1292} On the one hand, it found that argument for party’s alleged incompatibility with Article 11 (4) of the Constitution was unfounded, but such reasoning was derived from the premise that “there was no Macedonian ethnos in Bulgaria”\textsuperscript{1293}. The assessment about whether its activities were ‘contrary to national integrity and the unity of the nation’ (Art. 44) was based on a declaration made by cultural association UMO Ilinden in early 1990s, as well as various statements given by persons affiliated with UMO Ilinden PIRIN since 1990. Essentially, it was the demands for cultural autonomy of ethnic Macedonians in Bulgaria, accompanied by occasional indirect references to the right of internal self-determination of the region of Pirin Macedonia, that obviously preordained the judgment. Consequently, the Constitutional Court underlined that UMO Ilinden PIRIN purportedly “treats this part of the country’s territory as non-Bulgarian land”, or even as “foreign territory given to Bulgaria for temporary administration pursuant to an international treaty”.\textsuperscript{1294} On these grounds, it declared the political party unconstitutional, allegedly involved in activities aimed against the territorial integrity of Bulgaria within the meaning of Article 44 (2) and contrary to Article 2 of the Constitution that proclaims national territory as indivisible and inviolable.

The Bulgarian Helsinki Committee noted that the judicial decision which dissolved the political party UMO Ilinden PIRIN was "the most drastic violation in respect to the Macedonian identity in Bulgaria".\textsuperscript{1295} Similarly, a long time president of BHC and a leading authority in the field of human rights in Bulgaria, Krasimir Kanev, described this decision as "perhaps the most unfounded ruling in the court's entire history", considering that it apparently "ignored the provisions in the statutes and programme documents of the party which declare that it would realize its goals in a peaceful and lawful manner".\textsuperscript{1296}

The central committee of UMO Ilinden PIRIN lodged an application with the ECtHR claiming violation of their freedom of association as guaranteed under Article 11 of ECHR. In their submission, applicants pointed out that the Constitutional Court gave “undue weight” to past events and statements of persons affiliated with their political party, but, concomitantly, neglected that, by participating in the local

\textsuperscript{1290} M. Lenkova, Macedonians of Bulgaria..., supra note 1135, p. 13.
\textsuperscript{1291} Venice Commission, Opinion on the Constitution of Bulgaria, supra note 1073, para. 64.
\textsuperscript{1293} Ibid, para. 25.
\textsuperscript{1294} Ibid, para. 27.
\textsuperscript{1295} BHC, Alternative Report to the Report Submitted by Bulgaria..., supra note 1086, p. 4.
\textsuperscript{1296} Z. Daskalovski, Human Rights in the Balkan..., supra note 1145, pp. 158-159.
elections of 1999, the UMO Ilinden PIRIN “had in fact rejected a separatist agenda”, if there ever was one.\textsuperscript{1297} Minority rights for ethnic Macedonians and the issue of regional autonomy were indeed among the party’s main priorities, but not separatism and secessionism for a particular region of Bulgaria. Therefore, in applicant’s view, ban of UMO Ilinden Pirin “had not been based on relevant and sufficient reasons”, since the Constitutional Court’s argument that promotion of separatism stood beyond the party’s formation has been made “without embarking on any analysis of the proportionality of this measure”.\textsuperscript{1298}

The government invoked the wide ‘margin of appreciation’ that states purportedly enjoy in respect to restrictions on the general freedom of association. It highlighted that between the dissolved party and the unregistered association UMO Ilinden there is a “certain continuity”, so past statements were used legitimately in the procedure before the Constitutional Court.\textsuperscript{1299} The mere possibility that once registered, “the applicant party could effectively strive towards power and thus get hold of the mechanisms to achieve its separatists ideas posed an immediate threat to national security”.\textsuperscript{1300}

The ECtHR found that dissolution of the party amounted to interference with applicants’ freedom to association. Nevertheless, it conceded that the government’s attitude was ‘prescribed by law’ in pursuit of the legitimate aim of protecting national security.\textsuperscript{1301} At the same time, it found that the impugned interference in this case was “radical”, and thus a “drastic measure” rendered by the Constitutional Court, on the base of which the political party was dissolved “with immediate effect”.\textsuperscript{1302} Despite past statements and an invoked declaration, there were no indications that UMO Ilinden PIRIN had rejected the principles of democracy nor had it undertook any practical actions directed against national security. Then it referred to its first ‘pilot judgment’ concerning the ethnic Macedonians in Bulgaria, namely the case of Stankov and UMO Ilinden v. Bulgaria,\textsuperscript{1303} and gave the following legal reasoning (modified and adjusted for present case):

The fact that the applicant party’s programme was considered incompatible with the current principles and structures of the Bulgarian State does not make it incompatible with the rules and principles of democracy. It is of the essence of democracy to allow diverse political programmes to be proposed and debated, even those that call into question the way a State is currently organized, provided that they do not harm democracy.\textsuperscript{1304}

\textsuperscript{1297} ECtHR, Case of the UMO Ilinden – PIRIN and others v. Bulgaria, supra note 1292, para. 36.
\textsuperscript{1298} Ibid, para. 40.
\textsuperscript{1299} Ibid, para. 46.
\textsuperscript{1300} Ibid, para. 47.
\textsuperscript{1301} Ibid, para. 55.
\textsuperscript{1302} Ibid, para. 56.
\textsuperscript{1303} N. Sitaropoulos, Implementation of the European Court of Human Rights ’..., supra note 1245, p. 7.
\textsuperscript{1304} ECtHR, Case of the UMO Ilinden – PIRIN and others v. Bulgaria, supra note 1292, para. 61.
Consequently, it was declared that the Constitutional Court’s decision was in breach of Article 11 of ECHR, finding that there was no pressing need that necessitated the outright dissolution of UMO Ilinden PIRIN, and repeating that such interference was not necessary in a democratic society.\textsuperscript{1305}

The monitoring process over the implementation of this judgment was closed by the CM, even though at the time when the Resolution that closed examination was passed, the political party was not yet registered by the Bulgarian courts.\textsuperscript{1306} The Political Parties Act was amended in 2009 in a way that reduced the number of members required for establishment of a political party, from 5,000 to 2,500.\textsuperscript{1307} This amendment was perceived as a ‘general measure’ intending to prevent violations similar to the one raised above. In addition, it declared that “\textit{judicial decisions relating to the applicants’ third request for registration}”, following the above judgment of the Court, have not reiterated grounds previously incriminated by the Court (see below). Supposedly, all of them were “\textit{exclusively based on the non-compliance with the law of the material acts for the constitution of the party}”.\textsuperscript{1308} Consequently, the assurances from government that applicants were free to reapply for registration as a political party were deemed sufficient for closure of supervision process.

6.2. The Repetitive Case of UMO Ilinden PIRIN v. Bulgaria (2)

The case of \textit{UMO Ilinden PIRIN v. Bulgaria (2)} originated after three consecutive times, from 2006 to 2008, domestic courts in Bulgaria rejected all motions for registration of this political party on formal grounds and/or technical deficiencies.\textsuperscript{1309} The attitude of the Bulgarian judicial authorities was

\textsuperscript{1305} Ibid, para. 62.
\textsuperscript{1306} N. Sitaropoulos, \textit{Implementation of the European Court of Human Rights’…}, supra note 1245, p. 7.
\textsuperscript{1309} The Sofia City Court rejected the first bid for registration of UMO Ilinden PIRIN on formal grounds, by invoking various deficiencies and technical irregularities related to founding documents that are indispensable for establishing a political party. For instance, in the Court’s view, there were no indications that the initiative committee consisted of 50 Bulgarian citizens, as prescribed by the Political Parties Act. In addition, it purportedly found lapses regarding the founding declaration, disputed the applicants’ argument that the founding meeting was attended by more than the legally prescribed minimum of 500 persons, and finally contended that, allegedly, there has been no valid adoption of the party’s constitution. It should be recalled that police exerted pressure on the supporters of UMO Ilinden PIRIN by launching investigations to check identities, personal data and the signatures of persons who signed the founding declaration and the lists of the party’s members (5,778). The second attempt for registration was unsuccessful due to the fact that both Sofia City Court and the Supreme Court of Cassation found breaches of laws with the submission of the same list of members used in the previous case. Moreover, the goals detailed in the party’s constitution were construed as being rather more like those of a non-profit association than a political party. Finally, the applicants chose a rather different approach during the third attempt to have the party re-registered. Namely, they based their request on the premise that “\textit{since this Court (ECtHR-DT) had found the dissolution of the party in 2000 to be in breach of Article 11 of the Convention, the party had never ceased to exist}”. However, domestic courts treated this request as an ordinary motion for registration of political party and declared it ill-founded on the basis of their reasoning that “\textit{the party’s founders had not enclosed all the necessary documents}”. Ibid, paras. 9-37.
criticized by EU bodies, and by the then Vice President of the European Commission, Franco Frattini.\textsuperscript{1310} In the judgment, the ECtHR expressed concerns for some conduct attributed to both judicial and police authorities in Bulgaria in these three related cases. For instance, while rejecting the first bid for re-registration of UMO Ilinden PIRIN, “the Sofia City Court engaged in a protracted historical analysis of the applicant party’s symbols and the feasibility of its goals”, and expressed its view that “if registered, the applicant party would be banned on account of having the same goals and the same leadership as the one” previously dissolved in 2000.\textsuperscript{1311} As a matter of regret, the ECtHR underlined that “police in the Pirin region systematically summoned purported members of the applicant party, questioned them about the genuineness of their wish to join it, and in some cases elicited from them declarations to the effect that their wish was not genuine”.\textsuperscript{1312}

However, the ECtHR found no violation of ECHR Article 11 on the grounds that refusals for registration of UMO Ilinden PIRIN were not intended “to penalize the party on account of the views or the policies that it promotes”, but rather they were “exclusively based on failures to comply with the formal requirements of the law”.\textsuperscript{1313} It also reiterated what has been already stated in the Resolution of the CM with which the previous case was closed. Finally, it acknowledged that it was natural for domestic courts “to require a political party to enclose with its request for official registration an up-to-date list of its founding members”.\textsuperscript{1314} As a result, UMO Ilinden PIRIN is practically non-existent within the Bulgarian legal order, notwithstanding its long lasting judicial efforts to be recognized as political party capable for competition in the Bulgarian political arena.

6.3. The Overall Significance of ECtHR’s Judgments related to UMO Ilinden PIRIN on the Participation of Macedonian Minority in Public Life

The enforcement process of the first judgment that found a violation of Article 11 has revealed that the protection of of the right to form political parties that express unconventional views over some 'sensitive national issues' is inadequate, unless it ensured that they are able to engage in political activity.\textsuperscript{1315} Moreover, the Council of Ministers, "has proved...unable to exert a substantial, decisive influence in these situations, confirming the established, albeit challenged, state practice of viewing national minority questions as falling within each state's domaine reserve".\textsuperscript{1316} This case unfortunately

\textsuperscript{1310} M. Hajdinjak, Thou Shall Not Take the Names Ethnic or Minority..., supra note 1035, p. 122.
\textsuperscript{1311} ECtHR, Case of the UMO Ilinden – PIRIN and others v. Bulgaria (No.2), supra note 1308, para. 79.
\textsuperscript{1312} Ibid, para. 88.
\textsuperscript{1313} Ibid, para. 89.
\textsuperscript{1314} Ibid, para. 93.
\textsuperscript{1315} G. Gilbert, The Burgeoning Minority Rights Jurisprudence..., supra note 1260, p. 777.
\textsuperscript{1316} N. Sitaropoulos, Implementation of the European Court of Human Rights..., supra note 1245, p. 15.
provides strong support to claims that ECtHR judgments are largely ineffective in cases concerning the registration of political parties of those minorities that official state policy refuse to recognize.\footnote{Dia Anagnostou, \textit{Does European Human Rights Matter? Implementation and Domestic Impact of Strasbourg Court Judgments on Minority-Related Cases}, International Journal of Human Rights, Vol. 14, No. 5, 2020, pp. 721-743, p. 731.}

Bulgarian political and academic elite have invented the 'Bulgarian ethnic model' with a view to distinguishing themselves from neighboring countries, with which they associate ethnic tensions. This model of ethnic relations is purportedly a "synonym of stability, respect of habits and beliefs of other ethnic groups...mutual coexistence of monoethnic and multiethnic political parties", and moreover it essentially secures "equal and full rights of political representation of all ethnic minorities on the national as well as the local level, and (gives-DT) an opportunity to accommodate the interests of the different ethnic group's under a common denominator\textsuperscript{\textendash}1318 As we have seen, the 'Bulgarian ethnic model' enabled gradual acceptance of the political party representing the Turkish minority (MRF) into public life, though in return it had to abandon any minority rights agenda. Considering that other minority groups are either more or less represented (e.g. Roma) or excluded from the political processes (Macedonians, Pomaks), Rechel rightly deduced that the 'Bulgarian ethnic model' "serves primarily for political purposes", and simultaneously "sends a message to the European Union...claiming that Bulgaria has successfully 'solved' its minority problems and does not need any lessons in the protection of minorities\textsuperscript{\textendash}.\footnote{Y. Yanakiev, \textit{The Bulgarian Ethnic Model…}, supra note 1048, p. 70.}


The government stresses that the right to free and unrestricted access to media applies equally to persons belonging to various minorities in the country as it does to members of majority group.\footnote{Council of Europe, \textit{Third Report Submitted by Bulgaria…}, supra note 1056, p. 44.} Stripped of the possibility to receive various types of support from official institutions, persons belonging to the Macedonian national minority over the years have undertaken various initiatives to create their own printed media as well to cultivate their culture.

Currently, there is one newspaper published monthly, \textit{Narodna Volja (People’s Will)}, which mostly publishes articles on the Macedonian national minority in Bulgaria and the Republic of Macedonia.\footnote{M. Lenkova, \textit{Macedonians of Bulgaria…}, supra note 1135, p. 31.} There is also a bulletin called \textit{Makedonski Glas (Macedonian Voice)}, published occasionally, which deals specifically with domestic and international legal acts relevant to minority protection in Bulgaria, and their applicability to the quest of Macedonians to achieve minority status and enjoy the rights and freedoms that minorities in Bulgaria are supposedly entitled to. Persons responsible for these two newspapers suffered different types of pressures from authorities, and in one case, in 2012,
the police entered the venue where the bulletin *Makedonski Glas* was published and confiscated the whole issue.\textsuperscript{1322}

In the 1990s, two newspapers were published occasionally by people affiliated with the unregistered cultural organization UMO Ilinden, called *Skornuvane (Awakening)* and *Nezavisima Makedoniya (Independent Macedonia)*. Content was mostly in Bulgarian, but each issue contained several pages in Macedonian. Due to a combination of financial constraints and various pressures from the Bulgarian police, they ceased publishing after less than two years.\textsuperscript{1323}

If there is little space for persons belonging to Macedonian minority to launch and maintain various printed media on its own expense, the situation in electronic media is worse. As the Bulgarian Helsinki Committee underscored, the issue for Macedonian language broadcasting via national media has never been seriously considered a possibility, especially considering that the Turkish language, spoken by the country's huge minority, gets only 15 minutes of daily airtime.\textsuperscript{1324} Moreover, until recently, ethnic Macedonians in the Pirin region consistently reported various technical problems concerning the broadcasting of *Macedonian Television* (MTV) via local cable televisions. In one case, the broadcasting staff of a local cable TV highlighted that in fact "pressure from the security services" stood beyond the termination of broadcasting Macedonian Television.\textsuperscript{1325}

Finally, it must be noted that "the culture of the Macedonian minority has no financial or other support from the authorities", and activities in this field are mainly self-financed from persons affiliated with entities seeking official registration and legal recognition by the authorities.\textsuperscript{1326}

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\textsuperscript{1322} Interview with Stoyko Stoykov, editor in chief of the bulletin “Makedonski glas”, conducted on 28 October 2016 in Sandanski, R. Bulgaria.


\textsuperscript{1326} Ibid.
4.3. Minority Protection in Greece with Special Attention on the Position and Status of the Macedonian National Minority

In this section the legal framework for minority protection in Greece and the situation concerning the human rights and minority rights of persons belonging to the Macedonian national minority is comprehensively analyzed. To that end, this section is separated into two parts. The established writing pattern for the main chapter of this dissertation is by and large followed in the first sub-section, which deals with the legal framework prescribing rights to minorities, and the situation in several fields which are essential for maintenance of minority identity. The second sub-section examines the position and status of ethnic Macedonians in the country, where legal and political considerations arising from bilateral relations between Greece and Macedonia and their consequences on the situation of Macedonian minority are examined as well as issues arising from international human rights law.

A. Summary on the Framework for Protection of Human Rights and Minorities in Greece

1. Brief Historical Review of Minority Protection in Greece

The small Greek kingdom was established in 1830 at the London Conference, with active support from major European empires at the time, almost a decade after the first insurgency of Christian peasants against the Ottoman Empire, which erupted at 1821 in the Peloponnese.\textsuperscript{1327} To ensure the equality and civil rights of all inhabitants in the nascent Greek state, the London Protocol specifically named the Catholics in the country.\textsuperscript{1328} When it acquired Thessaly in 1881, Greece agreed to guarantee unrestricted observance of religious practice to its Muslim citizens, along with other civil and political rights granted to those of Greek origin.\textsuperscript{1329} However, Greek authorities faced significant minority challenges in the twentieth century, which “arose is the intersection of three interrelated parameters: domestic realities, foreign policy that involved the country such as bilateral agreements or the politics of neighboring countries and the attitudes of minority communities”.\textsuperscript{1330}

Being in the group of 'new and enlarged States' at the Paris Peace Conference of 1919, Greece was compelled to sign a minority treaty.\textsuperscript{1331} The \textit{Treaty concerning the Protection of Minorities in Greece}, concluded in Sevres 10 August 1920, basically reproduced the Polish treaty and the wording of

\begin{thebibliography}
\item \textsuperscript{1327} See: H. Poulton, \textit{The Balkans: Minorities and States...}, supra note 875, p. 173.
\item \textsuperscript{1329} V. Ortakovski, \textit{Minorities in the Balkans}, supra note 869, p. 55.
\item \textsuperscript{1330} E. Gazi, \textit{Constructing the National Majority and Ethnic/Religious Minorities in Greece}, supra note 1327, p. 306.
\item \textsuperscript{1331} J. Jackson Preece, \textit{National Minorities and the European...}, supra note 870, pp. 73-74.
\end{thebibliography}
its articles prescribing the rights of “nationals who belong to racial, religious or linguistic minorities”. As well as those provisions applying equally to all minorities, the Greek treaty included special guarantees and rights for some communities whose religious or cultural practices required special protection. Such was the case for Jews, Vlachs in Pindus, non-Greek monastic communities in Mount Athos, and the Muslim communities.

At the same time, Greece concluded bilateral conventions with two of its neighbors, which had a profound effect on its demographics, and especially affected minorities. The first of these, the Convention between Greece and Bulgaria concerning Reciprocal Emigration of Population, was mentioned in the section on Bulgaria. It will suffice to repeat that its principal effect was reduced numbers of Macedonian-speakers in the easternmost and central regions of what is known as Greek (Aegean) Macedonia.

The second such treaty was the Convention Concerning the Exchange of Greek and Turkish Populations of 1923, also known as the Lausanne Convention. Article 1 of this Convention prescribed that "there shall take place a compulsory exchange of Turkish nationals of the Greek Orthodox religion established in Turkish territory, and of Greek nationals of the Moslem religion established in Greek territory." The arrival of around 1.2 million Greek Orthodox refugees from Turkey significantly affected the ethnological composition of the Greek population, especially in the region of Greek Macedonia, where approximately 620,000 persons were settled. Moreover, for reasons set forth below, the Lausanne Convention continues today to provide the legal bases for the Greek system of minority protection. In sum, the system was "prefigured by the political choices made during the interwar period".

2. Who are Minorities in Greece?

A well known Greek scholar, Nicholas Sitaropoulos, once observed that minorities in Greece are a "taboo subject with 'dangerous implications' for its ethnic and territorial integrity". This observation is supported by the fact that Greece officially recognizes only one minority on its territory, which is religious in nature. Namely, by virtue of Treaty of Lausanne of 1923, ‘the Moslem minority’ of Western Thrace, in present day Greece, and ‘the non-Moslem minorities’ (Greek-speaking Orthodox Christians) in

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Istanbul and in the two Aegean islands (Gokceada and Bozcaada), in present day Turkey, were exempted from mandatory population exchange and were granted certain rights in education and religious affairs. In this treaty, Greece employs the term 'Muslim minority' for all Muslims of Western Thrace, regardless of their ethno-linguistic origin. On the one hand, Greek government concedes that “this minority consists of three groups whose members are of Turkish origin (50% of the minority population), Pomaks, a native population that speaks a Slavic dialect and espoused Islam during Ottoman rule (35%) and Roma (15% of the population)”.

Moreover, it regularly declares that the principle of individual self-identification is secured in a manner that “persons belonging to the Muslim minority in Thrace are free to declare their origin, speak their language, exercise their religion and observe their particular customs and traditions”.

On the other hand, Greece consistently and vehemently refuses to recognize the Turkish minority in Western Thrace.

Indeed, attempts for formal recognition of the Turkish minority are rejected, on the basis that such an act would be not "only unacceptable but [would] not correspond to existing realities and the actual composition of the Muslim minority, in accordance with objective criteria". In other words, the semiotic confusion of terms employed for reference of the country's only recognized minority is employed to sow doubt upon its existence, with claims, for example that “part of the Muslim minority is of Turkish descent (in Greek tourkogenis) but not Turks (tourkos), a term that defines the citizens of Turkey”.

Regardless of the official position, in fact, some legislative measures concerning the protection and privileges of Jewish community, originally adopted almost century ago, remain in force. If we include the regulations of language and religious freedoms for the Armenian community, we could reasonably conclude that Greek law effectively recognizes three minorities, i.e. Jews, Armenians and the 'Muslim minority' in Western Thrace.

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1342 Note that in the 1950s, the Greek state used the term ‘Turks’ in reference to all Muslims in Western Thrace. At the same time, “minority schools were referred to as Turkish schools and the Turkish language became obligatory for all segments of the Muslim minority, including Pomaks, who developed close ties with ethnic Turks and Turkey as a result”. Nevertheless, following the deterioration of Turkish–Greek bilateral relation as a consequence of harassment and mobs attacking the Greek community of Istanbul, and moreover, clashes between Greeks and Turks in Cyprus, this policy was abandoned and the Greek government reverted to its previous use of the term ‘Muslim minority’. See: Theresa Papademetriou, Greece: Status of Minorities, The Law Library of Congress, October 2012, p. 29.
1344 T. Papademetriou, Greece: Status of Minorities, supra note 1342, p. 7.
If this is indeed, the official position, the on-the-ground reality in Greece is quite different, with many other ethnic groups who satisfy the criteria to be designated as minorities. Two renowned Greek scholars in the field, Christopoulos and Tsitselikis, point out that "in the course of the 20th century, Turks, Macedonians, Chams, Romanian Vlachs, Bulgarians, Armenians and Jews have claimed their national character or have been recognised as national minorities". However, the legal literature often avoids denoting some minorities with a separate ethnic identity, arguing that either religion or mother tongue distinguishes these groups within the "concept of a single nation, with common creed and language". This reasoning was successfully disputed by former the vice-president of the ECtHR and legal scholar, Christos Rozakis, who disaggregated minorities in Greece into "two main categories: first, those bearing one major distinctive feature (religion, language, cultural ties) and second, those which are more complex in character, namely presenting more than one major difference with regard to the rest of the population (majority)". It is clear from such distinction that first category encompasses the religious (Catholics, Old Calendarists, Protestants, Jehovah's Witnesses etc.) and linguistic minorities (Arvanites). In the second category, one may "include all those traditionally linked with ethnic origins other than the predominant Hellenic origin", such as Turks, ethnic Macedonians, Vlachs, Slavic-speaking Pomaks, Jews, Armenians, Roma etc.

Several remarks are warranted with regard to the official attitude towards recognizing minorities – or not – in Greece. First, there is a consequential inference that minorities in Greece are only acknowledged “contingent upon their recognition through treaty law, which effectively means that the only one recognized in Greece is the Muslim one”. The main reason for recognizing a Turkish-speaking population in Thrace along with the Slavic-speaking Pomaks as a 'Muslim minority' can be traced to the nation-building process in Greece. Since the 1830s, religion (Orthodox Christianity), through the Greek pre-eminence over the Ecumenical Patriarchate of Constantinople (Istanbul), served as a major tool for the cultural spread of Greek national ideas and the expansion of the once tiny Greek kingdom into adjacent non-Greek speaking territories. In effect, the “Muslim minority has played the role of mirror-image, an external Other, from which the Greek nation has differentiated itself in terms of religion and ethnic origin”. In this context, protecting their rights to education and religious affairs

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1347 Ibid.
1348 See: S. Stavros, The Legal Status of Minorities in Greece Today..., supra note 1345, p. 9.
1351 Ibid.
1352 N. Kyriakou, Minority Participation in Public Life..., supra note 1337, pp. 4-5.
1354 E. Gazi, Constructing the National Majority and Ethnic/Religious Minorities in Greece, supra note 1327.
need not necessarily imply that minority rights are a central feature of Greek democracy. On the contrary, this minority regime was established via a reciprocal bilateral treaty, which effectively means that "respect for the rights of the minority of Western Thrace was conditional upon Turkey's respect for the rights of its Greek minority".\textsuperscript{1356}

Greece belongs to a group of EU member-states (France, Belgium, Sweden) that intentionally avoids collecting data on the ethnocultural, linguistic and religious origin of its population. Greek authorities contend that such activity by definition "would contravene the law on personal data protection".\textsuperscript{1357} Basically, the 1951 census was the last state-launched statistical data collection to record the citizens' mother tongue and religious affiliation. At that time, Turkish was recorded as mother tongue of 179,895 citizens (2.4%), 'Slavic' language was registered as the mother tongue of 41,017 persons (0.5%), Vlach language of 39,855 persons (0.5%) and some 22,736 (0.3%) persons were reported as Albanian-speakers.\textsuperscript{1358} As to religious affiliation, Orthodox Christians comprised up to 97.8% of the population, with 112,665 (1.4%) persons declaring themselves as Muslims, 28,430 (0.4%) as Catholics, and 6,325 (0.1%) as Jewish. All of these numbers are disputed, however, especially those concerning Macedonian-speakers (designated as ‘Slavic-speakers’), since the census was conducted only two years after the end of the Greek Civil War in 1949, which fragmented the Macedonian-speaking population in Northern Greece.\textsuperscript{1359}

With this mind, it seems that developing an accurate projection of the ethnological composition of the population in Greece is almost impossible. Nevertheless, various human rights bodies have tried. ECRI, for instance, indicated that traditional minority groups and migrants combined comprise "between 5-10% of the population of Greece with the potential for further growth".\textsuperscript{1360} Additionally, Turks, Pomaks and Roma of Western Thrace, colloquially designated the 'Muslim minority', are projected to number somewhere between 110,000 and 130,000 persons.\textsuperscript{1361} Greek Helsinki Monitor (GHM) operates with slightly lower number, less than 100,000, linguistically disaggregated between 50,000 Turkish speakers, 30,000 Slavic-speaking Pomaks and 10,000 Romani speakers. Notwithstanding their linguistic differences, it is assumed that a "very large majority of all Muslims, including Pomaks and Roma, have today a Turkish national identity".\textsuperscript{1362} In respect to other ethnolinguistic minority groups, such as

\begin{footnotes}
\item[1357] T. Papademetriou, \textit{Greece: Status of Minorities}, supra note 1342, p. 27.
\item[1359] Ibid.
\end{footnotes}
Arvanites (Orthodox Christians who speak Albanian-related vernacular) and Vlachs (Aromanians), some researchers have estimated their numbers to be around 200,000 each.\textsuperscript{1363} Ambiguities about the number of ethnic Macedonians in the country will be addressed below. As to religious minorities, it is assumed that apart from those discussed above, there are another 100,000 Muslims living in various regions of Greece, as well as some 500,000 Orthodox Christians who are Old Calendarists, and as such are outside the jurisdiction of the Church of Greece. Also, Greek Catholics are estimated to number around 50,000, Protestants at 30,000, Jews at 5,000 etc.\textsuperscript{1364} All in all, GHM has concluded that “among the residents of Greece, 7% have a non-Greek national identity and another 7% have a Greek national identity but also an ethno linguistic and/or religious specificity”.\textsuperscript{1365}

3. Legal Framework Presupposing Human Rights and Minority Rights in Greece

The highest legal act in Greece is short of provisions directly prescribing minority rights. Nevertheless, the core principles of modern human rights law are embodied in the constitution and positioned among the fundamental values of the Greek legal system. Accordingly, Article 5 (2) stipulates that “all persons living within the Greek territory shall enjoy full protection of their life, honour and liberty irrespective of nationality, race or language and of religious or political beliefs”.\textsuperscript{1366} This provision emanates from the principle of non-discrimination, and represents “the only constitutional provision that implicitly refers to minority rights”.\textsuperscript{1367} Article 4 (1), however, is another constitutional provision inspired by the principle of equality. It proclaims that all Greek citizens shall be equal before the law.\textsuperscript{1368} This equality clause has been interpreted by Supreme Administrative Court to clearly mean "any arbitrary differentiation among Greek nationals by the Greek state is proscribed".\textsuperscript{1369}

As a member state of the EU, Greece is bound by various regulations and directives that touch upon human rights. For example, the Greek Parliament in 2005 passed the Race Equality Directive 2000/43, adopted from the Council of the EU. Basically, Law 3304/2005 on the ‘Implementation of the principle of equal treatment regardless of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation’ prohibits both direct and indirect discrimination. In concrete terms, its Article 6, among other things, envisages that the adoption of “special measures aiming at preventing or

\textsuperscript{1363} Ibid, p. 3.
\textsuperscript{1364} N. Sitaropoulos, Freedom of Movement and the Right to a Nationality,..., supra note 1338, p. 207.
\textsuperscript{1365} GHM, Report about Compliance with the Principles of the FCNM, supra note 1362, p. 3.
\textsuperscript{1367} GHM, Report about Compliance with the Principles of the FCNM, supra note 1362, p. 1.
compensating for disadvantages on the grounds of racial or ethnic origin shall not be considered discrimination”. 1370

For ninety years, the Treaty of Lausanne provided the basic legal grounds and "mantra for the official position of Greece in relation to its obligations towards the Muslim minority of western Thrace".1371 Accordingly, persons belonging to this minority are the sole beneficiaries of all legal acts prescribing certain rights for minorities, and from "the only case of positive discrimination formally provided for by the legislature", namely the above-mentioned law implementing the Race Equality Directive of the EU.1372 Furthermore, since 1991, the Greek government has followed a new (relatively) policy in respect of its only recognized minority, inspired by principles of "isonomia" i.e. equality before the law and "isopotelia" i.e. equality of civil rights.1373 Over this period, several restrictive measures negatively affecting the 'Muslim' minority have been removed.1374

Greece is a state party to several multilateral treaties crafted by the UN and Council of Europe which prescribe human rights and rights relevant to minorities. Yet, Greece, along with Turkey, are the only two countries of those reviewed here that have not ratified the FCNM. Greece has not signed the ECRML, either.1375 Moreover, its adherence to the terms of the Treaty of Lausanne, in reality, served as a justification for the 30-years it took to ratify the ICCPR, whose Article 27 is widely considered to present, at least in part, a customary law in the field of minority rights. As Grigoriadis observed, Greek authorities feared that this article "would not only increase the level of minority rights protection but also give them a collective character, due to reference to the collective exercise of minority rights".1376 Finally, it is to be noted that ECRI constantly urges the Greek authorities to ratify Protocol No. 12 to the ECHM.1377

On the one hand, Article 28 of the constitution prescribes that ratified treaties are integral parts of the Greek legal system and prevail over any legal acts and provisions that contravene either the purposes or the individual provisions of such treaties.1378 However, in the area of minority rights, this constitutional provision applies only in respect to the Treaty of Lausanne, regardless of other multilateral treaties to which Greece is party. Indeed, in its second report about implementation of ICCPR, the Greek government highlighted that this bilateral treaty in some areas provides “more enhanced protection than

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1370 European Commission Against Racism and Intolerance (ECRI), ECRI Report on Greece (fourth monitoring cycle), 15 September 2009, para. 20.

1371 N. Kyriakou, Minority Participation in Public Life..., supra note 1337, p. 4.


1373 See: GHM, Report about Compliance with the Principles of the FCNM, supra note 1362, p. 2.

1374 I. Grigoriadis, On the Europeanization of Minority Rights Protection..., supra note 1356, p. 28.


1377 European Commission Against Racism and Intolerance (ECRI), ECRI Report on Greece (fifth monitoring cycle), 24 February 2015, para. 2.

the contemporary minority rights instruments”.\textsuperscript{1379} UN Special Rapporteur on Minority Issues has acknowledged that bilateral agreements in the field may indeed offer context-specific protection for particular minority groups, adjusted to their real needs and challenges.\textsuperscript{1380} Nonetheless, since international human rights law, including minority rights, have precedence over bilateral treaties, it urged Greek authorities “to consider its obligations with respect to minority populations as arising within the post-1945 legal framework of modern human rights treaties and jurisprudence based on the principle that protection of human rights and fundamental freedoms, including those of persons belonging to minorities, is the responsibility of the State in which the persons and/or minority groups reside”.\textsuperscript{1381}

3.1. Interpretation of the Term ‘Minority’ in the Greek Legal System and Review of the Legal Acts that Differentiate between Persons of Greek and non-Greek Ethnic Origin

The Greek legislation does not define in a legal sense the notion of ‘minority’. To put it clearly, interpretation of this term in Greece is "too restrictive to meet current standards: it focuses on the historical understanding of 'national minorities' created by the dissolution of empires or agreements concluded at the end of wars".\textsuperscript{1382} In line with this legacy, in Greece, the term 'minority' in itself encompasses solely those ethnic groups strictly identified in bilateral treaties, so rights ascribed to these communities are guaranteed solely on reciprocal basis.\textsuperscript{1383}

Conversely, the conventional meaning of the notion of ‘minority’ in Greece might be derived indirectly, by analyzing legal acts that differentiate between homogeneis and allogenesis, or persons of Greek descent and Greek citizens of non-Greek descent.\textsuperscript{1384} The repealed Article 19 of the Citizenship Code stipulated that “a person of non-Greece descent [“allogenis”] who leaves the Greek territory with no intent to return may be declared to be a person who has lost the Greek nationality”.\textsuperscript{1385} The Supreme Administrative Court decided to employ both subjective and objective criteria to distinguish the allogenesis from homogeneis and gave the following explanation in respect to application of this article for citizenship deprivation:

"Greek citizens of non-Greek descent are those whose origin, whether distant or not, is from persons coming from different nations and who, by their actions and general behavior have expressed

\textsuperscript{1379} ICCPR, Second Periodic Reports of States Parties: Greece, supra note 1341, para. 192.
\textsuperscript{1380} UN HRC, Report of the Independent Expert on Minority Issues: Mission to Greece, supra note 1343, para. 86.
\textsuperscript{1381} Ibid, paras. 80, 86.
\textsuperscript{1382} Ibid, para. 81.
\textsuperscript{1383} Ibid.
\textsuperscript{1384} European Commission Against Racism and Intolerance (ECRI), Third Report on Greece. 15 September 2009, para. 60.
\textsuperscript{1385} N. Sitaropoulos, Freedom of Movement and the Right to a Nationality..., supra note 1338, p. 212.
sentiments testifying the lack of Greek national consciousness, in a way that they cannot be considered as having assimilated into the Greek nation".  

By virtue of Article 19, which was in force from 1955 until 1998, 60,004 persons lost their citizenships.  

Turks comprised the vast majority of persons in this group, but considerable number of Macedonians, Jews and Armenians were also stripped of their citizenships under the same conditions.  

A 1982 regulation, enacted as part of a 'reconciliation package' for those expelled during the Greek Civil War, allowed free return to the country and reacquisition of once stripped citizenships solely to persons of 'Greek origin'. The discriminatory language used in this legal act excludes others, particularly ethnic Macedonians, comprising up to half of those who left Greece and were affected by punitive measures. Legal aspects of this issue are analyzed in more detail in the next sub-sections. In the final analysis, the existence of legal acts that distinguish between Greek citizens on the basis of their ethnicity leads to a conclusion that "in fact, contrary to official policy, Greece does recognize the existence of ethnic if not national minorities on its territory".  

4. Freedom of Association  

The right to freedom of association of minorities in Greece deserves special mention. In numerous cases initiated by persons affiliated with Turkish and Macedonian minorities, ECtHR has sanctioned the State for interfering in the effective exercise of this right. In essence, the official position opposing recognition of any ethnic minority in the country other than the ‘Muslim’ minority in Western Thrace is the main source of all deficiencies in this area. The Greek courts have consistently refused to register associations that included appellations such as ‘Turkish’ or ‘Macedonian’ in their official designations. In the court's reasoning, registration of such entities would imply recognition of these two minorities, in a way that would harm public order and national security. Needless to say, associations of this type have a fundamental, if not crucial role, for “preservation of community identity and culture".
For instance, in the case of Emin and others v. Greece, representatives of the Turkish minority in Greece established an association and applied to the domestic court to register it under the name ‘Cultural Association of Turkish Women of the Prefecture of Rhodopi’. Both lower and higher courts rejected the application, stressing that registration “would be against the public order on the ground that the title of the association would create the impression that there exists in Greece a Turkish (national) minority as contrasted to the religious one provided for by the 1923 Lausanne Treaty”. In another case, a domestic court decided to dissolve the association ‘Turkish Association of Xanthi’, established in 1936, because it persisted in using the term ‘Turkish’ despite previous warnings. In the court’s view, the practice constituted a threat to ‘public order’ and ‘national integrity’. In both cases, the ECtHR found Greece in violation of the right to freedom of association, as protected under ECHR Article 11. This case-law seems to have barely impacted the domestic court practice in subsequent years, though, since it "appears that the ethnic Turkish organizations which were the subject of the above-mentioned judgments have not been registered". The situation is similar for organizations with the term ‘Macedonian’ in their names.

The legal obstacles and jurisprudence that prevents ethnic Turks and Macedonians from registering associations which might foster their ethno-cultural identities, effectively violates their right to self-identification and "strikes at the heart of democratic values". Although the Turkish minority enjoys the right to practice and promote its religion in the "public domain", “the right to collective identification as 'Turkish' is banned". Ethnic Macedonians find themselves in an even more challenging situation, since their very existence as a community with recognizable identity markers (language, culture) is denied altogether. At this stage, as ECRI observed, “the question of the recognition of the right to freedom of association” of persons belonging to these two minorities “has still not been resolved”, and the Greek government should endeavor to begin a dialogue with them in order “to solve these issues and other matters of concern of these communities”.

5. Educational Rights of ‘Muslim’ Minority in Western Thrace

Education is another field where one can observe a tendency towards acculturation and the gradual assimilation of minority groups. Specifically, the constitutional Article 16 stipulates that one of the aims of education is "development of [the pupils’ - DT] national and religious consciousness". Considering the government’s stance on various ethnic groups in the country, Christopoulos and

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1397 See: T. Papademetriou, Greece: Status of Minorities, supra note 1342, p. 32.
1398 ECRI, ECRI Report on Greece (fourth monitoring cycle), supra note 1370, para. 112.
1399 N. Kyriakou, Minority Participation in Public Life..., supra note 1337, p. 8.
1400 Ibid.
1401 ECRI, ECRI Report on Greece (fourth monitoring cycle), supra note 1370, p. 8.
Tsitselikis noted that "the aim of the Greek constitutional legislator is the exclusive development of the Greek consciousness and not of any national consciousness". 1403

The basis for minority education of Muslim minority of Western Thrace is found in the Lausanne Treaty. Article 40 of this treaty states that the Muslim minority have the right to establish, manage and control at its own expense schools and other establishments for instruction and education. 1404 Currently, some 198 minority primary schools operate in the region; all are private schools governed by committees elected by the parents of pupils enrolled in the schools. 1405 There are also two minority secondary schools in the cities of Xanthi and Komotini, plus two Koranic schools (medrese) in Xanthi and Echinos, even though the latter type of school was not strictly envisaged with the Treaty of Lausanne. 1406 Most of the teachers employed in these schools to give lessons in Turkish are graduates of the Special Pedagogical Academy of Thessaloniki, while others earned their qualification at Turkish universities.

In general, the minority education program in Western Thrace differs from the state system in its focus on the Islamic religion and its provision of some compulsory subjects in Turkish language, while the rest of the curriculum is in Greek. 1407 For instance, in primary schools, "mathematics, religion and physics are taught in Turkish, geography and history in Greek, and the Koran in Arabic in accordance with Muslim tradition". 1408 Several years ago, the secondary schools in the region introduced Turkish as a second language for pupils of Turkish origin, as an optional rather than compulsory subject. 1409

Obviously, Turkish is not the mother tongue of all of the minority pupils in the region, though. The Pomaks, for example, speak a local vernacular which bears similarities to both modern Bulgarian and Macedonian languages. 1410 Moreover, in accordance with domestic legislation, "minority education is addressed to Moslem students, setting as the criterion their religion, and not, as one would expect, language". 1411 Nonetheless, since a bilateral treaty is main spiritus movens of minority education in Western Thrace, Turkey, on its part, occasionally provides schoolbooks for pupils enrolled at minority primary schools. 1412 In the end, since all minority pupils regardless of their linguistic origin are put under the umbrella term 'Muslims', they "enjoy" the “right” to be educated in Turkish.

Another positive measure for the benefit of 'Muslim' minority was adopted in higher education. Starting from 1996, a special quota of 0.5% has been assigned for admission of minority students at state-owned universities, and the number of minority students enrolled notably increased in subsequent

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1403 D. Christopoulos, K. Tsitselikis, Legal aspects of religious and linguistic otherness..., supra note 1346, p. 84.
1404 T. Papademetriou, Greece: Status of Minorities, supra note 1342, p. 34
1405 Ibid.
1406 ICCPR, Initial Reports of States Parties: Greece, supra note 1340, para. 921.
1407 S. Stavros, The Legal Status of Minorities in Greece Today..., supra note 1345, p. 18.
1408 ICCPR, Initial Reports of State Parties: Greece, supra note 1340, para. 920.
1409 ECRI, ECRI Report on Greece (fourth monitoring cycle), supra note 1370, para. 59.
1411 D. Christopoulos, K. Tsitselikis, Legal aspects of religious and linguistic otherness..., supra note 1346, p. 85.
At the other end of the system, however, the lack of bilingual kindergartens in Western Thrace is an oft-mentioned problem, highlighted both by community members and various human rights bodies. The UN Special Rapporteur on Minority Issues noted that kindergartens of this type would "allow better knowledge of both Turkish and Greek from an early age therefore providing benefits in terms of integration, and enabling greater choice of whether to go to minority school or Greek public primary schools".

6. Political Participation of Minorities in Public Life

Several positive and negative tendencies are apparent in the field of participation of minorities in political and public life in Greece too. As in other fields reviewed here, positive steps are solely for the 'Muslim' minority in Western Thrace, whereas non-recognized communities are sidelined from these processes. One positive tendency is a customary practice of electing at least two representatives from Muslim minority (predominantly of Turkish origin) as deputies at each parliamentary elections. These deputies, however, are almost always affiliated with mainstream political parties rather than parties specifically advocating for minority-related issues. Indeed, the 3% threshold, introduced in 1990 and applied to all political parties, prevents 'Muslims' of Western Thrace from being represented in the Greek Parliament with 'genuine' minority deputies.

At the local and regional levels, some 120 members of this minority have recently been elected as either municipal or regional councilors in municipal units and prefectures in the region. In those municipalities where Muslims comprise the majority they have also elected mayors. Additionally, guided by principles of equity and participation of minority in public administration, the Greek government introduced affirmative action measure aimed at increasing the proportion of the Muslim minority in civil service. Law 3647/08, which prescribes a quota of 0.5 % in the civil service, is a “positive development in addressing the high level of unemployment (60% according to some estimates) among members of this minority”. Even so, the concrete measures adopted towards achieving this target remain rather weak.
B. Macedonian National Minority in the Republic of Greece

This sub-section is devoted to the status and rights of ethnic Macedonians in Greece. It begins with a summary outlining the basic postulates of the Greek national position in respect to the 'Macedonian question' in general, and about the formation of the Macedonian ethno-cultural identity. Then, the ‘name dispute’ between Greece and Macedonia is briefly reviewed, mainly through the lens of its affect on ethnic Macedonians in Greece. The point is to show that if these seemingly unrelated factors in the position and present status of the Macedonian minority in Greece are neglected, any conclusion drawn on the subject are problematic.

a) Greek Position on the ‘Macedonian Question’

Before analyzing the present situation of the Macedonian national minority in Greece, it is worth briefly outlining the contours of the Greek narrative on the whole corpus of issues related to the 'Macedonian question'. Only through a genealogy of Greek national position on this question can one achieve an understanding of the Greek state’s official policy today, which denies the existence of a separate ethno-cultural group called Macedonians in its territory.

To begin, Greeks today generally believe that in ancient times Macedonians were a "Hellenic tribe", and accordingly, "their names...and almost all their dialectic word-forms coincide with the Greek and differ from the Thraco-Ilyrian language". Then they allege that the Greek character has remained continuous in Macedonia from the classical period through the Byzantine Empire until modern times, on the premise that "after the appearance in the Balkans of the Slavs and Bulgars (6th and 7th centuries AD), geographical area of Macedonia...continued to be bulwark and bastion of the Greek race, just as it had been in antiquity." Supposedly, even in the 19th century Greece, “nobody ever cast doubt on the Greekness of the Macedonians, even though it was entirely clear that many of them spoke non-Greek Slavic, Romance and Albanian dialects”.

Evangelos Kofos identified three zones by reviewing 19th century Macedonian ethnographies. According to Kofos, whereas the northern zone was "inhabited by Slav-speaking population of either Bulgarian or Serbian orientation", the southern zone had “a distinct Greek-speaking population”. Finally, the central or ethnically mixed zone had Greek and Slav-

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1420 Nicholas Andriotes, History of the Name “Macedonia”, in Macedonia: Past and Present, Institute for Balkan Studies, Thessaloniki, 1992, pp. 11-16, pp. 11-12.
speaking Christians, where in terms of national allegiances "Slav-speakers could be split into Greek, Bulgarian and Serb factions, even within the same village community". Based on such reasoning, Greek scholars have argued that "the term Macedonia has historically acquired several meanings, but never before has it symbolized the national character of a separate Slavic people".

A brief of the ‘explanation’ provided by Greek scholars about the genesis of Macedonian ethnocultural identity, both in the Republic of Macedonia and its neighboring countries, sheds important light on this subject. As in the Bulgarian narrative, the end of WWII and the creation of Yugoslavia serves as the starting point for the Macedonian nation-building process. First and foremost, Greek scholars argue, due to geopolitical circumstances, Yugoslavs opted for a one-sided solution on the strategically important 'Macedonian question', but were faced with "major obstacle" on their quest, namely "the pro-Bulgarian feeling and orientation of a large segment of the population of Yugoslavia." However, in the words of Kofos, who borrows medical imagery in a rather unconventional manner, "a novel approach was chosen: a surgical-type operation for the mutation of the indigenous Slavonic inhabitants and their transformation into ethnic 'Macedonians'." Prior to this alleged 'forcible conversion' of the ethnic self-awareness, Spyros Sfetas contends, "the Slav population used the term (Slav-) Macedonians as a geographical term, but also as an anodyne term that could neutralise the perhaps dangerous public self-chacarterisation of 'Bulgarian' in Yugoslavia and Greece, and which could express a localism with the meaning of 'autochthon' in contrast to the migrants, the Serb settlers or the Greek refugees". Overnight, during the so-called 'mutation process', "Yugoslavia's 'South Serbs' (as they were till 1941, becoming 'Bulgars' after the occupation of their land by the Bulgarian army) were exhilarated to discover that, since before recorded time and without knowing it, they had been 'Macedonians'". In this construction, the success of this process among the Macedonian population was dependent upon several interdependent preconditions. Consequently, the local language of this population, "usually described as a western Bulgarian dialect", via the process of 'linguistic mutation', transformed into a "'Macedonian' literary language". Supposedly, the authorities had manipulated historical facts and figures in order to establish a century old tradition of the 'new nation' for "well over 13 centuries, back to the time of the

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1424 Ibid.
1426 E. Kofos, National Heritage and National Identity..., supra note 1423, p. 316.
descent of the Slavic tribes in Macedonia". Apart from the three basic features (new identity, language, history), the whole 'mutation process' also needed "national aspirations beyond their 'boundaries', which they found in their 'brethren' living under foreign rule and awaiting liberation". Hence, this theory suggests, Macedonian historiography was directed to establishing the missing link, by inventing "the existence of 'Macedonian' minorities in all three neighboring countries".

On the basis of such argumentation, then, "the Greeks reject outright the existence of a 'Macedonian nation', 'Macedonian language' and even a 'Macedonian republic'", even though they seemingly "do not dispute the existence of a nation, a language or a republic after 1944". To put it more clearly, the Greeks "refuse the legitimacy of the appropriation of the Macedonian name for defining a Slavic population in the Balkans", since in their narrative, "the name by itself is a cherished historical feature, an inseparable element of Greek cultural heritage for well over two and a half millennia".

b) The ‘Name Issue’ between Greece and Macedonia and its reflection on the Macedonian minority

After the Republic of Macedonia declared its independence, Greece objected to the use of the designation ‘Macedonia’ as the denomination of its northern neighbor. On practical grounds, Greece alleged that the name as such implies territorial claims on its northern province called Greek Macedonia. Moreover, Greece effectively used its position as a member-state of the EU to prevent the recognition of the new state under its constitutional name, Republic of Macedonia. Greek scholars have invoked the principle prior in tempore potior in jure with a view to endorse the Greek ‘exclusive legal entitlement’ to the name ‘Macedonia’. In their view, Greece holds historic title to the name ‘Macedonia’, since it used this name long before it was introduced in Republic of Macedonia. As evidence of this alleged continuous use, they point out that Greece consistently protested the use of the contested name by its neighbor country (the persistent objector rule). Against these argument, a

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1431 Ibid.
1432 J. Koliopoulos, Plundered Loyalties: Axis Occupation..., supra note 1429, p. 113.
1433 E. Kofos, National Heritage and National Identity..., supra note 1423, p. 316.
1435 Ibid, p. 300.
leading authority in international law, Louis Henkin, concluded that "there appears to be no basis in international law or practice for Greece's position" that Macedonia should change its name.\textsuperscript{1440}

Apart from the legal arguments, the Macedonian national identity as such, combined with a frequently underestimated problem of the non-recognized Macedonian minority in Greece, lies at the core of the name dispute.\textsuperscript{1441} Former Greek Prime Minister Konstantinos Mitsotakis admitted that the issue of a Macedonian minority stood behind the Greek intransigent opposition to the constitutional name of the Republic of Macedonia. In his words, "what had concerned me from the very beginning was not the country's name...The problem for me was to avoid the emergence of a second minority problem in Western Macedonia", i.e. the region where Macedonian minority comprise sizeable portion of the total population.\textsuperscript{1442} Admittedly, Mitsotakis conceded that "for me, the aim had always been that the Republic should clearly state that there is no Slavomacedonian minority in Greece and to commit itself through international treaties to stop all irredentist propaganda against Greece".\textsuperscript{1443}

These statements are confirmed by official Greek actions in the early stages of the 'name issue'. Indeed, when the Greek government, on 4 December 1991, spelled out its conditions for recognizing the Republic of Macedonia,\textsuperscript{1444} it asked the leadership of the new independent state: 1) to stop using the name 'Macedonia', which they claim has solely geographic rather than ethnic meaning; 2) to assure that they harbor no territorial claims against Greece; and lastly 3) to acknowledge that there is no Macedonian minority in Greece.\textsuperscript{1445} Similar arguments were invoked during the review of the Republic of Macedonia’s application to join the UN. A Greek Memorandum submitted to the Secretary General of UN alleged that if Macedonia was accepted in the UN under its constitutional name, regional stability would be endangered in the long term.\textsuperscript{1446} In support of this claim, they cited from the preamble to


\textsuperscript{1441} A renowned Greek historian, a specialist on the subjects ‘Macedonian Question’ and Balkan identities and professor at the University of Macedonia in Thessaloniki, Vasilios Gounaris, has stated clearly that “sole reason because of which we discuss about the problem with the name of a country is the question of identity. For us, there wouldn’t be a problem at all to accept the constitutional name Republic of Macedonia as such, if all sides accept that there are two distinct ethnic communities in the country, namely Slav-Macedonians and Albanian Macedonians. I would say that even the change of the name of a country is not fundamental. Indeed, even if we reach solution, the debate concerning identity will surely continue indefinitely until a distinction is being made between Macedonians in your country and the Greek Macedonians. Certainly, I do not oppose that you are Macedonians, but a different sort from the Greek Macedonians”. See: Weekly Magazine ‘Globus’, \textit{The Name of the State is Not a Problem, but Identity of the People (in Macedonian),} Thessaloniki, 21 July 2009. Interview is available online at: [http://www.globusmagazin.com.mk/?ItemID=57FA2ED5842C7645B138BC107220EDEB](http://www.globusmagazin.com.mk/?ItemID=57FA2ED5842C7645B138BC107220EDEB) (retrieved on 29 December 2016)

\textsuperscript{1442} Θέδωρος Σκλαλάκης, \textit{Στο όνομα της Μακεδονίας} [Theodoros Skylakakis, \textit{In the name of Macedonia}], Athens, 1995. The foreword is written by Konstantinos Mitsotakis.

\textsuperscript{1443} Ibid.


Macedonia’s, claiming that it makes "direct references to the annexation of the Macedonian provinces of Greece and Bulgaria". Furthermore, they argued, constitutional Article 49,\footnote{As already mentioned elsewhere in the dissertation, Article 49 of the Constitution of the Republic of Macedonia proclaims that authorities care for the status and rights of those persons belonging to the Macedonian people in neighboring countries. Roudometoff rightly noted that ‘disputed’ Article 49 of the Macedonian Constitution “is indeed similar to Article 108 of the Greek constitution”, but not a single foreign authority has ever lodged a complaint in respect to the latter or interpreted as being a pretext for Greece’s interference into internal affairs of other States. See: V. Roudometoff, Collective Memory, National Identity…, supra note 1122, p. 30.} did not exclude the possibility of Macedonia meddling in "the internal affairs of neighboring states on the pretext of issues concerning the 'the status and the rights of alleged minorities'".\footnote{Memorandum of Greece…, supra note 1446.}

On 7 April 1993 the UN Security Council confirmed that R. Macedonia had fulfilled the conditions for membership of the UN, but recommended to the General Assembly that until “the difference that has arisen over the name of the State” has been resolved, within the UN, the state should be ‘provisionally’ referred to as “the Former Yugoslav Republic of Macedonia”.\footnote{UN Security Council, Resolution 817/93, S/RES/817/93, Adopted on 7 April, 1993.} As Kofos declared, this ‘temporary reference’ (which lasts 25 years) obviously presents “another concession” by the international community to “the Greek argument that the ‘constitutional’ state denomination of FYROM could negatively affect the promotion of peaceful and good neighborly relations among the peoples and the state in the region”.\footnote{Evangelos Kofos, Greece’s Macedonian Adventure: The Controversy Over FYROM’s Independence and Recognition, in Van Coufoudakis, Harry Psomiades, Andre Gerolumatos (eds.), Greece and the Balkans: Challenges and Opportunities, New York, 199, pp. 361-394, p. 369.}

Nevertheless, since the dispute began in the early 1990s, security concerns supposedly arising from Macedonian constitutional name were invoked as a means "to prevent the fomentation of a minority question, chiefly through pressure for the return of Slav-Macedonians who had fled Greece in the period 1944-9".\footnote{Ibid, p. 607.}

Soon after, the ‘name issue’ evolved into a “global cultural war”, as the Greek’s accused the Republic of Macedonia of “appropriating” its symbols, traditions, myths and even the territory associated with the name ‘Macedonia’.\footnote{Anna Triandafyllidou, National Identity and the ‘Other’, Ethnic and Racial Studies, Vol. 21, No. 4, 1998, pp. 593-612, p. 604} In that manner, it transformed its northern neighbor into a "significant other”. Greece started by emphasizing "its cultural and ethnic unity and continuity", and "tacitly ignored the fact that the indigenous Slavic-speaking population of the Greek region of Macedonia was subjected to forceful Hellenization during the first half of this century".\footnote{Ibid, p. 607.}

Finally, is should be noted that the identity aspects of the ‘name issue’ only came to the surface in 2001.\footnote{See: E. Kofos, The Unresolved ‘Difference Over the Name’: A Greek Perspective, supra note 1451, p. 172.} Hence, Matthew Nimetz, the UN special envoy, directly addressed these issues in several official proposals for resolving the dispute. Essentially, he envisioned possible ethnic and
regional/cultural appellations that would effectively delineate and differentiate between ethnic Macedonians in the Republic of Macedonia and Greek Macedonians in Greece, as defined in the Greek regional and cultural sense of the name. However, he neglected that Greece's northernmost province of Greek Macedonia "is also inhabited by Greek citizens who define themselves as ethnic Macedonians…who in no way adopt the Greek regional and cultural sense of the name". In that manner, in a letter addressed to ambassador Nimetz, representatives of Macedonian minority in Greece suggested that any bilateral agreement on the ‘name issue’ between Greece and Macedonia should respect their right to self-identification on an equal footing with the rights of other groups involved in it.

1. Review of the Present Position of the Macedonian National Minority in Greece from the Human Rights Law Perspective

Most of this sub-section is focused on the contemporary situation of the Macedonian national minority in Greece in several fields. After a short review of past events that by and large determined the current status of ethnic Macedonians in Greece, we conduct a thorough analysis of their present status from a human rights law aspects, combining several research methods. As elsewhere in this chapter, the format is adjusted and context-specific. The focus is on those areas that might provide an objective picture of the situation on the ground and the challenges faced by persons belonging to Macedonian national minority.

Substantial space is dedicated to the freedom of association and political participation of ethnic Macedonians in public life, examined through several judgments handed down by the ECtHR dealing with these rights. Because of their relationship with the main subject, legal considerations of the citizenship and property rights of ethnic Macedonian refugees from the Greek Civil War are also briefly reviewed. The issue of ethnic self-identification is inseparable from the ambiguity surrounding the term ‘Macedonian’ in Greek public discourse, so the findings of several anthropological studies of the notion of ethnicity in Greek (Aegean) Macedonia are briefly mentioned.

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1456 Their proposed amendment on the comprehensive ‘package deal’ from 2008 (which was not accepted by both sides either) read as follows: "The Greek state recognizes the existence of a distinct ethnic Macedonian identity as it is expressed and has developed in the Republic of Macedonia and elsewhere as a separate ethnic identity different from the Greek-Macedonian cultural identity that developed in the Greek state after 1912-1913 when a part of Macedonia was incorporated into the Greek state". See: EFA – Rainbow, EFA – Rainbow’s Letter Mr. Matthew Nimetz – Special Representative of the Secretary General of the United Nations on the Name Dispute between Greece and Republic of Macedonia regarding the Proposal of 19 February 2008, 28 February 2008. The letter is available online at: http://www.florina.org/news/2008/february26_c.asp (retrieved on 28 December 2016)
1.1. Main Events in the Past Century that Determined the Present Day Position of Ethnic Macedonians

Some of the historical events that affected ethnic Macedonians in Greece are indicated in the following pages, where the focus is on the situation in particular human rights areas. For reasons set forth below, implementation of mother tongue education as stipulated in the Treaty of Sevres as well as legal acts regulating or restricting mother tongue use, are examined more thoroughly. Analysis of the history of legal regulations in area of language could offer more objective insights into the present sociopolitical and anthropological situation of Macedonian language in Greece. Therefore, only short general information on some key events is presented here.

After the partition of the wider region of Macedonia in accordance with the Treaty of Bucharest of 1913, the largest and southern part, encompassing almost half of the territory, including the port of Thessaloniki/Solun, was integrated into the Greek kingdom.\footnote{1457} This region, which historically is known as either Greek or Aegean Macedonia, was famous for its ethnocultural diversity and the coexistence of various linguistic and religious groups side by side.\footnote{1458} However, the bilateral conventions on the exchange of population that Greece concluded with two of its neighbors negatively affected the demographic position of minorities, especially Turkish and Macedonian speakers. As a result, "the remaining Macedonian population in Aegean Macedonia found itself a minority in its own land, and an unrecognized and oppressed minority at that".\footnote{1459}

Indeed, despite their strong and traditional presence in the country, the Macedonian minority has never been recognized as such by the Greek authorities. A variety of labels and designations were invented by authorities to denote their ethnic and linguistic identity, such as 'Bulgarophones', 'Slavophones', 'Slavo-Macedonians', 'Slavophone Greeks' etc.\footnote{1460} It is worth noting that among these efforts, the 1920 census registered numerous persons whose mother tongue was identified as 'Macedonian', different from the Greek, Bulgarian and Serbian languages.\footnote{1461} Inconsistencies in the official 'label policy' is evident in subsequent censuses, where the native language of this population was renamed as 'Macedonoslavic language' in 1928, and later reduced simply to a 'Slavic language'.\footnote{1462}

\footnote{1457} A. Rossos, The Balkan Wars (1912-1913) and the Partition of Macedonia..., supra note 1162, p. 19.
\footnote{1458} V. Friedman, The Effects of the 1913 Treaty of Bucharest on the Languages..., supra note 970, pp. 133-160, pp. 137-144.
\footnote{1459} C. Kramer, Official Language, Minority Language..., supra note 1143, p. 241.
\footnote{1461} Δημήτρης Λιθοξόος, Μεηολοηηθά δεηήκαηα θαη εζληθή ζσλείδεζε ζηελ Ειιάδα – Αηαζζαιίεζες επε ειιεληθής ηζηορηογραθίας, [Dimitris Lithoksou, Minority Issues and National Consciousness in Greece: Inconsistencies in Greek Historiography], Leviathan, Athens, 1991, p. 66.
In 1930, the Greek Ministry of Foreign Affairs, in a report, had grouped ethnic Macedonians (designated as ‘Slavophones of Macedonia’), along with Muslims of Thrace and Albanian-speaking Chams, among the minority groups whose presence in the country was viewed as a threat to Greece’s national interests. In addition, Macedonians, “who were claimed by Bulgaria and the former Yugoslavia for their own reasons of political expediency” were classified as “the biggest minority problem.” This perception of the Macedonian national minority in Greece has been a driving force for adopting various repressive measures, we will see in the following pages.

A key factor behind the present-day challenges facing ethnic Macedonians in Greece was the Greek Civil War from 1946 till 1949. Even before formal hostilities erupted between the Greek government army and the Democratic Army of Greece (DAG), an army founded by the Communist Party of Greece (CPG), ethnic Macedonians sided with the latter. The main reason for this choice was the guarantee given by the CPG that its prospective government would officially recognize the Macedonian minority and create conditions suitable for their identity to flourish via educational, linguistic and cultural rights. Consequently, the political and military organization formed by ethnic Macedonians, called People’s Liberation Front (NOF), fought on the side of DAG, which even managed to absorb the former within its organizational framework.

The region known as Western Greek Macedonia, densely populated with ethnic Macedonians, became a key battlefield during the war. The inhabitants were enlisted en masse into the military units of DAG, and, at some stages, 30-40% of its military strength was comprised of ethnic Macedonians. In the end, DAG’s military defeat resulted in a mass exodus of both ethnic Macedonians and Greeks, including some 28,000 children. These refugees were relocated and sheltered in Yugoslavia and other Eastern European countries. The ensuing developments for ethnic Macedonian refugees, who were denied the right to return to their birthplaces, further disrupted the cohesion and numerical size of ethnic Macedonians in Greece. Instances of their human rights violations are reviewed below.

1.2. Present Position and Status of Macedonian Minority in Greece

At present, the Greek government denies the existence of the Macedonian minority in its territory and sees political motives behind public expressions of their Macedonian identity and their political

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1463 T. Papademetriou, Greece: Status of Minorities, supra note 1342, pp. 16-17.
1464 See: V. Roudometoff, Collective Memory, National Identity..., supra note 1122, p. 103.
1467 H. Poulton, The Balkans: Minorities and States..., supra note 875, pp. 180-182.
Furthermore, their role in society is significantly circumscribed, whereas vocal support for their minority agenda from abroad, until recently, was perceived as plotting to undermine Greece's territorial integrity. The official Greek position was clearly articulated in a statement by the former Minister of Foreign Affairs, Theodoros Pangalos, during his first official visit to the Republic of Macedonia in December 1998. Strictly in line with the official position, Pangalos reiterated the allegation that "there is no Macedonian minority in Greece", and declared that "Greece will never recognize a Slavic minority in Western Macedonia", since in his view, this minority is "artificial, a product of Titoism and Stalinism". Furthermore, using quite offensive formulations, he described the political party of ethnic Macedonians in Greece, EFA-Rainbow, as "a coalition of Slavomacedonians, Stalinists and homosexuals".

Supposedly, the problem with non-recognition of Macedonian minority does not emerge from the fact that "people of Slavonic-speaking origin wish to belong, and function as, an ethnic or national minority", but rather, because for a large population of Greeks "it is the name they have chosen - Makedones in the Greek language - by which to define themselves in Greece". As the Greek government commented on recommendations contained in ECRI's third report concerning Macedonian minority:

"Indeed, 2,500,000 Greeks who live in Greek Macedonia identify themselves as Macedonians (Makedones). The use of the term 'Macedonian minority' by a small number of Greeks in Northern Greece speaking a Slav idiom, usurps the identity of the above vast majority of Greek Macedonians".

According to Kofos, the efforts of ethnic Macedonians in Greece "to invest the regional/cultural appellation of the Greek inhabitants of Greek Macedonia with a national (Slav) 'Macedonian' connotation", in practice creates ambiguities and problems "that go beyond semiotics, inviting a kind of cultural strife". Greek legal scholar Stavros went further, subsuming the Macedonians in Greece – or the "bilingual people in certain parts of Macedonia", as he calls them – under the category of a linguistic rather than ethnic minority; but not automatically, only "if they could be shown to demonstrate a common will to preserve their second language". It is from this discourse that labels such as 'Slavophone
Greeks', 'bilingual Greeks', 'Slav-speaking people in Greek Macedonia' emerged, and obviously will continue to denote persons of Macedonian ethnicity in foreseeable future.  

It should be reiterated that in accordance with Article 3 of FCNM, the individual right to choose to identify as a minority member and to be treated as such prevails over any views of the authorities about the existence of such minority. Nevertheless, as long as Greece continues to insist that the existence of minorities is contingent upon the government’s official recognition, and especially where this contingency is clearly stipulated in a bilateral treaty, "then the individual right of choice would be rendered meaningless." On this point, the UN Expert on Minority Issues recommended that "the government should retreat from the dispute over whether there is a Macedonian or a Turkish minority and place its full focus on protecting the rights of self-identification, freedom of expression and freedom of association of those communities." Despite its non-recognition as a minority group, ethnic Macedonians, according to the government, are entitled to enjoy the human rights and freedoms ascribed to all Greek citizens, including the right to equality and non-discrimination. Again, this argumentation was rejected by UN Expert on Minority Issues, which repeated that "full protection of those rights is not a substitute for protection of their minority rights".

2. Right to Freedom of Ethnic Self-Identification and Numerical Strength of Macedonian Minority

As previously mentioned, Greece is one of the few countries that does not collect data on citizens' mother tongue and ethnic origin. Indeed, this proves to be an insurmountable obstacle for efforts to accurately estimate the numerical strength of Macedonian minority. As we have seen, estimates range from tiny 10,000 people up to 350,000–500,000 persons of Macedonian origin. Therefore, instead of projecting the numerical size of Macedonians in Greece, we should indicate main findings of several field researches and individual projections on the topic.

The 1951 census was the last one to collect information about the mother tongue of citizens in Greece. In that census, the 'Slavic language' was reported as the mother tongue of 41,017 persons.

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Greek scholar Dimitris Lithoxou observes that fear of repressions contributed to reluctance on the part of Macedonian-speakers to be registered as such, so calculates that their real number in 1951 was around 3.5 times higher than the officially disclosed figure. An assessment by analysts in the Greek secret service (KYP) in 1965, reached a similar conclusion, estimating that there were around 130,000–150,000 Macedonian-speakers in the densely Macedonian-populated areas of Florina/Lerin, Edessa/Voden and Kastoria/Kostur.

Dutch anthropologist Riki Van Boeschoten conducted a field survey (village to village visits) in 1993, encompassing the rural settlements in areas of Florina/Lerin and Almopia/Meglen. She found that of the 94 villages in the Florina/Lerin area (town of Florina excluded), with a total population of 36,212, some 64% or 23,189 were Macedonian-speakers who spoke Macedonian as either their first or second language in everyday communication. In the area of Almopia/Meglen, the rural population is concentrated in 45 villages with 24,728 inhabitants, of whom some 60% or 14,836 persons identified as Macedonian-speakers. In sum, she estimates a total number of 100,000–150,000 Macedonian-speakers, unevenly distributed in most areas of the region known as Greek Macedonia. Similarly, the American anthropologist Loring Danforth indicated that according to Greek estimates in 1992, some 65% of 53,000 inhabitants in the region of Florina/Lerin (including the town of Florina) referred to themselves as 'local Macedonians', with proficiency in both Greek and Macedonian.

German linguist Christian Voss recently conducted fieldwork in Greece to assess the usage of Macedonian language. He identified 270 villages in Greek (Aegean) Macedonia where Macedonian dialects continue today to be spoken to a greater or lesser extent. On this basis, he estimates that there are about 200,000 potential speakers of the various Macedonian dialects in Greece.

Macedonian authors usually produce higher estimates than those found by foreigners and non-partisan observers in Macedonian–Greek affairs. Andrew Rossos noted that “some Macedonians in the region, in the diaspora, and even in the republic of Macedonia claim half-million Macedonian in Aegean

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Macedonia. More reasonable estimates suggest 350,000 or even as few as 150,000-200,000”.\textsuperscript{1491} Todor Simovski in his two-volume book, a detailed study of the demography of all inhabited places in Greek (Aegean) Macedonia, estimates that, today, approximately 220,000 ethnic Macedonians live in Greece.\textsuperscript{1492} Similarly, Encyclopedia Britannica’s 2010 Almanac estimates that 1.8% of the Greek population, some 200,000 individuals, are of Macedonian ethnicity.\textsuperscript{1493}

In contrast, Greek scholars tend to minimize the numbers of those expressing Macedonian ethno-cultural identity. Aristotle Tziampiris invokes the 'insignificant' electoral support for policies pursued by the party of ethnic Macedonians, EFA Rainbow, as evidence that the percentage of "Greek Slavophones who self-identify as 'Macedonians'” is relatively small.\textsuperscript{1494} Conversely, field research by Macedonian human rights activists in Greece estimated that the number of Macedonian-speakers in Greece who actively use various Macedonian dialects as either a first or second language may be up to 300,000 people, scattered throughout various districts and areas in Greek Macedonia.\textsuperscript{1495} Nevertheless, as outlined below, this diverse group is further disaggregated into several sub-groups, and is far from agreement on the issue of ethnic self-identification.

2.1. Ambiguity Over the Terms ‘Macedonian/s’ in Greek (Aegean) Macedonia and Types of Identification among the Macedonian-speakers in Northern Greece

Here, we shall endeavor to clarify the various meanings ascribed to the terms 'Macedonian/s' in Northern Greece, which apart from political considerations, arise from question of identity for Macedonian speakers. To be precise, it is assumed that three main groupings can be differentiated among persons of Macedonian origin or the Macedonian-speakers, if we employ more politically-neutral and non-contested terminology. First, there are persons with clear Macedonian ethno-cultural identity, "who possess a continuing inward sense of their distinctiveness and more or less openly declare and promulgate their consciousness as such".\textsuperscript{1496} Persons in this group identify themselves as ‘ethnic Macedonians’, and feel that they are part of the same nation that constitute the majority in neighboring Republic of Macedonia, and thus “perceive their identity as incompatible with the Greek national identity,\textsuperscript{1496}
although hardly anyone has a problem with being a Greek citizen”.\textsuperscript{1497} Essentially, within this grouping, "Macedonian' and 'Greek' are mutually exclusive categories referring to people with two different national identities".\textsuperscript{1498}

Second, there are those with Greek national identity, “who possess an internalized sense of their Greekness and consistently express the same in their public and private lives”.\textsuperscript{1499} The illiberal and occasional discriminatory Greek nation-building policies contributed to the successful absorption of these Macedonian-speakers into the Greek nation.\textsuperscript{1500} In fact, “they descend from ‘Graecoman’ Slavs who opted to fight for the Greek national cause or...their families were the subject of successful, though oppressive assimilation: they are a simple linguistic minority which would be hostile to the use of the Macedonian term for them”.\textsuperscript{1501} However, while it is not uncommon for people in this group to admit their mother tongue is ‘Macedonian’, they simultaneously identify themselves as either ‘Greeks’ or ‘Greek Macedonians’.\textsuperscript{1502} The latter is accepted by Greek-speakers in the region of Greek Macedonia to denote their regional or cultural identity.

Finally, there is a group composed of persons struggling to find a ‘safe haven’ in a "social context that's often depicted as split into two opposing, mutually excluded sides, Greeks and Macedonians".\textsuperscript{1503} On the one hand, individuals in this group "recognize and accept their differences from the 'Greeks', defending what they regard as a legitimate cultural distinctiveness".\textsuperscript{1504} Nonetheless, while they seek recognition of their linguistic and cultural specificities, the core of their ‘Macedonian’ identity, in a way such an ethnic identity is not compatible with both the Greek and the Macedonian national identities.\textsuperscript{1505} Therefore, "identifying with neither Greek nor Macedonian nationalism, those in this group might best be considered the 'national homeless'”.\textsuperscript{1506}

Finally, we should note a typology depicting a variety of self-identifications among Macedonian-speakers in Greece, outlined by representatives of the Macedonian minority. They speak of four groups: a) those identifying as ethnic Macedonians; 2) those identifying as ethnic Macedonians in private, but who, for fear of oppression, abstain from expressing their ethno-cultural identity publicly; 3) those with 'competitive identity', namely persons who define themselves as being part of the Greek nation, but acknowledge that some cultural practices and the Macedonian language differentiate them from the

\textsuperscript{1497} GHM & MRG-G, The Macedonians, supra note 1445, p. 22.
\textsuperscript{1498} L. Danforth, Macedonian Conflict: Ethnic Nationalism..., supra note 1476, p. 6.
\textsuperscript{1499} A. Karakasidou, Cultural Illegitimacy in Greece: The Slavo-Macedonian..., supra note 1496, p. 148.
\textsuperscript{1501} GHM & MRG-G, The Macedonians, supra note 1445, p. 22.
\textsuperscript{1504} A. Karakasidou, Cultural Illegitimacy in Greece: The Slavo-Macedonian..., supra note 1496, p. 148.
\textsuperscript{1505} GHM & MRG-G, The Macedonians, supra note 1445, p. 22.
\textsuperscript{1506} A. Karakasidou, Cultural Illegitimacy in Greece: The Slavo-Macedonian..., supra note 1496, p. 148.
dominant group, which might occasionally lead them to ‘renegotiate’ or ‘reconsider’ their identity; and 4) those with a Greek national identity.

3. The Right to Freedom of Expression of Persons belonging to the Macedonian Minority

The beginning of minority activism by persons belonging to the Macedonian minority in Greece coincided with the eruption of the 'name dispute' between the Republic of Macedonia and Greece. The re-activation of the 'Macedonian Question' in Greek public discourse in the 1990s probably contributed to some limitations on the right to freedom of expression for Macedonian activists at the time. As an NGO report put it, "freedom of expression has been abrogated through an intensive campaign which combines propaganda and a series of extraordinary criminal prosecutors for dissenters". This practice equally affected ethnic Greeks who publicly rejected the government’s position on non-recognition of both the Macedonian minority and the Republic of Macedonia.

We should outline a few specific instances of violations of this freedom for ethnic Macedonians. For instance, Christos Sidiropoulos and Tasos Boulis were sentenced to six months imprisonment, following an interview in 1992 published in the magazine Ena, in which they both declared their Macedonian identity and spoke openly about the Macedonian minority whose members have been marginalized by the Greek state ‘for almost eighty years’. Both of them were involved with an organization called Macedonian Human Rights Movement, which emerged in the late 1980s, with Sidiropoulos as its leading figure. The lower court invoked Articles 191 and 192 of the Criminal Code and found that both of them had "spread false information about the non-Greekness of Macedonia, about the existence of a Macedonian minority in Greek territory, which is not recognized and is not represented in the Greek parliament". Furthermore, it found that Sidiropoulos and Boulis had “instigated conflicts among the Greek citizens”, by invoking differences between ethnic Macedonians and ethnic Greeks. By the court’s reasoning, this misinformation, on such highly sensitive issue, was conducive to creating "fear and unrest among the citizens and also affect the public security". It is worth noting that during the trial, two notorious Greek neo-Nazi groupings, 'Golden Dawn' and 'National Crusade', demonstrated

1507 Interview with Dimitrios Ioannou, editor in chief of the Macedonian newspaper in Greece “Nova Zora”, conducted on 18 November 2016 in Bitola, Macedonia.
1509 Ibid, pp. 3-5.
1512 Ibid, p. 81.
1513 Ibid, p. 80.
in front of the courthouse, shouting nationalistic slogans,\textsuperscript{1514} trying to effect on the outcome. In the end, however, the Court of Appeal dropped the charges, after the Parliament passed an amnesty law concerning offences committed by or through the press and media.\textsuperscript{1515}

Christos Sidiropoulos had previously been convicted for statements regarding the Macedonian minority in Greece, expressed at the annual \textit{OSCE Human Dimension Meeting} in 1990, where he participated with another activist, Stavros Anastasiadis. When the two returned to Greece, upon orders from his superior at work, Sidiropoulos' employer transferred him to another post several hundred kilometers from his hometown. Anastasidis, meanwhile, was ordered to pay some quite discriminatory taxes and was then dismissed from his work.\textsuperscript{1516} Sidiropoulos was also charged with violating Article 191 of the Criminal Code, in particular for "\textit{disseminating false information, which can cause disruption of the international relations of Greece}".\textsuperscript{1517} However, the entire prosecution case rested on a classified document from the Greek Ministry of Foreign Affairs, which was not made available to the defendant, contrary to the adjudication rules applied in criminal procedures. Therefore, since Article 6 of the Criminal Code stipulates that a Greek citizen can only be prosecuted for an act committed in a foreign country in cases where the alleged action is equally defined as criminal in that country, the charges for Sidiropoulos found to be inadmissible by the Court of Appeal.\textsuperscript{1518} In a way, the strong reactions from both Human Rights Watch and Amnesty International, which interpreted the judicial process against Sidiropoulos as a serious breach of the freedom of expression in Greece, have influenced the domestic courts approach in this case.\textsuperscript{1519}

At present, the situation in this field is improved, but nonetheless persons expressing their Macedonian identity continue to face with some 'softer discrimination', manifest as a general social uneasiness about demonstrating such an identity and to speak publicly about it.\textsuperscript{1520} A typical example of this uneasiness occurred during the launch of the first \textit{Modern Greek–Macedonian Dictionary}, in Athens on 2 June 2009. The event was organized by EFA Rainbow, the political party of ethnic Macedonians in Greece. Two well known linguists had been invited to launch the book. While Professor Victor Friedman was delivering his remarks on the dictionary, a dozen people, dressed in black and wearing combat helmets, interrupted the event and started yelling ‘Everybody out’, ‘Traitors’ and ‘Here is Greece’. They were members of the neo-Nazi political party Golden Dawn. Police officers outside the building had failed to prevent them from disrupting this event, organized by people against whom Golden Dawn

\begin{footnotesize}
\textsuperscript{1515} GHM, \textit{Report about Compliance with the Principles of the FCNM}, supra note 1362, p. 8.
\textsuperscript{1516} J. Shea, \textit{Macedonia and Greece: The Struggle...}, supra note 1510, p. 139.
\textsuperscript{1517} GHM & MRG-G, \textit{The Macedonians}, supra note 1445, p. 34.
\textsuperscript{1518} GHM, \textit{Report about Compliance with the Principles of the FCNM}, supra note?, p. 8.
\textsuperscript{1519} J. Shea, \textit{Macedonia and Greece: The Struggle...}, supra note 1362, pp. 139-140.
\end{footnotesize}
expresses enmity and hatred. This was not an isolated incident by nationalist groups against ethnic Macedonians, and ECRI urged the Greek authorities to take further steps to ensure that the freedom of expression of the Macedonian community is not hindered by the activities of either public authorities or private entities.

4. Right to Personal Identity (Name and Surname) and Right to Designate Topographical Signs in Minority Language

The right to use personal name and surname in minority language is contained in some treaties, most notably in Article 11 of the FCNM. Even though this treaty is not yet ratified by Greece, it is arguably an integral part of customary law, i.e. widely accepted rights and freedoms comprising contemporary human rights law. The same assumption cannot be said for the right of minorities to display traditional place names, street names and other toponyms in minority language, even in densely populated minority areas, since there is much resistance on the part of many states to such undertakings.

Several legal acts adopted almost a century ago affected the rights of ethnic Macedonians in these fields. With Decree no. 332 of November 21, 1926 the Greek government ordered that all 'Slavic' place-names (towns, villages, rivers, mountains) in Northern Greece should be ‘Hellenized’ and replaced with Greek ones. Thus, some 945 place-names were changed within a year after the adoption of the decree, and that number had risen to 1,497 by the end of 1928. These campaigns were followed by another assimilatory measure that imposed mandatory change of personal names and surnames of the Macedonian population "from Slavic to Greek ones", and the number of name changes reached its peak under the Metaxas dictatorship in 1936. In essence, infants were either given names from the list of saints prepared by the Church of Greece or historical names from the classical period, while “every Macedonian surname had to end in (Greek suffixes-DT) ‘os’, ‘es’ or ‘poulos”

Linguists qualified these policies as a "linguicism", a concept that encompasses "practices which are used to legitimate, effectuate and reproduce an unequal division of power and resources (both material and immaterial) between groups which are defined on the basis of the language".

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1522 ECRI, Third Report on Greece, supra note 1384, para. 84.


1524 H. Poulton, The Balkans: Minorities and States..., supra note 875, p. 176.


1529 C. Voss, Language Use and Language Attitudes of a Phantom Minority..., supra note 1490, p. 5.
No substantial changes are noted in these areas at present. Traianos Pasois, a minority activist from the region of Almopia/Meglensko, was charged for "dissemination of false information" (Article 191 of Greek Penal Code) in 1998, because he was carrying two wall calendars with the names of localities written in Macedonian. Moreover, former president of the municipality of Meliti/Ovcharani, Panaiotis Anastasiadis (Pando Ashlakov in Macedonian), petitioned the mayor of Florina/Lerin and the prefect of Western Macedonia in 2013 for the introduction of the Macedonian language within the municipality's territory. In particular, he demanded all topographic names in the area be bilingual, written in Greek and Macedonian language. He did not receive a reply.

Similarly, the UN Expert on Minority Issues noted that "individuals seeking to re-instate Macedonian family names have had their petitions refused by authorities on administrative grounds". This administrative practice concerning the right to personal identity contravenes the spirit of the Article 11. As noted, this provision requires that those who have been forced to change their names by means of coercion or forced assimilation should have the right to reintroduce their names in the original form.

5. Situation concerning the Private and Public Usage of Macedonian Language

5.1. Historical Review on the Linguistic and Educational Rights of Ethnic Macedonians in Greece

Several events from the past century need to be highlighted here in order to understand the present situation of ethnic Macedonians in the field of linguistic rights and mother tongue education. The first international legal regime that touched upon the issue of minority rights education in Greece was the Treaty concerning the Protection of Minorities in Greece of 1920. In accordance with its Article 9, Greek government was obliged to ensure that primary education is given through the medium of minority languages in those areas where minorities comprised a considerable proportion of the local population. Note that for a short period of time, based on the Protocol Kalfov-Politis of 1924, the Macedonian population in Greece was recognized as a 'Bulgarian minority'. However, after this Protocol...
rejected by the Greek Parliament, under diplomatic pressure, Greece authorized a three-person committee to develop a primer for the educational needs of its 'Slavic-speaking linguistic minority'. By the end of 1925, the first primer was released, called ‘Abecedar’, for the use of Macedonian pupils. It was based on the Bitola-Lerin/Florina dialects of the Macedonian language, but used a Latin rather than a Cyrillic alphabet, the latter being a traditional script used by the population itself. During debates at the League of Nations, the Greek officials argued that the native language of the population for which they had obligations in the area of education was "neither Bulgarian nor Serbian, but an independent language". In the end, the primer was distributed in regions with sizable populations of ethnic Macedonians, namely Florina/Lerin, Edessa/Voden and Kastoria/Kostur, but authorities cited the alleged 'political unrest' and 'internal non-acceptance' as a reason for non-introduction of the 'Abecedar' in the schools therein. Despite being a first clear recognition of the Macedonian language, according to Greek scholars, “the introduction of Macedonian dialects does not indicate that the Greek authorities had accepted the existence of Macedonian ethnicity”.

A fundamental right of ethnic Macedonians in Greece to use their mother tongue both in private and in public discourse was completely suppressed during the dictatorship of Ioannis Metaxas, which lasted from 1936 to 1940. This regime implemented a doctrine of "collectivistic nationalism", which in essence gave almost exclusive importance to the "general will and the idea of the nation as the highest good", along with the concept of “disciplinarian freedom”, in which the “individual must merge with the whole, and his own will was to be submitted to that of the nation”. As one author noted, since main goals of the regime were “enhancing the Greeks’ national sentiment and of extending the Greek civilization further within the country’s borders, the compulsory assimilation of the Slavo-Macedonians was seen as sine qua non”. The repressive measures in the first place forbade the use of Macedonian language “in streets, coffee-houses and anywhere that it can be possibly spoken”, and those violating this...

1537 I. Michalidis, Identities, Diplomacy, and Political..., supra note 1535, p. 232.
1540 C. Kramer, Partitioning Language Policy and Status Planning in Macedonia, supra note 1149, p. 241; I. Michalidis, Minority Rights and Educational Problems in Greek Interwar Macedonia, supra note 1536.
1541 I. Michalidis, Minority Rights and Educational Problems in Greek Interwar Macedonia, supra note 1536, p. 339.
rule were subject to penalties, "ranging from steep fines...to drinking of castor oil, imprisonment, and internal exile". Moreover, juveniles who used their Macedonian language at school were often beaten, whereas "an individual was assigned to make rounds of the village to listen for people speaking Slavo-Macedonian at home". At the same time, authorities opened night schools intended to increase the level of proficiency in Greek language among the adult and elderly people of Macedonian origin, where they were taught to read and write in Greek, but also received classes in Greek history and civilization.

During the wars in Greece, which lasted almost a decade (1940-1949), Macedonian groups and organizations attempted to stimulate the public use of the Macedonian language. In 1944 the "Kostur branch of Communist Party in Greece announced the completion of a primer and reader" in a local Macedonian dialect, and afterwards, "preparations for opening Macedonian schools in the districts of Lerin (Florina) and Kostur (Kastoria) were undertaken". Similarly, during the Greek Civil War, in areas controlled by the Greek Democratic Army, schools were opened with Macedonian as a language of instruction. Some authors claim that around 180 schools were operating in densely populated areas in what is today Western Greek Macedonia in the period from October 1947 until April 1948, and approximately 10,000 Macedonian pupils attended classes conducted in the Macedonian language.

With the tragic outcome of the Civil War, followed by the mass exodus of ethnic Macedonians from the country, any prospects for the recognition and introduction of Macedonian language into the formal education system in Greece disappeared. Let us review some of the discriminative measures imposed by Greek authorities that negatively affected the public use of the Macedonian language, which Friedman notes, "was targeted for destruction" since 1950.

In 1959, inhabitants of several villages 'voluntarily' swore an oath "in front of God and people", to "rid themselves and their language of every Slavic influence", and committed that henceforth "they would speak only the Greek language". Such oaths were made in the villages of Krpeshina/Atrapos, Ludovo/Kria Nera and Trebino/Kardia. In a similar vein, on 25 March 1962, around 600 ethnic

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1544 Ibid, p. 66.
1545 A. Karakasidou, Politicizing Culture: Negating Ethnic Identity in Greek Macedonia, supra note 1526, p. 3.
1546 P. Carabott, The Politics of Integration and Assimilation vis-à-vis the Slavo-Macedonian,..., supra note 1543, p. 66.
1547 C. Kramer, Partitioning Language Policy and Status Planning in Macedonia, supra note 1149, p. 242. This first attempt for the creation of a Macedonian alphabet was made by a three-person commission from the Florina/Lerin region. Their final result was Cyrillic alphabet encompassing both 24 consonant and vowel letters. The Macedonian primer was completed upon the decision of the Kostur/Kastoria branch of the Slav-Macedonian People's Liberation Front (SNOP), containing 31 consonants and vowel letters, the same number as in standard Macedonian. See: Стојан Киселиновски, Егејскиот дел на Македонија (1913-1989) [Stojan Kiselinovski, Aegean Part of Macedonia (1913-1989)], Kultura, Skopje, 1990, p. 134; Т. Поповски, Macedonian National Minority in Bulgaria, Greece and Albania, supra note 928, p. 215.
1548 Ibid.
1550 V. Friedman, The Effects of the 1913 Treaty of Bucharest on the Languages..., supra note 970, p. 149.
1552 These events usually took place in Sundays, in the school yards where all villagers attended the 'ceremonies', while military, political and religious leaders were special guests. Not surprisingly, it were the village' teachers that held main speeches and directed the crowd to repeat the oath after him. The oath read as follows: "I promise in front of God, men, and the official
Macedonians from the settlements of Ostrovo/Arnis, Drushka/Drosia and Rusilovo/Xhantoghia were forced to sign a resolution renouncing their linguistic tradition and negating the existence of a Macedonian nation.\textsuperscript{1553} Greek scholar Karakasidou has interpreted these ‘language oaths’ as an “important moment in Greek nation-building” in the region, a process through which “Greek consciousness was constructed and internalized among the local population”.\textsuperscript{1554}

Finally, it is worth invoking the confidential document from the Greek National Security Service dated 16 February 1982. The document states that “Skopians' activities for the autonomy of Macedonia may be efficiently confronted mainly by wiping out the use of the idiom, in the regions near the borders”.\textsuperscript{1555} Several measures were suggested for achieving this aim, such as: imposing legal obstacles that would prevent the return of ethnic Macedonian refugees in Greece; hiring civil servants who are either Greek-speakers or completely ignorant of the Macedonian language; providing special subsidies for ethnic Greeks originating from southern regions who work in the border areas densely populated with ethnic Macedonians; deterring students whose mother tongue is Macedonian from studying in Skopje etc.

Against this background, Law no. 1268 “On the Structure and Function of Higher Educational Institutions” adopted the same year, stipulated that the Greek government would no longer recognize university degrees obtained at universities where the language of instruction was not “widely recognized internationally”.\textsuperscript{1556} Administrative practice showed that the only university identified in this category was the University of Ss. Cyril and Methodius in Skopje.\textsuperscript{1557} Hence, upon this law’s entry into force, approximately 500 students from Greece, both ethnic Greeks and Macedonians, who were studying in the SR Macedonia at the time, had to return to Greece. Finally, the deterrence of the use of Macedonian language in public and private discourse continued even in 1987, when “Macedonian parents in Aegean Macedonia were forced to send their 2- and 3-year-old children to ‘integrated kindergarten’ to prevent them learning the Macedonian language and culture”.\textsuperscript{1558}

\textsuperscript{1553} Ристо Киризовски, Егејскиот дел на Македонија по Граѓанската војна во Грција [Risto Kirjazovski, Aegean Macedonia following the Greek Civil War], Institute of National History, Skopje, 200, pp. 113-114.
\textsuperscript{1554} A. Karakasidou, Cultural Illegitimacy in Greece: The Slavo-Macedonian..., supra note 1496, p. 145. Same authors interprets language oaths are a “rite of purification, held under the legitimating efficacy of both mystical or supernatural power (that is, God) and secular authority (that is representatives of the Greek state.)”
\textsuperscript{1555} EFA – Rainbow, Proposed disciplinary measures to stamp out the Macedonian minority in Greece by the National Security Service, 26 April, 2009. The document is available online both in Greek and English languages at following website: http://www.florina.org/news/2009/april26_e.asp (retrieved on 15 December 2016)
\textsuperscript{1556} V. Roudometof, Collective Memory, National Identity and Ethnic Conflict..., supra note 1122, fn. no. 14 at p. 149.
\textsuperscript{1557} T. Kostopoulos, The Forbidden Language: State Repression..., supra note 1485, p. 300.
\textsuperscript{1558} J. Shea, Macedonia and Greece: The Struggle..., supra note 1510, pp. 118-119.
5.2. Present Situation of Macedonian Language in Greece and the Official Greek Position

Recognition and cultivation of the Macedonian language is of the highest priority on the agenda of Macedonian human rights organizations in Greece since 1990. Since both Greeks and ethnic Macedonians are predominantly Orthodox Christians, the language is the fundamental identity marker that significantly distinguishes the two communities from one another.\(^{1559}\) However, linguists and anthropologists tend to be of the view that due to past assimilationist policies, there are traditional Macedonian-speaking villages in Northern Greece where local inhabitants express Greek national consciousness despite using their Macedonian dialect in everyday communication.\(^{1560}\) This situation is then used as a justification to continue with use of the term ‘Slavophone Greeks’ to denote the whole Macedonian-speaking community, and for non-recognition of colloquial Macedonian dialects as such. In the words of two Greek scholars, “the distant Slavic dialect spoken in certain villages in Greek Macedonia does not necessarily certify the existence of an ethnic minority”, having in mind that supposedly “linguistic criteria are not only insufficient to denote ethnic nuances in the Balkans: they can also be misleading”.\(^{1561}\) According to this construction, colloquial Macedonian dialects in Greece are far from a separate language, but solely a “local idiom” that serves as a mean for communication among the ‘Slavophones’, which in the past possessed "very scanty vocabulary of no more than one thousand to one thousand five hundred words".\(^{1562}\) These arguments are propped up by reasoning such as “the Greek national discourse propagating that the Slavic dialects of Macedonia only allegedly are Slavic”.\(^{1563}\) Basically, this line of argument seeks to establish that these dialects are closer to Greek than to Macedonian literary language – perhaps even a mere variant of Greek.\(^{1564}\)

Contrary to these self-serving attempts to negate the linguistic self-identification of ethnic Macedonians in Greece, linguists confirm that the dialects in question belong to the Macedonian diasystem.\(^{1565}\) Essentially, dialects spoken in eastern and central parts of the present day Greek Macedonia are part of the East Macedonian subgroup, whereas the dialects spoken by ethnic Macedonians in the Florina/Lerin, Edessa/Voden and Kastoria/Kostur areas constitute a transition between the East and West Macedonian subgroups.\(^{1566}\) Professor Christian Voss, a German linguist who explored the area, contends that despite population exchanges and mass expulsion affecting the region Greek (Aegean) Macedonia over the last century, one can identify about 200,000 potential speakers of Macedonian dialects in

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\(^{1562}\) The Macedonian Affair: A Historical Review of the Attempts…, supra note 1421, p. 31.

\(^{1563}\) C. Voss, *Language Use and Language Attitudes of a Phantom Minority…*, supra note 1490, p. 11.

\(^{1564}\) Αρις Σκιάδοπουλος, "Στέλης Παπαθεοδωρής: Πρέπει να δραστηριοποιηθείματα "[Aris Skiadopoulo, Stelios Papadopoulos: Must act as Skopje is acting], Ταχυδρόμος, 1998, p. 44.

\(^{1565}\) R. Schmeiger, *The Situation of the Macedonian Language in Greece…*, supra note 1476, p. 128.

\(^{1566}\) Ibid.
**Greece.** However, in his assessments, a number depicting active users should be for sure three to four times smaller than previous one. His fieldwork in the rural settlements in Northern Greece identified 270 villages, where until today Macedonian dialects are spoken to a higher or lower degree. Disaggregated between different regions, the situation is as follows: some 112 villages are located geographically and administratively in the region Western Macedonia (prefectures of Florina/Lerin, Kastoria/Kostur, Kozani), 121 are found in Central Macedonia (Pella, Kilkis/Kukush, Thessaloniki/Solun, Imathia), and 38 in Eastern Macedonia (Serres/Ser, Drama). 

Despite the number of potential speakers, the use of Macedonian language in Greece has been significantly reduced over the years, so it only dominates in "small (village) or even the smallest (family life) social units and in certain groups". Indeed, the status of the Macedonian language today is determined by several correlated factors, such as the educational level of individual speakers, their age, the degree of urbanization, and geographical location. Effectively, field researchers find that “the importance of the inherited Macedonian idiom is still relatively high among the peasant population with a low educational level, while the dominance of Modern Greek keeps growing with an increasing degree of school and university education”. Likewise, “the Macedonian code is still deeply rooted in the older generation, whereas it is continuously losing importance among younger people”. Inevitably, the effects in the long term include 'language shift' or ‘language replacement’ in some areas, illustrated through the example of a typical household where grandparents are almost monolingual and speak Macedonian, parents are bilingual and fluent in both Greek and Macedonian, while children are also monolingual, but in Greek, with only a passing knowledge of Macedonian vernacular. Social exclusion of persons publicly speaking the Macedonian language and expressing the Macedonian identity in a society that opposes the 'otherness', in fact, deters younger generations from learning the language of their forefathers. Consequently, at present, the Macedonian language "is refused as something unknown, 

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1571 *Ibid*, p. 142. The German linguist Robert Schmиеger has identified four categories of persons of Macedonian origin in Greece, where the process of ‘language shift’ is gradually visible, namely from primary Macedonian to primary Greek language. In that manner, communication among persons over 65 years old normally takes place completely in Macedonian, whereas those aged between 50 to 65 years old usually have solid knowledge of both languages, but “when Macedonian is used, the code is enlarged by linguistically adapted borrowings from Modern Greek...where there is a lack of adequate expression”. In addition, for persons aged between 35 and 50 years old primary language code in most cases is Modern Greek and “the knowledge of the Macedonian secondary code is already very fragmentary among many representatives of this group”. Finally, those below 35 predominantly are monolingual Greek speakers and “only a rudimentary linguistic competence in Macedonian remains, usually limited to the knowledge of several isolated lexical units (often even with an incorrect or unclear understanding of their meaning)
foreign, ridiculous and inferior and is seen as a rudiment of the primitive rural style of life of the older generation".\textsuperscript{1573}

Notwithstanding these tendencies towards ‘language shift’, Professor Voss points out that “it is quite possible to notice that a radical ethnic consciousness can do without the linguistic component, for example in the touristy village Loutraki/Pozhar near Aridaia/S’botsko”.\textsuperscript{1574} This conclusion was confirmed by the UN Independent Expert on Minority Issues, Gay McDougall, following her mission to Greece. She reported:

\begin{quote}
The Independent Expert met numerous individuals identifying as ethnic Macedonians. Some described themselves as fluent in the Macedonian language, having learned it within their families as it is not taught at school. Others described frustration that they lack fluency due to the lack of learning opportunities. They claim to have made numerous approaches to the Greek Ministry of Education regarding language education, which have never been acknowledged.\textsuperscript{1575}
\end{quote}

From that perspective, it might be reasonable to conclude that "it is exactly the generation that has lost the language that favors a Macedonian identity". In fact, public opinion in the Florina/Lerin area supports the proposition that one can declare as ethnic Macedonian without speaking the Macedonian dialect.\textsuperscript{1576} Overall, the present position of Macedonians in Greece might be described as "bilingualism without diglossia", or a situation where Greek society is officially completely monolingual, but ethnic Macedonians "are competent in the Macedonian code to a higher or lower degree, which makes them bilingual in an individual and collective sense".\textsuperscript{1577}

5.3. Activities Launched by Ethnic Macedonians in the Fields of Mother Tongue Education and Language Revitalization

With a view to countering the negative developments that were undermining the intergenerational transmission of the Macedonian language, ethnic Macedonians in Greece established a branch of the European Bureau for Lesser Used Languages (now defunct), which was tasked with promoting linguistic diversity and supporting minority languages in Europe. In its final report to the European Commission, ‘Support for Minority Languages in Europe’, Macedonian language in Greece is grouped among the

\textsuperscript{1573} R. Schmeiger, \textit{The Situation of the Macedonian Language in Greece...}, supra note 1476, p. 143.
\textsuperscript{1576} C. Voss, Between Indigenism and Transnational Cohesion..., supra note 1567, p. 13.
\textsuperscript{1577} R. Schmeiger, \textit{The Situation of the Macedonian Language in Greece...}, supra note 1476, p. 141.
languages of the autochthonous minority communities "which do not enjoy any official recognition in the member state in which they are spoken".\textsuperscript{1578} On the scale from 1 (strongest) to 8 (weakest), Macedonian language in Greece is ranked at stage 6, where due to its marginalization, nuclear family is the largest sphere of social activity that could contribute for a linguistic and cultural reproduction.\textsuperscript{1579} Accordingly, in the process of language revitalization "the stress should be on achieving and reinforcing intergenerational transmission of the language, providing support to local initiatives...in the field of publishing literature, especially for children", but at the same time "achievement of such transmission also depends on the existence of quality play-groups and primary school initiatives to use the language".\textsuperscript{1580}

Acting upon these recommendations and guided by real position of Macedonian language in Greece, minority activists launched several initiatives directed towards stimulation of the process of learning the Macedonian language by younger generations and those living in urban areas, where language contacts with dominant Greek language make them more susceptible to a gradual linguistic shift and acculturation. One such project is called 'Learn Macedonian online', which utilizes some of the most advanced methods for acquiring language competencies, similar to that used by the Rosetta Stone Language Software. Indeed, its performances are suitable for monolingual Greek speakers, but also for those having rudimentary or medium competency in Macedonian language.\textsuperscript{1581}

Moreover, in 2013, the former president of the settlement of Meliti/Ovcharani, Panayotis Anastasiadis, submitted an official request with the Ministry of Education for the introduction of classes for learning the Macedonian language in elementary and secondary schools in the territory of this former municipality.\textsuperscript{1582} Once again, although the initiative was well-supported by parents of children attending the local schools, the Greek authorities chose not to reply.

6. \textit{Freedom of Association with Emphasis on the ECtHR cases}

This part is devoted to assessing the degree of freedom of association enjoyed by ethnic Macedonians in Greece, an area of great importance for them as a non-recognized minority group. We begin with a review of the various Macedonian organizations have had emerged in Greece over the past 25 years. Then, the case of the non-registered association 'Home of Macedonian Culture' is analyzed more thoroughly via two final judgments delivered by the ECtHR. The situation regarding the Macedonian

\begin{thebibliography}{9}
\bibitem{1579} Ibid, p. 181.
\bibitem{1580} Ibid, p. 182.
\bibitem{1581} Interview with Dimitrios Ioannou, editor in chief of the newspaper “Nova Zora”, conducted on 18 November 2016 in Bitola, Macedonia.
\bibitem{1582} AMHRC \& MHRMI, \textit{An exclusive interview with Pando Ashlakov, the President (Mayor) of Ovcharen}, MHR Review, Issue 16, September 2013,
\end{thebibliography}
Movement for Balkan Prosperity (MAKIBE) is intentionally avoided for here. For reasons set forth below, it will be reviewed in the part for political participation of ethnic Macedonians and the case of political party EFA Rainbow respectively.

*Macedonian Movement for Human Rights* was active in the late 1980s and early '90s, with active support from the Macedonian communities in Canada, USA and Australia.\(^{1583}\) It first emerged in 1984 as the *Central Organizational Committee for Macedonian Human Rights* and issued a manifesto calling for recognition of ethnic Macedonians as an autochthonous community in Greece entitled to fundamental human and minority rights.\(^{1584}\) In particular, they sought the following rights and freedoms from the Greek state: education in Macedonian language; free operation of Macedonian cultural institutions; religious services in Macedonian language; free and unrestricted access to media; and promulgation of a special law allowing free repatriation of ethnic Macedonian refugees from the Civil War.\(^{1585}\) Naturally, this first public appearance of ethnic Macedonians since the end of the Civil War did not go unnoticed, especially since the manifesto was sent to all members of the Greek Parliament, foreign embassies in Athens and international organizations. In point of fact, the manifesto produced a negative reaction among the Greek public and authorities, for whom "*this event does not preoccupy Greek government, because of the very fact that such minority does not exist in the country*".\(^{1586}\) In following years, leading members of the organization, Christos Sidiropolulos and Tasos Boulis, along with some diaspora Macedonians and a Yugoslav delegation, participated at the OSCE Human Dimension Meeting of 1990, where they presented a report on the ‘oppressed Macedonian national minority in Greece’ and ‘discriminatory practices’ against persons seeking recognition of their Macedonian ethno-cultural identity.\(^{1587}\) Participation at the OSCE annual meeting on human rights was a pretext for these two activists to lose their jobs and, in the years to come, same meeting was used as ‘legal grounds’ for non-registration of the cultural association ‘Home of Macedonian culture’.

*Macedonian cultural association ‘Rousalii’* is another entity, formed by members of the Macedonian minority in Greece, whose request for registration has been dismissed by domestic courts. Based in Koufalia, Thessaloniki area, this cultural association was established in 1999. Its aims, according to the statute, were “*highlighting and promotion of traditional values of the local culture*”, through

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\(^{1587}\) Yugoslav delegation at the same conference submitted a ‘*Memorandum regarding the Macedonian minority*’ where numerous breaches of human rights of the ethnic Macedonians in Greece and Bulgaria were noted. In respect to situation in Greece, the memorandum emphasized the Law No. 2653/1953 on the colonization of border areas, where traditionally ethnic Macedonians comprised sizable portion of the population, with Greek settlers from the southern areas. The document interpreted this law as an legal act which indisputably was directed strictly against ethnic Macedonians, since border areas in Western Thrace where ethnic Turks lives in compact settlements were exempted from this law for a period of three years. See: L. Danforth, *Macedonian Conflict: Ethnic Nationalism..., supra* note 1476, pp. 134-143.
various means, such as music festivals, research of the local folklore and the promotion of traditional customs.\textsuperscript{1588} The Court of First Instance in Thessaloniki rejected the motion for registration, interpreting the purpose of the organization as too general and unclear. The Court went further, finding that “it is not possible to say with certainty whether this purpose is compatible with the laws of the moral and public order, something which is examined in all cases of union recognitions”.\textsuperscript{1589} Despite the fact that applicants have decided not to appeal to the higher courts, the outright rejection of the cultural organization 'Rousali' by Greek courts is noted in the human rights reports on Greece, as another instance of a negative tendency affecting the freedom of association of the Macedonian minority.\textsuperscript{1590} The decision in this case confirmed the inference of Tsitselikis, a leading Greek scholar in the area of minority protection, that “even information about such minorities as stated by the Supreme Court of Civil and Penal Law (Areios Pagos) could create social upheaval and harm the international relations of Greece”.\textsuperscript{1591}

We close this review with the Macedonian organization "Educational and Cultural Movement of Edessa", founded in February 2009. The seat of this organization is located in the city of Edessa/Voden. Its stated goals are the promotion of Macedonian culture and increasing of awareness among local populations about the region's cultural and linguistic diversity.\textsuperscript{1592} Shortly after its foundation, the organization launched Macedonian language courses for the local population in the city of Edessa/Voden and began publishing the periodical newspaper 'Zadruga'.\textsuperscript{1593} The "Educational and Cultural Movement of Edessa" also publishes books and CDs as well organizing concerts, exhibitions, seminars and other cultural events.

\textit{6.1. The Case of Sidiropoulos and others v. Greece}

The following case demonstrates how the prevalent position in Greece concerning the non-recognition of Macedonian minority predetermines the outcome of any attempt register an association containing the word 'Macedonian' in its title. Considering that, to date, ECtHR has delivered two final judgments on this repetitive case, the case of the association 'Home of Macedonian Culture' warrants a

\begin{itemize}
\item \textsuperscript{1588} Greek Helsinki Monitor, Minority Rights Group – Greece, \textit{Freedom of Association; The Case of the “Rousalii” Association}, 30 December 2001.
\item \textsuperscript{1592} The statute of the organization where its goals are stipulated in available online at: \texttt{http://edessavoden.gr/Aim.php} (retrieved on 30 December 2016)
\item \textsuperscript{1593} Vladimir Ortakovski, \textit{Minority Rights in the Republic of Macedonia and the Macedonian Situation in Greece}, International Yearbook of the Faculty of Security, Skopje, 2015, pp. 2-12, p. 8.
\end{itemize}
more thorough analysis. Notably, the first and leading case *Sidiropoulos and others v. Greece* has been considered by many authors as initiating a 'new era' in the ECtHR's approach to minority rights.\(^1\)

The cultural association 'Home of Macedonian Culture' was established on 18 April 1990 in the city of Florina/Lerin, by 56 persons affiliated with the aforementioned Macedonian Human Rights Movement. Its charter in Article 2 stipulated that its main aims were: "(a) the cultural, intellectual and artistic development of its members and of the people of Florina..., (b) the cultural decentralization and the protection of the intellectual and artistic manifestations and traditions, the monuments of civilization and in general the preservation and development of folk culture, and (c) the protection of the natural and cultural environment of the region".\(^2\) Their request for registration with the Court of First Instance in Florina was refused. The court noted that some members of the association had participated at the annual OSCE Human Dimension Meeting of 1990, where they spoke in favor of a Macedonian minority in Greece and about the country's poor minority rights record.\(^3\) It recalled articles from Greek newspapers reporting on the event, which had supposedly disclosed an alleged 'Slavic plot' against Greece, masterminded by some prominent Yugoslav politicians and diplomats at the time.\(^4\) Therefore, the request was refused on the grounds that the "real" aim of the association was "promotion of the idea that there is a Macedonian minority in Greece, which is contrary to the country's national interest and consequently contrary to law".\(^5\)

This judgment was challenged before the Salonika Court of Appeal. Notwithstanding the evidence submitted by parties, the Court widened its argumentation on the subject, by invoking "well-known facts, whose validity the Court does not doubt".\(^6\) These ‘well-known facts’, contained in various history books, allegedly 'indisputably prove' the Greek character of Macedonia since antiquity and its definition as a “stronghold and bastion of Hellenism".\(^7\) The core of the historical review by the Court, is an inference stating that "nowhere in either the recent or the distant past are Macedonia and the Macedonians mentioned in any official document as a specific ethnic group".\(^8\) Consequently, the Court accepted in essence the basic feature of the Greek national narrative in respect to non-Greek speaking people with a ‘Greek national consciousness’, stressing that “the fact that a small part of this region’s

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\(^5\) Ibid., p. 16. References from historical books and workings quoted by the Court of Appeal are more or less the same one as those already mentioned in the part devoted to Greek nationalism and the ‘Macedonian Question’.
population also speaks a language which is basically a form of Bulgarian with admixtures of Slavic, Greek, Vlach and Albanian words, does not prove that this minority is of Slavic or Bulgarian origin”.

Moreover, it further underlined that in the aftermath of population exchanges in the 1920s and especially in the aftermath of the Civil War in 1949, “almost all the bilingual inhabitants of this region who did not have a Greek national consciousness emigrated to neighboring countries”, where these former citizens of Greece “experienced a mutation of their partly Greek or partly Bulgarian nationality into a ‘Macedonian’, i.e. Slav-Macedonian, nationality”. Then, the Court of Appeal deduced that formation of the cultural association 'Home of Macedonian Culture' was part of the strategy of neighboring Socialist Republic of Macedonia to use "in various ways bilingual Greeks from Greek Macedonia" for its own irredentist purposes. Besides, the Court saw danger in the planned inclusion of youth population in the region in the activities of the association, as purportedly they would be exposed and “trapped by suitable propaganda in an ethnologically non-existent and historically evacuated Slav-Macedonian minority.”

In a similar vein, the very name of the association was interpreted as being a “source of confusion”, mainly because “at first sight...creates the impression that it refers to Macedonia’s Greek civilization, whereas in reality it envisages a specifically Slavic civilization which does not exist in the region in question”. Taken as a whole, the name of the association was seen as part of an endeavor from abroad to dispute the Greek identity of Macedonia, which inevitably was used by the Court of Appeal to dismiss the appeal. Later, the Court of Cassation upheld this judgment.

When domestic remedies were exhausted, six applicants lodged an application with the ECtHR, claiming violation of several rights and freedoms contained in ECHR. Since the case originated prior to the entrance into force of Protocol 11 of ECHR, the former European Commission of Human Rights initially reviewed the case, in accordance with the two-level mechanism in force at the time. The Commission in its opinion found a violation of Article 11, stressing that no indications existed that applicants had advocated the use of violence or of any undemocratic and unconstitutional means, even though they asserted a Macedonian national conscience.

The ECtHR acknowledged that refusal to register the association amounted to interference with the applicants’ freedom of association. Then, it accepted the government’s arguments that provisions of the Civil Code allowing courts to refuse creation of new associations and dissolve existing ones are proof that interference was indeed 'prescribed by law'. However, while protection of national security and prevention of disorder were seen as ‘legitimate aims’ pursued by the judiciary with the interference in

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1602 Ibid.
1603 Ibid, p. 17.
1606 Ibid, paras. 56-60.
1607 ECtHR, Case of Sidiropoulos and others v. Greece, supra note 1598, para. 36.
question, the point referring to “upholding of Greece’s cultural traditions and historical and cultural symbols” was dismissed as inappropriate to qualify as such. Furthermore, if ‘national security’ concerns were not raised, probably the ECtHR would have been eager to establish that denied registration did not pursue any legitimate aim and hence to stop with further examination.

As to the final stage of examination, whether the interference in question was ‘necessary in a democratic society’, the ECtHR recalled its jurisprudence by stating that “only convincing and compelling reasons can justify restrictions on freedom of association”. More importantly, when imposing restrictions of this type, authorities must be aware that they possess only limited and not an absolute “margin of appreciation, which goes hand in hand with rigorous European supervisions embracing both the law and the decisions applying it”.

Applicants argued that neither national security nor public order was jeopardized when some of them participated at the OSCE Human Dimension Meeting of 1990, since by then Greece had already signed many OSCE documents. Besides, the Court here derived an important generalization based on the applicants' arguments, and established the doctrine that “the existence of minorities and different cultures in a country was a historical fact that a ‘democratic society’ had to tolerate and even protect and support according to the principles of international law”. Not surprisingly, the government’s arguments before the ECtHR were much the same as those presented to the domestic courts. In sum, it reiterated that the aim of the association was different than the one stipulated in its charter and allegedly its "deceptive name" had been chosen intentionally by applicants in order "to conceal the type of culture which they referred" and to dispute the Greek identity of Macedonia.

The ECtHR found that the non-registered association ‘Home of Macedonian Culture’ had clear and legitimate aims, such as preservation of local traditions, folk culture and special characteristics of the Florina/Lerin region. It went even further, conceding for the first time in its jurisprudence that:

“Even supposing that the founders of an association like the one in the instant case assert a minority consciousness, the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE of 29 June 1990 and the Charter for a New Europe of 21 November 1990 – which Greece has signed – allow them to form associations to protect their cultural and spiritual heritage”.

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1609 S. Chubric, International Instruments for the Protection…, supra note 1270, p. 54.
1610 ECtHR, Case of Sidiropoulos and others v. Greece, supra note 1598, para. 40.
1611 Ibid.
1613 ECtHR, Case of Sidiropoulos and others v. Greece, supra note 1598, para. 41.
1614 Ibid, para. 42.
1615 Ibid, para. 44.
1616 Ibid.
The quoted passage is of paramount importance for minorities in Europe. Indeed, never before has the ECtHR accepted that other instruments ratified by contracting States might have an impact on the way that rights and freedoms contained in ECHR are interpreted and implemented in practice. Prior to this judgment, the ECtHR had been consistent in applying its teleological approach in interpretation of the ECHR provisions, and consequently reluctant to build minority-related provisions of the ECHR around external standards. With this decision, it implicitly acknowledged the inevitable intrusion of OSCE standards to uphold the right to freedom of association of minorities under the ECHM.

In the final analysis, the ECHR confirmed that if a registered association pursues aims that are not indicated in its charter or even ones that are contrary to the law, domestic court could dissolve it according to Article 105 of Civil Code. Nonetheless, this argument here is completely redundant, since as a non-registered legal entity, the association ‘Home of Macedonian Culture’ never had a possibility to conduct any activity to assess the legality of. On these grounds, the ECtHR found that “refusal to register the applicants’ association was disproportionate to the objectives pursued”, and hence constituted a violation of Article 11 of the ECHR.

This judgment has had an enormous and positive effect on the overall jurisprudence of ECtHR in minority related cases. As van Bossuyt noted, since 1998, the ECtHR regularly applies its protective approach towards associations established by minorities and reiterates that domestic courts may not deny registration of an association solely because it has a minority agenda and aims to promote their ethno-cultural identity. Nonetheless, its real effect in the Greek legal system was to highlight serious deficiencies in the whole system for the execution of judgments in areas considered by national authorities as exclusively domestic jurisdiction.

The supervision process on the execution of this judgment ended in 2000, with a resolution of Committee of Ministers (CM), accepting assurances from the Greek government that the domestic courts “will not fail to prevent the kind of judicial error that was at the origin of the violation found in this case”. In practice, however, Greek authorities have only adopted weak measures, incapable of preventing future violations in similar cases, i.e. they translated the judgment into Greek and enclosed it to the Court of First Instance in Florina, and later, its text was published in the country’s renowned legal

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1619 ECtHR, Case of Sidiropoulos and others v. Greece, supra note 1598, para. 46.
1620 Ibid, para. 47.
1621 Anneleen van Bossuyt, Fit for Purpose or Faulty Design? Analysis of the Jurisprudence of the European Court of Human Rights and the European Court of Justice on the Legal Protection of Minorities, p. 14.
journal *Syntagma* with an extensive commentary on it. ¹⁶²³ Nevertheless, some authors have praised the response of the Greek authorities, claiming that all these measures have revealed “the value of pleading minority issues before the Court when the government acknowledges its obligation to abide by the decision in the individual case and to take steps to rectify any general situation of breach to prevent future violations”. ¹⁶²⁴ This position, however, neglects the intergovernmental nature of the CM, which enables state interests to have influence on its work, and at the same time considerably eases acceptance of assurances provided by State parties via their diplomatic representatives. ¹⁶²⁵

6.2. The Repetitive Case of Home of Macedonian Culture v. Greece of 2015

Following the judgment in the case *Sidiropoulos and others v. Greece*, applicants submitted a new request for registration of the cultural association 'Home of Macedonian Culture' in July 2003. They slightly revised the statute, which expressly stipulates that “preservation and dissemination of Macedonian civilization”, as well “preservation and cultivation of the Macedonian language”, are among the aims of the association. ¹⁶²⁶

Referring to the name of the association, Court of First Instance in Florina stressed that term ‘Macedonian’ could be used solely in historical and geographical sense, but not in an ethnological manner to designate “so called Macedonian civilization” in the region. ¹⁶²⁷ Purportedly, in a historical sense, the term ‘Macedonia’ and its derivatives has always been an inseparable part of the Greek civilization. As to a geographical sense, the Court in Florina underlined that applicants failed to specify which particular Macedonian region, as it was defined after the Balkan Wars of 1912-13, their organization refers. ¹⁶²⁸ Moreover, it also found 'vagueness' in the term 'Macedonian language', because such terminology allegedly was susceptible to create confusion and endanger public order. Accordingly, the application for registration was rejected once again. ¹⁶²⁹ As in the previous case, the appeal was unsuccessful; the Court of Appeal in Thessaloniki and the Court of Cassation in Athens both upheld the judgment of the lower court for denying registration of this cultural association on 16 December 2005 and 11 June 2009 respectively. ¹⁶³⁰

The ECtHR noted that rejections from domestic courts relied on the same or similar grounds as those already sanctioned in the case of *Sidropoulos and others v. Greece*.\(^{1631}\) Again, it emphasized that, as a whole, the aims of the association could hardly infringe public order. In such a way, the ECtHR qualified the domestic judgments refusing registration of the cultural association as being disproportionate to the objectives pursued and found a repetitive violation of Article 11 of the ECHR.\(^{1632}\)

Several remarks are worth mentioning in respect to these two judgments. First, both are declarative judgments, which lack "an analysis of the politico-legal context in which human rights are violated", and hence CM and the respondent state are "left without effective, authoritative guidance as to the origins of the violations at issue and how these violations may be effectively redressed".\(^{1633}\) This happens also in repetitive cases concerning minorities, like one reviewed here, where ECtHR was not eager to recognize existence of general or structural problem in the field. Second, "the core ideological stance", that there is no Macedonian language and ethnicity, which served as a pretext for all denied registrations of Macedonian organizations, was not accompanied with diplomatic pressure from "a weak, unstable and newly born state", Republic of Macedonia.\(^{1634}\) Third, these cases reveal that the "supervisory role of the CM, as a collective guardian of the European human rights standards, is de facto limited" in respect to minority-related cases, especially in relation to "states that have not as yet come to terms with the ethnic 'otherness' in their territories".\(^{1635}\)

7. Participation of Ethnic Macedonians in Political and Public life of Greece and Role of Political Party EFA Rainbow

In this part, participation of Macedonians in public life is reviewed through the position of their main political agency in Greece, namely the political party EFA Rainbow, and its election results over the past two decades. Other organizations and persons of Macedonian origin who contested elections, either as independent or as members of other political parties, are mentioned only briefly. In one case concerning the political party EFA Rainbow, the ECtHR found breach of several rights and freedoms enshrined in the ECHR by Greece, so the main findings of that case are analyzed separately.

We will begin with an organization called *Macedonian Movement for Balkan Prosperity (MAKIBE)*, which was established in 1991 in the town of Aridaia/Sobotsko by a group of persons living in the area of Almopia/Meglensko.\(^{1636}\) Its first conference was in 1993, at which the main goals of the

\(^{1632}\) Ibid, paras. 42-44.
\(^{1633}\) N. Sitaropoulos, *Implementation of the European Court of Human Rights’...*, supra note 1245, p. 5.
\(^{1635}\) N. Sitaropoulos, *Implementation of the European Court of Human Rights’...*, supra note 1245, p. 15.
organization were clearly outlined, such as repatriation of ethnic Macedonian refugees, free and unrestricted use of Macedonian language and promotion of their culture via different activities etc.  

The following year, a delegation of MAKIBE visited the European Parliament, following an invitation from the pro-minority parliamentary group ‘Rainbow’, which at the time was a leading group supporting the demands of various stateless nations and ethnocultural minorities in the EU member-states. 

They also established initial contacts with the European Bureau for Lesser Used Languages, which several years later opened a branch office in Greece, presided by an ethnic Macedonian. After returning in Greece, MAKIBE decided to contest the 1994 elections for European Parliament. Therefore, the organization applied to the Court to be registered as a political party, under the name ‘Rainbow’. Initially, the Supreme Court rejected their motion, purportedly because the applicants failed to indicate in the basic principles that the party rejects "any action aiming at the violent seizure of power, or the overthrow of the democratic regime". Nonetheless, due to external pressure on the Greek government, Rainbow was granted permission to participate at the election. In the end, Rainbow received a total of 7,269 votes, mainly from people in the regions of Florina/Lerin, Kastoria/Kostur and Edessa/Voden. However, during the campaign, ‘Rainbow’ candidates were excluded from the media and many people were totally unaware that an ethnic Macedonian party was participating in the election. 

In subsequent years, the party consolidated its organizational structure and adopted main documents. An incident in 1995, when the party’s office in Florina/Lerin was attacked, will be reviewed below. In its political manifesto, ‘Rainbow’ declares itself to be a political organization of ethnic Macedonians in Greece, inspired by traditions and ideals of Macedonian Revolutionary Organization (IMRO), the Ilinden uprising, and the antifascist organizations SNOF and NOF. From their perspective, inherited policies for use of terms, such as 'Slavophones', 'bilinguals', 'Slavic-Macedonians', 'Slavs' etc. in reference to Macedonian minority in Greece are mainly directed at preventing the use of the term 'ethnic Macedonians', the most accurate one to depict their ethno-cultural identity and clearly differentiate them from those claiming a Greek-Macedonian regional or cultural identity. The main priorities of ‘Rainbow’ as stipulated in the manifesto are: 1) repealing legal acts that prevent ethnic Macedonian refugees from the Civil War from returning to their birthplaces in Greece; 2) revitalization of Macedonian language and dialects spoken in Greece via: a) short-term projects, such as the creation of bilingual newspapers and periodicals and a Greek–Macedonian dictionary, that prospectively would lay a

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1638 Ibid.
1640 L. Danforth, Macedonian Conflict: Ethnic Nationalism..., supra note 1476, p. 127.
1643 Ibid.
path toward the long-term goal, namely: b) introducing the Macedonian language in the nine-year educational system in Greece in areas where ethnic Macedonians live; 3) official recognition of Macedonian place-names through the policy of ‘dual naming’; 4) revision of the 3% quota for political parties in general elections that prevents participation of minorities in political life etc.\textsuperscript{1644}

In the past two decades, ‘Rainbow’ participated in elections for the European Parliament as well as local elections in Greece, whereas the 3% quota remains an insurmountable hurdle for their participation in national elections. Several ‘Rainbow’ members have been elected as councilors in the local assemblies in municipalities in Florina and Kastoria.\textsuperscript{1645} Moreover, at the 2010 local elections, ethnic Macedonians affiliated with either ‘Rainbow’ or other political parties were also elected as presidents of rural settlements of Meliti/Ovcharani, Vevi/Banica, Papagiannis/Popolzhani, Neochoraki/Neokazi, Achlada/Krushoradi and Sidirochori/Shesteovo.\textsuperscript{1646} We should note that before Rainbow, some individuals affiliated with Macedonian organizations had contested as candidates in elections. For example, at the 1993 general election, Tasos Boulis from Macedonian Human Rights Movement ran as an independent candidate in the Florina district and received 369 votes, whereas Pavlos Voskopoulos from MAKIVE (later Rainbow) ran for the Florina county council that year and received some 14% of the votes cast.\textsuperscript{1647}

As to international activities, we should note that ‘Rainbow’ nurtures close cooperation with European Free Alliance (EFA), a political party in the European Parliament that unifies 33 stateless nations and minorities in the EU and promotes minority rights, including the right to internal self-determination via regionalization. Accordingly, in 1999, ‘Rainbow’ achieved the status of observer within the frame of EFA, and a year later it was promoted to full-fledged membership in this alliance. Therefore, the acronym EFA was added prior the term Rainbow, thus indicating party's affiliation with this European political party.

\textbf{7.1. The Case of Rainbow and others v. Greece of 2005}

When ethnic Macedonians established a headquarters for the political party EFA Rainbow in Florina/Lerin in September 1995, they affixed a sign to the balcony in the front of the office inscribed in both Greek and Macedonian. The inscription simply denoted the party's name and local branch in the two languages, namely Rainbow-Florina Committee/Vinozhito-Lerinski Komitet (in Cyrillic).\textsuperscript{1648} In the
\begin{footnotesize}
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\item \textsuperscript{1644} Ibid, pp. 15-17.
\item \textsuperscript{1645} Interview with Dimitrios Ioannou, editor in chief of the newspaper “Nova Zora”, conducted on 18 November 2016 in Bitola, Macedonia.
\item \textsuperscript{1646} V. Ortakovski, Minority Rights in the Republic of Macedonia..., supra note 1593, p. 8.
\item \textsuperscript{1647} GHM & MRG-G, The Macedonians, supra note 1445, p. 21.
\item \textsuperscript{1648} European Court of Human Rights, Ouranio Toxo and others v. Greece, Strasbourg, 20 October 2005, paras. 9-10.
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following days, priests of the Eparchy of Florina, Prespa and Eordea adopted a resolution by which it strongly protested “the insignificant minority of the Skopjanophiles, which was recently formed under Rainbow, causes problems to our border area”. The resolution described the party’s members as ones purportedly known by "their treacherous and anti-Hellenic sentiments", so it called upon citizens of Florina to join a "mass rally of protest against these enemies of Greece, who arbitrarily hang up signs with such anti-Hellenic inscriptions, and we will demand their banishment". The town council of Florina joined this call from the clergy and organized a protest against inscriptions "written in the language of FYROM which is non-existent for us and giving our town a Slavic name".

The public prosecutor ordered the local police to remove the sign and announced it would indict ‘Rainbow’ leaders for inciting ‘division of the people’, with public use of Macedonian language in their sign. Acting upon this order, police removed the sign, but shortly afterwards, members of ‘Rainbow’ affixed a new one. That evening, a mob lead by the mayor and several town councilors gathered in front of the office to protest against ‘Rainbow’. The following day, a number of people entered the office by force, removed the sign, destroyed the equipment and set fire to the office. Police were inactive during the incident, allegedly, due to lack of manpower, despite being duly warned by ‘Rainbow’ members and being located no more than 500 meters away.

It is noteworthy that no indictments were brought against those responsible for destruction of the property owned by the party. Instead, the public prosecutor, invoking Article 192 of the Criminal Code, found ‘legal ground’ to initiate criminal proceedings against four leading members of Rainbow. The indictment stated that these four persons were “responsible for, having acted jointly and in public, in any way having caused and incited mutual hatred among the citizens, so that common peace was disturbed on September 6, 1995 in Florina”. The words in Macedonian affixed on the party’s sign were allegedly reminiscent of an “old terrorist organization of Slavic-speaking alien nationals which was active in the area and which, with genocide crimes, pillages and depredations against the indigenous Greek population, attempted the annihilation of the Greek element and the annexation of the greater area of the age-long Greek Macedonian to a neighboring country, which at the time was Greece’s enemy”.

Concurrently, the four accused lodged a complaint with the Florina Criminal Court, alleging that attackers of their office had intentionally committed serious criminal acts, as sanctioned in the Criminal

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1650 Ibid.
1651 Ibid. p. 45.
1653 ECtHR, *Ouranio Toso and others v. Greece*, supra note 1648, para. 15.
1654 Ibid.
1655 GHM MRG–Greece, *Greece against its Macedonian minority…*, supra note 1649, p. 16.
1656 Ibid., p. 17.
Code. After domestic remedies were exhausted, with delays in both the Court of Appeal and the Court of Cassation, Pavlos Voskopulos, Vasilis Romas, Costas Tasopoulos and Petros Vasiliadis lodged an application with the ECtHR claiming violation of their right to fair trial and the right to freedom of association as guaranteed under Articles 6 and 11 of ECHR.\textsuperscript{1657}

The government argued that term ‘Vinozhito’, during the Civil War, served as ‘rallying cry for forces’ intending to capture the town of Florina/Lerin, so its use was capable of provoking discord among the local inhabitants. They further alleged that the police were far from passive during the incident, since when applicants put the sign back, the tensions were eased, so police officers could not have predicted the situation would escalate to a degree that their intervention would be necessary.\textsuperscript{1658}

In rebuttal, the applicants noted that “by adding the word vino-zito to the sign, they had only wished to translate the meaning of the party’s name ‘into Macedonian’ without intending to sow discord among the inhabitants of Florina”.\textsuperscript{1659} The fact that the incident was essentially triggered by the clergy and town councilors was what most concerned them, although later events, particularly the destruction of the party’s headquarters hand in hand with lack of intervention from police, highlighted the failure of the whole state apparatus to ensure protection of persons claiming minority identity.\textsuperscript{1660}

The ECtHR in its judgment reiterated that freedom of association, as guaranteed with Article 11 of the Convention, also has a negative aspect, in that public authorities must abstain from arbitrary measures that could interfere with the effective enjoyment of this right.\textsuperscript{1661} Nonetheless, since rights and freedoms granted with the Convention “are not theoretical or illusory, but practical and effective”, it stressed that “a genuine and effective respect for freedom of association cannot be reduced to a mere duty on the part of the State not to interfere”.\textsuperscript{1662} Inevitably, this reasoning implies that free and unrestricted enjoyment of the right to freedom of association necessitates positive obligations by the public authorities, to guarantee “the proper functioning of an association or political party, even when they annoy or give offence to persons opposed to the lawful ideas or claims that they are seeking to promote”.\textsuperscript{1663}

In the ECtHR view, since ‘Rainbow’ is a legally registered political party, affixing the sign to the front of its office in both Greek and Macedonian languages "cannot be regarded as reprehensible or

\textsuperscript{1657} ECtHR, Ouranio Toxo and others v. Greece, supra note 1648, paras. 17-22.
\textsuperscript{1658} Ibid, para. 32.
\textsuperscript{1659} Ibid, para. 33.
\textsuperscript{1660} Ibid, para. 37.
\textsuperscript{1661} Ibid.
\textsuperscript{1662} Ibid.
\textsuperscript{1663} Ibid.
considered to constitute in itself a present and imminent threat to public order.”. Moreover, it pointed out that by its attitude prior the incident, local authorities had contributed to the increased hostilities among the local population against the applicants. Finally, the court highlighted two important aspects of the present case. First, it found that the police in Florina should have anticipated the eruption of violence from the people gathered to protest in the front of the party’s office and were obliged to react promptly when the office was attacked rather than making excuses about an alleged lack of available officers at the critical time. Second, “the Court cannot overlook the fact that the public prosecutor did not consider it necessary to start an investigation in the wake of the incidents to determine responsibility.” In other words, “reluctance by the court to examine the case” triggered the applicants to lodge a complaint on their own against those responsible for the incident, even though they had to face criminal proceedings for inciting ‘disharmony among inhabitants in the area’. With this in mind, the Court found a violation of the right to freedom of association and of the right to a fair trial, considering that procedure in Greece “was excessive and was in contravention with the requirement of ‘reasonable time’.”

8. Religious Liberties and the Case of Father Nikodim Tsarknias

Ethnic Macedonians in Greece are predominantly Orthodox Christians, a religious confession practiced by a huge majority of Greek citizens. Religious liberties are guaranteed by Article 13 of the Greek Constitution, which clearly states that enjoyment of prescribed rights and freedoms is not dependent upon one’s religious affiliation. Nonetheless, there is no strict legal separation between the State and the church, hence the Orthodox Church of Greece has a privileged position in society.

When Greece acquired the present day Greek Macedonia in 1913, its authorities systematically eradicated all Slavonic inscriptions in churches and graveyards and installed the Greek language in their place. Concurrently, religious sermons in Church Slavonic were banned and literature in that language was confiscated. Similar actions directed towards eliminating the regional cultural and religious heritage continued into the late 1970s. For instance, during the time of Augustinos Kantiotes, the metropolitan bishop of the Florina and Prespa Eparchy from 1967 until 2000, old churches in the city of

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1664 Ibid, para. 41.
1666 ECtHR, Ouranio Toxo and others v. Greece, supra note 1648, para. 43.
1667 K. Tsitselikis, Minority Mobilisation in Greece and Litigation in Strasbourg, supra note 1591, p. 46.
1671 L. Danforth, Macedonian Conflict: Ethnic Nationalism..., supra note 1476, p. 69; H. Poulton, The Balkans: Minorities and States..., supra note 875, p. 176.
Florina/Lerin and the villages of Amynteon/Sorovichevo, Oxia/Bukovik, Plati/Shtrkovo, Kalitea/Rudari etc. were completely destroyed, due to the Church Slavonic inscriptions in iconostases and frescoes.\textsuperscript{1672}

As to religious freedoms of the Macedonian minority at present, it is worth considering the case of Father Nikodim Tsarknias. In 1974, he was ordained a priest in the Church of Greece and worked under the authority of the abovementioned bishop Augustinos Kandiotes in the region of Florina/Lerin. Father Tsarknias publicly advocated for the cultural rights of ethnic Macedonians in Greece and, in 1982, after several formal requests from his superior, he was finally removed to another area (Kilkis/Kukush) in order to limit his influence in the region with the highest concentration of Macedonian speakers and persons declared as ethnic Macedonians.\textsuperscript{1673} Nonetheless, the problems of Father Tsarknias with Greek clerics have not stopped here and pressures for issuing an anathema on him "culminated in 1990 when apparently faked indecent pictures were circulated and contributed to his second dismissal in early 1993".\textsuperscript{1674} After being defrocked from the Church of Greece, “because of his commitment to the Macedonian cause”,\textsuperscript{1675} he joined the Macedonian Orthodox Church and for some time served in the monastery ‘St. George the Great Martyr’ in the village of Kuchkovo, Macedonia.\textsuperscript{1676} Since he continued to wear clerical clothing, Greek courts have convicted him several times for the ‘pretense of authority’, invoking Article 176 of the Greek Criminal Code. As a point of fact, “the court disregarded the certificate of the Orthodox Church of Macedonia certifying Father Tsarknias had joined that Church before his defrocking, arguing that in Greece only the Church of Greece can accredit clergymen”.\textsuperscript{1677} Essentially, he has been convicted up to ten times and sentenced to forty months imprisonment, most of them in absentia, since each time that he indicated the reasons for absence, the court refused to adjourn the hearings.\textsuperscript{1678} However, all these convictions were subsequently appealed and reduced by higher court, which effectively converted them into pecuniary penalty of 1,500 drachmas per day.\textsuperscript{1679} Consequently, "the only time he has spent in custody was that following his arrests".\textsuperscript{1680} Father Tsarknias has challenged the verdicts by domestic courts before the ECtHR, by invoking several rights and freedoms as guaranteed with ECHR, such as right to a fair trial and freedom of thought, conscience and religion in conjunction with the principle of non-discrimination. The ECtHR declared the application inadmissible, since

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\item \textsuperscript{1672} R. Kirjazovski, Aegean Macedonia following the Greek Civil War, supra note 1553, p. 125.
\item \textsuperscript{1673} GHM & MRG-G, The Macedonians, supra note 1445, p. 23.
\item \textsuperscript{1674} Ibid.
\item \textsuperscript{1675} P. Hill, Macedonians in Greece and Albania..., supra note 932, p. 21.
\item \textsuperscript{1676} See: GHM & MRG-G, The Macedonians, supra note 1445, p. 38.
\item \textsuperscript{1677} GHM, Report about Compliance with the Principles of the FCNM, supra note 1362, p. 33.
\item \textsuperscript{1678} See: GHM & MRG-G, The Macedonians, supra note 1445, p. 38.
\item \textsuperscript{1679} European Court of Human Rights, Decision as to the admissibility of the Application No. 45629/99 by Nikodimos Tsarknias against Greece, 25 January 1999, p. 2.
\item \textsuperscript{1680} GHM & MRG-G, The Macedonians, supra note 1445, p. 38.
\end{enumerate}
\end{footnotesize}
purportedly "the applicant has not substantiated his allegation and it does not appear from the file that he has been discriminated on grounds of national origin and conscience".\(^{1681}\)

Father Nikodim Tsarknias in 2001 founded the Macedonian Orthodox Church “St. Zlata of Meglen” in his native town of Aridaia/S'botsko, on a property owned by his family.\(^{1682}\) The shrine is still under construction. As well as support from local Macedonians, donations from Macedonian communities in USA, Canada and Australia are secured for the first church in Greece which is designated by the founder as ‘Macedonian Orthodox Church’. Occasionally, Father Nikodim Tsarknias gives religious sermons in Macedonian. However, it is not uncommon for his religious services to be interrupted, and in one case, a group of young people chanted nationalism songs and threw stones and eggs on the Tsarknias home and the church’s façade.\(^{1683}\)

9. Printed and Electronic Media and Cultural Activities

The founders of the ‘Macedonian Movement for Balkan Prosperity’ began publishing the occasional newspaper called ‘Ta Moglena’ in the region of Almopia/Meglen in 1991.\(^{1684}\) The newspaper was written in Greek, except for some articles which used the local Macedonian dialect, albeit with Greek orthography and letters. Therefore, the language as such was “not really in the centre of the discourse of otherness”. The main subjects of each issue during its two years of activity (1991-93) were local history and the “apartheid and the discrimination” faced by persons belonging to Macedonian minority over the years.\(^{1685}\) Despite its local character, the newspaper ‘Ta Moglena’ had a readership of almost 3,000 people.\(^{1686}\)

Another newspaper named 'Zora' was regularly published during the period 1993-96 in approximately 5,000 copies.\(^{1687}\) Unlike its predecessor, here the standard Macedonian language was introduced in articles about folklore and in sections devoted to discussing the modifications to centuries-old toponyms across the region, replacing the old Macedonian place names with Greek names. According to the German linguist Voss, these efforts were "the classical imperative of rebirth-discourse", which sought to give impetus for local population to rediscover "the lost ethno-linguistic identity", and to make

\(^{1681}\) ECHR, Decision as to the admissibility..., supra note 1679, 5.
\(^{1682}\) I. Stawowy - Kawka, Macedonians in Greece – Comparison..., supra note 1481, p. 15; V. Ortakovski, Minority Rights in the Republic of Macedonia..., supra note 1593, p. 8.
\(^{1683}\) Excerpts from Macedonian media
\(^{1684}\) See: Τραϊανός Πασοί, Η Ιστορία της Μακεδονικής Κίνησης Βαλκανικής Εθνοτροφίας [Traianos Pasiou, History of the Macedonian Movement for Balkan Prosperity], 2007.
\(^{1685}\) C. Voss, Macedonian Linguistic and Ethnic Identity..., supra note 1574, p. 16.
\(^{1686}\) V. Ortakovski, Minority Rights in the Republic of Macedonia..., supra note 1593, p. 8.
\(^{1687}\) P. Hill, Macedonians in Greece and Albania..., supra note 932, p. 17.
them "accept their linguistic otherness with dignity instead of being ashamed of it by acquiring historical and linguistic knowledge".1688

At the second EFA Rainbow conference, held in Edessa/Voden in 1997, the bilingual newspaper 'Nova Zora' was promoted and those involved in it expressed their intention to overcome the regional character of previous issues and make the newspaper available for the whole Macedonian community in Greece. From 1997, selected articles from each issue were posted on the party's website as a newsletter called ‘Info Zora’.1689

Each of these three newspapers ceased publication several years after their first release. Professor Voss contends that gradual transformation from a monolingual Greek newspaper that promotes local history and Macedonian folklore, via modest incursion of various texts in native Macedonian dialect with Greek letters, to the complete bilingual newspaper that uses standard Macedonian literary language and promotes “minority-engineering and identity-management of the local elites”, in fact, contributed to their alienation and “non-acceptance among the members of the minority”.1690 To be clear, the reality is quite different. On the one hand, it seems rationally that texts in standard Macedonian are incomprehensible for people in regions with "hardly sizable influence of the Macedonian standard like Edessa and Naoussa".1691 However, this argument fails to mention that all of these newspapers were self-financed and their sustainability was wholly dependent upon the marginalized Macedonian activists.1692 Moreover, as GHM underlined, "there were credible reports that postal authorities obstructed the postal distributions of Macedonian minority publication 'Zora' and 'Moglena'".1693 Consequently, it was the lack of finances, as well as the exclusion of persons advocating minority rights for ethnic Macedonians from the public discourse, that effectively brought about the demise of these publishing initiatives.

Additionally, Nikos Sakelarios, an ethnic Macedonian from Thessaloniki/Solun, in 2001 launched an individual project to publish the journal ‘Loza’. The journal is written almost exclusively in Greek and contains articles devoted to the culture and activities of the Macedonian minority in Greece. Finally, in 2010, two separate Macedonian newspapers commenced publication, namely the Florina/Lerin based 'Nova Zora' and Edessa/Voden based 'Zadruga'.1694 ‘Nova Zora' grew into a respectable medium with

1688 C. Voss, Macedonian Linguistic and Ethnic Identity..., supra note 1574, p. 7.
1689 The archive of the newsletter is available online at: http://www.florina.org/info_zora/archive.asp. (retrieved on 25 December 2016)
1691 C. Voss, Macedonian Linguistic and Ethnic Identity..., supra note 1574, p. 8.
1692 P. Hill, Macedonians in Greece and Albania..., supra note 932, p. 17.
1693 GHM, Report about Compliance with the Principles of the FCNM, supra note 1362, p. 37.
around 20,000 readers and a modern website, regularly updated with new issues. 'Zadruga', though, had a much smaller audience and after several years ceased to exist. Each issue of 'Nova Zora' has 24 pages, in various sections, such as politics, culture, history and an education section that promotes the Macedonian language. Over the years, Dimitrios Ioannou, the editor in chief of this newspaper, has been subject to various threats and harassment from nationalistic media and political parties such as “Golden Dawn”, some even suggesting that the Greek state strip his citizenship and expel him from the country.

Several cultural activities are also worth mentioning. When Macedonian minority-oriented activism emerged in the Greek public scene in the late 1980s, its leading figures had the important task of encouraging the rural population to publicly use Macedonian songs in village festivals. Prohibitions on the use of the Macedonian language, inherited from the military junta period (1967-1974), included traditional Macedonian songs. Indeed, it was common practice for bands to play traditional songs as instrumentals, without lyrics, since they were in the "forbidden language". Some individuals were engaged in ‘breaking the rules’ and sang in Macedonian on its own, but, there was no breakthrough in the field until the early 1990s. Again, this process was far from linear and not all settlements where Macedonian-speakers live embraced the renewed cultural policy for promoting a local vernacular through music. At present, the traditional festival on St. Elijah’s day, in the village of Meliti/Ovcharani, is a central cultural event for ethnic Macedonians, with approximately 10-15,000 people gathering each year to mark the beginning of the Ilinden uprising in 1903.

In the past 25 years, persons affiliated with Macedonian minority have published dozen of books devoted to the language, culture and history of ethnic Macedonians in Greece, either generally or focused on a particular region. To name but a few, "Contemporary Greek - Macedonian Dictionary" by Tashko Karadja, the above quoted "History of the Macedonian Movement for Balkan Prosperity" from Traianos Pasois, the reprinted primer "Abecedar", and "Folklore of the Florina/Lerin-Kasto/Kostur area" by Pavlos Koufis etc. Additionally, Kostas Novakis from the village of Koufalia/Kufalovo researched folklore throughout the regions of Northern Greece and recorded three volumes of traditional songs and dances in local Macedonian dialects.

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See: I. Stawowy - Kawka, Macedonians in Greece – Comparison..., supra note 1481, p. 16. See also: www.novazora.gr (retrieved on 25 December 2016)

Interview with Dimitrios Ioannou, editor in chief of the newspaper “Nova Zora”, conducted on 18 November 2016 in Bitola, Macedonia.

See: C. Voss, Between Indigenism and Transnational Cohesion..., supra note 1567, p. 4.


See: E. Danforth, Macedonian Conflict: Ethnic Nationalism..., supra note 1476, p. 121.

Interview with Dimitrios Ioannou, editor in chief of the newspaper “Nova Zora”, conducted on 18 November 2016 in Bitola, Macedonia.

R. Kirjazovski, Aegean Macedonia following the Greek Civil War, supra note 1553, p. 209.

They are named as follows: Λεςκόρ κάμπο πλάι ζε θάλαζζα λεςκή / Бело поле до Белото море, Ππάζινο δάζορ / Развила гора зелена, Ππόζθοπα από ηη Θεζζαλονίκη / Понуда од Солун.
Several days after the political party EFA Rainbow opened its second office in Edessa/Voden, they announced the establishment of the "Krste Petkov Misirkov Foundation" in this city. The main aims of the foundation, as indicated by persons from the local branch of EFA Rainbow, are popularization of the writings of this prominent historic figure among the Macedonians in Greece, by translating his books into Greek, support of initiatives intending to preserve the Macedonian language and its dialects as well as establishing a museum in his honor.  

10. Citizenship and Property Rights of Ethnic Macedonian Refugees from the Greek Civil War

The legacy of the Greek Civil War continues to affect bilateral relations between the Republic of Macedonia and Greece. Sixty-five years after the event, the two countries adhere to different positions on the subject of human rights violations against ethnic Macedonian refugees. It should be noted that in the years that followed the war, these refugees, were stripped of their citizenship, and, in most cases, had their properties confiscated and/or expropriated without compensation. This group, inclusive of its descendants, number approximately 80,000 people, of whom some 14,000 were children aged between 2 and 14 during the years of the Macedonian exodus from Northern Greece.

10.1. Legal Acts Concerning Citizenship Rights

With respect to citizenship rights, it should be reiterated that the differentiation between persons of Greek (homogenis) and non–Greek (allogenis) descent has a long legal history in Greece. Moreover, one of the purposes of domestic policy since 1920 was to reduce the number of non–Greek persons (allogenis) in the country. The violent events that took place during the Civil War witnessed a
large scale internal deportations and citizenship deprivations conducted under the label of ‘security policies’ that, ironically, intensified hostilities among the two belligerents.\(^{1710}\) Namely, in 1947, the Fourth Revisionary Parliament of Greece passed Resolution ‘LZ’ (FEK 267/1947) “On the withdrawal of the Greek nationality from persons that are acting in an anti-national way abroad”.\(^{1711}\) The resolution prescribed that a special security commission for “persons engaged in anti-national activities” would first give an opinion in each case, followed by a final decision handed down by a special government commission.\(^{1712}\) In a significant number of cases, the resolution was applied to ethnic Macedonians, but, persons of Greek descent were not spared from the arbitrary withdrawal of citizenships by Greek authorities.\(^{1713}\)

Additionally, Article 20 of the Citizenship Code of 1955 continued this policy and allowed the government to strip citizenship from those citizens living abroad who “commit acts contrary to the interest of Greece for the benefit of a foreign state”. Despite its applicability to all citizens, in practice it “has been applied mostly to persons who identify themselves as Macedonians”.\(^ {1714}\) Besides, it was not only these legal acts that violated the civil rights of thousands of Greek citizens. As Tassos Kostopoulos points out, over a period of fifteen years (1948-1963), due to 155 orders and ministerial decisions prescribing such measures, of the 22,266 individuals that were stripped of their citizenships, roughly 15,000 cases concerned ethnic Macedonians.\(^ {1715}\)

The repatriation question became relevant only in the late 1970s, after the military junta (1967-1974) ended, when refugees expected the new democratic government to deal with legacy issues emanating from the civil war. Ministerial decree No. 106841, adopted on 29 November 1982, was the key legal act regulating issues regarding the return and repatriation of political refugees from the civil war. According to its provisions, the decree provides:

\[\text{the legislation on the withdrawal of nationality from allogenis belonging to minority groups was gradually being differentiated: in the first stage, the main victims...were ethnic Macedonians. In the following...the measure targeted the Turkish minority of Thrace}.\]
\[\text{Ireneusz Adam Slupkov, The Communist Party of Greece and the Macedonian National problem (1918 - 1940), Wroclaw University, 2006, p. 112.}\]
\[\text{Ристо Кирјазовски, Правната дискриминација на Големо – грчката политика во Егејскиот дел на Македонија по Втората светска војна [Risto Kirjazovski, Discriminatory Policies Pursued by Greek Authorities in the Aegean Part of Macedonia], Skopje, 1996, p. 81-82.}\]
\[\text{See: D. Christopoulos, Acquisition and Loss of Nationality..., supra note 1709, p. 262.}\]
\[\text{ECRI, Second Report on Greece, supra note 1360, para. 5.}\]
\[\text{T. Kostopoulos, The Forbidden Language: State Repression..., supra note 1485, p. 219}\]
“Free to return to Greece are all Greeks by genus (emphasis added-DT), who during the Civil War of 1946-1949 and because of it have fled abroad as political refugees, in spite that their Greek citizenship has been taken away from them.”¹⁷¹⁶

The wording of this decree is unequivocally discriminatory, or as Christopoulos and Tsitselikis put it, “the hidden aim of this decision was to exclude Slav-Macedonian refugees”.¹⁷¹⁷ The ostensible national reconciliation legislation only provided amnesty to refugees of Greek ethnic origin. Moreover, Christopoulos contends that the express exemption of refugees who were not ‘Greeks by genus’ from possible repatriation makes these ministerial decisions “the sole instrument in force that recognizes, through exclusion, the existence of Slav-Macedonians in the country”.¹⁷¹⁸ Due, then, to their national and ethnic origins, tens of thousands of ethnic Macedonians born in Greek (Aegean) Macedonia, including their descendants, continue to be denied the possibility of applying for the reacquisition (or acquisition) of revoked citizenship. Conversely, most refugees who are ethnically Greek were repatriated according to the amnesty laws passed in 1982 and 1985, respectively.

10.2. Legal Acts Pertaining to Property Rights of Ethnic Macedonian Refugees

The Greek state has adopted several legal acts regulating property rights, whose provisions enabled properties owned by refugees to either be confiscated or pass into state possession. For instance, provisions of Decrees M/1948/FEK 17 and N/1948/FEK 101 provided for the mandatory confiscation of real estates belonging to persons who had participated in the Civil War on the side of DAG and NOF (National Liberation Front), as well as those who were stripped of Greek citizenship in compliance with Resolution LZ of 1947.¹⁷¹⁹ By the same token, Article 13 of the Regulation 3958/1959 allowed the confiscation of agricultural land belonging to refugees who left Greece who did not return within five years, reclassifying the land as state-property.¹⁷²⁰ Similarly, abandoned properties that belonged to refugees were confiscated under Article 34 of Special Law 1539/1938.

Probably the most controversial legal act was the Law on Resettling Border Areas and Boosting their Population (No. 2536/1953). Under Article 6 of Law 2536, real estates and agricultural plots belonging to refugees that had left Greece ‘without permission’, and who did not return within three years’ time, were seized and managed by the Ministry of Agriculture. Persons settled on refugees’

¹⁷¹⁶ The ministerial decision is attached as Appendix B to the publication: HRW, Denying Ethnic Identity: Macedonians of Greece, supra note?, p. 68. As for the deprived citizenships, the decree envisaged that a procedure for the return of citizenship would be in accordance “with existing regulations for the cancellation of administrative acts by the Ministry of Internal Affairs”.
¹⁷¹⁷ D. Christopoulos, K. Tsitselikis, Legal aspects of religious and linguistic otherness…, supra note1346, p. 83.
¹⁷¹⁸ D. Christopoulos, Acquisition and Loss of Nationality…, supra note 1709, p. 262.
properties initially had to receive a certificate from the army or police confirming that no security impediments existed for its settlement in a given area. Afterwards, the settlers were accommodated in the abandoned, renewed or newly built residential units, and even received state-sponsored financial and agricultural incentives for the first growing season.\footnote{R. Kirjazovski, \textit{Discriminatory Policies Pursued…}, supra note 1712, p. 107. Note that in 1956 the Constitutional Court of Greece proclaimed that Resettlement Law 2526/1953 was unconstitutional and allegedly all confiscations decisions were annulled. Although, based on this decision, original owners could reclaim their properties, ethnic Macedonian refugees, as we saw above, were stripped of their citizenships and denied reentry, and thus were prevented from reclaiming confiscated properties.} According to John Shea, the leitmotiv of authorities in enacting such a law was “\textit{to separate Macedonians living in Greece from their kin living in the Republic of Macedonia…and to create a 60-kilometer-wide belt along the border with then Yugoslavia where ‘the faithful sons of the Greek nation’ could be settled}”.\footnote{J. Shea, \textit{Macedonia and Greece: The Struggle…}, supra note 1510, p. 118.}

As in the case of deprived citizenships, the issue of restoring property rights to refugees has provoked various debates across the country. On April 10 1985, the Greek Parliament adopted \textit{Law No. 1540 Provisions concerning the properties of the political emigrants and other regulations}, defining the composition of political emigrants who fled during the civil war. With wording reminiscent of the proposal in the Ministerial decree on refugees’ repatriation, its Article 1, paragraph 1 states:

\textit{“As political emigrants, for the purposes of this Law, shall be considered the \textit{Greeks by genus} (emphasis added-DT), who, because of the Civil War, had fled abroad before January 1945 or were imprisoned or interned”}.\footnote{Excerpts from the Law No. 1540/1985 are attached as Appendix C to the publication : HRW, \textit{Denying Ethnic Identity: Macedonians of Greece}, supra note 1482, p. 69.}

Once again, ethnic Macedonian refugees were deprived of their rights; in this case, excluded from the possibility of reclaiming confiscated properties. Whereas for ethnic Greek refugees, the law enabled the restoration of property rights, for a considerable portion of the refugees, this was merely a continuation of the official policy excluding them on the grounds of ethnicity.

10.3. \textit{Human Rights Law Aspects of these Legal Acts}

The ‘amnesty laws’ of 1982 and 1985 discriminate against ethnic Macedonian refugees by preventing them from reclaiming their right to Greek citizenship, and their confiscated properties. In fact, laws that prescribe preferential treatment for persons of Greek ethnic origin contravene Article 12.4 of the \textit{ICCPR},\footnote{See: N. Sitaropoulos, \textit{Freedom of Movement and the Right to a Nationality…}, supra note 1338, p. 218.} which stipulates that, \textit{“no one shall be arbitrarily deprived of the right to enter his own country”}.\footnote{UN General Assembly, \textit{International Covenant on Civil and Political Rights}, 16 December 1966, United Nations, Treaty Series, vol. 999, Article 12.4.} Moreover, by favoring members of one ethnic community, the provisions in these laws raise issues under several articles enshrined in ECHR, including Article 13 (right to effective remedy), Article
3 (prohibition of inhuman and degrading treatment), Article 14 (prohibition of discrimination) to be read in conjunction with Article 1 of Protocol 1 to the ECHR, as well as Article 1 of Protocol 1 to the ECHR (right to peaceful enjoyment of property). Finally, since the wording, as related to the ‘amnesty laws’, is not benign, and has the clear intent of discriminating against all those who belong to the category of political refugees who are not ‘Greek by genus’, it could be alleged that Greece is not giving legal effect to articles 2 and 5 of ICERD. Of particular interest is Article 5, by which states are obliged to guarantee enjoyment to everyone of “the right to leave any country, including one’s own and to return to one’s country” and “the right to nationality”. In the final analysis, we might conclude that the overstepped usage of legal acts excluding a particular ethnic community from the ‘amnesty laws’ is contrary to the peremptory norms of international law, and may give rise to a state’s international responsibility, as Sitaropoulos observed.

With all this in mind, ECRI recommended several times that the Greek authorities “take steps to apply, in a nondiscriminatory manner, the measures of reconciliation taken for all those who fled the civil war.” With regard to persons who were deprived of Greek citizenship, the Commissioner for Human Rights of the Council of Europe urged Greek authorities “to proceed to the immediate restoration of their nationality”.

1726 Article 2: “States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:
(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.”

1727 Article 5: “In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:
(d) Other civil rights, in particular:
(ii) The right to leave any country, including one’s own, and to return to one’s country;
(iii) The right to nationality.”

1728 See: N. Sitaropoulos, Freedom of Movement and the Right to a Nationality…, supra note 1338, p. 221.
1729 ECRI, ECRI Report on Greece (Fourth Monitoring Cycle), supra note 1370, para. 116.
4.4. Macedonian National Minority in the Republic of Serbia

Introduction

Republic of Serbia was declared an independent state in 2006, after a majority of Montenegro’s citizens voted in favor for separation from the State Union of Serbia and Montenegro. The latter had been formed by the two former members of the Federal Republic of Yugoslavia on 27 April 1992 following the dissolution of the Yugoslav federation, and its leadership claimed to be the sole legal successor of the SFR Yugoslavia. During the reign of Slobodan Milosevic, the Federal Republic of Yugoslavia actively supported Bosnian and Croat Serbs in their military campaigns for the secession of Serb-populated and occupied territories in Croatia and in the Bosnia and Herzegovina. As a consequence of this interference in wars in these two countries, the international community imposed political and economic sanctions against the FR Yugoslavia, and suspended its membership and access to a number of international organizations. Kosovo’s conflict, which, by and large, was frozen but nevertheless perpetuated during the Yugoslav wars, escalated in 1998-1999, leading to the mass displacement of the population in the province, and triggering a NATO air campaign against Yugoslav military forces, although without prior authorization from the UN Security Council. In the end, on the basis of the UN Resolution 1244 of 1999, Serbian authorities withdrew all security and military forces from Kosovo, though the resolution confirmed the territorial integrity of the FR Yugoslavia with Kosovo as its constitutive part. However, Serbian authorities were deprived of any possibility of governing the province directly from Belgrade, as an international civil administration was empowered to replace them. The situation in the country changed markedly after Milosevic was ousted in 2000 and the new elected government began to normalize the situation, both domestically and internationally.

A. General Overview of the System of Minority Protection in Serbia

The turbulent political history of Serbia in the past century was inextricably intertwined with the fate of several wider polities. Under the circumstances, the society “experienced with numerous divergent systems of minority institutions – and the lack thereof – so that members of its national minorities...have a long and patchy, if not painful and only periodical happier, memory of treatment by various

1732 R. Caplan, Europe and the Recognition of New States in Yugoslavia, supra note 1437, pp. 146-179.
As hinted above, endeavors to create a coherent system of minority protection in Serbia accelerated after the democratization of the country in October 2000. The new government devoted itself to ensuring the country’s full fledged membership in the major international organizations, including the fundamental Council of Europe’s treaties presupposing minority rights. This marked the beginning of a ‘new minority policy’, where political subjects of the country’s biggest national minorities were duly represented.

According to the 2011 census, there were 7,186,862 citizens living in the Republic of Serbia. Ethnic Serbs comprise some 83.3% of the population, with the rest comprised of numerous, much smaller, national minorities. The largest of the national minorities are Hungarians (3.5%), followed by Roma (2.1%), Bosniaks (2%), Croats, Slovaks, Albanians, Montenegrins, Vlachs, Macedonians, Romanians, Bulgarians etc. It is noteworthy that most of these ethnic groups are less than 1% of the population. As for religious affiliation, a huge majority of Serbian citizens are Orthodox Christians (84.6%), while the rest are Roman Catholics (5%), Muslims (3%), Protestants (1%) etc.

One notable demographic trend is that, when compared with previous census, all ethnic groups are experiencing considerable reductions in their numbers. As Purger noted, “although Serb majority is also plagued by negative demographics, such decimation is existentially much more threatening to minorities’.”

The concept of ‘national minority’ in Serbia is defined in Article 2 of the Law on the Protection of Rights and Freedoms of National Minorities, which reads as follows:

“National minority is any group of citizens which is representative to a sufficient extent in terms of the number of persons belonging to it and, although it constitutes a minority in the territory of the Republic of Serbia, belongs to one of the groups of population which have a lasting and firm connection with the territory of the Republic of Serbia, and possesses some distinctive features, such as language, etc.”

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1736 Due to census boycott on the part of ethnic Albanians in areas where they compose considerable part of the population, the census data in respect to them is for sure not accurate. As Advisory Committee on the FCNM noted, “around 85-90% of Albanians appear to have boycotted the census, in a move that appears to reflect a certain lack of confidence of the Albanian minority in the central authorities’ capacity to improve the overall situation of this minority in Serbia”. Thus, only 5,809 persons declared themselves as ethnic Albanians in the census of 2011, compared with 61,647 in 2002. With this in mind, the Advisory Committee urged the authorities to maintain “a close dialogue with representatives of the Albanian minority to ensure that alternative data sources, including independent research data, are appropriately consulted”. See: Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities, Third Opinion on Serbia, Strasbourg, 23 June 2013, paras. 47-49.
1737 One scholar analyzed in depth the religious-confessional profile of country’s recognized national minorities and concluded that two major branches of Christianity are represented almost equally among them, i.e. 10 ethnic groups are Orthodox Christians, whereas 9 of them are either Roman or Greek Catholics. In addition, the survey showed that Sunni Islam is the most prevailing religious confession among various Muslim minorities, while Judaism is the religion of almost all members of Serbia’s tiny Jewish minority. See: Dragoljub Djordjević, Religije i veroispovesti nacionalnih manjina u Srbiji, Sociologija, Vol. XLVII, No. 3, 2005, pp. 193-212.
1738 T. Purger, Ethnic Self Governance in Serbia..., supra note 1734, p. 2.
culture, national or ethnic affiliation or origin, and whose members are distinguished by their concerns to jointly maintain their common identity, including their culture, tradition, language or creed"."1739

Advisory Committee of FCNM several times urged the authorities to remove the criterion of citizenship as a decisive condition for determination of the status of national minority. Nevertheless, the government invoked its alleged wide margin of appreciation on minority definition, and stressed that "without the citizenship criterion, the term 'national minority' would be reduced to an abstract definition hardly applicable in a legal order, which could possibly create a situation of protection of national minorities with a 'member by member' approach and different categories of national minorities."1740

Some national minorities which have emerged as such only recently, after the dissolution of Yugoslavia, occasionally are referred to as ‘new minorities’. Basically, these ethnic groups belong to ‘constitutive nations’ of former Yugoslav republics, as it were, designated Croats, Slovenians, Macedonians, Montenegrins and Muslims/Bosniaks.1741 However, the legal definition above is quite flexible and does not delineate between traditional national minorities and newly established (immigrant) ethnic groups. In other words, Serbia recognized that "all groups have long lasting historical and territorial ties" and embraced them as national minorities.1742

Some of the country's biggest minorities are traditionally present in a given region or locality. For instance, ethnic Hungarians are historically rooted in the Autonomous province of Vojvodina, where they compose clear majority in six municipalities, and their presence is strong in an additional 25 municipalities as well. Similarly, Bosniaks are linked with the ethno-historical region of Sandjak, Albanians predominantly live in the three southwestern municipalities of Preševo, Bujanovac and Medveđa, while Bulgarians are the majority in the two southeastern municipalities of Dimitrovgrad and Bosilegrad, and Slovaks traditionally live in the municipalities of Kovačica and Bački Petrovac.1743 Of course, there are also individual members of almost every ethnic group scattered throughout the country’s regions and municipalities.

The domestic legal framework prescribing minority rights is composed of an array of laws and legal acts. Such laws, as well as the aforementioned Law on the Protection of Rights and Freedoms of National Minorities, include the Law on National Councils of National Minorities, Law on the Official Use of the Language and Script, Law about the Bases of the Education and Upbringing System, Law of

1743 See: N. Gojković, System of Minorities’ Protection of Serbia, supra note 1741, p. 4.
Local Self-Governance etc. The Law on the Prohibition of Discrimination from 2009 adopts wide definition of discrimination and strictly prohibits discriminatory practices on various grounds, including association with one’s ethnic origin, language or religious affiliation. In addition, said law established the institution of Commissioner for the Protection of Equality, with powers to take action “when cases of discrimination occur(s) whether against individuals or group of individuals”. Finally, note that Serbia has concluded bilateral agreements designed solely for the protection of national minorities with Hungary, Croatia, Macedonia and Romania.

Prior to analyzing the situation of the Macedonian national minority in Serbia, we will briefly review the enforcement of linguistic and educational rights of national minorities in Serbia. We will also more extensively consider the participation of minorities in public affairs, focused on the system of national minority councils, since these institutions are a unique feature of the Serbian system for minority protection, and are an expression of the constitutionally enshrined right to self-governance in several areas.

1. Linguistic and Educational Rights of National Minorities in Serbia

Article 11 of the Law on the Protection of Rights and Freedoms of National Minorities prescribes the conditions under which a language of national minority could obtain a status of ‘language in official use’ at municipal level. This would be the case when national minority comprises at least 15% of municipal population in units traditionally inhabited by some of the recognized minorities. Concurrently, a positive example is noted in the AP Vojvodina, where minority language may be introduced in official use “in certain settlements where minorities live compactly within a municipality, even where the 15% criterion for the obligatory introduction of the language in official use throughout the entire municipal area is not met”. Joint application of these rules paved the way for Albanian language to obtain a status of ‘language in official use’ in three municipalities, Bosnian language in four municipalities, Bulgarian language in two municipalities and one settlement, and Croatian language in one town and six settlements. The Hungarian language satisfies the preconditions for receiving status of 'language in official use' in 28 municipalities and several other settlements, Macedonian language in one

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1744 European Commission Against Racism and Intolerance (ECRI), ECRI Report on Serbia (fourth monitoring cycle), 31 May 2011, para. 27.
1746 OSCE Mission to FRY, Law on Protection of Rights and Freedoms of National Minorities, Official Gazette of FRY No. 11 of 27 February 2002, Art. 11. The status of official and equal use of minority language at municipal level effectively means such language is regularly used in administrative and court procedure, in communication between administrative bodies and speakers of minority language, in the work of municipal councils, in the civil status documents and certificates etc.
1747 Advisory Committee on the FCNM, Third Opinion on Serbia…, supra note 1736, para. 137.
municipality and one settlement, Romanian language in nine towns and municipalities, Ruthenian language in six municipalities and the Slovak language in eleven towns and municipalities.\(^{1748}\)

Furthermore, persons belonging to those national minorities that account for at least 2% of the total population in the country have the right to address the central authorities in their own language and to receive an answer in that same language. Conversely, persons belonging to those national minorities that do not reach 2% of the total population will usually receive a reply in their respective language, but via local authorities in municipal units where such language is in official use.\(^{1749}\) In addition, national minority councils’ competencies in the area of language encompasses their right to propose introduction of the traditional names of municipal units, towns and settlements in the language of national minority; to propose authorities to display such names and designations in minority language; to propose changes of names of streets and squares etc.\(^{1750}\)

On the issue of mother tongue education, the domestic legal framework is wide, offering either complete education in minority language or bilingual instruction from preschool to secondary and post-secondary education. The Law on Preschool Education provides that upbringing for minority pupils shall be conducted in their language, but also bilingually or in the Serbian language, if at least 50% of parents concede to such an option.\(^{1751}\) At primary and secondary levels, minority children have right to instruction in their mother tongues if minority classes are composed of at least 15 pupils. However, even classes below that number are allowed to carry out a curriculum in minority language, though with a mandatory prior consent provided by the Ministry of Education.\(^{1752}\) National minority councils may propose syllabi in national history, culture and art for pupils receiving instruction in minority languages.\(^{1753}\)

The range in practice of this educational framework in respect to national minorities is presented in sum by the Advisory Committee on the FCNM in its third report on Serbia and reads:

"Teaching in minority languages is currently available in Albanian, Croatian, Hungarian, Romanian and Slovakian at pre-school, primary and secondary levels, and in Bulgarian and Ruthenian at primary and secondary levels. The subject “mother tongue with elements of the national culture” is also taught at primary school level in all of these languages except Albanian, as well as in Bosnian, Bunjevci, Czech, Macedonian, Romani and Ukrainian, but is provided at secondary level only in Bulgarian, Croatian, Romanian, Ruthenian and Slovakian. Bilingual pre-school education in minority languages and


\(^{1750}\) Ibid, p. 236.

\(^{1751}\) Ibid, p. 314.

\(^{1752}\) Ibid, pp. 320-332.

Serbian is provided in Albanian, Bosnian, Bulgarian, Croatian, German, Hungarian, Romani, Romanian, Ruthenian and Slovakian, as well as in Hungarian and German in one pre-school in Subotica.1754

2. Participation of Minorities in Public Affairs

Serbian Constitution guarantees representation of national minorities in the National Assembly. Notably political parties or coalitions representing national minorities are exempted from the rule that prescribes only those political parties and coalitions that will obtain at least 5% of the total number of votes cast to participate in the distribution of parliamentary seats.1755 Thus, in order to obtain a seat in the National Assembly, minority parties or coalition need to reach “the so-called natural threshold according to which one parliamentary seat equals the number of citizens who voted in the elections divided by the number of parliamentary seats”.1756 By the same token, the principle of representation of numerically smaller and non-dominant ethnic groups is equally applied in the assembly of the Autonomous Province of Vojvodina, where again their representation is not qualified with a prior fulfillment of the determined election threshold of 5% of the total number of votes cast. Likewise, the Law on Local Election, upon its amendments from 2011, envisages that in those municipalities where different ethnic groups coexists, “accounts be taken of the representation of national minority political parties in the local assembly”.1757

It is worth noting that out of twenty-four national minorities in Serbia, only three (Hungarians, Bosniaks and Albanians) are regularly represented in the Parliament with deputies coming from ‘genuine’ minority political parties.1758 However, it should be acknowledged that minority deputies might be elected either as affiliated with mainstream political parties and hence nominated on their electoral lists, or in case a 'genuine' minority political parties forms a pre-election coalition with some of the major parties. For instance, during the period of 2008-2012, out of 31 non-Serb deputies, only 7 were elected from political parties or coalitions representing national minorities, while the other 24 were elected from electoral lists of mainstream political parties.1759 The different political background of these deputies in practice serves as either impetus or deterrence for advocating minority-related issues in their overall activities in the Parliament. As recent survey showed, minority deputies elected from electoral lists of political parties specifically representing national minorities contribute more towards ‘substantive

1754 Advisory Committee on the FCNM, Third Opinion on Serbia..., supra note 1736, para. 171.
1755 Council of Europe, Second Report Submitted by Serbia..., supra note 1739, p. 362. According to the Law on the Election of Deputies, “political parties of national minorities are all those parties whose main objective is to represent and advocate interests of national minorities and to protect and promote the rights of persons belonging to national minorities, in keeping with international legal standard”.
1757 Advisory Committee on the FCNM, Third Opinion on Serbia..., supra note 1736, para. 177.
1758 See: M. Pejčić, Minority Rights in Serbia..., supra note 1742, p. 162.
representation' of minorities by addressing core issues for their communities than those elected as members of major parties.\textsuperscript{1760}

Finally, in those municipalities where persons of different ethnicities coexist, the Law on Local Self-Government necessitates that local council for inter-ethnic relations should be established. The principle of proportional representation of national minorities applies properly here, since the law prescribes that such councils should be composed with representatives from both the Serbian community and the national minority groups that exceed 1% of the total population in municipalities.\textsuperscript{1761} These councils may discuss various issues arising from the pressing needs of national minorities in various fields as well as addressing possible inter-communal disputes in the municipality.\textsuperscript{1762}

2.1. Councils of National Minorities

The 'national councils of national minorities' was firstly introduced to the Serbian legal system in 2002. Envisioned as a kind of cultural autonomy and functional decentralization, national minority councils were intended to enhance effective participation of minorities in decision-making process in areas of particular importance for their identities.\textsuperscript{1763} Moreover, the new Serbian Constitution of 2006 accepted the notion of ‘national minority councils’ and thus upgraded them to a separate constitutional category. In particular, the highest legal act guarantees collective rights to national minorities in a way that they can elect their national councils in order “to accomplish their rights to self-government in culture, education, information and official use of language and script”.\textsuperscript{1764} Therefore, “defined constitutionally and legally as representative organs of national minorities, as well as consultative and advisory bodies of state authorities, NMC’s can be channels for dialogue and cooperation between minorities and state organs and other governmental as well as non-governmental organizations”.\textsuperscript{1765}

The Law on the National Councils of National Minorities provides that each of the country's recognized national minorities elects members for its own national minority council either through a direct ballot or by an electoral assembly.\textsuperscript{1766} Consequently, in 2010, members of 16 national minorities

\begin{itemize}
\item \textsuperscript{1760} J. Lončar, Electoral Accountability and Substantive Representation..., supra note 1756, pp. 9-17.
\item \textsuperscript{1761} Council of Europe, Third Report Submitted by Serbia..., supra note 1740, p. 360.
\item \textsuperscript{1762} See: N. Gojković, System of Minorities' Protection of Serbia, supra note 1741, p. 7.
\item \textsuperscript{1763} See: Council of Europe, Third Report Submitted by Serbia..., supra note 1740, p. 350.
\item \textsuperscript{1764} National Assembly of the Republic of Serbia, Constitution of the Republic of Serbia, Article 75.
\item \textsuperscript{1765} Svetluša Surova, Exploring the Opportunities for Trans-Ethnic Cooperation Within and Across Serbia Through the National Minority Councils, Journal of Ethnopolitics and Minority Issues in Europe, Vol. 14, No. 2, 2015, pp. 27-50, p. 34.
\item \textsuperscript{1766} According to prescribed rules, each national minority creates and maintains its own registry, where persons belonging to a given minority are duly registered to vote for members of their respective national minority council. However, the central electoral commission oversees these national minorities' registries, and is responsible for supervising elections for national minority councils and verifying election results. Thus, a direct election comes as an option in case at least 50% of persons belonging to particular national minority in the whole country, reduced by 20%, are registered to vote. Otherwise, members of national minority council are elected via electoral assembly. See: T. Purger, Ethnic Self Governance in Serbia..., supra note 1734, p. 6.
\end{itemize}
voted directly for the representatives of their respective national minority councils, whereas in three cases, the councils were elected indirectly by electoral assemblies (Macedonians, Croats and Slovenes).\footnote{Advisory Committee on the FCNM, Third Opinion on Serbia..., supra note 1736, para. 191.} Their activities are primarily financed from the central budget, but also by provincial and local budgets. Some 30\% of central budget funds are allocated in equal shares to all national minority councils, while the other 70\% is distributed depending on the national minority size and the number and type of institutions they control.\footnote{See: Council of Europe, Third Report Submitted by Serbia..., supra note 1740, p. 353.}

Competencies of national minority councils in the areas of education, culture, media and official use of language include among others: to establish institutions, associations, funds and companies in these four and other areas of importance for national minorities as such; to propose minority representatives for the Councils for inter-ethnic relations at local level; to submit initiative and proposals to state bodies for adoption or amendments of laws and other regulations in areas where they exercise their right to self-governance; to make initiatives and undertake measures on all issues and subjects affecting their status, identity and rights in the society where they live.\footnote{Ibid, p. 351.}

In the area of culture, national councils may participate in the management of public owned institutions and can “designate institutions, buildings and objects of particular importance for the preservation of national identity and heritage of a particular national minority”.\footnote{T. Purger, Ethnic Self Governance in Serbia..., supra note 1734, p. 8. However, as Advisory Committee to FCNM pointed out, “major issue of concern is the lack of criteria applicable to decisions of a national minority council to declare an institution to be of particular significance to it...Moreover, nothing prevents two or more councils from declaring the same institution to be of particular significance to them and requesting the transfer of founder rights in their favor – a situation which is however not specifically envisaged by the Law”. See: Advisory Committee on the FCNM, Third Opinion on Serbia..., supra note 1736, para. 194.} With respect to competencies in area of education, it is naturally that “due to diasporic nature or geographic distribution of many national minorities in Vojvodina and Serbia, securing elementary and secondary education in their native languages is difficult”.\footnote{T. Purger, Ethnic Self Governance in Serbia..., supra note 1734, p. 7.} Here, national councils may request adjustments of educational policy in order to ensure that minority language education is provided even in classes with fewer students, as well as to import textbooks from their respective kin-states. In a similar vein, national minority councils may determine names of all settlements in minority languages, primarily in those areas where their languages have been granted the status of 'language in official use'. Moreover, in those areas, national minority councils may also require from local or regional authorities to issue official documents in minority language, as well as to communicate and conduct various administrative procedures in minority languages.\footnote{Ibid, p. 9.}
In addition, national minority councils may cooperate regionally or internationally, particularly with organizations and institutions that are dealing with minority rights issues and with official institutions of their own kin-states. With respect to latter, national councils may participate in negotiations and drafting process for conclusion of bilateral agreements for protection of kin-minorities, and accordingly their representatives to serve as members of joint commissions in charge for assessment of implementation process of such agreements.\footnote{1773}

In spite of these positive developments, the whole system is not immune of shortcomings. Some provisions laid down in the Law of National Councils of National Minorities are in conflict with other laws, rendering their implementation in practice highly problematic.\footnote{1774} Moreover, recently the Constitutional Court of Serbia repealed several provisions of said law, as a consequence of their unconstitutionality. As such, some wide ranging competencies once enjoyed by national minority councils have been effectively restricted. Basically, state authorities are no longer obliged to seek opinion from national councils in case issues derived from their competencies are part of decision making process, and moreover, the Court confirmed the consultative and legally non-binding nature of proposals and initiatives originating from national minority councils. Finally, the Court deprived the councils of the possibility to nurture close contacts with official institutions of their respective kin-state.\footnote{1775}

Overall, though, the national minority councils seem to be a valuable asset for each national minority since they accumulate necessary political experience and simultaneously learn about negative and positive experiences within their respective national councils.\footnote{1776}

\section*{B. Position and Status of Macedonian National Minority in Serbia}

\subsection*{1. Demographic Features of Macedonian Community in Serbia and Its Legal Status}

The Macedonian community in Serbia was established as a minority group in a unique way. First, ethnic Macedonian families were settled in Vojvodina during the land reforms of the former Yugoslavia in 1946. Other families arrived in Vojvodina as refugees from the Greek Civil War in the late 1940s. The Socialist Republic of Macedonia’s participation in the Yugoslav Federation also led to the migration of many Macedonians to Serbia.\footnote{1777} Therefore, the amalgamation of Macedonians originating from different

\footnotesize{\begin{tabular}{l}
1773 S. Surova, Exploring the Opportunities for Trans-Ethnic... supra note 1765, p. 36. \\
1774 See: Advisory Committee on the FCNM, Third Opinion on Serbia... supra note 1736, para. 190. \\
1775 S. Surova, Exploring the Opportunities for Trans-Ethnic... supra note 1765, pp. 36-39. \\
1776 See: M. Pejić, Minority Rights in Serbia... supra note 1742, p. 163. \\
1777 See: OSCE Mission to Serbia, Ethnic Minorities..., supra note 1745, p. 18. \\
\end{tabular}}
countries and regions provided the base for the formation of the Macedonian national minority and its existence today in the various regions in Serbia.\footnote{See: Dejan Marolov, The Relations between Macedonia and Serbia, Romanian Journal of History and International Studies, Vol 2 (1), pp. 117-128, p. 125.}

There are some uncertainties regarding a continuous and accelerating decrease in the number of Macedonians in Serbia. According to the 1991 census, there were 47,577 Macedonians in Serbia, including both autonomous provinces of Kosovo and Vojvodina.\footnote{Milan Paunovic, Nationalities and Minorities in the Yugoslav Federation and in Serbia, in John Packer, Kristian Myntti (eds.), The Protection of Ethnic and Linguistic Minorities in Europe, Abo Akademi University, 1993, pp. 145-165, p. 163.} The 2002 census, found a significant depopulation of the Macedonian minority, with only 25,847 Macedonians were registered in Serbia (excluding Kosovo), a 44% decrease.\footnote{F. Remenski, Macedonian National Minority in the Neighboring Countries..., supra note 931, p. 156.} Having in mind the uneasy period between the two censuses (1991-2002), with wars, turmoil and a political climate that favored assimilation of minorities into the body of Serbian nation, these results were not unexpected. In fact, under Milosevic at the time, domestic policies for ‘ethnic homogenization’ prevailed over the need for democratization.\footnote{Ibid, p. 152.} Hence, one is not surprised that Macedonians were not considered as a genuine 'national minority' in the 1990s. Consequently, some citizens of Macedonian origin avoided indicating their ethnic background or identified themselves neutrally as 'Yugoslavs', while those people coming from ethnically mixed marriages were keen to declare themselves as Serbs instead as Macedonians.\footnote{Национален совет на Македонската национална заедница во Р. Србија, Национална стратегија на македонската национална заедница во Р. Србија 2013-2023: Македонски обединети сили (MAKOS) [National Council of the Macedonian National Minority in Serbia, National Strategy of the Macedonian national community in the Republic of Serbia (2013-2023): United Macedonian Forces (MAKOS)], 2013, p. 10.}

Inevitably, the ongoing process of demographic transition in Serbian society equally affects all ethnic groups, and the Macedonian minority is not immune to such negative developments. Indeed, the 2011 census revealed that the Macedonian community in Serbia continues to decline, with only 22,755 Macedonians registered in the country.\footnote{ECRML, Third Periodical Report: Serbia, supra note 1748, p. 15.} However, an example given by National Council of Macedonian National Minority reveals that back in the 1950s some 2,000 ethnic Macedonian families with approximately 11,600 members were settled in just three municipalities (Pančevo, Vršac, Plandište), and naturally, these numbers were expected to be doubled in size in fifty years.\footnote{National Strategy of the Macedonian national community in the Republic of Serbia (2013-2023)..., supra note 1782, p. 10.} Therefore, in their assessments, the number of ethnic Macedonians in the whole country is much higher than one determined with the census, amounting to between 100,000 and 200,000.

As a consequence of its non-autochthonous character and ‘diasporic nature’, the Macedonian minority in Serbia is dispersed throughout the country’s regions and municipalities. Indeed, persons belonging to Macedonian national minority are found in 174 of 178 municipalities in Serbia, but they do
not constitute clear or relative majority in any of these municipal units. The highest concentration of this minority is found in Belgrade, along with municipalities of Pančevo, Plandište, Novi Sad and Vršac. Finally, it is to be noted, while some 55% of this population lives in Serbia proper, including the capital Belgrade, the rest of them is concentrated in the Autonomous Province of Vojvodina.

An important consideration is that the position and status of Macedonian national minority in Serbia was significantly affected by the dissolution of Yugoslavia. Having been a majority population in the Socialist Republic of Macedonia, ethnic Macedonians enjoyed the status of ‘constitutive people’ in the Yugoslav federation, which positively affected their rights and privileges in other republics, including in Serbia. The reconfiguration of the political map in the Balkans in the 1990s effectively downgraded the status of ethnic Macedonians, and they were subsumed into the widely accepted umbrella term ‘national minorities’. However, a side effect of this legally prescribed ‘downgrade’ for Macedonians and other ethnic groups, such as Croats, was the repeal of almost all rights and privileges. The status of Macedonian language as a ‘language in official use’ in the municipality of Pančevo was abolished, as was the local Macedonian language radio and a single Macedonian page in the local newspaper ‘Pančevac’. Moreover, even the subject ‘Macedonian language’, which previously was regularly offered as an optional subject in some of the schools in the district of South Banat gradually ceased to be offered. This reversible process was not unnoticed by international organizations responsible for monitoring minority rights and their implementation. As Advisory Committee of FCNM noted, “persons belonging to those groups that have only relatively recently, following the break-up of Yugoslavia, been defined as national minorities, such as Croats and Macedonians, have often had difficulties in creating, and attracting adequate support for their cultural institutions and initiatives in the new circumstances”.

2. Review of the Present Human Rights Situation of Macedonians in Serbia

As indicated above, within the constitutional system of Serbia, Macedonians are recognized as a national minority. Moreover, the Statute of the Autonomous Province of Vojvodina identifies them among ethnic groups that traditionally inhabit the province, and for which authorities are obliged to pursue minority policies in order to ensure full equality with Serbian majority. Such recognition in the

1785 Ibid, p. 4.
province’s highest legal act is assumed to be a positive step towards improving the status of Macedonians from ‘national minority’ to one as a ‘constitutive people’.

The right to organize themselves into national minority councils is an emanation of the recognized collective right of national minorities to self-governance in several areas. The National Council of the Macedonian National Minority was initially established in 2004, as a body with a prescribed jurisdiction to coordinate activities and projects pertaining to the Macedonian minority in the fields of culture, education, information and official use of language and script. In addition, on 29 August 2010, representatives from 31 Macedonian associations and non-governmental organizations (NGOs) held an electoral assembly and voted for composition of the national council. These 31 cultural associations and NGOs are unified into a Union of Associations of the Macedonian national community (SAMS). Along with the Democratic party of Macedonians, all three entities agreed to conclude the National Strategy of the Macedonian National Community in Serbia (2013-2023): United Macedonian Forces (MAKOS), where all future activities and priorities for effective enforcement of rights in the area of culture, education, information, official use of language and political participation are stipulated.

Republic of Serbia is the only neighbor country with which Republic of Macedonia has concluded bilateral agreement for protection of their kin-minorities. Therefore, we will give special attention to the effective realization of the rights and freedoms stipulated in this bilateral agreement on the minority protection. However, in relation to the implementation of this bilateral agreement one fundamental issue of concern remains. Namely, Article 14 provides that Intergovernmental Joint Commission shall be established with a task to monitor the agreement’s implementation in practice. Both sides are represented equally in the joint commission and participation of members of the Serbian minority in Macedonia and of the Macedonian minority in Serbia is mandatory. Accordingly, incumbent president of the National Council of the Macedonian National Minority is simultaneously a member in the joint commission from the Serbian side. Notwithstanding these stipulations, no single meeting of the joint commission has been held to date. Recent analysis found that the Serbian members have been appointed and have held three preparatory meetings, while Macedonian side has failed to do so.

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1791 Interview with Borče Velickovski, president of the National Council of the Macedonian National Minority in Serbia, conducted on September 1, 2016.
1792 Prior to the National Council of the Macedonian National Minority in Serbia, there were only two Macedonian organizations in the country. The first one, called 'Community of the Macedonians in Serbia and Montenegro' was based in the city of Požarevac, while the other one in essence was not 'pure' minority-related organization, since it was called Society for Macedonian-Serbian cooperation and friendship 'Šar Planina'. See: S. Kiselinovski, I. Stavovi Kavka, Minorities in the Balkans, supra note 935, p. 181.
1793 National Strategy of the Macedonian national community in the Republic of Serbia (2013-2023), ... supra note 1782, p. 11.
the same. Considering the wide and flexible provisions enshrined in the bilateral agreement, the Macedonian community considers such indifference on the agreement's implementations as a serious impediment in its quest for an accelerated enforcement of the rights and privileges stipulated in it.

3. Effective Realization of Language Rights of Persons belonging to the Macedonian Minority

On the issue of language rights, it should be recalled that “Macedonian minority has undergone a degree of assimilation, as many Macedonian language rights were lost as the result of the break-up of the former Yugoslavia”. Macedonian language and its script were in official use in the municipality of Pančevo until 1991, when a new municipal statute abolished that status. Obviously, the ‘vested rights' doctrine had no relevance here. Moreover, although Serbia ratified the ECRML, Macedonian language is not included in the languages for which obligations stipulated in Part III are taken over, i.e. in the fields of education, judicial and administrative procedures, media, cultural activities/facilities and economic and social activities. Supposedly, the main reason behind the non-inclusion of the Macedonian language among the group of 'regional and minority languages' is that at the time of the ECRML ratification, it was not recognized as a language in official use in any municipality. This issue is raised by the representatives of Macedonian national minority on each occasion and a formal request for recognition of Macedonian language as regional or minority language is contained in each supplement from Macedonian minority to the periodical reports submitted by Serbia on the implementation of the ECRML.

Despite lacking official recognition as a ‘regional or minority language’, there are some positive measures undertaken for promotion of the use of Macedonian language in the fields covered with the ECRML, which have to be considered when assessing the situation and position of ethnic Macedonians in Serbia. Part II of the ECRML, which has a general scope and applies to any language spoken in the country, offers front-line protection for all languages, by prescribing several objectives and principles,
directed basically as a guidelines for state parties in the process of designing language policies.\textsuperscript{1803} Additionally, Article 7 of the ECRML obliges state parties to base their policies, legislation and practices according to the situation of each language.\textsuperscript{1804}

As stressed above, national minority councils have the possibility to accomplish their constitutionally enshrined right to self-government in several areas, including the official use of language. To that end, National Council of the Macedonian National Minority intends to improve the position of Macedonian language in those regions and municipalities where a considerable number of ethnic Macedonians lives. Positive changes in this field are noticed recently. Namely, Macedonian language and its Cyrillic script were introduced in official use in the settlements of Jabuka (Municipality of Pančevo) and Dužine (Municipality of Plandište) in 2009. Three years later, official use of Macedonian language was recognized in the entire territory of the municipality of Plandište.\textsuperscript{1805} However, with respect to the municipality of Pančevo, authorities neglected the needs of Macedonian community "from neighboring villages and at the level of the entire municipality, to enjoy, foster and develop the right to use mother tongue in public life. This has the consequence that only 38.91% of the members of the Macedonian community in Pančevo enjoy the right of use Macedonian language and script officially (in the settlement of Jabuka - DT), while the major part (61.8%), in the same town, has nothing of this benefit".\textsuperscript{1806}

In addition, the improvement of the position of Macedonian language in these local units and settlements simultaneously means that "all of the requirements have been met for Macedonian language and its Cyrillic script to be moved from the Part II of the European Charter for Regional and Minority Languages to the Part III of the said Charter".\textsuperscript{1807} Concurrently, it should be noted that introduction of Macedonian language in official use in the entire territory of the municipality of Pančevo, as well in Vršac, Subotica, Novi Sad and other settlements with vital Macedonian communities are among the middle-term priorities of the National council. In the long term, the main priority is the introduction of Macedonian language in official use in the Autonomous Province of Vojvodina, along with six other official languages.\textsuperscript{1808}

\textsuperscript{1804} Council of Europe, \textit{European Charter for Regional and Minority Languages}, 4 November 1992, ETS 148, Art. 7.
\textsuperscript{1805} ECMRL, \textit{Third Periodical Report: Serbia}, supra note 1748, p. 35.
\textsuperscript{1806} European Charter for Regional and Minority Languages, \textit{Serbia} - Second Periodical Report presented to the Secretary General of the Council of Europe in Accordance with the Article 15 of the Charter, Strasbourg, 23 September, 2010, p. 60.
\textsuperscript{1808} National Strategy of the Macedonian national community in the Republic of Serbia (2013-2023)...., supra note 1782, pp. 17-18.
4. Education in Macedonian Language

As in the case of language rights, at the time of the Yugoslav federation, Macedonian language was included in the educational processes for ethnic Macedonians in Serbia, though different models were implemented in various periods. Initially, from 1946 to 1960, a complete education in Macedonian language was provided for pupils in the schools in Kačarevo, Plandište, Glogonj and Jabuka. Afterwards, from 1960 till 1976, the situation had changed fundamentally, since Macedonian children had possibility to learn their mother tongue only via the subject Macedonian language in these schools. Starting from 1975, the subject Macedonian language as a 'language of social environment' was mandatory for students from all ethnic groups in the settlement of Jabuka, and this situation continued until 1994, when it was repealed.\footnote{\textit{Ibid}, p. 23.}

Law on the Protection of Rights and Freedoms of National Minorities envisages that in case no mother tongue education for national minorities exist, the State shall create the conditions for organizing such education, "\textit{and in the meantime shall provide bilingual classes or studying of national minorities language with elements of national history and culture for the persons belonging to national minorities}".\footnote{\textit{Law on Protection of Rights and Freedoms of National Minorities...}, supra note 1746, Art. 13, para. 2.} Moreover, the bilateral agreement on the minority protection between Macedonia and Serbia provides that both parties, through appropriate legislative measures, shall enable persons belonging to the Macedonian national minority in Serbia and to the Serbian national minority in Macedonia to study their respective mother tongues or to receive education in their mother tongues.\footnote{\textit{Agreement between Republic of Macedonia and Serbia on the protection...}, supra note 1794, Art. 4.} Until recently, Macedonian language was absent from the formal education system in Serbia. Thus, pupils belonging to Macedonian national minority were deprived of a right to receive some of the three modalities for education in minority language, i.e. complete education in minority language, bilingual education or studying mother language tongue with elements of national culture. This shows that even though all non-dominant ethnic groups in Serbia are designated as ‘national minorities’, ‘traditional ethnic communities’ are privileged in their access to mother tongue education in comparison with those occasionally referred as 'newly emerged minorities'.\footnote{\textit{Supplement of the National Council of the Macedonian National Minority}, in \textit{supra} note 1808, p. 389.}

Using its competencies in the field, National Council of the Macedonian National Minority in 2007 prepared syllabi and curricula for the subject ‘Macedonian language with elements of national culture’ for the grades I to IV in primary school. After several postponements, the subject 'Macedonian language with elements of national culture' was reintroduced into the Serbian education system in the school year 2011/2012. Actually, one Macedonian language class was established in Jabuka in that school
year, and pupils attending therein have an opportunity to study their mother tongue for 2 classes per week.\footnote{1813} Simultaneously, the National Council completed the formal requirements for introduction of Macedonian language in the schools in Kačarevo, Glogonj, Plandište, Dužine and Gudurica. In practice, at present, the subject ‘Macedonian language with elements of national culture’ is taught in five classes in the primary school ‘Goce Delčev’ in Jabuka, in three classes in the primary school ‘Žarko Zrenjanin’ in Kačarevo, in two classes in the primary school ‘Svetozar Marković’ in Leskovac and in one class in the primary school ‘Kosta Stamenković’ in Bogoevce.\footnote{1814} Overall, approximately 100 pupils are encompassed in these classes, and the number was expected to exceed 200 pupils during the school year 2016/2017.\footnote{1815}

Recent analysis of the implementation of the Macedonian–Serbian agreement on minority protection indicates that some principals are unwilling to introduce the subject ‘Macedonian language with elements of national culture’ in their schools, due to fear that some colleagues might lose their jobs if minority children opt to study their mother language as an optional subject rather than other existing subjects.\footnote{1816} Consequently, it is recommended the subject minority language with elements of national culture be transferred from the group of facultative into the optional subjects, in the same group with subjects such as civil and religious education.\footnote{1817}

Evidently, only a small portion of Macedonian minority is encompassed with classes where subject Macedonian language is provided as a facultative one. The two other modalities stipulated in various laws, namely the complete education in minority language or a bilingual instruction, are still unavailable to pupils of Macedonian ethnicity. Hence, the linguistic assimilation of younger Macedonians in Serbia is visible from the census results, where the number of persons declaring Macedonian as their mother tongue is much smaller than the number of ethnic Macedonians in the country.\footnote{1818} Accordingly, while some 22,755 ethnic Macedonians were registered in the 2011 census, only 12,706 citizens declared Macedonian as their mother tongue.\footnote{1819} In order to revitalize Macedonian language among ethnic Macedonians in Serbia who live in various regions, the National Council of the Macedonian National Minority is organizing the course “Welcome in the Macedonian language”.\footnote{1820} The course lasts 40 classes and apart from increasing linguistic competencies, the main aim is to develop awareness among Macedonian community for their history, culture and traditions. It seems that for a national minority that is quite dispersed throughout the country and whose language is not taught in the schools in a satisfactory way, such privately launched activities are indispensable and desirable.

\footnote{1813} National Strategy of the Macedonian national community in the Republic of Serbia (2013-2023)…, supra note 1782, p. 23.
\footnote{1814} A. Popov, Analiza sprovodenja bilateralnog Sporazuma…. supra note 1796, p. 31.
\footnote{1815} Personal communication with Borča Veličkovski, president of the National Council of the Macedonian National Minority.
\footnote{1816} A. Popov, Analiza sprovodenja bilateralnog Sporazuma…. supra note 1796, p. 31.
\footnote{1817} Ibid.
\footnote{1818} See: F. Tasevska Remenski, Macedonian National Minority in the Neighboring Countries…. supra note 931, pp. 199-200.
5. Political Participation of Macedonian Minority in Public Life

Macedonian–Serbian bilateral agreement on minority protection stipulates that both countries shall ensure effective participation of national minorities in decision making process at local, regional and national level on issues affecting their rights and shall provide for their adequate representations in bodies at all levels. Accordingly, in the Serbian political spectrum, Macedonian community is represented by three political parties. Democratic Party of Macedonians was the first political party of ethnic Macedonians in Serbia, formed in 2004. This political party has managed to establish its own local branches in Pančevo, Kačarevo, Plandište, Zrenjanin, Požarevac, Kostolac, Novi Sad etc. On 17 January 2016 the founding committee of the new political party called Party of Macedonians in Serbia held its founding meeting in Belgrade and announced the party's formation.

However, it was not until 2012 that the Macedonian national minority was represented for the first time in the Serbian Assembly with a ‘genuine’ minority deputy coming from an ethnic Macedonian political party. In this case, Democratic Party of Macedonians made a pre-election coalition with a major Serbian Progressive Party and its candidate Mile Spirovski was elected as a deputy in the Serbian Assembly. At the local level, one of three ethnic Macedonian political parties won a seat in the municipal council of Pančevo in the 2016 local election.

National Council believes political representation of the Macedonian minority at central and local level is rather small and contends that local authorities in some municipalities do not understand the significance of national minority councils and their prescribed role in the decision making process. Therefore, they advocate revising the domestic legal framework to create 'reserved seats' for national minorities in the Serbian Assembly. However, as mentioned, this is not to ignore that some ethnic Macedonians affiliated with mainstream political parties have been elected as deputies or city councilors. Nonetheless, in such cases what matters most is whether these persons are more inclined to advocate substantial representation and advancement of the rights of their community instead of their political affiliation.

Similar tendencies are noted in public administration and the judiciary. Persons belonging to Macedonian national minority are generally underrepresented and hardly any member of this community is found in high position as a judge, public prosecutor, police commander etc. For instance, in Pančevo, where ethnic Macedonians are the second largest ethnic group, they are represented by only six civil

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1821 Agreement between Republic of Macedonia and Serbia on the protection..., supra note 1794, Art. 8.
1824 Personal communication with Borče Veličkovski, president of the National Council of the Macedonian National Minority.
1825 Suplement of the National Council of the Macedonian National Minority, supra note 1807, pp. 389-390.
1826 J. Lončar, Electoral Accountability and Substantive Representation..., supra note 1756.
servants, but none in a senior position. Similarly, there is only one ethnic Macedonian employed in the administration of the Autonomous Province of Vojvodina. Furthermore, a survey for national composition of provincial administrative bodies and local self-government units in the territory of AP Vojvodina showed that no candidate of Macedonian ethnicity was among the newly elected judges of 2010, while five ethnic Macedonians were appointed as lay judges from the High Judicial Council in 2009.

6. Activities in the Area of Culture and Access to Information in Mother Language

Tasevska Remenski noted that acculturation is an important driving force behind the gradual assimilation of ethnic Macedonians in Serbian society. Indeed, the acculturation and appropriation of the majority's cultural practices occur mainly because the Macedonian minority lacks institutions that would enable them to preserve, nurture and develop their culture and language. Therefore, the areas of culture and access to information in mother language are also crucial for maintenance of minority identity.

Macedonian minority lacks finance and thus is prevented from the possibility of establishing its own cultural institution, but nevertheless every week organizes some cultural events. All organizations affiliated with the National Council each year organize in their places cultural events called ‘Days of Macedonian Culture’, which afterwards are unified in a central cultural gathering. In addition, five years ago, the national ensemble ‘Tose Proeski’ evolved into a Center for protection and affirmation of Macedonian tradition and distinctiveness. In a similar vein, the National Council intends to reorganize the foundation ‘Makedonsko sonce’ into a Bureau for Macedonian culture.

The right of access to information in mother language as well the right to disseminate ideas in mother language is guaranteed by treaties to which Serbia is a signatory, and is stipulated in the bilateral agreement on minority protection between Serbia and Macedonia. Public broadcasting service in the AP Vojvodina provides radio and TV programs in Macedonian. In particular, a half hour program 'Makedonsko sonce' is regularly broadcast on RTV Vojvodina, whereas TV Pancevo broadcasts a weekly 30 minute program 'Banatsko sonce'. Macedonian language publications include the monthly magazine ‘Makedonska videlina’, the children magazine ‘Zunica’, also published monthly, and a quarterly journal

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1829 F. Tasevska Remenski, Macedonian National Minority in the Neighboring Countries…, supra note 931, pp. 175.
1830 A. Popov, Analiza sprovodenja bilateralnog Sporazuma…, supra note 1796, pp. 32-33.
1832 Agreement between Republic of Macedonia and Serbia on the protection..., supra note 1794, Art. 7.
of literature, art and culture ‘Videlo’. All these magazines are published by the National Publishing Institution ‘Macedonian Information and Publishing Centre’, whose founder is the National Council of the Macedonian National Minority. Projects that aim at promoting Macedonian culture and spreading information in Macedonian language are supported in whole or in part by the budgets of the Republic of Serbia and the AP Vojvodina. It is worth noting that some thematic projects in these areas are supported by the Ministry of Foreign Affairs of the Republic of Macedonia, through a grant program allocated for the associations of Macedonians living in neighboring countries, such as the TV program ‘Infomak’, broadcast on TV Vranje. On the latter point, it is worth reiterating that the bilateral agreement on minority protection obliques both sides to encourage free and unimpeded contact between national minorities and their kin-states, and such activities are compliant.

The analysis of the practical implementation of the bilateral agreement highlights two pressing 'open issues' in respect to the Macedonian minority in Serbia. First is the lack of adequate textbooks on the subject 'Macedonian language with elements of national culture', despite the approval of proposed textbook by the Ministry of Education. Second is related to access to information in Macedonian language. Namely, the Macedonian TV program 'Makedonsko sonce', which was previously broadcast on the local TV stations in Nis, Leskovac and Vranje, was dropped when these TV stations were privatized. The Law on Public Information and Media stipulates, however, that media privatization processes shall ensure the maintenance and continuity of the programs in specific minority languages.

7. Religious Freedoms of Macedonians in Serbia

One issue that must be discussed separately is that persons belonging to Macedonian national minority do not have a right to profess and practice their religion on their own language, nor have a right to their own church or even to declare themselves as adherents of the Macedonian Orthodox Church. Article 10 of the Law on Churches and Religious Communities grants automatic recognition to five ‘traditional churches’ (Serbian Orthodox Church, Roman Catholic Church, Slovak Evangelical Church, Christian Reformed Church and the Evangelical Christian Church) and two ‘traditional religious communities’ (Islamic Religious Community and Jewish Community). As a consequence, the right to establish religious institutions is limited such that “no religious organization the name of which contains a name or part of a name expressing the identity of a church, religious community or religious

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1835 Information for this project is disclosed with prior consent by the Ministry of Foreign Affairs of the Republic of Macedonia.
1836 Agreement between Republic of Macedonia and Serbia on the protection..., supra note 1794, Art. 5.
1837 A. Popov, Analiza sprovođenja bilateralnog Sporazuma..., supra note 1796, p. 35.
1839 A. Popov, Analiza sprovođenja bilateralnog Sporazuma..., supra note 1796, p. 31.
organization that has already been entered in the register or has submitted an application for entry beforehand shall be registered”. Accordingly, any other Orthodox Church may not be registered to operate in Serbian territory, “on the grounds that, under Orthodox canon law, territorial overlapping between dioceses has to be avoided”.

In one case, when a church committee launched an initiative to build a new church in the city of Jabuka, National Council of the Macedonian National Minority acted as an intermediary between local Macedonians and Serbian Orthodox Church over the prefix of the newly consecrated church. Since ethnic Macedonians are second ethnic group in the city, their representatives intended the church to be designated as Macedonian Orthodox Church, the name of which was highly disputed by clerics of the Serbian Orthodox Church. Compromise was reached when church was officially designated the Orthodox Church 'St. Ilija', without any prefixes. Furthermore, it must be noted that ethnic Macedonians, and Bulgarians, are still unable to practice the religion in their mother languages, a situation which also occasionally affects Vlachs and Romanians.

In essence, the religious freedoms of Macedonian national minority in Serbia are predetermined by the dispute between the Serbian Orthodox Church and the Macedonian Orthodox Church–Archdiocese of Ohrid on the canonical status of the latter, and its deprived right to exist as an autocephalous church within the ecumenical realm of Eastern Orthodox Christianity. Djordjević, a Serbian scholar, observes that until the dispute is resolved and the Macedonian Orthodox Church is recognized by other autocephalous churches, the Macedonian minority in Serbia will have to continue to use Serbian Orthodox Churches for their religious practices, which thus presents a “religious community by
Other authors, such as Tasevska Remenski, contend that the negation of the Macedonian Orthodox Church by the Serbian Orthodox Church, and indirectly by the Serbian authorities, undermines the national consciousness of the Macedonian national minority and questions the existence of such minority in their territory. Especially, if one accept the strength and influence of the Serbian Orthodox Church in the society, which indeed presents an insurmountable factor for decisions on core national issues, than such conclusion seems reasonable.

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1847 F. Tasevska Remenski, Macedonian National Minority in the Neighboring Countries..., supra note 931, pp. 175.
1848 See Perica, who quotes Miljanovic, underlining that "the Serbian Orthodox Church is not only a religious organization, but also a leading national institution committed to the cause of national unity - national leadership is the Church's historical mission as a church and national institution". Vjekoslav Perica, Balkan Idols: Religion and Nationalism in Yugoslav States, Oxford University Press, 1992, p. 36.
4.5. Minority Protection in the Republic of Kosovo and Human Rights Position of the Macedonian-speaking Gorani Community

The last section of this chapter analyzes the domestic legal framework in the Republic of Kosovo that prescribes minority rights and its implementation in several previously determined areas. The issue about position and legal status of the Macedonian-speaking Gorani community is reviewed separately. Here, emphasis is placed on those aspects that clarify uncertainties about their self-identification, as well their communal preferences on the realization of constitutionally enshrined educational, linguistic and participatory rights. For the reasons set forth in following pages, human rights and the situation of persons declared as ethnic Macedonians are mentioned only in brief.

Some details of Kosovo's conflict in late the 1990s have been mentioned in previous sections. It should be recalled that after Serbian authorities withdrew their security and military forces from the province in 1999, the international community (UN) was responsible for supervising and monitoring the Provisional Self-Government in Kosovo.\textsuperscript{1849} That situation fundamentally changed on 17 February 2008, when members of the Kosovo Assembly passed the Declaration of Independence, the legality of which was disputed by Serbian authorities. At present, the Republic of Kosovo is a partially recognized country, and until recently, has been sidelined from all international organizations. The EU-brokered dialogue between Serbia and Kosovo, which began in 2011, intends to correct this situation, by promoting concrete measures in several fields, although fundamental differences on the status of Kosovo remain.\textsuperscript{1850}

A. Overview on the Position of Minority Communities in Kosovo and Legal Framework Pertaining to Minority Rights

For various reasons, legal documents related to human rights and rights of minorities in Kosovo, both international and domestic, refer not to ‘minority’ and ‘majority’, but use the term ‘communities’ instead. On the one hand, this tendency is not unique to Kosovo; many ethnic groups worldwide object to being labeled ‘minorities’. However, in this case, there are at least two significant reasons for this semantically neutral reference. First, Serbs in Kosovo continue to see the territory as an integral part of Serbia, and fear that "by being referred to as a 'minority' in Kosovo they are conceding that Kosovo is an independent state".\textsuperscript{1851} Furthermore, the main leitmotiv for employing the term ‘communities’, first used

in the Ramboullet Accords, was to avoid “any allusion to or anticipation of the final status of Kosovo”.

Despite this, the notion of ‘communities’ is indirectly equated with that of ‘minority’ in the Law on the Promotion and Protection of the Rights of Communities. Namely, Article 1 of this law defines the communities as “national, ethnic, cultural, linguistic or religious groups traditionally present in the Republic of Kosovo that are not in the majority”. In addition, the term ‘minority’ is continuously used by OSCE and UNHCR, by which they refer to “any community that lives in a situation where they are a numeric minority relative to the communities surrounding them”. On this basis, in fact, this term also encompasses majority members when they are in a situation of ‘minority within the minority’.

Initially, the Law on the Protection and Promotion of the Rights of Communities followed the diction of the Constitution and explicitly enumerated the Serbs, Turks, Bosniaks, Roma, Ashkali, Egyptians and Gorani as recognized communities for whom the prescribed protection will apply. In December 2011, after numerous requests for official recognition by representatives of the Croat and Montenegrin communities, the Constitution was amended to encompass these communities as well, and to afford them equal legal protection as already established for the other seven communities. As per above, in accordance with the provisions of this law, members of the majority Albanian community are entitled to equal protection in those municipalities where they are a numerical and non-dominant minority.

On Kosovo’s ethnic composition, we should mention two tendencies observed mainly from the censuses conducted in the aftermath of WWII. First, a steady decrease in the share of Serbian population since 1946 is by far the most significant and obvious. Simultaneously, the permanent increase in the size of the Albanian community, plus the ethnic cleansings committed by both belligerents in the recent war, created almost monoethnic regions throughout Kosovo, where either Albanians or Serbs dominate. After several postponements, first post-war census was conducted in 2011. The results

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1853 Assembly of Kosovo, *Law on the Promotion and Protection of the Rights of Communities and Their Members in Kosovo*, Art. 1.4.
1855 Ibid.
1858 In the aftermath of World War II the share between the Albanian and the Serbian population in Kosovo was 68% to 24.1%. Visible changes on the percentages reflecting these two communities were noticed during the census of 1971, when Serbs decreased to some 18.4% and Albanians grew to 73.4% of the total population in Kosovo. As a consequence of various demographic indicators in both communities (fertility rate, migration), these tendencies were accelerated in following years. Therefore, the last Yugoslav census of 1981 witnessed additional increase with regard to Albanians (77.4%) and simultaneous reduction in the proportion of Serbian population (15.2%). See: E. Lantschner, *Protection of Minority Communities in Kosovo…*, supra note 1852, pp. 452-453.
largely confirmed the previously indicated tendencies, though the European Centre for Minority Issues recommended the census results to be used with reservations.\textsuperscript{1860} For one thing, the survey failed to include the four northernmost Serb-populated municipalities of Zvečan/Zveçan, Leposavić/Leposaviq, Zubin Potok and North Mitrovica/Mitrovicë. For another, there was a partial boycott by Serbs and Roma in southern Kosovo. Therefore, it is unsurprising that out of approximately 1.74 million citizens registered during the census, 92.2% identified as Albanians, 1.5% as Serbs, 1.6% Bosniaks, 0.6% Gorani, 0.5% Roma, 0.6% Egyptians, 0.9% Ashkali, 1.1% Turks, and 0.6% as ‘others’.\textsuperscript{1861}

The legal framework pertaining to the rights of minority communities in Kosovo is wide and comprehensive. Advisory committee on the FCNM observed that Kosovo’s legislative framework "is generally in line with the Framework Convention and in some aspects one of the most advanced in Europe".\textsuperscript{1862} It goes without saying that many of the prescribed rights are directly transposed from the Comprehensive Proposal for the Kosovo Status Settlement, prepared by UN Secretary General Special Envoy Marti Ahtisaari.\textsuperscript{1863} Perhaps the most important rule arising from the Constitution is the one that provides direct applicability of the provisions of the core international human rights treaties.\textsuperscript{1864} Against this background, the Constitution in particular "accepts and employs the doctrine of incorporation, given that the instruments concerned automatically take effect in the domestic law".\textsuperscript{1865} The Constitution recognizes that minority communities “shall have specific rights...in addition to the human rights and fundamental freedoms” provided to all Kosovo’s citizens, regardless of one’s ethnocultural affiliation or linguistic background. In addition, being the largest non-dominant community within the society, and as a consequence of their special historical and cultural attachment to the land of Kosovo, Serbs are entitled to

\textsuperscript{1860} ECMI Infochannel, \textit{Minority figures in Kosovo to be used with Reservations}, 8 January 2013.

\textsuperscript{1861} A. Beha, \textit{Minority Rights: An Opportunity...}, supra note 1850, p. 86.

\textsuperscript{1862} Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities, \textit{Third Opinion on Kosovo}, Strasbourg, 10 September 2013, p. 6.

\textsuperscript{1863} Stevens rightly noted that “minorities were effectively excluded from deliberations and drafting of the Ahtisaari Plan and its final settlement of Kosovo”, in spite of repetitive recommendations for their inclusion in these processes, issued by Advisory Committee to FCNM, Minority Rights Group etc. Moreover, the Ahtisaari Plan envisioned “the Constitutional Commission drafting the new Kosovo Constitution...to include at least three Serb Kosovo members, and three members representing ‘other’ minority communities”. While Serbs opposed any involvement in process that would pave the way for creation of independent state, Bosniaks, Egyptians and Turks participated in the initial working group with one representative from each group. G. Stevens, \textit{Filling the Vacuum: Ensuring...}, supra note 1854, p. 16.

\textsuperscript{1864} Article 22 of Kosovo’s Constitution reads: "Human rights and fundamental freedoms guaranteed by the following international agreements are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions: (1) Universal Declaration of Human Rights; (2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols; (3) International Covenant on Civil and Political Rights and its Protocols; (4) Framework Convention for the Protection of National Minorities; (5) Convention on the Elimination of All Forms of Racial Discrimination”.

enjoy various group-differentiated rights.\textsuperscript{1866} With this in mind, scholars contend that the Constitution “is based on the consociational model of democracy – as opposed to a majoritarian model of democracy”.\textsuperscript{1867}

1. Effective Participation of Minority Communities in Central and Municipal Level Institutions

Kosovo’s Constitution adopts the approach of providing minority communities with ‘special representation rights’ at various state level institutions.\textsuperscript{1868} Constitution Article 64 provides that exactly 20 out of 120 seats in the Kosovo Assembly are guaranteed to representatives of non-majority communities. These reserved seats for minority communities are disaggregated in a way that ten seats are granted for Serbs, three for Bosniaks, two for Turks, while Gorani, Roma, Ashkali and Egyptians are entitled to one seat each.\textsuperscript{1869} The last seat goes either to Roma, Ashkali or Egyptians, depending on the number of votes achieved by their respective lists. Conversely, Croats and Montenegrins, despite being recognized as minority communities upon the amendments of legislation in 2011, are not provided with special representation in the Assembly. With this in mind, Advisory Committee of FCNM in its third opinion found that “these communities have an equal right to obtain guaranteed representation in the Assembly as other communities”.\textsuperscript{1870} Furthermore, it is worth noting that two out of five Deputy Presidents of the Assembly are elected from representatives of minority communities, one from the Serbian community and one from the other communities. Finally, “all 13 permanent and functional committees of the Assembly of Kosovo have appointed the required second vice-chairs from non-Albanian communities”.\textsuperscript{1871}

The Constitution foresees creation of a Committee on the Rights and Interests of Communities (CRIC) as one of the two permanent committees within the Assembly. This committee is composed on a tripartite basis, namely “one-third Serb deputies, one-third deputies of other minority communities and one-third deputies of the majority community”.\textsuperscript{1872} Scholars noted that “the overall mission of CRIC is to act as a legislative catalyst for minority rights in Kosovo”, since it is in an “ideal position to enhance and protect community rights through ‘its own initiative, propose laws and other measures within the responsibilities of the Assembly as it deems appropriate to address the concerns of Communities’”.\textsuperscript{1873} However, the Advisory Committee on the FCNM noted with regrets that “the recommendations and

\begin{footnotes}
\footnote{1866}{See: A. Beha, Minority Rights: An Opportunity..., supra note 1850, p. 87.}
\footnote{1867}{D. Doli, F. Korenica, Calling Kosovo’s Constitution..., supra note 1865, 83.}
\footnote{1868}{See: A. Beha, Minority Rights: An Opportunity..., supra note 1850, p. 95.}
\footnote{1869}{Assembly of the Republic of Kosovo, Constitution of the Republic of Kosovo, Art. 64.}
\footnote{1870}{Advisory Committee on the FCNM, Third Opinion on Kosovo, supra note 1862, para. 133.}
\footnote{1871}{OSCE Mission in Kosovo, Communities Rights Assessment Reports (fourth edition), November 2015, p. 20.}
\footnote{1872}{E. Lantschner, Protection of Minority Communities in Kosovo..., supra note 1852, p. 479.}
\end{footnotes}
concerns of the Committee are not adequately considered and that it does not, therefore, have an effective input of legislative drafts that affect the rights and concerns of minority communities”.  

Another institution that enables effective participation of minority communities at central level, and concomitantly deals with minority issues is the Community Consultative Council, which is founded under the auspices of the President of Kosovo. This body was envisaged in the Ahtisaari Proposal, and later established by the Law on Communities as a "forum for coordination and consultation amongst communities". Among others, this council is empowered with very far reaching competency to recommend the allocation of funds by both international donors and state institutions with a view to ensure that projects meet the needs and interests of minority communities. In practice, however, “systematic consultation with the CCC in the early stages of legislation and policy developments is still lacking”.

The ‘special representation rights’ approach also applies to the distribution of ministerial posts at the governmental level. Namely, when government is composed of no more than 12 ministries, one must be a representative from the Serbian community and one from another minority community. In case there are more ministries, an one additional is appointed from some of the recognized minority communities. The current Kosovo government, headed by Isa Mustafa (2014-2018), is a coalition government that includes representatives of minority communities, namely Serbs, Turks and Bosniaks. In particular, “one of the three Deputy Prime Ministers is non-Albanian, a Kosovo Serbs; of the 19 ministries appointed four are from non-Albanian communities...two Kosovo Serbs, appointed as Ministers for Communities and Return and Local Government Administration, one Kosovo Turk, appointed as Minister of Public Administration, and one Kosovo Bosniak without portfolio”.

The legitimate desire of authorities to build coherent and inclusive civil service in Kosovo was conditioned with a principle of equitable representation of minority communities in the institutions at central level. In that manner, provisions of the Law on Civil Service stipulated that within these institutions non-majority communities must be represented with at least 10%. The judiciary presents another field where preferential treatment of non-majority communities with prescribed minority quota is

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1874 Advisory Committee on the FCNM, Third Opinion on Kosovo, supra note 1862, para. 134.
1875 Emma Lantschner, Protection of Minority Communities in Kosovo..., supra note 1852, p. 479. The Statute for the Establishment of the Communities Consultative Council in Kosovo foresees that its members shall be composed of representatives of minority communities and from the government or the parliament. Members coming from minority communities have clear numerical supremacy within the Council, with at least two-thirds of its overall members. According to Lantschner, “Serbs shall be represented with five members, Bosniaks and Turks with three members each, and Roma, Egyptians, Ashkali and Gorani with two members each”.
1876 G. Visoka, A. Beha, Minority Consultative Bodies..., supra note 1873, p. 15.
1877 Communities Rights Assessment Reports (fourth edition), supra note 1871, p. 21.
1879 Back in 2010 the Office of the Prime Minister of Kosovo conducted research on the real impact of the preferable provision for minority communities. Unsurprisingly, the results were unsatisfactory. The report showed that "the overall representation of members of non-majority communities in the civil service cannot be considered as representing the multi-ethnic character of Kosovo". See: Communities Rights Assessment Reports (third edition), supra note 1871, p. 34.
provided. Some 15% of Supreme Court judges mandatorily come from the recognized minority communities, as well as four of thirteen members of the Kosovo Judicial Council (two Serbs, two others). Moreover, two Constitutional Court judges are recommended to the President for appointment only after the consent of majority deputies representing the minority communities in the Assembly.\footnote{Emma Lantschner, Protection of Minority Communities in Kosovo..., supra note 1852, p. 476.}

Several points are important on the issue of effective participation of minority communities at municipal level. First, the Ahtisaari Proposal contained an array of measures "to address the legitimate concerns of the Kosovo Serb and other Communities that are not in the majority in Kosovo and their members, encourage and ensure their active participation in public life". The proposed redrawing of municipality borders to establish new municipalities with Serbian majority was probably the most important legislative reform. As a result, upon the enactment of the Law on Local Self-Government, new Serb-majority municipalities have been created in different geographical regions. Namely, the municipalities of Gračanica/Graçanicë, Klokot Vrbovac/Klokot Verboc, Mitrovica/Mitrovicë North, Parteš/Partesh, Ranilug/Ranllug as well as the expanded municipality of Novo Brdo/Novëbërd are new units that emerged or whose borders were revised in accordance with provisions of this law.\footnote{UN Security Council, Letter dated 26 March 2007 from the Secretary-General addressed to the President of the Security Council: addendum: Comprehensive Proposal for the Kosovo Status Settlement, 26 March 2007, p. 22.}

In addition, position of all municipalities where Serbs form clear majority are enhanced with extended asymmetrical competencies in four areas: higher education (applicable solely to Mitrovica/Mitrovicë North); secondary health care; cultural affairs, including protection and promotion of Serbian and other religious and cultural heritage within the municipal territory; and with respect to the selection and dismissal of police Station Commanders.\footnote{A. Beha, Minority Rights: An Opportunity..., supra note 1850, p. 97.}

However, the existence of Serbia’s parallel institutions in Mitrovica North and the Serbian boycott of local elections prevented the establishment of this municipality. This situation triggered the EU to facilitate dialogue between Serbia and Kosovo on the overall situation in the four northernmost Serb-populated municipalities, including the Mitrovica North, where firstly UNMIK, and later the Kosovo institutions could not exercise their authority since 1999.\footnote{Comprehensive Proposal for the Kosovo Status Settlement, supra note 1881, pp. 22-23.} An agreement for normalization of relations was reached only on 19 April 2013. On the basis of this agreement, Kosovo’s authorities conceded to grant special autonomy to the Association of Serb majority municipalities in Kosovo, while Serbs are obliged to dismantle their parallel institutions. The four municipalities of Zvečan, Leposavić, Zubin Potok and North Mitrovica have the right to appoint a Serb as regional police commander, and a new Appellate Court in North Mitrovica will be established with each panel composed of a majority of Serb judges.\footnote{Ibid, p. 105. In spite of this tremendous breakthrough in relations between once bitter foes, implementing this agreement proves to be challenging, especially integration of Serbs into the Kosovo security system and creation of Association of Serb
Finally, according to the Law on Local Self-Government, in those municipalities where minority communities make up at least 10% of population, two subsequent posts are held by them, namely Deputy Mayor for Communities and Deputy Chairperson on the Municipal Assembly. So far, almost all municipalities in Kosovo managed to establish Communities Committees and Municipal Offices for Communities and Returns.\textsuperscript{1886}

2. Right to Education in Minority Languages

The division of society is most visible in the field of education. Indeed, there are two parallel education systems in Kosovo. The first, in Albanian language, is run by the Ministry of Education, Science and Technology. The second, in Serbian, is run by the Ministry of Education of the Republic of Serbia. As a consequence, in the Serb-operated schools scattered throughout several of Kosovo's municipalities and regions, different curriculum and textbooks are applied, namely those used in the Republic of Serbia.\textsuperscript{1887} Of course, this parallelism in the field of education is a legacy of Kosovo’s political battles over the last 30 years. As Bozic observed, “it was Albanians who created and maintained their 'parallel institutions' in the late 1980s, while from 1999 on the Serbs organized public services, including education, around their own 'parallel structures'”.\textsuperscript{1888}

This dualism has been legitimized by the highest legal acts. For instance, the Law on Education in the Municipalities envisages that “schools that teach in the Serbian language may apply curricula or textbooks developed by the Ministry of Education of the Republic of Serbia”.\textsuperscript{1889} Schools intending to apply for such education programs must apply to the Ministry of Education, Science and Technology of Kosovo, which has three months to review the program and issue a decision.

Both curricula have deficiencies on the issue of fair and unbiased representation of history and culture of other ethnic communities. Few schools operating under the Kosovo education system “focus on cultural diversity, tolerance, non-discrimination, community and human rights as part of these classes”, and similarly, the Serb schools in general “promote(s) understanding of all communities, but... (are-DT) not focused on communities in Kosovo”.\textsuperscript{1890} Another problem is that neither of these education systems obliges children educated in one language to learn the other official language, not even the basics. Within the Serbian education system, only three schools provide the opportunity for learning Albanian as a

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\textsuperscript{1886} Communities Rights Assessment Reports (fourth edition), supra note 1871, p. 22.

\textsuperscript{1887} E. Lantschner, Protection of Minority Communities in Kosovo..., supra note 1852, pp. 461-462.


\textsuperscript{1889} E. Lantschner, Protection of Minority Communities in Kosovo..., supra note 1852, p. 463.

\textsuperscript{1890} Communities Rights Assessment Reports (fourth edition), supra note 1871, p. 25.
second language. However, the Kosovo authorities have failed till now to adopt a textbook for teaching Serbian as a second language, thus members of the dominant Albanian community are denied the opportunity to formally learn a basic knowledge of country’s second official language. Furthermore, due to political considerations, Kosovo’s education curriculum is not available in Serbian language.

The mutual non-recognition of diplomas poses an additional issue of concern, affecting mostly those shifting from Serbia’s to Kosovo’s education system, thus undermining their ability for access to the job market. However, the aforementioned dialogue between Serbia and Kosovo paved the way for recognition of diplomas issued by the university in Mitrovica North.

The non-existence of a curriculum based on multiculturalism, inclusive of subjects in the history and culture of other ethnic communities provoked a rather strong response from the Advisory Committee on the FCNM:

“The Advisory Committee regrets, however, that the necessity of introducing bilingual and multilingual teaching methodologies to make Kosovo viable as a diverse society continues to be insufficiently appreciated. The continued practice of separating children according to their language with no systematic effort of promoting interaction and communication exacerbates the language divide experienced today and risks becoming irreversible if not addressed urgently.”

With respect to the minority communities, at first, it should be reiterated, they have the right to receive public education at all levels in one of the two official languages in Kosovo. Bozic points out that those communities whose mother tongue is “what was previously known as Serbo-Croatian”, or some closely related language or dialect, like Gorani, Croat, Bosniak (predominantly for university education) and Serbian-speaking Roma, usually opt for the Serbian language curriculum. Meanwhile, the other non-majority communities, such as Turks, Albanian-speaking RAE (Roma, Ashkali, Egyptians) and Bosniaks (predominantly for primary and secondary education) tend to choose the system run by Kosovo’s Ministry of Education.

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1891 *Ibid*, p. 25. This is the case in three of six schools in the region of Gora (municipality of Dragaš/Drageš), operated under the Serb program, thus enabling some members of the Gorani community to learn Albanian as second language. Some of these schools are operated under the principle of ‘two schools under one roof’, meaning that pupils receiving education under the Kosovo education system (in Bosnian language) as well those encompassed within the parallel Serb education program share same facility.

1892 See: Advisory Committee on the FCNM, *Third Opinion on Kosovo*, *supra* note 1862, para. 128


1894 Advisory Committee on the FCNM, *Third Opinion on Kosovo*, *supra* note 1862, para. 112.

1895 G. Bozic, *The Ethnic Division and…*, *supra* note 1889, p. 284. However, the author noted that such choices are not homogenous, since members of same ethnic community in different geographical areas may adhere to different education system. She observes that members of Bosniak community living in and around the city of Prizren predominantly choose Kosovo education system in Bosnian language, but as we saw above such option is applicable only for primary and secondary education, since state owned universities do not offer any faculty program in Bosnian language. In contrast, Bosniaks and Croats living in
Concurrently, the legislation adopted after the declaration of independence stipulated the right of these communities to pre-school, primary and secondary education in their mother tongues. However, this possibility is available only to members of the Turkish and Bosniak communities, as these are the only languages for which Kosovo’s Ministry of Education has managed to develop curricula and textbooks. Furthermore, such textbooks are not available for all grades, and their quality is disputed by both communities’ members.  

In practice, these two communities tend to overcome this situation with imported textbooks from their respective kin-states. It goes without saying that the different origin and somewhat incompatible subjects of imported textbooks than the ones prescribed in the Kosovo education system is a threat to the oft-recommended integrated and multi-cultural education in Kosovo. Bozic went so dare as to state that the imported textbooks “either tend to be ethnocentric with biased interpretation on the historical role of a) particular ethnic group(s) or b) have very limited, if any, reference to Kosovo”. In addition, pupils who follow instructions in Bosnian and Turkish language have only two classes per week of Albanian language instruction, often without adequate textbooks. However, a more pressing challenge is that, as OSCE observed, “the schools are without specialized teachers or materials for teaching Albanian as a non-mother tongue”.  

Other minority communities, such as the Gorani, Roma, Ashkali, Egyptians, Croats and Montenegrins, “have no access to community-specific educational subjects to enable them to preserve their identity.” Educating pupils belonging to Roma, Ashkali and Egyptian communities prove to be the biggest challenge. Those belonging to the Albanian-speaking Ashkali and Egyptian communities predominantly follow the Kosovo education system in Albanian language, whereas Roma living in Serb populated areas mostly opt for Serbia’s education system, where, in fact, Romani language classes are provided. Despite some recent improvements in the scope and conditions of study for pupils belonging to these communities, general problems affecting their right to education, such as discrimination, low school attendance, high drop-out and late school enrolment, persist. Both systems segregate Roma, Ashkali and Egyptian pupils, even though OSCE and Advisory Committee charged the authorities to either close such the town of Janjevo generally opt for classes in the parallel Serb education system, notwithstanding availability of Kosovo curricula in Bosnian language in the same building. Finally, some members of Bosniak community in the town of Gjilan/Gnjilane receive education in Albanian, even though Serbian schools are also active in the area.

Emma Lantschner further noted that available textbooks are “very often poorly translated, due to the fact that those persons who do the translations from Albanian are not experts in the subjects they are translating. As a result, the terminology is often wrong”. See: E. Lantschner, Protection of Minority Communities in Kosovo..., supra note 1852, p. 465.  


See: Advisory Committee on the FCNM, Third Opinion on Kosovo, supra note 1862, para. 128.  

Communities Rights Assessment Reports (fourth edition), supra note 1871, p. 19.  

Ibid, p. 18. One positive development noted by the OSCE is the most recent introduction of classes in Romani language in Prizren, which were enriched with elements of Roma history and culture. Since the position of Gorani community is assessed separately, much space is devoted below to their specific situation in the field of education.
classes or to merge them with other classes. Concurrently, the need for resolute action to address the low literacy rate among adult members of these communities remains a high priority.\textsuperscript{1901}

3. Linguistic Rights of Minority Communities in Kosovo

Kosovo's legal framework for the use of minority languages in the public sphere is probably the most advanced in Europe. First, Kosovo’s Constitution establishes two official languages, Albanian and Serbian, with an equal status in respect to their use in all Kosovo institutions.\textsuperscript{1902} However, even though the Serbian language is traditionally used in both Cyrillic and Latin alphabet, within the Kosovo legal system and institutions at central and municipal level Cyrillic is almost non-existent, despite requests for the use of both variations.\textsuperscript{1903} Recently, though, in its fourth report on community’s rights, OSCE noted that starting from July 2015 the Ministry of Internal Affairs “introduced new software allowing municipalities to issue civil registry forms and templates in Bosnian and Turkish languages and in the Cyrillic alphabet”.\textsuperscript{1904}

The lowest prescribed threshold for one language to obtain the status of ‘official language’ at municipal level makes the Kosovo Law on the Use of Languages one of the most ambitious in Europe.\textsuperscript{1905} Article 2.3 of the law proclaims that:

“In municipalities inhabited by a community whose mother tongue is not an official language, and which constitutes at least five (5) percent of the total population of the municipality, the language of the community shall have the status of an official language in the municipality and shall be in equal use with the official languages.”\textsuperscript{1906}

At municipal level, Turkish is recognized as an official language in the municipalities of Prizren and Mamuša/Mamushë/Mamuša, while Bosnian has this status in the municipalities of Prizren, Dragash/Dragaš and Pejë/Peć.\textsuperscript{1907} This favorable provision is reinforced with an additional one introducing the category of ‘language in official use’ in municipality. In accordance with this provision, languages of ethnic communities that represent above three percent of the municipal population, which are different than the two state official languages, have the status of language in official use within the

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\textsuperscript{1901} See: Communities Rights Assessment Reports (third edition), supra note 1871, pp. 26-27.
\textsuperscript{1902} D. Doli, F. Korenica, Calling Kosovo’s Constitution..., supra note 1865, p. 63.
\textsuperscript{1903} Advisory Committee on the FCNM, Third Opinion on Kosovo, supra note 1862, para. 102.
\textsuperscript{1904} Communities Rights Assessment Reports (fourth edition), supra note 1871, p. 15.
\textsuperscript{1905} Advisory Committee on the FCNM, Third Opinion on Kosovo, supra note 1862, para. 99.
\textsuperscript{1906} Assembly of the Republic of Kosovo, Law on the Use of Languages, Art. 2.3.
\end{footnotesize}
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municipality.\textsuperscript{1908} The status is equally applied to those languages that are traditionally spoken within the area, notwithstanding the proportion of native speakers of these languages in the total population of the municipality. Again, only Turkish and Bosnian communities in some municipalities fulfil the prescribed criteria for their respective languages to obtain the status of ‘language in official use’. In concrete terms, Turkish language has this status in the municipalities of Gjilan/Gnjilane, southern Mitrovicë/Mitrovica, Prishtinë/Priština and Vushtrri/Vučitrn, while Bosnian is thus recognized in the municipality of Istog/Istok.\textsuperscript{1909} Consequently, in accordance with the law, persons belonging to these linguistic communities are entitled to receive services in their languages and official documents are to be issued in their respective languages. The final option is solely upon request, not automatically.

The language legislation envisages many advantages for official languages at municipal level in several fields. In other words, "municipal institutions are required to use all official languages in the provision of services, interpretation during meetings of representative and executive bodies, translation of municipal meeting materials and all public documents, as well as the displaying of multilingual street names and municipal road signs".\textsuperscript{1910} However, international bodies charged with monitoring the implementation of this rather advanced legislation noted resistance on the part of some municipalities to comply with principle of substantial equality between all official languages and to guarantee the fundamental rights to the speakers of minority languages.\textsuperscript{1911}

\section*{B. Review of the Present Human Rights Situation of the Macedonian-speaking Gorani Community in Kosovo}

The final sub-section of the dissertation closes with analysis of the protection of rights and freedoms of Macedonian-speaking Gorani community in the new Republic of Kosovo. First, the crucial question of their ethnic self-identification is examined. Namely, despite their unique ethno-religious features, one observe multiple identities among the population living in the remote area of southwesternmost Kosovo, i.e. region of Gora. Then, the current situation is illustrated through examination of this community’s access to mother tongue education, if any, and right to participate in public life. Finally, the human rights situation of persons with Macedonian identity are reviewed, basically through their requests to be officially recognized as a minority community in Kosovo’s legal system.

\textsuperscript{1908} Law on the Use of Languages, Art. 2.4.
\textsuperscript{1909} Municipal Language Compliance Survey, supra note 1907, p. 11.
\textsuperscript{1910} Ibid, p. 7.
\textsuperscript{1911} Therefore, the language compliance survey conducted by OSCE indicated serious shortcomings with respect to municipalities’ duty to display multilingual signs in municipal public offices, written communication in minority languages, translations of minutes meeting and legal acts, monolingual municipal websites, low quality translations etc. Ibid, pp. 24-25.
Kosovo’s Gorani are a native population in the municipality of Dragash/Drageš, though they are also found in other regions, most notably in the city of Prizren and its adjacent villages, as well in Pejë/Péć, Prishtina/Priština etc. The municipality of Dragash embraces most of the ethno-historical region of Gora, with nineteen villages located within its municipal borders. It is to be noted that the geographical region of Gora is divided among Kosovo, Albania and Macedonia. There are an additional nine Gorani villages in neighboring Albania and two more in the Republic of Macedonia.\footnote{See: V. Friedman, The Effects of the 1913 Treaty of Bucharest on the Languages..., supra note 970, p. 150.}

Despite the territorial division, the language and religion of the Gorani community unites them in all three countries. These features predominantly contribute to their ethno-religious (or sub-cultural) distinctiveness, distinguishing them from other ethno-cultural groups. Even though they are not subjugated or discriminated against in the Republic of Kosovo, there is some ‘contention’ over their ethno-linguistic identity which needs to be clarified.\footnote{K. Steinke, Identity Problems of the Gorani in Eastern Albania and Kosovo, supra note 954, pp. 360-375.} First, it should be noted that almost all members of this community are Muslims, whose mother tongue according to linguistic standards is considered to be a dialect or a regional variation of the Macedonian language.\footnote{Matthew Cowan Curtis, Slavic-Albanian Language Contact: Convergence and Coexistence (Doctoral dissertation), Ohio State University, 2012, pp. 10, 43. The author noted that “the Gora dialects...found in Kosovo, Albania, and Macedonia are structurally closer to the Macedonian dialects than Serbian ones, and for this reason are considered in the group of Macedonian dialects”. Elsewhere in the dissertation, the author reiterated that “dialectal classification (of the local language used by inhabitants in the region of Gora - DT) within South Slavic is somewhat disputable as it shows features of southeastern dialects of Serbian and northwestern dialects of Macedonian, although linguists tend to classify it as a Macedonian dialect”.} Similarly, the authors of the OSCE’s profile of this community confirmed that “Gorani speak a Slavic language, a dialect that is close to the Macedonian language”.\footnote{OSCE, Kosovo Communities Profiles - Community Profile: Kosovo Gorani, 2010, p. 3.} Not content with this, over the years various scholars, journalists and politicians have taken it upon themselves to ‘prove’ their ethnic, cultural or linguistic association with either the Serbs, Bosniaks, Turks or Bulgarians, depending on the author’s interests.\footnote{See: Таня Мангалакова, Нашенци в Косово и Албания [Tanya Mangalakova, Nashenci in Kosovo and Albania], NIBA Consult, 2009, Sofia. Bozic for instance contends that over the years Gorani community in Kosovo “developed their own local dialect called ‘Nashinski’, a blend of Serbian, Macedonian and Bulgarian”. See: G. Bozic, The Ethnic Division and..., supra note 1889, p. 292.}

Apart from the position endorsed by linguists and scientists, members of this community in Kosovo today predominantly designate their mother tongue as either ‘Nashinski’, which simply means ‘Our language’, or as Gorani.\footnote{OSCE Community Profile: Kosovo Gorani, supra note 1915, p. 3.} Nevertheless, authorities ignored the fact that at least 30% of the population in the municipality of Dragash indicated Gorani as their mother tongue and failed to recognize its status as an official language at municipal level.\footnote{Advisory Committee on the FCNM, Third Opinion on Kosovo, supra note 1862, p. 34.} The non-recognition of their language, in essence, denies them access to mother tongue education. Indeed, ‘ambiguities’ over the community’s ethno-
cultural traits are exacerbated by their adherence to the Serb education system, provided in Serbian, and low community mobilization for recognition of their language.\textsuperscript{1919}

During the Yugoslav period, members of the Gorani community identified themselves as Muslims in the ethnic sense, but have nevertheless retained their distinctiveness. Indeed, their ethnoreligious distinctiveness represents the “synergy of several cultures”,\textsuperscript{1920} with elements of both Slavic and Oriental cultures combined with customs that originated in the early Gnostic religious movement.\textsuperscript{1921} Accordingly, the majority of them seem to identify as belonging to a separate Gorani ethnic group. Indeed, 10,265 ethnic Gorani were registered in Kosovo in the 2011 census, of whom some 8,957 live in the municipality of Dragash.\textsuperscript{1922} However, it is significant that a considerable part of this community, or some 4,100 citizens, identified as ethnic Bosniaks in the same census. The main factors behind the emergence of ‘Bosniakism’ in the Gorani community are outlined below, along with issues of the community’s education and political representation rights.

Positioned or, more precisely, ‘caught between two mutually antagonistic nationalisms’ in Kosovo, Gorani’s regionalism emerged as an impetus for reinventing their ethnic identity during Yugoslavia’s disintegration and the Kosovo conflicts.\textsuperscript{1923} According to social science, far from being stable, fixed or naturally given, ethnic identity is always a social construction subject to change or transformation.\textsuperscript{1924} This dynamic character of ethnic identity means that it is shaped and occasionally reshaped “by frequent renegotiations of ethnic boundaries which...is steered by the interplay of three principal identity markers: language, religion and political interest”.\textsuperscript{1925}

In sum, one may conclude that despite being Macedonian-speakers, the vast majority of people in the Gora region of Kosovo identify as Gorani by ethnicity, though there is a significant proportion who identify as Bosniak. Conversely, emigrants from Kosovo’s Gora area in Macedonia and their descendants predominantly identify as either Macedonians or Macedonian Muslims.\textsuperscript{1926} We can safely identify two factors beyond their alienation from ethnic Macedonians, namely decades of negligence on the part of the Macedonian state and the religious differences between majority of ethnic Macedonians in the Republic

\textsuperscript{1919} OSCE Community Profile: Kosovo Gorani, supra note 1915, p. 3.
\textsuperscript{1920} G. Bozic, The Ethnic Division and..., supra note 1889, 275.
\textsuperscript{1922} Kosovo Agency of Statistics, Office of the Prime Minister, Republic of Kosovo, Kosovo 2011 Census.
\textsuperscript{1925} Ivan Damjanovski, Zoran Ilievski, At the Crossroads of Language, Religion and Politics: Explaining Variation of Self-Determination of the Slavic Speaking Muslim Communities in Macedonia and Kosovo, Association for the Study of Nationalities, 2016, p. 5.
\textsuperscript{1926} Ibid, p. 16.
of Macedonia and the Macedonian-speakers in Kosovo. The belief that being an ethnic Macedonian means equally as being an Orthodox can be found even among Macedonian-speaking Muslims in Macedonia. In view of that, “having in mind the Ottoman legacies of the Millet system and the role that religious elements played in the construction of nation states, religion can be perceived as a crucial and defining feature of ethnicity”.  

2. Exercise of Kosovo’s Gorani Rights to Education and Political Representation

Since Gorani’s vernacular is not formally recognized as either an ‘official language’ or ‘language in official use’, pupils in the region can access educational instruction in either Albanian or Bosnian, via the Kosovo education system, or in Serbian, through the parallel Serbia education system. As suggested above, Gorani pupils in Kosovo mostly opt for the latter. Many reasons lay behind such choice, such as decades long history of Serb schools (previously Yugoslav schools) with instruction in Serbian language, dating back to the 1930s. Moreover, students who continue with university education, mostly go to the University in North Mitrovica, where again, programs are available in Serbian. In addition, it is important to recognize that Gorani tend to rely on educational and other services provided by the Serbia-administered municipality of Gora, which in the 2000s was merged with Albanian dominated area of Opolje by the then Provisional Institutions of Self-Government of Kosovo in order to create the present municipality of Dragash.

It is thus hardly surprising that the Gorani community in Kosovo are perceived by Kosovo’s Albanians as past collaborators of the Milosevic’s regime and loyalists to modern Serbia. This widespread suspicion is undoubtedly a factor in the Gorani difficulties in exercising their right to education. Municipal authorities in conjunction with Bosniak community attempted to disband parallel schools and pressure Gorani to opt for regular education in Bosnian language. For instance, municipal authorities of Dragash in 2007 barred Gorani pupils from attending classes in Serbian at the primary school “Nezim Berati/Nebojsa Jerkovic” in the town of Dragash and in an effort to coerce them to

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1927 Though divisions along religious lines were not unfamiliar among ethnic Macedonians in the Republic of Macedonia, in recent years the ongoing integration process of Macedonian Muslims in all segments of the Macedonian society is accelerated. See: I. Damjanovski, Old Communities, New Controversies..., supra note 1921.
1929 I. Damjanovski, Z. Ilievski, At the Crossroads of Language, Religion and Politics..., supra note 1925, p. 6.
1931 OSCE Community Profile: Kosovo Gorani, supra note 1915, p. 11. The Gorani community supported by some Bosniak political parties and organizations have lodged several requests with the Kosovo government for re-establishment of the Gora municipality. There have been no positive response on such requests till now, since it is believed that decentralization reform was completed with establishment of five new Serb dominated municipalities.
integrate into the Kosovo education system. Thus, these 135 students were redirected to other villages that offered classes in Serbian (Ljuboviste and Kukuljane). In another case, noted by OSCE, “a letter circulated to a number of Gorani parents in the village of Rapca/Rapqe by the director of the Kosovo curriculum school in August 2011, alleges that they may be held responsible if they do not enroll their children in a Kosovo curriculum school”.

The mutually exclusive interests of various actors in these cases, shows clearly how the issue over the preference of Serbia’s or Kosovo’s curriculum (in Bosnian language) within the Gorani community, triggers divisions along ethnic and political lines in the fragile post-conflict Kosovo society. As Bozic clearly puts it:

“When the political elites of the Gorani community in Kosovo defend their right to have education in the Serbian language (as opposed to the Bosnian), they are protecting their identity against assimilationist policies and rhetoric, both potential and real, promoted by their counterparts in the Bosniak community. In contrast, the elite of the Bosniak community perceive the Gorans not as a separate ethnic community, but rather as integral members of the Bosniak ‘corpus’ who have not yet fully developed their ‘national consciousness’”.

One finds similar tendencies in the execution of the right to political representation of Gorani community at national and municipal level. In the political spectrum of Kosovo they are represented by political party called “Gora Citizens Initiative” and several smaller political movements. During the 2014 parliamentary elections, the reserved seat in Kosovo’s Assembly for the Gorani community was won by the political coalition “Coalition for Gora”. However, since its formation, the ethnic Bosniak political party VAKAT has exerted political influence on the Gorani community. In particular, a considerable part of its membership is Gorani and it is not uncommon for posts assigned to this party in coalition governments are held by Gorani. This arrangement might serve as an impetus for Gorani to declare themselves as Bosniaks in future censuses. The results of the last municipal elections in Dragash demonstrate the effectiveness of this strategy, as VAKAT won three seats in the municipal council, whereas the ‘Gora Citizens Initiative’ only one. Likewise, at the municipal level, VAKAT also defeated ‘Coalition for Gora’ in the early parliamentary election of 2014.


\[1937\] Ibid.

Taken together, it appears that religious and linguistic similarities between these two communities provide a principal ‘sub-cultural bond’ Bosniak actors to penetrate the Gorani ethno-political spectrum. Concurrently, if we acknowledge that Kosovo’s power-sharing system “give incentives for ethnic and political entrepreneurship in the quest for access to power and state resources”, it seems feasible that “identity shifts are to a much larger extent a result of the interplay between religious pull factors and strategies of ethno-political entrepreneurship”.\textsuperscript{1939}

C. Human Rights Law Aspects on the Present Situation of Persons Declared as Macedonians and the Issue of Their Non-Recognition

Some members of this community who identify as Macedonians formed an organization called \textit{Macedonian Gorani Community}. In their efforts, the foundational committee received support from the “Association of the Macedonians with Islamic Religion”, many of whom are their compatriots living in the Republic of Macedonia. The organization was duly registered on 25 October 2007 by the Kosovo Ministry of Public Services.\textsuperscript{1940} Its basic aims are protection and affirmation of Macedonian ethnic, linguistic, religious and historical identity, as well the heritage of Macedonians in the region of Gora, accompanied with protection of human rights and fundamental freedoms. In that manner, promotion of the folklore, customs and traditions of the region, protection of the rights and interests of Macedonians in front of Kosovo’s government and international organizations, granting scholarships for pupils and students to receive education in Macedonian language in the Republic of Macedonia, forming cultural organizations and cultural informative centers, forming branches of the organization in urban areas with significant concentration of people originating from the Gora are envisioned as means to achieve its aims.\textsuperscript{1941}

The motion for official recognition of Macedonians as a minority community was one of the first activities launched by the organization, in the light of amendments of the Constitution, by which Croats and Montenegrins were listed among the recognized minority communities in the society. The same request was reiterated several times by Macedonian officials to their Kosovo counterparts, but the latter tacitly avoided discussion of the issue.\textsuperscript{1942} In the end, the population census ostensibly prevented further amendments of the Constitution. In a similar vein, the initiative to register a political party of the Macedonians of the Gora area has been partially rejected on formal grounds, allegedly due to the use of

\textsuperscript{1939} I. Damjanovski, Z. Ilievski, \textit{At the Crossroads of Language, Religion and Politics...}, supra note 1925, p. 32.
\textsuperscript{1940} This information is based on the content of official request for registration of Macedonian Gorani Community submitted to the government of the Republic of Kosovo. Personal copy owned by author.
\textsuperscript{1941} \textit{Statute of the Macedonian Gorani Association}. Personal copy owned by author.
Cyrilli in the handwritten signatures of the prescribed 500 persons eligible to vote in Kosovo’s elections who support the party’s formation.\textsuperscript{1943}

Considering this, in the absence of financial support from institutions at both national and municipal level, the Macedonian Gorani Community intends to achieve its goals with the support of the Macedonian Ministry of Foreign Affairs, through its grant program for associations of Macedonians living in neighboring countries and the broader diaspora. Thus, so far, with such support, they opened ‘Cultural Corner’ in the municipal seat of Dragash, where in addition to cultural activities, private lessons are given in the Macedonian language. Other activities encompass the traditional football tournament, organized each year on 8 September, where football teams from several villages in the area compete on the anniversary of the independence of the Republic of Macedonia. Furthermore, from 2012, pupils from the Gora region regularly attend an annual summer camp in Ohrid (R. Macedonia) for learning Macedonian language and culture.\textsuperscript{1944}

\textsuperscript{1943} Personal communication with Avnija Rahte, former president of the Macedonian Gorani Association.
\textsuperscript{1944} The information for these projects is disclosed with a prior consent from the Ministry of Foreign Affairs of the Republic of Macedonia.
V. CONCLUSIONS AND RECOMMENDATIONS

1.1. This dissertation has examined the approaches adopted by certain Balkan and Central European countries towards protecting their national minorities, with the primary focus being the position and rights of Macedonian minorities in the neighboring countries of the Republic of Macedonia. Minority rights represent an enduring issue in both international law and international relations, considering that around 10 to 20% of the world population belong to minorities.\textsuperscript{1945} Indeed, contemporary international law does not prioritize minority issues, but, nonetheless, it recognizes them as matters of legitimate international concern, eligible for legal regulation. In fact, one could correctly speak about a multi-level approach towards the protection of minorities, where obvious international (global) and regional instruments, accompanied by bilateral treaties and domestic legal acts, comprise the current and forthcoming legal framework concerning minorities and their rights and freedoms.

1.2. The very notion of a 'minority' is permanently faced with conceptual difficulties, most vividly apparent in the absence of a widely accepted and legally binding definition. Regardless, at least from a legal perspective, Francesco Capotorti’s renowned definition presents legal reasoning around which a minimum consensus might be reached. At present though, a broad and expansive concept of 'minority', based on 'associational theory' which emphasizes the freedom of choice over ethnocultural characteristics, is yet to be endorsed by states or international organizations.

1.3. The dissertation has argued that the right to identity is in many ways, in combination with other minority rights, the quintessential right for minorities within the wider scope of human rights. The hypothesis is generated from the concept of minority protection in general, and tested by analyzing the minority protection provisions in certain Balkan and Central European countries, especially focused on the position and rights of Macedonian minorities in countries neighboring the Republic of Macedonia. It finds support in international judicial and quasi-judicial case-law, which confirms that protection of the separate ethno-cultural, religious and linguistic identity of minorities is the core of the international protection of minorities. Some authors contend that the 'right to preserve a separate identity' is one of the two collective human rights that international law affords to minorities in general.\textsuperscript{1946} In other words, while the vast majority of rights concerning minority protection are formulated in an individualistic manner, designed to protect the 'individual as a member of a minority', these rights are based on the

interest of minority groups and *a fortiori* require collective exercise. Correspondingly, it should be reiterated that the principles of minority protection are based on the concept of substantive equality, and, consequently, composed of two pillars, namely: 1) the principle of non-discrimination accompanied by individual human rights relevant to minorities; and 2) special minority rights. The rationale behind the latter is to create conditions conducive to the protection and promotion of the ethno-cultural, linguistic and religious identity of minorities. It goes without saying that the right to mother tongue education in combination with linguistic rights and the right to participate in public and political life are of utmost importance for minority identity to flourish in the societies in which they live.

1.4. The ideal conditions for testing the hypothesis exist when minority members are free to express their ethno-cultural characteristics and State authorities grant minority status to all ethno-cultural groups who consider themselves and function as national minorities. Alternatively, the opposite case covers situations where a particular ethno-cultural group is not recognized as a national minority and its members lack adequate opportunities to preserve and nurture their identities via special rights offering direct protection (educational, linguistic, participatory rights). We tested the hypothesis in the latter case, and assessed whether identities of minorities might be preserved via first pillar, i.e. principles of non-discrimination and equality, accompanied with rights and freedoms affording indirect protection, which are justiciable at international level, such as those enshrined in ECHR.

*Minority protection at global and European level*

2.1. The global level clearly lacks a comprehensive universal treaty on minority protection. Efforts to address this effectively came to an end in 1992, when the UN General Assembly adopted the Declaration on Minorities. Although undeniably of universal character, from a *strict sensu* legal aspect, it remains a non-legally binding instrument. In fact, Article 27 of the ICCPR, which directly addresses some of the most important aspects of minority identity, remains unsurpassed at the global level and still presents the most significant legally binding rule that prescribes rights of minorities. For reasons set forth above, some of the principles derived from this article are in whole or in part considered as customary law, and, as such, define the minimum standards for minority protection in international law. The HRC is a treaty-based body with quasi-judicial competence, whose practice and jurisprudence adds substance and meaning to Article 27, by offering more extensive interpretation and reasoning on the scope of this provision. In such a way, it advances understanding of the 'right to identity', stipulated under Article 27, and modestly contributes to the progressive development of international law in the field.

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2.2. Historically, the European continent has played a leading role in providing for the legal protection of minorities by various means in both multilateral and bilateral arrangements. The generic approach of the UN, providing modest minority rights and measures of indirect protection where minorities are barely mentioned, has been significantly refined at the European level through legal instruments ensuring 'targeted minority rights'. But of course, the development of a legal framework for protection of national minorities in Europe was not a simple linear process. It should be reiterated that the ECHR does not contain a freestanding minority rights provision, and the notion of a 'national minority' is mentioned solely as impermissible grounds for discrimination against individuals. Nevertheless, over the years the ECHR has developed a considerable case-law entitling individual members of minority groups to indirect protection of their culture and some basic human rights, indispensable for maintaining their identity. The latter are derived mainly from the right not to be discriminated against, freedom of assembly and expression, religious freedoms and right to respect for private life and family life. However, monitoring of the implementation of ECHR’s rulings in minority-related cases indicates that the most ineffective are rulings concerning the registration of cultural associations and political parties of national minorities, which various domestic organs vehemently refuse to recognize as such.

2.3. Over the years, the Council of Europe has become a leading proliferator of documents and treaties prescribing human rights in general and the rights of persons belonging to national minorities in particular. The FCNM remains the sole legally binding multilateral treaty specifically designed to protect national minorities and to provide their members with rights, which are necessary for maintaining and developing their culture as well as preserving the essential aspects of their minority identity. At the same time, we must acknowledge that its provisions are not directly applicable, since they merely set out objectives, whose operationalization depends on policies, legal acts and programs adopted by state parties. Similarly, the individual rights enshrined in the FCNM are not justiciable and there is no complaint procedure for challenging the State in cases of non-compliance. Nevertheless, despite the FCNM’s relatively weak enforcement mechanism of periodic state reports and occasional country visits, its overall significance for national minorities in Europe has been tremendous, and, hopefully, its wider acceptance by European nations might contribute to further progressive development of international law in the field.

2.4. In addition, despite being a minority-related treaty, ECRML protects regional and minority languages as intangible but vulnerable cultural heritage, not linguistic minorities as such. The ECRML

does not establish individual or collective rights of any sort for the speakers of protected languages, but promotes a ‘menu approach’ concerning the States’ undertakings and duties in the field of minority languages. Two aspects of the ECRML must be understood. First, as such, the ECRML is adaptable to the particular situation of minority languages and their vulnerability in each individual country. Second, selected arrangements might comply with real needs and challenges faced by minority languages and their speakers, but States might also opt to select modest arrangements stipulated in the treaty.

2.5. Finally, minority rights are not addressed in the European Union's law. However, over the past twenty-five years, several tendencies and patterns have emerged in EU policies regarding human rights and minority protection which are worth mentioning. On the one hand, respect for human rights, along with principle of equal treatment irrespective of one’s ethnocultural origin, has been embedded into the EU’s primary and secondary legislation. On the other hand, minority protection has become an issue solely in EU’s external relations, primarily in the enlargement process, where the minority rights record of countries wishing to join the EU have been scrutinized by the European Commission. Clearly missing from the EU legal framework, is the second pillar of minority protection: the prescription of special rights to the benefit of minorities.

Protection of national minorities in certain Balkan and Central European countries

3.1. Several positive developments can be inferred from the comparative examination of the systems of minority protection in Balkan countries. To begin with, each of the countries analyzed has its own unique approach to dealing with minority issues. However, almost all of them are ‘new emerged states’ or states that have experienced radical transformations in their socio-political, legal and economic systems. On the whole, they experienced similar challenges in their transitions from socialism to democracy. Similarities are especially visible in the area of minority protection. In general, from a legal perspective, minority needs in the Balkan countries are addressed either via general law on minority rights or with more specific legal acts prescribing linguistic, educational or participatory rights. Here, the most innovative practice is the conclusion of general bilateral treaties inclusive of provisions extending minority rights to members of 'kin minorities' and special bilateral treaty on minority protection. Indeed, this practice, rekindled in the early 1990s, shows that previous disputes between neighbors were significantly eased, as relations between respective countries and the position of 'kin minorities' were considerably improved. The generally positive effects of such bilateral treaties essentially supports the hypothesis, considering that the rationale behind them is to provide a context-specific protection and elaboration of the right to identity in the three areas mentioned, adjusted to real needs and challenges
faced by the groups concerned. However, as demonstrated below, some bilateral treaties in the region avoid mentioning even modest minority rights provisions for 'kin-minorities'.

3.2. The instituted 'minority self-government', provided in the Hungarian Act on the Rights of Nationalities, offers a crucial advantage for recognized minorities. It functions as a legal entity of cultural and functional autonomy rather than territorial autonomy. Minorities can establish and operate cultural and educational institutions, but can also take over the operations of public education institutions from both the central and local government. Yet, the definition of 'nationalities' in the Act on the Rights of Nationalities covers only 'historical or autochthonous minorities' and strictly excludes 'new minorities'. Therefore, Hungary should consider amending the definition article to encompass and subsume under the umbrella term 'nationalities' all ethnic groups that consider themselves and function as minorities.

3.3. The Romanian Constitution contains favorable provisions on parliamentary representation of national minorities, including the smaller ones. Indeed, 36 deputies (half of them ethnic Hungarians) representing 19 national minorities are regularly elected in its lower house (Chamber of Deputies), in addition to members of the Hungarian minority elected in the upper house (Senate). Nonetheless, the overall legal framework concerning national minorities is incomplete, and the Romanian government is expected to submit the revised Draft Law on the Status of National Minorities to the national legislature for its adoption. Similarly, Romania must ensure that the implementation of the linguistic rights of the Hungarian national minority is largely the same in municipal units where they comprise a majority as in those where they are a minority.

3.4. Croatia regulates the position of national minorities and their rights in special law, namely the Constitutional Law on the Rights of National Minorities, whose title indicates that its status within the Croatian legal system is not the same as those of regular laws. It guarantees rights of the first, second and third generation on an equal footing, whereas their effective realization is additionally stipulated in other laws and by-laws. However, two urgent issues affecting the Serbian national minority have to be resolved. The first relates to Serbs who fled the country during the war. It is recommended that the Croatian government takes measures conducive for the return and reintegration in Croatia of those willing to do so. The second recommendation is to introduce the Serbian language and its Cyrillic script in the city of Vukovar as a 'language of official use', as stipulated by the Act on the Use of Languages and Scripts of National Minorities.

3.5. There is no special law on minorities in Slovenia, but its Constitution devotes several articles to the position and rights of ethnic Hungarians and Italians as 'autochthonous communities' and to the special status of the Roma community. Some of the collective and quasi-collective rights ascribed to the Italian and Hungarian national minority are peculiar for Slovenia and are not found in any other Balkan or Central European country. These include the following rights: the right to use and hoist their national
flags, which apparently are identical to the national flags of Italy and Hungary; the compulsory bilingual education which even encompasses students of Slovene ethnicity in some municipalities; the issuance of bilingual personal documents to all inhabitants in areas where these two communities are recognized as 'autochthonous communities'. Moreover, the right to organize themselves in 'self-governing minority communities', at national and local level, represents a variation of cultural or even of a local autonomy, which again is particularly visible in ethnically mixed areas. It is noteworthy that no decision can be taken without their consent on matters within their competences or concerning the special rights granted to community to which they belong. Aside from these tremendous achievements, the overall system of minority protection possesses some deficiencies that need to be resolved.

3.6. Namely, Slovenia should reconsider its three-pillar system of minority protection that fundamentally differentiates between various ethnic groups on the basis of their historical presence in the country and which favors 'autochthonous national communities' over other groups designated as 'new minorities'. Therefore, it is recommended that the Slovenian government implement the Declaration on the Status of National Communities of the Members of the former SFRY Nations in the Republic of Slovenia of 2011, including the adoption of various regulations to reinforce the rudimentary generic rights protection afforded to these 'new minorities' with rights to mother tongue education, culture, and participation. Additionally, Slovenia should reassess its approach to the rights ascribed to former Yugoslav 'constitutive nations' and 'nationalities' by initiating bilateral agreements on minority protection.

3.7. The section devoted to the minority protection in the Balkans closed with a short review of the situation in three other countries with different constitutional and political histories, as well as diverse legal frameworks on human and minority rights. The analysis found that Montenegro has the most advanced legal framework in this field, including a considerable number of constitutional provisions (68/158), and a special law on minority protection. Montenegro's Assembly has also ratified all major multilateral treaties designed to protect national minorities as well as regional and minority languages. Nevertheless, the politicization of the Montenegrin society, especially visible in issues related to ethnicity, language and culture of Montenegrins, Serbs, Bosniaks andCroats, impedes the exercise of the constitutional right of national minorities to be educated in their mother tongue. Effectively, only members of the Albanian minority can exercise this right without legal or practical hurdles. Considering that no single ethnic group constitutes a clear majority in Montenegro, then it seems reasonable to deduce that such wide and comprehensive legislation concerning minority rights is extraordinarily difficult to enforce in practice.

3.8. Turkey shares many similarities with Greece in its approach to minorities, so the general remarks for the latter, presented below, are also applicable to the former. The domestic legal framework does not contain any special legal act or secondary legislation offering wide protection of rights and
freedoms to various ethno-cultural and religious minorities in the country. By virtue of the Treaty of Lausanne of 1923, still the main legal source for minority policies, only 'non-Muslim minorities' are recognized as such. Therefore, Turkey ought to abandon the 'principle of constitutional nationalism' and redefine the very notion of minority in accordance with contemporary international law. Concomitantly, it should renounce its approach giving preference to bilateral treaties concluded almost a century ago over contemporary multilateral treaties, crafted to protect minorities. Before all else, the Turkish Parliament must proceed with ratification of core treaties in the field, such as the FCNM.

3.9. Finally, it should be recalled that Bosnia and Herzegovina has a complex political structure based on a system of power-sharing among three main 'constituent nations', which, more or less, ignores the needs of 'others', which happens to be its constitutional term for minorities. In fact, strict adherence to the principle of distributing the highest posts among particular ethnic group(s) is questionable under human rights law and is contrary to its basic principles, widely recognized as the core of customary law in the field, i.e. principles of equality and non-discrimination. Moreover, despite passing the Law on the Protection of National Minorities, its provisions for educational, linguistic and participatory rights have limited capacity for improving the position of vulnerable communities in a post-conflict society strictly divided along ethnic and religious lines. Consequently, there is a pressing need for the government of BiH to adjust its minority policies and legislation to ensure that minorities are not to be assimilated as a consequence of the established power-sharing system, which is prone to alienate 'others' from their language and culture.

Macedonian minorities in the neighboring countries of the Republic of Macedonia

4.1. The main chapter of this dissertation intended to provide a wide and comprehensive legal analysis of the position and rights of Macedonian minorities in the countries neighboring the Republic of Macedonia, namely Albania, Bulgaria, Greece, Serbia and Kosovo. The section on each country was subdivided into two main parts. First, the general system of minority protection in the respective countries was analyzed, including the legal framework pertaining to minorities and its enforcement in several fields. The second part looked specifically at the position and status of the Macedonian minority, emphasizing those fields that enable an objective and coherent review of the issues in each country.

4.2.1. Several new developments in Albania have to be indicated in this area. On 15 October 2017, Albanian Parliament passed the Law on the Protection of National Minorities. In fulfilling this requirement from both EU and CoE, Albania joined the group of Balkan countries that regulate minority

protection by adopting a 'general law on minorities'. Several positive and negative observations about the provisions in this act should be made here. First, it is laudable that the inherited legal division of the non-dominant ethnic groups in the society, which differentiated three 'national' and two 'ethno-linguistic' minorities, is finally abolished. Once this Law is enforced, all of these minorities are subsumed into the umbrella term 'national minorities'. Moreover, it accords the status of national minorities even to those non-dominant ethnic groups which, until recently, were excluded from the dichotomy ‘national v. ethno-linguistic minorities’ and thus were denied any minority status whatsoever, such as Bosniaks and Egyptians.\textsuperscript{1951} In the same direction, the Law prescribes a procedure for according the status of national minority to other ethnic groups, by clearly emphasizing the principle of ethnic self-identification, but without neglecting objective criteria (e.g. long lasting and firm connection with the country, confirmed with census results etc).

4.2.2. In general, rights and freedoms to persons belonging to national minorities guaranteed by this Law are compliant with the operative provisions of the FCNM. Prof. Rainer Hofmann noted that the 'list of rights' used by the Venice Commission is largely reflected in the final version of the Law.\textsuperscript{1952} Article 15 prescribes, for the first time, the possibility for minority languages to be used in communication with administrative authorities at municipal level. In practice, this would be limited to those municipal units where a particular national minority comprises at least 20% of the population.\textsuperscript{1953} Concomitantly, subject to a decision by the municipal councils, in those units where a minority population comprises at least 20% of the population, signage naming public institutions, road signs and other topographic nomenclature may be displayed also in the minority language. However, a few concerns and reservations about this provision should be mentioned here. First, Article 4 of the Albanian Constitution, declares Albanian as the sole official language in the country, and it is evident that the \textit{Law on the Protection of National Minorities} does not provide for minority languages to be accorded the status of 'official language' or 'language in official use' at local level. As to the practical implementation of provisions for the use of minority languages at the local level, it should be noted that following the adoption of the \textit{Law on Administrative and Territorial Division} of 2014, there are only three municipalities where the prescribed percentage of the national minority is fulfilled. This, in effect, means that the new provisions would only apply in areas formerly designated as ‘minority zones’. Finally, interpreting Article 15 through the ordinary meaning of phrases used therein, one could conclude that minority languages will only be used for matters under the jurisdiction of municipal units, whereas in

\textsuperscript{1951} Ibid, Art. 3, paragraph 2.
\textsuperscript{1953} \textit{Law on the Protection of National Minorities in the Republic of Albania}, Art. 15, paragraph 2.
matters of transferred competency from central to local authorities, the use of Albanian remains mandatory.

4.2.3. Article 13 concerning mother tongue education mirrors Article 6 of FCNM, stating that in municipal units traditionally inhabited by persons belonging to national minorities, minority pupils shall have adequate opportunities to receive minority language classes or instruction in this language. At the same time, Article 13 stipulates that the exercise of this right must be in compliance with legislation in area of education. The very next paragraph states that the Council of Ministers of Albania shall prescribe the criteria for determining which municipal units shall provide mother tongue education for minority pupils. On the one hand, being a ‘general’ or ‘framework’ law on minority protection in Albania, referring the legislator to other laws or secondary legislation in the field is both desirable and understandable. On the other hand, it is essential that all of the other acts thus referred to are fully compliant with the letter and spirit of the Law on the Protection of National Minorities. On this basis, amendments and corrections should be made as necessary in those cases where inconsistencies are noted. To this end, the Council of Ministers should adopt appropriate secondary legislation, providing context-specific elaboration of the rights and freedoms enshrined in the Law.

4.2.4. In area of participatory rights, the position and competences of the new Committee for National Minorities are notably enhanced in comparison with its legal predecessor, the State Committee for Minorities (soon to be defunct). For one thing, candidates for membership of the Committee must first be nominated by associations representing national minorities, although appointment remains at the Prime Minister’s discretion. The Committee is responsible for managing the newly established Fund for National Minorities, financed completely from the central budget, to support projects intended to protect the rights of national minorities as well as preserving and promoting their identities.

4.2.5. Despite these achievements, the Law falls short of prescribing ‘reserved seats’ for national minorities both nationally and locally. The Albanian authorities should take measures to enhance the participation of national minorities in political life. Second, to substantially improve the domestic framework of linguistic and educational rights of minorities, Albania might reconsider its position on the ratification of ECRML. Third, de lege ferenda, it is recommended that the government resume the process for adopting a special law addressing education in languages of national minorities in Albania, as stipulated in the National Plan for Implementation of Stabilization and Association Agreement with EU.

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4.2.6. Several other recommendations specifically concerning the Macedonian minority are also indicated, which are directly related to the main premise in the hypothesis. First, universal respect for the right to freedom of ethnic self-identification should be extended to all who identify as Macedonians, especially in areas where they have never been recognized as a national minority (Golo Brdo, Gora). This would have a twofold effect. On the one hand, the concept of 'minority zone', which denied the status and rights of minority to those outside of the designated zones, should be officially abandoned. Such a move would enable all ethnic Macedonians, regardless of domicile, to nurture their minority identity, including mother tongue education through the formal education system. Thus, it is expected the provision concerning mother tongue education in the said Law on the Protection of National Minorities (Art.13) will be elaborated subsequently (via secondary legislation), in such a manner that the number of minority schools and of schools with the optional subject ‘Macedonian language and literature’ would be expanded, encompassing settlements in areas of Golo Brdo and Gora. Second, while proceeding with ratification of the ECRML, authorities should consider granting the status of 'language in official use' to the Macedonian language in the Municipality of Pustec. Beyond its usage in communication with municipal authorities, such an arrangement would pave the way for Macedonian language to be used in all administrative procedures (including those of transferred competency) and judicial procedures at municipal level. Third, the government should review options for enhancing the participation of ethnic Macedonians at the local level, particularly in municipal units recently merged with smaller ones, where previously ethnic Macedonians and Macedonian-speakers comprised a clear majority (Ostreni, Trebisht, Steblevo, Shishtavec and Zapod). In the writer's understanding, the prescribed steps are necessary for ethnic Macedonians and Macedonian-speakers in these two areas to preserve and nurture their ethno-cultural and linguistic identity. The core of the hypothesis is confirmed here, since changes in terms of self-identifications are noted among the Macedonian-speakers in the region of Gora, where, simultaneously, alienation from both Macedonian and Albanian narratives is more visible. Hence, people are more eager to express their identity as 'Gorani' instead as Macedonians.

4.3.1. The section on minority protection in Bulgaria revealed the pre-eminence of individual rights ascribed to all citizens, including those who belong to national minorities, which is deeply entrenched in both the legal framework and judicial practice in minority-related cases. A peculiarity of the Bulgarian situation is the non-recognition of certain minority groups (Macedonians and Pomaks), which authorities contend are simply regional or cultural variations of ethnic Bulgarians. As analysis of the census practices revealed, such policies breach the right to freedom of ethnic self-identification. Accordingly, in the context of de lege ferenda, the Constitution and domestic legislation must stipulate positive rights for minorities rather than relying simply on principles of equality and non-discrimination,
as recommended by the Venice Commission. Second, while the existence of a given national minority hardly depends upon official recognition by authorities, denial of such recognition can deprive the non-recognized minority from cultural institutions and finances crucial for its survival. It was in this vein that Advisory Committee to the FCNM recommended that Bulgarian authorities give preference to the subjective criteria (ethnic self-identification) over the supposed objective criteria (cultural and linguistic proximity with Bulgarians) and to recognize the existence of these two minorities in the country. Prospectively, they should enter sincere dialogue with representatives of these communities in order to identify the challenges faced by those who publicly speak and express Macedonian and Pomak identity.

4.3.2. The right to study their own language in public schools, despite being a constitutionally enshrined right in Bulgaria, is becoming harder to exercise by both Turks and Roma. To improve this situation, it is suggested to amend the National Education Act in a way that the status of minority language subject for pupils “whose mother tongue is not Bulgarian” in primary and secondary schools is upgraded from 'compulsory optional subject' to a 'compulsory subject'. In the long term, with the recommended ratification of the ECRML, the legislature might reassess the usefulness of providing bilingual education for pupils of Turkish and Roma origin.

4.3.3. Being officially a non-recognized minority, the rights to freedom of expression and association are of the utmost importance for Macedonians in Bulgaria. Indeed, it is through these two rights that they might express their distinctiveness in the society and promote their cultural identity. Judgments delivered by the ECtHR in cases concerning the long-lasting practice of Bulgarian authorities banning meetings and rallies organized by the non-registered Macedonian cultural association UMO Ilinden and the dissolved political party UMO Ilinden PIRIN, eventually achieved the desired result, as no major hindrances to their freedom to hold peaceful assemblies have been reported in several years. Conversely, the execution of ‘repetitive judgments’ concerning refusals of the courts to register the cultural association UMO Ilinden, which is still being supervised by the Committee of Ministers, indicates that no breakthrough has occurred in domestic law, policy and court practice. However, it should not be forgotten that the revised Law on Non-Profit Legal Entities, passed by the Bulgarian Assembly in September 2016, transferred the competence to register non-profit associations from courts (non-contentious procedure) to the newly formed Registration Agency, with an allegedly simplified administrative procedure. Nonetheless, the excessive transition period, from its adoption to its coming into force, left room for domestic courts occasionally to rely on the previously sanctioned 'margin of appreciation'. Recently, two additional complaints were filed with the ECtHR, when the domestic courts,

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in a manner reminiscent of other decisions discussed, refused to register both the Macedonian Cultural and Educational Association 'Nikola Vapcarov' and the Association of Repressed Macedonians in Bulgaria.

4.3.4. Consequently, the Bulgarian government should comply with Recommendation No. R (2000) 2 of the Committee of Ministers on the re-examination or reopening of certain cases following judgments of the ECtHR. Particularly, the government has to ensure: 1) that there are, at the national level, adequate possibilities for injured parties to achieve the same situation as the one they enjoyed prior to the violation of the rights enshrined in ECHR (restitutio in integrum); and 2) that there are adequate possibilities to re-examine the case, including reopening proceedings, especially where the injured party continues to suffer negative consequences because of the outcome of the domestic decision at issue, which are not adequately remedied. In order to prevent similar violations of the ECHR rights and freedoms in cases concerning the registration of Macedonian associations, it is expected that the ECtHR will be prepared occasionally to deliver 'pilot' or 'quasi-pilot' judgments, instead of relying on its 'declaratory adjudicatory' approach, in order to identify and acknowledge the existence of general or structural problems originating from domestic legislation, administrative procedures or judicial practices, producing repetitive violations of Article 11 of ECHR.

4.3.5. Finally, domestic courts are expected to not directly reject any future motion for registration of political parties associated with the Macedonian minority. In more concrete terms, they must rely on contextual and non-restrictive interpretations of Article 11 of the Bulgarian Constitution, which in fact prohibits political parties formed along ethnic lines. Nevertheless, considering that political parties of minorities de facto exist, and have participated in consecutive Bulgarian coalition governments, one cannot rule out a minority-sensitive interpretation of Article 11 by the domestic courts. These recommendations follow the premise that respect and unrestricted enjoyment of the rights to freedom of expression and association as well as of the right not to be discriminated against in enjoying the ECHR rights and freedoms on the grounds of belonging to a national minority, as elaborated by the ECtHR's jurisprudence, enables emergence of associations and political parties espousing minority identity which are not officially recognized and increase the chances of a minority's continuing existence as a community. Overall, the findings in this section confirm the hypothesis in cases involving non-recognized minorities.

4.3.6. When analyzing the position of the Macedonian minority in Bulgaria, one must consider recent developments in the bilateral relations between Bulgaria and the Republic of Macedonia. For many years, the conclusion of a good-neighbor’s treaty proved to be impossible, as the two countries adhered to

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mutually exclusive positions in respect to several crucial issues, not least, the issue of the non-recognized Macedonian minority. The roots of this issue can be traced to the Bulgarian position on the 'genesis' of Macedonian ethno-cultural identity, both in the Republic of Macedonia and elsewhere. When the two countries did reach an agreement, it quickly became clear that there had been no fundamental changes on their starting positions in respect to minority issue. Therefore, the Macedonian-Bulgarian Treaty of Friendship, Good-Neighborly Relations and Cooperation of 2017 is short of any provision(s) prescribing rights and freedoms to persons belonging to the Macedonian minority in Bulgaria, or for those espousing Bulgarian identity in the Republic of Macedonia. In concrete terms, most of the provisions in the treaty repeat those enshrined in the Joint Declaration of 1999. Essentially, by virtue of Article 11 (5) of the treaty, Macedonia conceded that nothing in its Constitution can or should be interpreted as a legal basis for interference with the domestic affairs of the Republic of Bulgaria, or to raise issues about the status and rights of any persons in Bulgaria who are not Macedonian citizens. In such a way, in the long term, Article 49 of the Macedonian Constitution is effectively suspended in respect of Bulgaria, and Bulgaria is assured that the minority issue will not be on the agenda between the two countries. Furthermore, Macedonian authorities should not, whether directly or indirectly, support individuals and organizations representing Macedonian minority in Bulgaria and claiming violations of their fundamental rights and freedoms.

4.4.1. Findings in the section devoted to the minority protection in Greece raise various issues under contemporary human rights law. They basically arise from the decades-old approach of Greece to recognize only one minority, namely the 'Muslim minority' of Western Thrace. Moreover, the Treaty of Lausanne of 1923 continues to be the main legal source for minority protection, and for the rights ascribed to the country's only recognized minority. Consequently, the domestic legal framework for minority rights is rather modest, and Greece refuses to ratify the FCNM. Additionally, the terminology employed to refer to this minority derives directly from stipulations in the aforementioned peace treaty, and as such focuses solely on the religious affiliation of this population, which in fact comprises persons of different ethno-cultural and linguistic origins (Turkish, Roma, Slavic-speaking Pomaks), although the majority self-identify as ethnic Turks. This 'naming policy' clearly negates the right to freedom of ethnic self-identification in Greece and predetermines the fate of any motion for registration of associations or legal entities containing the core word ‘Turkish’ in its title.

4.4.2. Due respect for the right to freedom of ethnic self-identification of all citizens of Greece is of utmost importance. This minimum requirement is relevant for both non-recognized minorities, such as

1962 Ibid, Art. 11, paragraph 5.
Macedonians and Vlachs/Aromanins, as well as for Turks, the officially designated 'Muslim minority'. A crucial starting point for fundamentally changing the situation is for Greece to start collecting data on the ethnic and linguistic origins of its citizens during its regular censuses and to ratify the FCNM. Simultaneously, in the context of de lege ferenda, Greece should adopt wide and comprehensive legislation pertaining to minority rights, with no prior limitations to minority group(s) eligibility for the rights and freedoms contained therein. Moreover, the government should abandon its position opposing recognition of minority status to those ethno-cultural groups not clearly specified in a bilateral treaty, as limiting the recognition of minority status to such mechanisms is anachronistic in international law. Therefore, domestic legislature and courts are expected to properly apply Article 28 of the Constitution, which determines the status of ratified treaties, by prioritizing multilateral treaties containing rights of persons belonging to minorities over domestic rules and acts that restrict its application solely to ‘Muslims’ of Western Thrace. Finally, the clauses in legislation which differentiate between persons of Greek and non-Greek origin, in way that favor the former over the latter in their eligibility for certain civil rights, should be repealed and replaced in accordance with the requirements of contemporary human rights law.

4.4.3. Considerable improvements in minority participation in public life could be achieved through repealing or modifying the prescribed 3% threshold for entrance of political parties in the Greek Parliament (de lege ferenda) in a manner that exempts minority political parties from its application and guarantees them a respective number of seats. In this way, minorities in Greece would have the possibility of electing 'genuine' minority deputies to represent their interests in the highest legislative body.

4.4.4. The analysis showed that the position of non-recognition of the Macedonian minority has its roots in the Greek national narrative on the wider 'Macedonian Question'. The key argument here is that, allegedly, the terms 'Macedonia' and 'Macedonians' were historically inseparably from Greeks and Greek cultural heritage. Although the Greek national narrative accepts that these terms have acquired different meanings over time, it nevertheless contends that they have never symbolized 'the national character of a separate Slavic people'. One might interpret this position as a self-serving ahistorical narrative about matters subject to varying interpretations by different actors. In essence, it suggests discomfort about claims of Macedonian ethno-cultural identity and a refusal to grant minority status to ethnic Macedonians in Greece under their self-selected name. Hence, Greece should abide by the principle enshrined in Article 3 of the FCNM, which gives preference to the right of every minority member to freely choose to be treated or not be treated as such over any interpretation about the supposedly objective existence of such minority in a given country. In so doing, Greece could focus on

more substantive issues, such as providing a climate conducive for the identities of both *ethnic Macedonians* and *Greek Macedonians* to flourish, without any of them interpreting the other group's identity markers as either negating or even impeding the maintenance of its own identity.\(^{1964}\) Moreover, once this is secured, authorities could also consider implementing various means for rapprochement and reconciliation between them and ethnic Macedonians.

4.4.5. Ethnic Macedonians in Greece seeking to reinstate their traditional Macedonian family names via administrative or judicial procedures face either with 'outright dismissal' of their requests on formal grounds or adjournment *sine die*. Recently, several complaints against Greece were lodged with the ECtHR by ethnic Macedonians seeking the effective recognition of their right to personal identity in minority language. In the context of *de lege ferenda*, it is recommended the government amend the legislation in a way to give effect to Article 11 of the FCNM, requiring that those who have been forced to change their names by means of coercion or forced assimilation should have the right to reintroduce personal and family names in their original forms. In addition, Greece should also reconsider its position on the religious rights of the Macedonian minority, particularly their right to worship in the Macedonian language. More concretely, Article 13 of the Constitution regarding the freedom of religion might be invoked as a legal basis for both civil and religious authorities to allow religious sermons to be delivered in the Macedonian language by priests from the Church of Greece.

4.4.6. Freedom of expression and association are essential for persons belonging to the Macedonian minority in Greece to nurture and maintain their ethnic, linguistic and cultural identity. Several breaches of these rights have been registered in recent years, since Greek courts of all instances rejected any bid for registration of cultural associations containing the word 'Macedonian' in their name. Even after the ECtHR found Greece in breach of Article 11 of ECHR in three cases concerning refusals to register Macedonian associations, no fundamental change in the attitude of domestic courts is observable. Concerning the ‘repetitive judgment’ in the case of *Home of Macedonian Culture v. Greece* of 2015, it is worth noting that Greek Ambassador to the Council of Europe in November 2016 submitted a letter indicating the measures adopted in previous period.\(^{1965}\) It informed that the Greek Government has prepared a draft bill that will establish a *National Monitoring Mechanism for the Implementation of ECtHR Judgments*, which, in the context, serves as a 'general measure'. In the government’s view, the National Mechanism will improve institutional coordination and prospectively guarantee that prompt and appropriate execution of ECtHR judgments is secured. However, the letter indicates rather weak


'individual measures', suggesting that the ECtHR judgment has simply been translated into Greek and forwarded to respective judicial authorities, accompanied by commentary on the facts upon which the findings of 'repetitive violations' of the freedom of association have been based. Indeed, the proposed measures are reminiscent of the ones adopted during the supervision of the first judgment in the case Sidiropoulos and others v. Greece, which failed to prevent further violations of the right to freedom of association in similar cases. Nonetheless, the Greek government supposedly reviewed options for enforcing the judgment in the case Home of Macedonian Culture v. Greece, including the possibility of introducing a legal remedy that would allow Greek Civil Courts to re-examine cases where violations of the Convention have been found. Basically, the latter derives from the requirements enshrined in the aforementioned Recommendation No. R (2000) 2 of the Committee of Ministers on the re-examination or reopening of certain cases following judgments of the ECtHR.

4.4.7. In future, courts of all instances in Greece must comply with both positive and negative aspects of freedom of association, as guaranteed by Article 11 of ECHR and derived from ECtHR jurisprudence. This would require abstaining from arbitrary interference in the effective enjoyment of this right (negative aspect), but also some positive actions to enable free and unrestricted utilization of freedom of association. Moreover, it seems reasonable to recommend the Greek courts consent to associations/NGOs established by ethnic Macedonians to employ the core word (adjective) ‘Macedonian’ on a non-exclusive basis, in an equal manner to legal entities formed by Greeks who identify as Greek Macedonians in a regional/cultural sense. In addition to its policy-oriented work, it is expected that the Committee of Ministers of the Council of Europe will duly emphasize the need to prevent further violations and give due care to implementing final judgments, i.e. registration of Macedonian associations. As stressed elsewhere, in future cases concerning Macedonian minority, the ECtHR is expected to consider issuing 'pilot' or 'quasi-pilot' judgments, by identifying general or structural problems arising from domestic legislative and judicial practice which produce repetitive violations of Article 11 of ECHR, if such is the case. These recommendations emphasize the rights to freedom of expression and association as well as the right not to be discriminated against in enjoying ECHR rights and freedoms on the grounds of belonging to national minority, as elucidated in ECtHR's jurisprudence, for preserving the identity of ethnic Macedonians in Greece. Again, the research findings confirm the hypothesis in cases involving non-recognized minorities.

4.4.8. Recently, Greece's Ministry of Education recognized several diplomas and academic degrees awarded to members of the Macedonian minority at universities in the Republic of Macedonia. If this policy prevails, the number of students from Greece enrolled in Macedonian universities will inevitably increase. Since there are no indications that the Macedonian language will be introduced in the formal education system in Greece, private initiatives for teaching Macedonian language are essential to
reversing the ongoing processes negatively affecting linguistic cohesion of Macedonian minority in Greece, such as 'language shift' or 'language replacement' in areas traditionally inhabited by the them. Indeed, these processes produce changes in self-identification among persons belonging to Macedonian minority. Therefore, considering that language is a fundamental identity marker, which differentiates ethnic Macedonians from the dominant group, private initiatives are deemed necessary for ethnic Macedonians to cultivate their language and to preserve and nurture their ethno-cultural identity.

4.4.9. The case of ethnic Macedonian refugees from the Civil war in Greece (1946-1949) concluded that legal acts which exclude particular ethnic communities from 'amnesty laws' contravene core human rights, some of which are customary international law. Particularly, the contentious laws of 1982 and 1985 prevent ethnic Macedonians from reclaiming their right to nationality and properties, and as such violate rights and principles enshrined in the ECHR, ICCPR and ICERD. Notably, on 18 March 2017 the Greek Parliament passed a motion recognizing the right of descendants of Holocaust survivors to apply for Greek citizenship. The Holocaust survivors in question were members of the Jewish community, former Greek citizens who lost their nationality after they left the country, in much the same way as many ethnic Macedonians and Turks were stripped of their nationality after WWII and the Greek Civil War. Yet, ethnic Macedonian refugees and their descendants were not included in this conciliation. They are entitled to challenge such laws and practices as individuals, by determining their civil status in Greece, in compliance with the Citizenship Code, or to dispute original decisions depriving them of their citizenship and property rights in Greece. After domestic remedies have been exhausted without restitutio in integrum, they may lodge an application before the ECtHR claiming violations of several rights enshrined in ECHR.

4.4.10. On 13 June 2018, Republic of Macedonia and Greece reached an agreement for resolving the long-running name dispute, and signed it four days later on the shores of Lake Prespa. The signed agreement is a comprehensive 20-page document, encompassing, in addition to the 'name issue’, all other segments of bilateral relations between the two countries. The procedure for its entry into force is complicated, and contingent on the completion of several stages, including a referendum for its approval by the citizens of the Republic of Macedonia. Hence, for the moment, it remains a conditional and prospective agreement. Nonetheless, its main provisions addressing the minority issue in bilateral relations should be briefly assessed.

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1966 Haaretz, Descendants of Greek Holocaust Survivors Now Eligible for Citizenship, 20 March 2017. This article is available online at: https://www.haaretz.com/jewish/descendants-of-greek-holocaust-survivors-now-eligible-for-citizenship-1.5451147
From the outset, the agreement does not recognize the minority status of ethnic Macedonians in Greece nor provide any minority protection whatsoever for them.\textsuperscript{1968} On the one hand, Article 4 (3) of the Agreement, in a similar fashion as the above mentioned Article 11 (5) of the Macedonian-Bulgarian Treaty, essentially circumscribes the scope and application of Article 49 of the Macedonian Constitution. It states that this or any other constitutional clause, "as it is in force or will be amended in the future", cannot be interpreted by the Macedonian government as constituting the basis for interference in the internal affairs of Greece, including for "the protection of the status and rights of any persons that are not its citizens".\textsuperscript{1969} Additionally, Greece reiterated its contention that any direct or indirect reference to the non-recognized Macedonian minority might provide an impetus for territorial claims or 'irredentist pattern of behavior' from the Macedonian state agencies. Therefore, by virtue of Article 1 (12), Macedonia is bound, during the process of changing its constitutional name, to simultaneously amend the Preamble, Article 3 and Article 49 of its Constitution. Hence, if the Agreement comes into force, Macedonia would be deprived of any possibility of legitimately raising minority issues in bilateral relations with Greece and to exercise care, in accordance with principles of international law, for the status and human rights record of the Macedonian minority in Greece.

4.5.1. The Republic of Serbia has an advanced legal framework for minority protection and its legal definition of national minorities is wide enough to encompass different types of ethnic groups, notwithstanding their historical presence and numbers in the country. However, only the three most populous national minorities (Hungarians, Bosniaks and Albanians) are regularly represented in the National Assembly with 'genuine' minority deputies. Therefore, in the context of de lege ferenda, Serbia should amend its Law on the Election of Deputies and include provisions enabling more favorable representation of national minorities in the highest legislative body. Similarly, many wide-ranging competences and consultative roles in the National Minority Councils were either limited or repealed by the Constitutional Court of Serbia. For example, the Constitutional Court gave preference to the legal doctrine that legislative power of the National Assembly cannot be qualified or dependent upon the opinions issued by the National Minority Councils. Accordingly, authorities must undertake a proper legislative amendment, to secure the widely acclaimed achievements of these legal entities empowered with certain self-government competencies.

\textsuperscript{1968} Article 7 acknowledges that terms 'Macedonia' and 'Macedonian' have different meanings for both parties. It goes even further, by stating that, when used, these terms denote to different historical context and cultural heritage related to the territory, people and their attributes in the Republic of Macedonia and in the northern region of Greece, also known as Greek Macedonia. In such a way, the agreed sharp delimitation of the distinctly different meanings of the terms 'Macedonia' and 'Macedonian' in respect to the territory and people in both countries, might be invoked as a 'legal ground' for continuation of policy for non-recognition of Macedonian minority in Greece.

\textsuperscript{1969} Ibid, Art. 4, paragraph 3.
4.5.2. Most pressing issue in Serbia is that even thirteen years after the conclusion of the bilateral agreement for protection of kin-minorities between Serbia and Macedonia, the Intergovernmental Joint Commission has failed to hold a single meeting. Consequently, the two countries must abide by and observe their obligations enshrined in the agreement in good faith (pacta sunt servanda), in accordance with Article 26 of the Vienna Convention on the Law of Treaties. In doing so, the identified challenges and problems faced by persons belonging to the Macedonian national minority in different areas would surely be resolved.

4.5.3. National Council of Macedonian National Minority in Serbia should obtain linguistic rights once possessed by ethnic Macedonians in the former Yugoslavia, but repealed in the 1990s (restitutio in integrum). Apparently, acculturation and appropriation of the majority's cultural practices by ethnic Macedonians in Serbia are the main forces driving the continuing process of 'language replacement' affecting the Macedonian minority. Therefore, Serbia should upgrade the level of protection afforded to the Macedonian language and its speakers in the fields of education, judicial and administrative procedures, media, culture etc. Introduction of Macedonian language as ‘language in official use’ in those municipalities with vital Macedonian communities is only a first step for attaining a higher level of protection. Essentially, in the midterm, Serbia should expand the list of languages for which obligations stipulated in ECRML Part III apply, by adding the Macedonian language.

4.5.4. The analysis revealed that only a portion of Macedonian pupils in Serbia have opportunity to learn their mother tongue, through one of three established modalities for mother tongue education for minorities. The option for some to study Macedonian language via the subject 'Macedonian language with elements of national culture' became available only recently, whereas two more advanced modalities, namely complete education in minority language and bilingual education, remain unavailable. Moreover, the subject 'Macedonian language with elements of national culture' is grouped with the facultative subjects in elementary schools, which means that only two classes per week are secured for teaching the Macedonian language. Hence, this subject should be transferred from the facultative to optional subjects, as stipulated in the analysis on the implementation of the bilateral agreement on kin-minority protection between Macedonia and Serbia. Teaching in Macedonian language at pre-school level could give an additional impetus for pupils of Macedonian ethnicity in elementary schools to elect the subject minority language with elements of national culture. If this step is followed by gradually widening the network of elementary schools providing the subject 'Macedonian language with elements of national culture', it would then be feasible for ethnic Macedonians to ask authorities to introduce second or third modality of mother tongue education for pupils of Macedonian origin, namely bilingual education or complete education in Macedonian language. In essence, the recommendations are derived from the fact that lack of instruction in minority language or more advanced protection of Macedonian language would make the
ethnic Macedonians in Serbia, a 'diasporic minority', vulnerable and susceptible to the gradual erosion of their resilience to sustain and preserve essential aspects of their identity. The findings of this section uphold the hypothesis.

4.5.5. Serbia should reconsider its position on the religious rights of its Macedonian minority. In the writer’s understanding, the dispute between Serbian Orthodox Church and the Macedonian Orthodox Church on the canonical status of the latter in the ecumenical realm of Eastern Orthodox Christianity, cannot serve as an obstacle to exercising the rights and freedoms derived from human rights law. On the one hand, domestic legislation accepts century-old principles of canon law, imposing legal impediment on the coexistence of two Orthodox churches in the same jurisdictional area. From this perspective, it seems that any initiative for establishing an Orthodox Church in Serbia, even one prefixed with ‘Macedonian’, will be outright rejected by domestic courts. On the other hand, domestic legislation, ratified treaties and the Macedonian–Serbian bilateral agreement on minority protection, combined with the principle of reciprocity, should provide adequate legal basis for authorities to guarantee ethnic Macedonians the right to worship in Macedonian as well as permitting clerics of the Serbian Orthodox Church to deliver sermons in Macedonian.

4.6.1. Kosovo has a wide and comprehensive legal framework for minority protection, inclusive of far-reaching provisions in certain areas. However, several weaknesses in general, and in respect to the Macedonian-speaking Gorani community in particular were identified in this research. First and foremost, the existence of two parallel education systems in Kosovo, with completely different curriculums, present an insurmountable obstacle for the creation of an integrated and cohesive society. To correct the situation, the government should ensure that the educational curriculum in schools run by the Ministry of Education, Science and Technology of Kosovo is available both in Serbian language, and in the languages of other communities (Croat, Macedonian). Additionally, following amendments to the Constitution identifying Croats and Montenegrins among the recognized 'communities', authorities should consider securing 'special representation rights' for them, by reserving seats for these two communities in the Kosovo Assembly.

4.6.2. Similarly, the right to freedom of linguistic self-identification must be properly respected by authorities for the Macedonian-speaking Gorani community. More specifically, since at least 30% of the population in the municipality of Dragash declares their mother tongue to be either ‘Nashinski’ or Gorani, Article 2 of the Law on the Use of Languages should automatically apply. That would effectively grant Gorani’s Macedonian-related vernacular the status of an ‘official language in the municipality’. Second, until an integrated education system is established in Kosovo, authorities should ensure that parents in Dragash are free to enroll their children in either of the country's parallel education systems. Third, the government of Kosovo should reconsider its position on the request by who identify as
Macedonians to be recognized as a minority community. In the end, regardless of the number who define themselves as members of this-or-that ethnic- or language-community, the right to freedom of ethnic, cultural and linguistic identification should prevail over any other interpretation.

Conclusion on the ‘common denominator’ in the position of Macedonian minorities

5.1. The research revealed that the position and status of Macedonian minorities in the countries neighboring the Republic of Macedonia vary significantly from one to another. Hence, prospects for preserving the Macedonian identity in the long term are different in each particular context. It should go without saying, the situation is more promising in countries whose legal systems directly protect national minorities, either via general laws on minorities or through special laws and by-laws elaborating the practical implementation of right to mother tongue education, linguistic and participatory rights of national minorities. I stress that the institution of minority self-governance presents the best solution for identified shortcomings, that is, when entities representing national minorities are empowered with cultural autonomy or self-governing competences in fields crucial for maintenance of minority identity. Conversely, it appears that when domestic legislation lacks special rights for minorities, and individual rights doctrine preclude enshrining the second element of minority protection in the legal system, any indirect protection afforded via general human rights, present a challenge to the preservation of minority identity. Finally, cases of non-recognition of minority status to ethnic Macedonians raise legitimate concerns under human rights law, often highlighting considerable uneasiness on the part of authorities for acceptance of Macedonian ethno-cultural identity and of persons seeking unrestricted promotion of Macedonian language, culture and tradition. Here, it is important that rudimentary generic protection at the national level are accompanied with human rights that are justiciable internationally (e.g. right to freedom of association), and enable their communal exercise domestically, via protection of associations and political parties publicly expressing minority's ethno-cultural features. Otherwise, perspectives for preservation of minority identity and cultivation of Macedonian language in these societies will be utterly limited, and the gradual acculturation and assimilation could occur in the foreseeable future.

5.2. Recent developments in the Macedonian-Greek and Macedonian-Bulgarian bilateral treaties have to be assessed together in assessing their impact on the position of Macedonian minorities, taking into consideration the absence of minority rights provisions and conditions limiting Republic of Macedonia’s role as a 'kin-state'. Hence, one might conclude that, for the foreseeable future, persons belonging to Macedonian minority in both countries, seeking recognition and promotion of their ethno-cultural identity, will have to seek remedied through international organizations, such as Council of
Europe, UN and OSCE, and to rely on mechanisms for monitoring and implementing human rights and minority rights established within their legal/quasi-legal/political frameworks.

5.3. With this in mind, it is important to underscore that we found no trace of a ‘common denominator’ between the countries neighboring the Republic of Macedonia in their treatment of Macedonian minorities. Nonetheless, we did identify several more-or-less common criteria that determine the position of persons of Macedonian origin in each country, namely:

a) the State’s general attitude to minorities;
b) the nature of the rights ascribed to national minorities (individual, quasi-collective, collective);
c) the legal framework for protecting minority rights (ratified UN/CoE treaties, general law on minorities, special laws for minority rights in areas of education, language or culture, overly modest provisions for indirect protection etc.);
d) the State’s position on the Macedonian ethno-cultural identity and Macedonian language;
e) bilateral relations with the Republic of Macedonia, including possible bilateral treaties on the protection of kin-minorities, or good-neighborliness inclusive of minority provisions.

Ideal system of minority protection?

6.1. As noted at the beginning, to date, no ideal system of minority protection has been developed or implemented, either in the Balkan counties or elsewhere. This situation remains unchanged. However, since the dissertation encompasses twelve countries, whose systems of minority protection have been critically reviewed to a greater or a lesser extent, we will venture to extend some general comments in that direction. At the beginning of “devising an adequate system of minority protection”, it seems prudent to recognize that FCNM might provide a basic starting point, but the rights and freedoms stipulated therein should not constitute "programme-type provisions setting out objectives which the Parties undertake to pursue". Here, the Constitution of the Republic of Kosovo provides a promising model, stipulating the direct applicability of the provisions of core international human rights treaties (including FCNM), and giving them priority over domestic law in cases of conflict (Art. 22). On a somewhat different note, a delicate balance must be struck between individual and collective rights, and between ‘collective rights’ and concerns about ‘national security’, ‘territorial integrity’ etc. A crucial starting point for empowering national minorities as groups, in fields indispensable for maintaining their

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cultural-identities, would be to institute ‘minority self-government’, as it is embodied in domestic legislation in Slovenia and Hungary. Only then might this kind of ‘cultural autonomy’ of national minorities be prospectively upgraded with some degree of ‘local autonomy’ or ‘asymmetric competences’ in geographical areas where they comprise a majority of the population.

6.2. Education systems should be adjusted to the real needs of national minorities, fostering an integrated and intercultural curriculum while avoiding segregation of students along linguistic lines. In essence, depending on various demographic factors such as numerical size of national minority populations, the ideal situation is for students from pre-school to post-secondary education to have the option to elect either complete education in minority language, bilingual education or minority language subjects. Of course, learning the official language of the country shall be mandatory for every pupil, starting from the earliest stages of education.

6.3. ECRML as well OSCE's Oslo Recommendations regarding Linguistic Rights of National Minorities provide an array of provisions and clauses that might be adapted for any minority language, including directions for their usage in administrative and judicial procedures, public services, in cultural activities, media, economic and social life. A basic guideline for selecting the appropriate options outlined in these two instruments should be providing the best possible protection for minority languages and their speakers, not just the minimum required by law or treaty. As to the possibility for minority languages to be recognized as an 'official language' or 'language in official use' at regional or local level, the legal frameworks of both Montenegro and Kosovo contain the most favorable provisions. Again, what matters mostly is the real effect and proper enforcement of such far-reaching clauses, which providing quite advanced protection of minority languages and collective rights for national minorities.

6.4. In respect to participatory rights of minorities at national and local level, it is of utmost importance that an alternative threshold is established for securing seats for 'genuine minority deputies', elected from the lists of political parties representing national minorities. To that end, a combination of the Romanian and Croatian models would be a proper solution. It should be reiterated that Romania, with its preferential quote for organizations of all of the country's recognized national minorities, secures at least one seat for all of them in its Chamber of Deputies, whereas in Croatia, the reserved seats for national minorities are elected in a separate constituency. The Slovenian example in respect to the competences of minority deputies seems to be the most suitable for developing an adequate system of minority protection. Specifically, the highest legal act in Slovenia empowers minority deputies with ‘veto rights’ on legal acts and matters affecting the exercise of their ascribed rights. As to the participation of national minorities in public and political life at the local level, it is important that governments strictly abide by the duties derived from Article 16 of FCNM. Among other things, this provision protects against measures such as redrawing administrative borders, including of a municipal units, which aim at
restricting the rights and freedoms of national minorities flowing from the Convention as a whole ('gerrymandering').

6.5. Finally, the continuing pursuit of bilateral treaties, both general ones inclusive of minority provisions and those aimed specifically at the protection of kin-minorities, as in the case of Serbia and Hungary, for example, surely promise ever more comprehensive and detailed protections of national minorities. It seems clear that while domestic legal framework apply, more or less, to several minority groups, bilateral treaties are by definition more focused and provide context-specific protection, finely adjusted to the real needs of particular national minorities.
VI. POZETEK


Hipotezo je najlažje preveriti v primeru, ko lahko pripadniki manjšine svobodno izražajo svoje etnično-kulturne značilnosti in kjer oblasti priznajo status manjšine vseh etnično-kulturnih skupin, ki se same opredeljujejo kot manjšine in delujejo kot take. Nasprotno pa je bilo v primeru, ko določena etnično-kulturna skupina ni priznana kot narodna manjšina in jeni člani nimajo možnosti za ohranitev in negovanje svoje identitete na podlagi posebnih pravic, ki zagotavljajo neposredno varstvo (izobraževalne, jezikovne, participativne pravice) analizirano, ali se lahko hipoteza potrdi in ali je mogoče identiteto manjšin ohraniti preko prvega stebra, tj. z načeli nediskriminacije in enakosti, skupaj s pravicami in svoboščinami, ki zagotavljajo posredno zaščito, a so upravičene na mednarodni ravni, kot so tiste, ki so zapisane v Evropski konvenciji o človekovih pravicah.

Varstvo narodnih manjšin v nekaterih balkanskih in srednjeevropskih državah

Iz primerjalnopravne analize sistemov varstva manjšin v državah na Balkanu je moč izpeljati več ugotovitev. Najprej je treba izpostaviti, da so skoraj vse analizirane države prešle čez radikalne reforme svojih socio-političnih, pravnih in ekonomskih sistemov in so tako doživele podobne spremembe na svoji poti iz socializma v demokracijo. Te podobnosti so vidne predvsem na področju varstva manjšin. Na splošno, gledano s pravnega vidika, so potrebe manjšin na Balkanu urejene v splošnih zakonih ali v bolj specifičnih pravnih predpisih, ki predpisujejo jezikovne, izobraževalne ali participativne pravice. Tu se v
praksi sklepajo splošne dvostranske pogodbe, ki vključuje določbe, iz katerih izhajajo manjšinske pravice pripadnikov "pripadajočih manjšin" ali pa posebne dvostranske pogodbe o varstvu manjšin. Praksa s sklenitvijo takšnih dvostranskih sporazumov v bistvu podpira hipotezo, saj je razumevanje njihovega obstoja zagotovitev specifičnega kontekstne zaščite in oblikovanja pravice do identitete na zgoraj navedenih treh področjih, prilagojenih potrebam in izzivom, s katerimi se te skupine soočajo.

1.1. Pravni institut “manjšinska samouprava”, ki ga ureja madžarski Zakon o pravicah narodnosti, zagotavlja državno priznanim manjšinam ključno prednost. Manjšina namreč deluje kot pravna oseba s kulturno avtonomijo, saj lahko manjšine ustanovijo, vodijo in upravljajo kulturne in izobraževalne ustanove ter nadzorujejo izpolnjevanje pravice do delovanja institucij javnega izobraževanja tako centralne kot lokalne uprave. Vendar pa opredelitev "narodnosti" v Zakonu o pravicah narodnosti zajema le "zgodovinske ali avtohtone manjšine" in strogo izključuje "nove manjšine".

1.2. Romunska ustava vsebuje določbe o zastopanju narodnih manjšin v parlamentu, vključno z manjšimi manjšinami. Kljub temu pa splošni pravni okvir za narodne manjšine še ni dokončan, zato je od romunske vlade pričakovati, da bo zakonodajalcu v sprejem predložila spremenjen osnutek Zakona o statusu narodnih manjšin.

1.3. Hrvaška ureja položaj narodnih manjšin z Ustavnim zakonom o pravicah narodnih manjšin, ki zagotavlja enakovredne pravice prvi, drugi in tretji generaciji, pri čemer je njihova realizacija dodatno podrobnno opredeljena z drugimi zakoni in podzakonskimi akti. Na tem področju je potrebno razrešiti dve odprti vprašanji. Prvo je povezano z vrnitvijo in ponovno integracijo Srbov, ki so med vojno pobegnili iz države. Drugo vprašanje se nanaša na uporabo srbskega jezika kot uradnega jezika v mestu Vukovar, kot je določeno v Zakonu o uporabi jezikov in pisav narodnih manjšin.

1.5. Del, posvečen varstvu manjšin na Balkanu, se zaključuje s kratkim povzetkom situacije v naslednjih treh državah, ki imajo raznolik zakonski okvir na področju človekovih in manjšinskih pravic. Analiza je pokazala, da ima Črna Gora najbolj napreden zakonski okvir na tem področju, sestavljen iz precejšnjega števila ustavnih določb (68/158) in posebnega zakona o varstvu manjšin. Kljub temu pa močna politizacija črnogorske družbe, ki se še posebej kaže pri vprašanjih, povezanih z etnično pripadnostjo, jezikom in kulturo Črnogorcev, Srbov, Bošnjakov in Hrvatov, otežuje uresničevanje ustavne pravice narodnih manjšin do izobraževanja v maternem jeziku. Zato lahko to pravico brez kakršnih koli pravnih ali praktičnih ovir uveljavljajo le pripadniki albanske manjšine.

1.6. Zakonski okvir v Turčiji ne vsebuje posebnih pravnih aktov, ki bi zagotavljali varstvo pravic in svoboščin različnim etnično-kulturnim in verskim manjšinam v državi. Na podlagi Lozanskega sporazuma iz leta 1923, ki predstavlja glavni pravni vir turške politike do manjšin, se namreč kot take priznavajo samo "nemuslimanske manjšine". Turčija bi morala spremeniti svoj pristop, ki daje prednost dvostranskim pogodbam, sklenjenim pred skoraj stoletjem, pred sodobnimi multilateralnimi pogodbami, ki so namenjene zaščiti velikih vladnih manjšin. Pred tem pa mora turški parlament nadaljevati z ratifikacijo temeljnih pogodb na tem področju, kot je na primer Okvirna konvencija za varstvo narodnih manjšin.

1.7. In ne nadzadnje, Bosna in Hercegovina, ki s svojo zapleteno politično strukturo, zasnovano na sistemu delitve oblasti med tremi glavnimi "konstitutivnimi narodi", bolj ali manj zanemarja potrebe manjšin. Strogo razdeljevanje najvišjih delovnih mest med določene etnične skupine namreč postavlja pod vprašaj skladnost z načeloma enakosti in nediskriminacije. Poleg tega imajo kljub sprejetju Zakona o varstvu narodnih manjšin njegove določbe o izobraževalnih, jezikovnih in participativnih pravicah zgolj omejen vpliv na izboljšanje splošnega položaja narodnih manjšin.

Makedonske manjšine v državah, ki mejijo z Republiko Makedonijo

Glavno poglavje disertacije obsega široko in temeljito pravno analizo položaja in pravic makedonskih manjšin v državah, ki mejijo z Republiko Makedonijo, torej z Albanijo, Bolgarijo, Grčijo, s Srbijo in Kosovom. Pri vsaki posamični državi, vključeni v to poglavje, je v prvem delu analiziran splošni sistem varstva manjšin v tej državi, ki zajema pravni okvir varstva manjšin in njegovo izvrševanje na več področjih. Drugi del analize pa se podrobnno osredotoča na položaj in status makedonske manjšine s poudarkom na tistih področjih, ki omogočajo objektiven in skladen pregled tega vprašanja v vsaki posamezni državi.

2.1. 15. oktobra 2017 je albanski parlament potrdil Zakon o varstvu narodnih manjšin. S tem se je Albanija uvrstila v skupino balkanskih držav, ki urejajo varstvo manjšin na podlagi "splošnega zakona o manjšinah". Ključnega pomena je, da je bila z omenjenim zakonom razveljavljena prejšnja pravna delitev
ne-dominantnih etničnih skupin v državi, ki je dejansko razlikovala med tremi "narodnimi" in dvema "etnično-jezikovnima" manjšinama. Z uveljavitvijo tega zakona se vse manjšine spadajo pod krovni izraz "narodne manjšine".

V zvezi z jezikovnimi pravicami narodnih manjšin je treba poudariti, da 15. členu pri občevanju z upravnimi organi na občinski ravni prvič predvideva možnost uporabe jezikov manjšin. To pomeni, da bi se to določilo uporabljalo v tistih občinskih enotah, kjer posamezna narodna manjšina predstavlja vsaj 20% skupnega prebivalstva. Vendar pa zakon kot celota ne zagotavlja možnosti, da bi manjšinski jeziki pridobili status "uradnega jezika" ali "jezika za uradno uporabo" na lokalni ravni. Kar zadeva praktično izvajanje določb o uporabi manjšinskih jezikov na lokalni ravni, je treba poudariti, da trenutno samo tri občine izpolnjujejo pogoje za predpisanem odstotku narodnih manjšin.


Kljub vsem dosežkom zakon ne vsebuje določbe, ki bi predpisovala "rezervirane sedeže" za narodne manjšine na lokalni in na državni ravni. Zato se zdi primerno albanskim oblastem predlagati, da bi sprejele ukrepe za dodatne izboljšave na področju udeležbe narodnih manjšin v političnem življenju. Prav tako bi lahko Albanija ponovno preučila svoje stališče o možni ratifikaciji Evropske listine o regionalnih ali manjšinskih jezikih. *De lege ferenda* pa bi vlaške lahko ponovno začela s postopkom za sprejetje posebnega zakona o izobraževanju v jeziku narodnih manjšin v Albaniji.

Poleg tega so navedeni številni predlogi, ki se nanašajo na makedonsko manjšino. Predvsem bi bilo primerno zagotoviti univerzalno spoštovanje pravice do svobodne etnične samoopredelitve vseh, ki se opredeljujejo za Makedonce, še posebej na območjih, kjer so sedaj niso bili priznani kot narodna manjšina (Golo Brdo, Gora). Takšen razvoj bi omogočal, da bi lahko etnični Makedonci z uporabo maternega jezika v izobraževalnem sistemu ohranjali še druge vidike svoje manjšinske identitete. Določba o izobraževanju v maternem jeziku iz omenjenega zakona (13. člen) bi se morala spremeniti tako, da bi se v naseljih na območjih Golo Brdo in Gora povečalo število manjšinskih šol in šol, v katerih so se poučeval izbirni predmet "Makedonski jezik in literatura". Prav tako bi lahko oblast z nadaljevanjem postopka morebitne ratifikacije Evropske listine o regionalnih ali manjšinskih jezikih, makedonskemu jeziku v občini Pustec dodelila status "jezika v uradni uporabi". Tretje, v skladu s splošnimi priporočili, ki
se nanašajo na Albanijo, bi morala vlada preučiti možnost za spodbujanje sodelovanja etničnih Makedoncev na lokalni ravni, zlasti v občinskih enotah, ki so se nedavno združile z manjšimi, v katerih so predhodno etnični Makedonci imeli čisto večino.

2.2. Del, posvečen varstvu manjšin v Bolgariji, je razkril nadvlado koncepta individualnih pravic, ki pripadajo vsem državljanom, vključno s tistimi, ki pripadajo narodnim manjšinam. Ta koncept je globoko ukorenjen tako v pravni okvir kot v sodno prakso. Druga posebnost je nepriznavanje določenih manjšinskih skupin (Makedoncev in Pomakov), ki jih oblasti štejejo za regionalno oziroma kulturno različico etničnih Bolgarov. Zato bi morala v kontekstu de lege ferenda ustava in domača zakonodaja določati pozitivne pravice manjšin in se ne zanašati le na načelo enakopravnosti in nediskriminacije. Drugič, treba je opozoriti, da je Svetovalni odbor Okvirne konvencije za varstvo narodnih manjšin bolgarskim oblastem priporočil, da dajo prednost subjektivnim merilom (etnična samooperdelitev) pred domnevnimi objektivnimi merili (kulturna in jezikovna bližina z Bolgari) in da priznajo obstoj teh dveh manjšin v svoji državi. Tretjič, pravica do učenja lastnega jezika v javnih šolah, čeprav je v Bolgariji ustavno zagotovljena pravica, za Turke in Rome vse bolj izgublja svoj pomen. Za izboljšanje položaja na tem področju je primeren predlog sprememb zakona o nacionalnem izobraževanju tako, da se sedanji status manjšinskega jezika v osnovnih in srednjih šolah nadgradi iz "obveznega izbirnega predmeta" na "obvezni predmet".

“kvazipilotne” sodbe, namesto da bi se oprlo na svoj "deklarativni sodni" pristop. S tem bo prepoznao obstoj splošnih ali strukturnih problemov, ki izhajajo iz domačega zakonodajnega, upravnega postopka ali sodne prakse, ki dejansko povzročajo ponavljajoče se kršitve 11. člena Evropske konvencije o človekovih pravicah.

In nazadnje se domačim sodiščem svetuje, da ne zavračajo kateregakoli bodočega zahtevka za registracijo politične stranke, povezane z makedonsko manjšino. Konkretno, morajo se opreti na namensko in široko razlago 11. člena bolgarske ustave in pri tem upoštevati dejstvo, da v bolgarskem političnem spektru de facto žoobstajajo manjšinsko orientirane politične stranke, ki svobodno nastopajo na volitvah.

Treba se je tudi zavedati, da makedonsko – bolgarski Dogovor o prijateljstvu, dobrosošedskih odnosih in sodelovanju ne vsebuje določil, ki bi opisovala pravice in svoboščine oseb, ki pripadajo makedonski manjšini v Bolgariji, kakor tudi ne tistih, ki se identificirajo kot Bolgari v Republiki Makedoniji. Dejansko je na podlagi 11. člena (5) Makedonija sprejela, da se ne more in ne sme v njeni ustavi ničesar razlagati kot zakonsko osnovo za poseganje v notranje zadeve Republike Bolgarije, za sprožitev vprašanj o statusu in pravicah katerihkoli ljudi v Bolgariji, ki niso njeni državljeni. Na ta način je uporaba 49. člena makedonske ustave dejansko onemogočena, Bolgariji pa je s tem zagotovljeno, da manjšinsko vprašanje ni postavljeno na dnevni red med obema državama. Korenine tega vprašanja pravzaprav izvirajo v bolgarskem stališču do 'geneze' makedonske etnično-kulturne identitete tako v Republiki Makedoniji kot tudi drugje.

2.3. Ugotovitve v delu, namenjenemu varstvu manjšin v Grčiji, postavljajo različna vprašanja o sodobnem pravu človekovih pravic. Ta izhajajo iz desetletja starega grškega stališča, ki priznava obstoj le ene manjšine, imenovane 'muslimanska manjšina' iz zahodne Trakije. Poleg tega pa Lozanski sporazum iz leta 1923 še vedno predstavlja glavni pravni vir za sistem varstva manjšin in njihovih pravic, ki jih država priznava samo priznani manjšini na recipročni osnovi. Posledično je notranji pravni okvir manjšinskih pravic precej skromen. Ta ugotovitev je dodatno podprta s dejstvom, da Grčija nasprotuje ratifikaciji Okvirne konvencije o varstvu narodnih manjšin.

Samoumevno je, da je spoštovanje pravice do svobode etnične identifikacije vseh državljanov Grčije izrednega pomena. Ta zahteva je pomembna ne samo za obe nepriznani manjšini, Makedonce in Vlahe/Aromanije, temveč tudi za Turke, ki so uradno zapisani kot »muslimanska manjšina«. Sočasno, v kontekstu de lege ferenda, bi moral zakonodajalec sprejeti celovito zakonodajo, ki ureja manjšinske pravice, brez predhodnih omejitev manjšinskih skupin, ki bi bile upravičene do uporabe teh pravic in svoboščin, ki jih vsebuje. Poleg tega bi bilo primerno, da vlast obupja svoje stališče, ki nasprotuje priznanju manjšinskega statusa tistim etnično-kulturnim skupinam, ki niso točno navedene kot take v dvostranskem sporazumu. Zato bi morala notranja zakonodaja in sodišča ustrezno uporabljati 28. člen
ustave in dati prednost večstranskim sporazumom pred notranjimi pravili in akti, ki omejujejo njihovo uporabo zgolj in samo za 'muslimane' iz Zahodne Trakije. Klavzule v zakonodaji, ki razlikujejo med ljudmi grškega in ne-grškega porekla tako, da imajo prvi prednost pred drugimi pri upravičenosti do pridobitve in ohranitve določenih pravic, bi bilo potrebno razveljaviti oziroma popraviti v skladu z zahtevami sodobnega prava človekovih pravic.

Analiza je pokazala, da ima grško stališče o nepriznavanju makedonske manjšine svoje korenine v genealogiji grškega nacionalnega narativa o širšem 'makedonskem vprašanju'. Glavni argument pri tem je, da sta, domnevno, izraza »Makedonija« in »Makedonci« zgodovinsko neločljivo povezana z Grki in grško kulturno dediščino. To stališče razkriva nepripravljenost do sprejetja makedonske etnično-kulturne identitete kakor tudi do dodelitve manjšinskega statusa etničnim Makedoncem v Grčiji pod imenom, ki so si ga sami izbrali. Zaradi tega bi Grčija morala spošтовati načelo, zapisano v 2. členu Okvirne konvencije o varstvu narodnih manjšin, ki daje prednost pravici vsakega člana manjšine do svobodne izbire, da ga obravnava ali ne-obrnava kot takega, nad kakršnikoli razlago o obstoju take manjšine v določeni državi.

Etnični Makedonci v Grčiji se pri administrativnih ali sodnih postopkih za povrnitev svojih tradicionalnih makedonskih priimkov običajno soočajo z 'dokončno ustavitvijo' njihovih zahtevkov zaradi formalnosti ali s prekinitvijo sine die. V kontekstu de lege ferenda je priporočljivo, da vlada spremeni svojo zakonodajo tako, da bi uveljavila 11. člen Okvirne konvencije o varstvu narodnih manjšin, ki določa, da imajo tisti, ki so bili prisiljeni v spremembo imena, pravico do ponovne uporabe osebnih imen in priimkov v njihovi izvirni obliki. Poleg tega v Grčiji trenutno nimajo nobenega namena uvesti makedonskega jezika v grški šolski sistem, zato so zasebne iniciative za učenje makedonskega jezika ključne in bi lahko pomagale ustaviti procese, ki negativno vplivajo na lingvistično kohezijo makedonske manjšine v Grčiji kot so 'jezikovni obrati' in 'jezikovne zamenjave' na območjih, kjer tradicionalno živijo Makedonci. Ti procesi resnično povzročajo spremembe pri samo-identifikaciji in celo preoblikovanju identitete med ljudmi, ki pripadajo makedonski manjšini.

Svoboda izražanja in združevanja sta bistvenega pomena za ljudi, ki pripadajo makedonski manjšini v Grčiji, da bi lahko negovali in razvijali svojo etnično, lingvistično in kulturno identiteto. V prejšnjih letih je bilo zabeleženih več kršitev teh pravic, saj so grška sodišča na vseh stopnjah zavračala vsa zahteve za ustanovitev kulturnih društev, ki so imel besedo 'makedonski' v svojem imenu. Kljub temu, da je sodišče v Strasbourgu potrdilo kršitev 11. člena Okvirne konvencije o varstvu narodnih manjšin v treh primerih, ki se nanašajo na zavrnitev registracije makedonskih združenj, ni bilo zabeleženih nikakršnih temeljnih sprememb pri odlokranju grških sodišč. Ob upoštevanju izvajanja 'ponavljajoče se sodbe' v primeru Doma makedonske kulture proti Grčiji iz leta 2015, je grška vlada domnevno pregledala več možnih zakonskih rešitev, vključno z možnostjo za uvedbo ukrepa, ki bi
civilnem sodiščem dovoljeval, da ponovno pregledajo primere, v katerih so ugotovljene kršitve konvencije. V prihodnje bi morala sodišča v Grčiji na vseh stopnjah upoštevati tako pozitivne in negativne vidike svobode združevanja, ki je zagotovljena v 11. členu Evropske konvencije o človekovih pravicah in izhaja iz sodne prakse ESČP. Poleg tega bi bilo razumno grškim sodiščem predlagati, da dovolijo društvom, ki jih ustanavljajo etnični Makedonci, da lahko kot osrednjo besedo brez izjema uporabljajo pridelup 'makedonski', ki na enak način kot se uporablja pri pravnih osebah, ki jih ustanavljajo Grki, ki se opredeljujejo kot grški Makedonci v regionalnem in kulturnem smislu. Sočasno, kakor je predlagano že zgoraj, bi lahko sodišče v Strasbourgu ponovno pretehtalo svoj sodni postopek v podobnih primerih pri sprejemanju pilotnih in (kvazipilotnih sodb. Poleg tega bi sodišče lahko identificiralo obstoj splošnih ali strukturnih problemov, ki dejansko povzročajo ponavljajoče se kršitve 11. člena Okvirne konvencije o varstvu narodnih manjšin, če je temu tako.


2.4. Republika Srbija ima napreden pravni okvir za varstvo manjšin. Pravna definicija narodnih manjšin je dovolj široka, da zajema vse različne vrste etničnih skupin, ne glede na njihovo zgodovinsko navzočnost v državi. Kljub temu pa imajo samo tri največje narodne manjšine (Madžari, Bosanci in Albanci) redno prisotne svoje »pristne« manjšinske predstavnike v parlamentu. V kontekstu de lege ferenda, bi torej Srbija lahko razmisila o spremembi svojega Zakona o volitvah poslancev, s sprejetjem določil, ki bi omogočila prisotnost večjega števila predstavnikov državnih manjšin v najvišjem zakonodajnem telesu. Poleg tega je Ustavno sodišče Srbije omejilo ali razveljavilo večino tega, kar je bilo prej opisano kot široke pristojnosti Narodnega manjšinskega urada. Oblasti bi morale sprejeti primerne zakonodajne spremembe, ki bi zagotovile, da se ne bi izgubilo vse, kar je doseženo s samim obstojem teh pravnih oseb, ki so podkrepljene z določenimi samo-upravljalnimi pristojnostmi.

Raziskava je pokazala, da imajo makedonski učenci v Srbiji možnost učenja svojegamaternega jezika, in sicer na enega od treh vzpostavljenih načinov za učenje maternega jezika manjšin. Šele pred kratkim je bilo omogočeno učenje makedonsčine v obliki predmeta 'Makedonski jezik z elementi narodne kulture', druga dva naprednejša načina pa še vedno nista na voljo. Učenje v makedonskem jeziku na predšolski stopnji bi lahko dodatno spodbudilo učence makedonskega porekla, da bi kasneje v osnovni šoli izbrali predmet manjšinskega jezika z elementi nacionalne kulture. Če bi ta korak spremljalo postopno širjenje mreže osnovnih šol, v katerih je v učnem računu tudi predmet 'Makedonsčina z elementi narodne kulture', bi obstajala možnost, da etnični Makedonci od oblasti zahtevajo, se uvede tudi drugi in tretji način poučevanja njihovega maternega jezika za učence z makedonskimi koreninami, in sicer dvojezično izobraževanje ali celostno izobraževanje v makedonskem jeziku.

Nazadnje bi morala Srbija premisliti o svojem stališču o verskih pravicah makedonske manjšine. Po avtorjevem razumevanju spor na ekumenskem področju pravoslavnega krščanstva med Srbsko pravoslavno in Makedonsko pravoslavno cerkvijo glede kanonskega statusa slednje, ne bi smel predstavljati ovire za uresničitev pravic in svoboščin, izvirajočih že iz prava človekovih pravic. Dejansko bi morala domača zakonodaja in bilateralni sporazum med Makedonijo in Srbijo glede varstva manjšin v povezavi s načelom vzajemnosti, delovati kot pravna osnova, da bi oblast etničnim Makedoncem zagotovila pravico do verskih obredov v makedonskem jeziku, kakor tudi, da bi duhovniki Srbske pravoslavne cerkve izvajali verske obrede v makedonskem jeziku.

2.5. V tem delu je navedenih nekaj zaključkov in predlogov, ki se nanašajo na Kosovo. Potrebno je poudariti, da ima Kosovo širok in celovit zakonski okvir za varstvo manjšin, vendar je bilo med raziskavo odkritih več šibkih točk. Prva in predvsem najbolj izpostavljena med njimi je ta, da obstoj dveh paralelnih izobraževalnih sistemov na Kosovu predstavlja nepremožljivo oviro za oblikovanje integrirane in povezane družbe. Da bi popravili to stanje, bi si vlada morala prizadevati, da je šolski učni načrt
Ministrstva za šolstvo, znanost in tehnologijo Kosova na voljo tudi v srbskem jeziku pa tudi v jezikih drugih 'skupnosti'. Prav tako bi morali organi primerno spoštovati pravico do svobodnega jezikovnega samo-identificiranja (makedonsko govoreče) goranske skupnosti. Natančneje, samodejnobi se moral izvajati 2. člen Zakona o uporabi jezikov, ker se vsaj 30% prebivalcev v občini Dragaš opredeljuje, da je njihov materni jezik 'našinski' oziroma preprosto goranski jezik. To bi pomenilo, da bi bil goranskemu jeziku - makedonskemu dialektu priznan status uradnega občinskega jezika. Na koncu bi bilo priporočljivo, da bi vlada Kosova pretehtala svoje stališče o zahtevi po priznanju manjšinske skupnosti tistim članom te skupnosti, ki se identificirajo kot Makedonci. Ne glede na število tistih, ki se opredeljujejo kot Makedonci v skupnosti, ki je tako razdeljena zaradi vprašanj o narodnosti in maternem jeziku, bi morala biti pravica do svobode narodne, kulturne in jezikovne identifikacije tista, ki bi morala prevladati nad katero koli drugo interpretacijo.

3.1. Raziskava je pokazala, da se stanje in status makedonskih manjšin v državah, ki mejijo z Republiko Makedonijo, zelo razlikujeta glede na države. Prav zato so perspektive za ohranjanje makedonske identitete na dolgi rok konkretno razlikujejo v vsakem kontekstu posebej. Samoumevno je, da je situacija bolj obetavna v državah, v katerih pravni sistem ponuja neposredno varstvo narodnih manjšin - ali na podlagi splošnega zakona o manjšinah ali z uporabo in prilagajanjem posebnih zakonov pri praktičnem izvajanju pravice do izobražbe v maternem jeziku, jezikovne in participativne pravice narodnih manjšin. Po drugi strani pa je jasno, da kadar v domači zakonodaji ni posebnih pravic za manjšine, predstavlja zagotovljena posredna zaščita, zgolj preko splošnih človekovih pravic, veliko večji izziv pri ohranjanju manjšinske identitete. Ne nadzorno primeri nepriznavanja manjšinskih statusov etničnim Makedoncem povzročajo legitimne pomisleke o pravu človekovih pravic, ker bi lahko tako opazili precejše nelagodne oblasti v zvezi s priznanjem makedonske etnično - kulturne identitete. Pri tem je pomembno, da osnovno splošno varstvo na državnem nivoju spremljajo človekove pravice, ki so priznane na mednarodnem nivoju (npr. pravica svobode do združevanja) in omogočajo njihovo splošno izvajanje doma, preko varstva do ustanavljanja združenj, kot tudi političnih strank, ki javno izražajo svoje manjšinske etnično - kulturne lastnosti. V nasprotnem primeru bodo perspektive za ohranjanje manjšinske identitete in makedonskega jezika v teh okoljih še bolj omejene in bi zato lahko v bližnji prihodnosti prišlo do postopek akulturacije in asimilacije v dominantno kulturo.

3.2. Zaradi vsega zgoraj našteteega je pomembno poudariti, da ni bilo mogoče najti nobenega 'skupnega imenovalca' v obravnavi makedonskih manjšin držav v sosedstvu Republike Makedonije. Kljub
temu pa bi lahko določili več kriterijev, ki bolj ali manj določajo položaj ljudi z makedonskim poreklom v vsaki izmed teh držav, in sicer:

   a) splošni odnos države do manjšin;
   b) vrsta pravic, ki bi morale biti priznane narodnim manjšinam (individualne, kvazi-kolektivne, kolektivne);
   c) pravni okvir za varstvo pravic manjšin (ratificirane pogodbe Združenih narodov/Evropskega sveta, splošni zakon o manjšinah, posebni zakoni o pravicah manjšin na področjih izobraževanja, jezika ali kulture, določbe za posredno varstvo itd.);
   d) položaj makedonske etnično-kulturne identitete in makedonskega jezika;
   e) bilateralna razmerja z Republiko Makedonijo ter obstoj bilateralnih sporazumov o varstvu manjšin ali pogodbe o dobrososedskih odnosih, ki vključujejo določila o manjšinah.
VII. APPENDIX
<table>
<thead>
<tr>
<th>Country</th>
<th>Internal acts prescribing minority rights</th>
<th>Accepted and ratified UN/CoE treaties</th>
<th>Bilateral treaties inclusive of minority provisions (1) or designed for protection of kin-minorities (2)</th>
<th>Essential characteristics of the system of minority protection</th>
<th>Most pressing issues and identified shortcomings in the field</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hungary</td>
<td>- Act on the Rights of Nationalities</td>
<td>- ICCPR - FCNM - ECRML</td>
<td>1. - Romania - Slovakia</td>
<td>- the institute ‘minority self-government’ functions as a legal entity of cultural autonomy with competencies in areas of culture and education</td>
<td>- definition of nationalities covers only ‘historical or autochthonous’ minorities and excludes ‘new minorities’</td>
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<td>2. - Slovenia - Croatia - Serbia and Montenegro</td>
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<td>Romania</td>
<td>- Law on Education (Part ‘Education for Persons belonging to National Minorities’) - Law on Local Public Administration</td>
<td>- ICCPR - FCNM - ECRML</td>
<td>1. - Hungary - Ukraine</td>
<td>- all recognized minorities regularly elect at least one MP each in the lower house - Hungarian minority is represented in lower and upper houses, as well in European Parliament</td>
<td>- Draft Law on the Status of National Minorities is not yet adopted - weak implementation of minority language rights in areas where Hungarians are minority</td>
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<td></td>
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<td>2. X</td>
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<tr>
<td>Slovenia</td>
<td>- Acts related to the special rights granted to the Hungarian and Italian National Communities - Several acts on the status and rights ascribed to the Roma community - Declaration on the Status of the Members of the former SFRY Nations</td>
<td>- ICCPR - FCNM - ECRML</td>
<td>1. - Osimo Treaty of 1975, concluded between former SFRY and Italy</td>
<td>- Hungarian and Italian MP possess ‘veto right’ on legal acts affecting their ascribed rights - collective and quasi-collective rights in several areas are ascribed for these two minorities - 'self-governing minority communities' present a variation of cultural and local autonomy</td>
<td>- three-pillar system of minority protection differentiates between various ethnic groups - rudimental legal protection afforded to members of the former SFRY nations</td>
</tr>
<tr>
<td>Country</td>
<td>Relevant Acts/Conventions</td>
<td>Croatia</td>
<td>Montenegro</td>
<td>Bosnia and Herzegovina</td>
<td>Turkey</td>
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<td></td>
<td>- Constitutional Act on the Rights of National Minorities</td>
<td>- the reserved 8 seats for national minorities are elected in a separate constituency - mother tongue education is organized in three models - right to equality in use of languages in case minority population comprise 1/3 in local unit</td>
<td>- alternative threshold for representation of minorities at national and local level - languages of four 'minority nations' have the status of 'languages in official use' at national level</td>
<td>- reserved seat in municipal councils in case minority exceeds 3% of local population - segregation of pupils along ethnic lines and existence of mono-ethnic schools</td>
<td>- narrow understanding of the notion of minority - TV channel in the Kurdish language was established in 2009</td>
</tr>
</tbody>
</table>
Table 2. Protection of Macedonian national minorities in the neighboring countries of the Republic of Macedonia

<table>
<thead>
<tr>
<th>Country</th>
<th>Internal acts prescribing minority rights</th>
<th>Accepted and ratified UN/CoE treaties</th>
<th>Bilateral treaties on good-neighborliness inclusive of minority provisions or designed solely for the protection of kin-minorities</th>
<th>Position and status of the Macedonian minority</th>
<th>Educational rights of Macedonian minority</th>
<th>Linguistic rights of Macedonian minority</th>
<th>Participatory rights of Macedonian minority</th>
<th>Most pressing issues and identified shortcomings in the field</th>
</tr>
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<tbody>
<tr>
<td>Albania</td>
<td>- Law on the Protection of National Minorities of 2017</td>
<td>- ICCPR - FCNM</td>
<td>Recognized status as a national minority</td>
<td>X</td>
<td>- Those living in the Municipality of Pustec have possibility to study and be taught in their mother tongue - Ethnic Macedonians and Macedonian-speakers in the regions of Golo Brdo and Gora as well in other settlements in inner Albania have no such possibility</td>
<td>- Signboards in the territory of Municipality of Pustec are bilingual, written in Albanian and Macedonian - There is no possibility for any minority language to acquire a status of a ‘language in official use’ at local level</td>
<td>- Macedonian minority is represented in the Committee for National Minorities with one member - Mayor and councilors in the Municipality of Pustec are ethnic Macedonians - rural municipal units in areas of Golo Brdo and Gora were abolished and merged with larger ones in 2014</td>
<td>- opposes to proceed with ratification of ECRML - special law on the education in languages of national minorities is missing - negative responses on requests for opening facultative minority language classes for Macedonians in Golo Brdo</td>
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<td></td>
<td>- Article 36 of the Constitution provides</td>
<td>- ICCPR - FCNM</td>
<td>Since Bulgaria opposes to recognize</td>
<td>Non – recognized minority</td>
<td>- Political party of the ethnic Macedonians, -individualistic approach in the human rights</td>
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<tr>
<td>Country</td>
<td>Modest educational rights for ‘citizens whose mother tongue is not Bulgarian’ - Law on Education</td>
<td>Minority status to ethnic Macedonians, Treaty on the good-neighborliness of 2017 is short of provisions prescribing rights to kin-minorities</td>
<td>UMO Ilinden PIRIN was declared unconstitutional back in 2000, shortly after its registration in 1999 in 1999 - No major hindrances on the freedom to hold peaceful assemblies organized by Macedonian minority are noted since 2007 - Cultural association UMO Ilinden is not yet registered</td>
<td>Field prevents adoption of strong minority rights laws and by-laws - Number of pupils receiving minority language classes is fallen drastically - ECtHR found ‘repetitive violations’ of Article 11 of ECHR in cases where ethnic Macedonians sought to register NGO’s or political party</td>
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<tr>
<td>Greece</td>
<td>- Articles 5(2) and 4(1) in the Constitution are inspired from the principles of equality and non-discrimination - Law implementing the Race Equality Directive of the Council of EU was passed in 2005</td>
<td>- Treaty of Lausanne of 1923, whose minority provisions are applicable solely to ‘Muslim’ minority in Western Thrace - The prospective agreement on resolving the ‘name dispute’ is short of minority provisions and envisages in-</td>
<td>- Macedonian political party EFA Rainbow competes on the local elections and the elections for MEP, whereas a high threshold of 3% prevent a hurdle for their participation at the general elections - ECtHR found ‘repetitive violations’ of Article 11 of ECHR in cases where ethnic Macedonians sought to register NGO’s or political party</td>
<td>- Opposes to proceed with ratification of FCNM - Does not collect data on the citizens’ ethnic origin and mother language - Despite ECtHR judgments, NGOs containing the words ‘Turkish’</td>
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[Table data]
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<thead>
<tr>
<th>Country</th>
<th>National Legislation</th>
<th>International Treaties</th>
<th>Recognized Status as a National Minority</th>
<th>Pupils of Macedonian Origin</th>
<th>Macedonian Language</th>
<th>Existence of Two Parallel Educational Systems</th>
</tr>
</thead>
</table>
| Serbia | - Law on the Protection of Rights and Freedoms of National Minorities  
- Law on National Councils of National Minorities | - ICCPR  
- FCNM  
- ECRML | - Hungary  
- Croatia  
- Macedonia  
- Romania | Recognized status as a national minority | Pupils of Macedonian origin in some regions have possibility to study their mother tongue for 2 classes per week at primary level, via the facultative subject 'Macedonian language with elements of national culture’ | Macedonian language have the status of 'language in official use’ in the Municipality of Plandiste as well in the town of Jabuka (Municipality of Pancevo) | Macedonian minority elects its own National Minority Council  
- Macedonians were represented in the Serbian Assembly with a 'genuine minority deputy’ in the period 2012-2014 | - Joint Commission for implementation of MKD-SRB Treaty for protection of kin-minorities is inactive  
- Macedonian language is not included in the list of languages for which obligations in the Part III of ECRML are taken over |
| Kosovo | - Law on the Protection and Promotion of the Rights of Communities  
- Law on the Use of Languages | - ICCPR  
- FCNM  
- ECRML | - Macedonian-speak Gorani are recognized as a 'community’  
- Those who express Macedonian | - Macedonian language have the status of 'language in official use’ in the Municipality of Plandiste as well in the town of Jabuka (Municipality of Pancevo) | Macedonian language have the status of 'language in official use’ in the Municipality of Plandiste as well in the town of Jabuka (Municipality of Pancevo) | - existence of two parallel educational systems  
- non-application of Article 2 (3) of the Law on the |

*Article 11 of ECHR in cases where ethnic Macedonians sought to register NGO’s containing the word ‘Macedonian’ and 'Macedonian' are continuously being faced with a denied registration.*
| - Law on Education in the Municipalities of Kosovo | identity in the region of Gora are not recognized as such |  | Use of Languages in the Municipality of Dragash, where Gorani dialect lacks the status of an “official language” at local level - motion for recognition of Macedonians as minority community is neglected | X | X |
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XXXVI


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