

Thomas Benedikter (ed.)

# EUROPE'S ETHNIC MOSAIC

A Short Guide  
to Minority Rights  
in Europe

In the frame of EURASIA-Net project,  
funded by the Seventh Framework Programme  
of the European Commission



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August 2008

This study was written by the Accademia Europea Bolzano/Europäische Akademie Bozen (EURAC) Institute for Minority Rights in the frame of the project Europe-South Asia Exchange on Supranational (Regional) Policies and Instruments for the Promotion of Human Rights and the Management of Minority Issues (EURASIA-Net) funded by the Seventh Framework Programme of the European Commission.

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ICCPR	International Covenant on Civil and Political Rights of the UN (1966)
CSCE/OSCE	Conference/Organisation for Security and Co-operation in Europe
EBLUL	European Bureau of Lesser Used Languages
ECHR	European Convention on Human Rights (1950)
ECOHR	European Court of Human Rights
EU	European Union
UK	United Kingdom (of Great Britain and Northern Ireland)
NATO	North Atlantic Treaty Organisation
UDHR	Universal Declaration of Human Rights
FCNM	European Framework Convention on the Protection of National Minorities
ECRML	European Convention on Regional or Minority Languages
DAHR	Democratic Alliance of Hungarians in Romania
HCMN	High Commissioner on National Minorities
USSR	Union of Soviet Socialist Republics
UNESCO	United Nations Education, Science and Culture Organisation
FUEN	Federalist Union of European Nationalities
CLRAE	Congress of Local and Regional Authorities in Europe

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# Introduction

Cultural, ethnic and linguistic diversity is a fact of life in Europe. Not only in terms of states, but also in terms of regions, cultural and ethnic communities, national minorities and peoples, Europe is a mosaic, not a melting pot. European countries and peoples cherish their regional identity, cultural heritage, values and traditions, languages and ways of life, although globalisation seems to level down local peculiarities and to unify habits, lifestyles and cultural consumption patterns. On the other hand, the stronger global exchange mounts, the more Europeans appear to need cultivating and expressing their regional identity. National and ethnic minorities fit in this evolution, as they always sought to preserve their cultural features against a dominant culture. The open borders of enlarged markets, the unlimited access to information and media products round the clock, the increased mobility of people in terms of migrant workers, commuters of all kind and tourists, and the steady process of political integration of the continent seem to put the national minorities under pressure. But despite facing new threats and problems, Europe's economic and political integration offers more positive chances for minorities which they are called to actively capture.

Cultural pluralism needs to be firmly based on the respect of differences, which implies equal opportunities, non-discrimination and active protection. The acceptance of diversity, interaction between cultures and promotion of the sense of belonging to a community are becoming more important as physical and legal borders are fading, as the European and world economy become increasingly borderless. It is not the denial, but rather the recognition of differences that keeps a community together. Several examples in Europe show that different ethnic communities can peacefully share the same region or state if diversity is appreciated.

Nevertheless, modern Europe shows two faces with regard to the respect of differences. Non-discrimination and equality are enshrined in national laws and international conventions. On the other hand there are scores of examples of complete absence of responsible public action to meet the needs of minorities, of grave violation of international standards of minority protection and even active persecution and oppression of such minorities. Despite progress in many directions, Europe is not yet a "heaven" for minorities. The discrimination of national minorities and smaller peoples brings about various reactions, from silent

suffering to violent resistance, and is however a source of social and political conflict. But if peace, stability and harmonious relations between majorities and minorities are to be achieved, European politicians and citizens have to be actively committed to the respect of diversity and protection of minorities. Ethnic conflicts – from the Basque Country, Northern Ireland, Corsica, parts for the former Yugoslavia, Moldova, Georgia and Cyprus – persisting patterns of direct and indirect discrimination, popularity of right-wing nationalist movements and the shrinking cultural and economic space of ethnic minorities have posed some blatant affronts to the political players and the international community, too. The European institutions have responded with various legal instruments and political programmes, but still a lot needs to be done.

What is this 'ethnic mosaic' about? In this "Short Guide", after giving the fundamental definitions and basic terms, we offer a brief overview on the figures and features of national minorities, on the major issues of ethnic diversity and on the most important means of minority protection in Europe. After briefly illustrating some major conflicts involving national minorities and grievances expressed by them, we describe succinctly how the single states, still the decisive actors in minority policies, act to tackle the needs and interests of minorities and smaller peoples. The international instruments on minority protection, 'hard law' and 'soft law', established and enforced by European organisations and institutions, are of utmost importance to pressure national parliaments and governments. They are the cornerstones for generally improving the European standards of protection of national minorities. Due to historical, cultural and political developments, Europe has become a colourful mosaic, but the challenge to preserve that variety with substantial equal rights and fairness lies ahead.

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The editors

Bozen/Bolzano (South Tyrol, Italy), August 2008



# 1

Minorities in Europe  
An Overview

## 1.1 How can minorities be defined?

How can minorities be identified and recognised as such? Which group of people is a minority and who belongs to such a group? The general issue of minorities has always triggered a controversy about the identification of minorities of different kinds. The very term 'minority' has been an issue of contention among scholars, politicians and minority activists. From the point of view of international law two basic questions are to be solved: is there a definition and which one can be generally accepted? Is it possible to determine its scope of application?

There is no clearly formulated definition contained in an international treaty which is generally accepted, due to the difficulty in identifying common elements which could grasp the plurality of existing relevant communities living within the states. There have been various initiatives at different international forums in order to clarify the concept of a minority. The importance of a definition, however, lies at a practical and theoretical level: namely in its capacity to delimit the subjects who should benefit from protection and for the fundamental requirement of clarity and foreseeability of law. When it comes to determining the contemporary international legal concept of minority, there are two options to be considered:

- 1) Pointing out special features of a minority group, such as citizenship, stability, traditional areas of settlement, in its relation with the state;
- 2) A broader and dynamic approach to the protection of minority groups in modern societies.

With regard to the special features under 1) the traditional position refers basically to the stable ethnic, religious or linguistic peculiarities of a group, which should be "markedly different" from the majority population. The group should be in a non-dominant position in the state it belongs to and it should be willing to preserve its identity. This concept is reflected in one of the most widely accepted definition provided by Capotorti in 1978 with regard to Article 27 of the ICCPR:

"A minority is a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only explicitly, a sense of solidarity, directed towards preserving their cultures, traditions, religion or language."

On the one hand in this definition there is the objective peculiarity of a group, on the other its subjective self-awareness. However, the existence of the group is premised on individual freely chosen membership.

Which is the scope of application of such a definition of minority? In most legal texts in Europe, the concept of minority refers to "a historical minority group, which has long acquired a permanent status within a state and whose members are citizens and desire to preserve their ethnic-cultural traits that distinguish them from the rest of the population."<sup>1</sup> Thus 'national minority' in a European context always means a group (regardless of the size: the Livs in Estonia are barely more than 100 people, the Catalans in Spain more than 6 million) rooted in the territory of a state whose ethno-cultural features are markedly different from the rest of the society. Some other categories of "differences", notably migrant people, refugees and social groups such as castes or tribes, are not covered by this definition. In the case of religious communities, which by number are minorities with regard to the major religion practised in a given state, often they are not referred to as 'minority', but mostly as 'smaller religious communities'.

According to the prevailing view, the above definition is the most common in European law, where minority rights are equivalent to the rights of ethnic-linguistic minorities, but only exceptionally including also religious minorities, especially in such particular cases where religion is an important marker of cultural and ethnical distinctiveness of a group.<sup>2</sup> Conversely, according to the aforementioned broader approach to the concept of minority, there are definitions which abandon the requirement of citizenship and ease the necessity of a long stay on the territory of the state, thus including categories previously excluded such as foreign nationals and immigrants with newly acquired citizenship. This new approach focuses on the demand to protect the cultural identity of all minority groups within a given society.

Pentassuglia<sup>3</sup> rightly remarks that two fundamental aspects have to be considered: citizenship and the degree of permanency on the territory of the state. In Europe almost all national legal provisions reporting the formula "persons belonging to minorities" refer always to citizens of the state in question. Also during the debate about Article 27 ICCPR it emerged that the provision should be limited to well-defined and long-established groups, whereas stateless persons and foreign citizens did not fall under the scope of Article 27. Thus immigrants as

generally accepted in principle in current European law are still not considered as “ethnic or national minorities”. Finally, national minorities themselves also strongly oppose this broader interpretation of the minority concept, out of the fear that the protection standards could be levelled down by state parties. Summing it up, the prevailing interpretation and legal terminology exclude newly settled groups on the territory from the protection as “national or ethnic, linguistic or religious minorities”.

Unlike Asia, no European state does accept such a social category or minority defined as ‘castes’ or ‘tribes’. Even if a few national minorities such as the Inuit and the Sami qualify as ‘indigenous peoples’, there are no ‘scheduled castes’ or ‘scheduled tribes’ in any European legislation. Religion also plays a quite secondary role in the definition of a national minority, much less important in the construction of individual and collective identity than in Asia.

The development of a general concept under the existing international legal instruments appears unlikely. Sure, neither the FCNM nor the ECRML, nor the UN-Declaration on the rights of persons belonging to national minorities of 1992 prevents state parties from extending rights and benefits to individuals other than those who comprise traditional groups hitherto exclusively considered as national minorities (e.g., UK has adopted a relatively wide notion of ‘ethnic minorities’).<sup>4</sup> Thus, generally states are free to encompass also so-called new minorities in the definitions determined in domestic law.

Indeed, also in Europe there are political tendencies to include into the notion of “ethnic minority” also other minority groups traditionally not included in the common international legal understanding, especially due to migration movements or political refugees.<sup>5</sup> This new approach conceives the minority rights regime as aimed at meeting the particular needs of an increasing number of disadvantaged groups. As a matter of fact, international law provides different responses to the protection of different categories of individuals and groups. Both the protection of foreigners, and more specifically, of migrant workers and refugees, rest on premises different from those applying to minorities. The international legal protection of the latter is animated by concerns for maintaining ‘autochthonous’ cultural identity rather than for safeguarding equality and non-discrimination, which is simply a starting point for a protective regime. By contrast, when it comes to

the international legal protection of newly immigrated groups, socio-economic and/or political aspects is the main concern for the prohibition and prevention of discrimination, rather than the safeguarding of cultural identity as such.

This also explains the existence of specific conventions, resolutions, etc., for such groups. These instruments provide a minimum, mainly social and economic, guarantee against discrimination. Respect for general cultural rights of “new” groups<sup>6</sup> only serves as one of the logical implications of this broad approach. National minority rights go beyond such a vision in that they recognise the objective existence of groups whose members need clearly established guarantees because of their ethno-cultural, territorial and personal situation.

In conclusion, the Capotorti definition given above still reflects the prevailing understanding of minority in international law in Europe. Minority status under this definition is accorded on the “historical” national minorities. Also in this text we will stick to this approach and just exceptionally include a chapter on religious rights of immigrants in Europe.

There are some more reasons for establishing a clear definition of minority, because often legal implications are linked to the recognition of minorities as a group or its individual members: e.g., how is the individual’s membership to a minority determined? Can “self-definition” as a minority be acceptable for legal purposes? The existence of minority members and minorities themselves does not depend on domestic legal acts of recognition. At the same time individuals may not be forced to embrace membership of a minority by the group. Thus, the main criterion is free self-identification and self-declaration, which encompasses the right of each individual, formerly member of a minority, to quit this position. The profession of membership to a minority is free and must not be challenged by the authorities. Minority treaties, nevertheless, stress the necessity that individual declaration of affiliation with a minority group should reflect a fact, not just an intention or wish. In other terms there should be objective elements to prove the membership to a minority group of an individual. The explanatory Memorandum of the FCNM is rather clear on this point, the “choice on belonging” principle given in Article 3 “does not imply a right for an individual to choose arbitrarily to belong to any national minority. The individual’s subjective choice is inseparably linked to objective criteria relevant to the person’s identity.”<sup>7</sup> Hence, minority status may not be enjoyed only on the

basis of a purely subjective perception or feeling, but has to rely on a proper combination of subjective and objective components.

Eventually, does a person belonging to a national majority population qualify as a 'minority member' within a given region, be it autonomous or not, where a national minority constitutes a majority? This has been generally dismissed.

Should a distinction be made between nationality, national and ethnic minorities? Which is the difference between an ethnic and a linguistic minority? In European research and debate on minority protection these terms are commonly used with different connotations.

a) The term 'nationality', historically often used to designate membership of a national community, rather refers to the citizenship of a country and is mostly come across in the context of minority rights issues.

b) A minority is designated as a 'national minority' if it shares its cultural identity (culture, language) with a larger community that forms a national majority elsewhere. National minorities in this sense are, for example, the Germans in Denmark, the Danes in Germany, the Hungarians in Romania, the Romanians in Hungary, etc.

c) In contrast to this, the term 'ethnic minority' refers to persons belonging to those ethnic communities which do not make up the majority of the population in any state and also do not form their own nation state anywhere, such as the Raetoromanians in the Alps, the Celts or the Gaelic-speakers in North-western Europe, the Friesians in the Netherlands, the Catalans in South-western Europe and a major number of peoples in Eastern Europe, especially in Russia. Such smaller communities or peoples in official texts are sometimes referred to as "groups speaking lesser used languages" to downplay their self-perception as smaller peoples.

d) In some European countries the term 'linguistic group' or 'linguistic minority' is also used in legal terminology referring to minorities (Belgium, Switzerland, France). As in the European context language (not religion) is the decisive feature of an ethnic group or people, 'linguistic' and 'ethnic' are mostly used as synonymous terms. But it can be observed that 'linguistic' is also used when the problem of ethnic groups and their multifaceted nature is to be politically downplayed and differentiation of an ethnic group is to be reduced to language.

e) Even the term 'minority' itself includes disadvantages and is sometimes considered inappropriate, not only due to the fact that in all societies there is a wide range of different kinds of minorities, but also because the

concerned groups in several cases do perceive themselves as a people (e.g. the Catalans, the Basques, the Scots, the Tatars.

f) The term "indigenous people" in Europe has much less importance and refers only to the way of livelihood of 2-3 semi-nomadic herders and fishermen in Greenland and in Northern Scandinavia.

Summing it up, it has to be acknowledged that the issue of 'minority rights' in Europe generally refers to ethnic or national minorities. Since in Europe the principal distinctive single cultural feature of a minority is the language, often the reader comes across the term 'linguistic minority' or group.<sup>8</sup> In contrast to Asia, in the whole discussion in the European reality there is nearly no reference to religious and caste-related minorities, but in a few cases the 'national' character of a minority is derived from an identity construction based on religious issues too (e.g., the Bosniaks in Bosnia, the Catholic Irish in Ulster, the Jews in some European regions or cities). In view of the difficulties of precisely carrying over the existing great variety of terms into the most important European languages, the Council of Europe, when editing the 'Framework Convention for the Protection of National Minorities' (see chapter 4.2), has chosen to simplify the terminology and decided to use the expression 'national minority' in a representative manner. Hence, also in the following this will be the dominant term when referring to ethnic communities in a minority position within a given state.

1 Article 1 of the European Charter of Regional and Minority Languages of 1992 and Article 1 of the draft additional protocol on the rights of minorities to the ECHR, adopted by the Parliamentary Assembly of the Council of Europe in 1993 (Recommendation 1201). 'National minority' appears also in Article 14 of the ECHR without clarifying its meaning.

2 This is the case in Northern Ireland, in Bosnia-Herzegovina and with the Jewish communities

3 Gaetano Pentassuglia, *Minorities in International Law – An Introductory Study*, Council of Europe 2002

4 The UN-Declaration on the Rights of Persons belonging National or Ethnic, Linguistic and Religious Minorities, available at: [http://www.unhcr.ch/html/menu3/b/d\\_minori.htm](http://www.unhcr.ch/html/menu3/b/d_minori.htm)

5 A new kind of "migrant communities" are considerable groups of retired people settling in Mediterranean coastal regions or islands, citizens of other EU-member states.

6 E.g., under Article 31 of the 1990 UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.

7 The Framework Convention for the Protection of National Minorities (CoE), is available at: <http://conventions.coe.int/Treaty/EN/Treaties/Html/157>

8 The European Charter for Regional or Minority Languages (CoE), is available at: <http://conventions.coe.int/Treaty/EN/Treaties/Html/148.htm>

## 1.2 A typology of minority situations

There should be no doubt that a significant part of the contemporary challenge of national minorities is due to the lingering effect of the European notion of the ‘nation-state’ with its ideal of the pure cultural-linguistic character of a ‘nation’, or at least the dominant linguistic majority, which is titular to the state, e.g., the Germans in Germany, the Hungarians in Hungary, the French in France etc. This romantic ideal is often at the root of linguistic disputes as linguistic or ethnic minorities seek equality both in law and in fact. The substantial distance between public policy and law (reflecting the nation-state ideal) on the one hand and the multilingual reality of every state (to varying degrees) on the other, demonstrates that most European states have yet to conform their thinking and governance to both the socio-cultural reality of their population and the



*This map refers to the „linguistic areas“ within the EU, but it should be kept in mind, that in reality many regions are multi- or bilingual.*

**Table 1 – The European languages (by number of speakers)**

1. Russian	122.000.000	32. Chuvashian	1.800.000	63. Gagausian	200.000
2. German	89.300.000	33. Macedonian	1.580.000	64. Circassian	174.000
3. English	58.000.000	34. Bosnian	1.560.000	65. Kalmykian	166.000
4. Turkish	56.500.000	35. Latvian	1.420.000	66. Karachai	150.000
5. French	55.000.000	36. Bashkirian	1.345.000	67. Yiddish	150.000
6. Italian	53.000.000	37. Sardinian	1.270.000	68. Komi Permjak	147.000
7. Ukrainian	43.200.000	38. Mordvinian	1.100.000	69. Irish Gaelic	142.000
8. Polish	38.400.000	39. Estonian	1.000.000	70. Lakian	106.000
9. Spanish	31.100.000	40. Chechnyan	900.000	71. Tabasaranian	94.000
10. Romanian	22.500.000	41. Udmurtian	715.000	72. Sami	93.000
11. Dutch	20.700.000	42. Karelian	700.000	73. Balkarian	78.000
12. Hungarian	11.700.000	43. Basque	667.000	74. Nogai	74.000
13. Portuguese	11.600.000	44. Cheremissian	644.000	75. Scottish Gaelic	70.000
14. Greek	11.600.000	45. Avarian	544.000	76. Sorbian	60.000
15. Belorussian	10.200.000	46. Welsh	543.000	77. Ladin	57.000
16. Czech	9.800.000	47. Friulian	526.000	78. Inuit	53.000
17. Swedish	8.000.000	48. Kashubian	500.000	79. Ladino	50.000
18. Serbian	7.700.000	49. Frisian	462.000	80. Faroe	45.000
19. Bulgarian	6.700.000	50. Breton	450.000	81. Raetoromanian	38.000
20. Catalan	6.400.000	51. Ossetian	400.000	82. Rutulian	20.000
21. Occitan	5.950.000	52. Montenegrin	394.000	83. Tatian	19.000
22. Tatar	5.700.000	53. Kabardianian	386.000	84. Vepsian	12.000
23. Finnish	5.340.000	54. Maltesian	374.000	85. Tsakhurian	6.500
24. Albanian	5.300.000	55. Darginian	353.000	86. Karaim	4.600
25. Danish	5.100.000	56. Aromanian	336.000	87. Ivi	3.000
26. Slovakian	5.000.000	57. Komi Zyryan	336.000	88. Ishorian	1.100
27. Croatian	4.800.000	58. Letzeburgisch	308.000	89. Cornish	1.000
28. Norwegian	4.100.000	59. Kumykian	277.000	90. Manx Gaelic	300
29. Romany	3.800.000	60. Lesgian	257.000	91. Livian	135
30. Lithuanian	3.100.000	61. Icelandic	250.000		
31. Slovenian	1.900.000	62. Ingushetian	215.000		

*Source: Christoph Pan, Die Bedeutung von Minderheiten und Sprachschutz für die kulturelle Vielfalt Europas, Europäisches Journal für Minderheitenfragen, Europäisches Journal für Minderheitenfragen, Vol 1, No.1/2008, p.11-34*

international standards on minority protection to which they are committed.<sup>1</sup> Besides the concept of nation-state, the concept of territoriality is a crucial issue when it comes to elaborate solutions to minority conflicts. Today, in Europe, vis-à-vis 47 sovereign states, still more than 90 peoples can be counted.<sup>2</sup>

It should be recalled that behind this table there is a concept of language defined also by political reasons and not only reasons based sufficiently on linguistics research. In some cases the qualification as 'language' is contested (e.g., Letzeburgisch, the national language of Luxembourg) or has been artificially created by new states willing to underscore the distinctive culture of the titular nation (Bosnia-Herzegovina, Montenegro).

Eventually, it makes a difference whether a minority has a kin-state or is a smaller people, ethnic group or indigenous people without particular 'patronage'. Therefore, we can distinguish various situations of minorities and different minority conflicts with differing conflict parties, differing matters of contention and context scenarios. In order to form categories, three features have to be introduced: the ethnographic structure of a state, the pattern of settlement of the minority groups concerned and the existence of kin-states.

### a) Nation-state versus multinational state

The situation of national minorities (or ethno-national groups) differs in accordance with the cultural pluralism existing in a given state. It makes quite a difference whether a minority is part of a state with some smaller national minority groups or peoples or if there are several major peoples and ethnic groups. In Europe basically two types can be marked in this regard: nation-states and multinational states. In the first case the majority population is perceiving itself as the "titular nation", whereas smaller groups differ by language, culture or religion, or sometimes just by a different construction of historical self-perception. In the latter case, the state is composed by two or more ethno-national groups jointly comprising the state's population (Switzerland, Belgium, Bosnia-Herzegovina). In the first case conflict arises between the central state and the minorities, in the latter it occurs along the different groups.

Most of the European states in their inner structure reflect the nation-state model, with varying number and share of minorities and minority-population. In most Western European countries the share of minority population is less than 10 per cent, whereas in some Central and Eastern European states the share of

population belonging to ethnic minorities is often more than 10 per cent. In those cases often there is one single minority which by numbers is of major significance, like the Turks in Bulgaria (10.1 per cent), the Hungarians of Romania (6.6 per cent) and Slovakia (9.7 per cent), the Albanians in Macedonia (25.2 per cent), the Russians in Estonia (28.1 per cent), Latvia (29.2 per cent) and in the Ukraine (22.1 per cent) and the Catalonians in Spain (10.1 per cent). The main conflict is taking place between those major minorities (or smaller people) and the respective titular nation, while smaller minorities are in quite weaker position. The potential of conflict in such states with numerically relevant minority population is more serious than in states with a relatively small percentage of people belonging to minorities.

Besides the dominating nation-state model, there are a smaller number of multinational states, first of all Switzerland and Belgium and – as a result of the splitting-up of former Yugoslavia – Bosnia-Herzegovina. Cyprus, too, once has been a bi-national state, but since the division of the island along ethnic lines in 1974 and the proclamation of the North Cyprus entity this model is de facto not existing any more. Finally, Macedonia is moving towards a bi-national state. Spain is considered a nation-state, composed by the Castilian majority and several other 'nationalities', which in reality are full-fledged peoples as the Catalans, the Galicians and the Basques.

In most European states the challenge is to establish minority protection and peaceful coexistence of two or more ethno-national groups in one particular area of the state. Generally there is a need of shared rule and inclusion of ethnic minorities into the political system of those regions. If this basic claim of minorities is ignored and the titular nation insists to preserve the dominant position, the potential for deep conflict is very high. Europe in the past three-four decades witnessed violent ethno-national struggle including terrorism (Northern Ireland, Basque Country, Macedonia, Corsica), civil war (Cyprus, Croatia, Bosnia-Herzegovina), secession conflicts (Kosovo, Transdnjestra, Abkhasia, South Ossetia, Nagorno Karabakh) and the violent fragmentation of a whole state (Yugoslavia), whereas Czechoslovakia and the Soviet Union were dissolved peacefully.

### b) Non-territoriality versus territoriality

The second feature is territoriality of groups, which comprises an objective and a subjective dimension. The first one refers to the settlement structure, the latter on

to the symbolic or even mythological value of territory for an ethno-national group. In Europe most of those groups have a close relationship with their home-region or “homeland”, as their traditional or ancestral territory irrespective of the circumstance that a part of the group, due to emigration, is not anymore living there. This idea is linked to the image of a common descent of all members of a group with deep ancestral ties to a region, very close to the concept of indigenous ethnicity. Often the name of the ethno national group is identical with the region’s name such as the Basque Country, Catalonia, Wales, Scotland, South Tyrol, Gagauzia or the Szeklerland. Ancestral homelands are sometimes even idealised with religious symbolism and great historical events, one of the constituent elements for the perception of one’s own history. A homeland in the perspective of an ethno-national group is both a source of identification and the only territory where it can exert self-determination in the future. This concept of homeland is the foundation for territorial claims to control a territory or even to strive for an own state.

Thus, with regard to historical legitimacy of the control of a homeland there are no conceptual differences between Europe’s nation-states and the national minorities. But some ethnic groups are not linked to such a well determined “homeland” living scattered on the whole territory of a state with few major urban centres and there is no “compact” territory of settlement. This feature, rather unusual for Europe, marks the Roma and Sinti (Gypsies), most of the Russian minorities immigrated to the former Soviet Republics in Eastern Europe (the Baltic states, Ukraine, Moldavia; the Russians of the latter state are settling rather compactly in the secessionist region of Transdnistria) and some religious minorities such as the Jews.<sup>3</sup> One of the few indigenous peoples of Europe, the Sami, due to the migration of Scandinavian farmers has no “compact form of settlement”, but is strongly linked to their wider territory in Northern Scandinavia, called “Sápmi”. A rather mixed and intermingled pattern of settlement was previously given also in Bosnia-Herzegovina until 1992 and in Cyprus until 1974, but in both cases the single communities did not perceive themselves as “minorities”. War and forced migration have tragically put an end to this form of mixed form of settlement where the ethnic communities lived in different neighbouring villages or even shared the same urban quarters and villages.

If both the titular majority and the national minority claim a territory or a region with the same kind of historical argument (ancestral homeland), conflict

is almost inevitable. States then are trying to keep and control the contested region, establishing forms of power-sharing among the concerned regional communities, while ethno-national minorities struggle for territorial autonomy or in some cases even for independence (Corsica, Kosovo, Scotland, Abkhazia, Basque Country).

### c) Minorities with and without a kin-state

The third feature to be kept in mind when dealing with Europe’s minorities is the presence of a so-called “kin-state”. A kin-state, sharing the language, culture, history and other features with a given minority, is ready to commit itself to the protection of the rights and interests of their fellows in the neighbouring state. The presence of a kin-state increases the number of parties involved directly in an ethnic conflict. Again there are national minorities with and groups without a kin-state. Typical examples for “kin-state-less” smaller nations are the Basques, the Catalans, Corsicans and Occitans in France, Scots, Welsh, Reatoromanians in the Alps, Faroese in Denmark, Italy’s Sardinians, the Friesians in the Netherlands, Sami in Scandinavia, Pomaks in Bulgaria and Greece and Gagausians in Moldova. A number of good examples for the kin-state-protected minorities are to be found in South Eastern Europe, where most of the minorities do have a kin-state and almost all states (Slovenia, Hungary, Croatia, Serbia, Albania, Bulgaria, Greece) do have to face their role as a kin-state. This role encompasses each form of material support to the development and welfare of the co-national “kin-minority”, as well as political support on international and bilateral level with the co-nationals beyond the border. Border crossing activities of such kind, although in most cases peaceful in nature, are however not always welcomed by the sovereign states. The central governments often blame minorities, seeking support from a kin-state, with being not loyal or instrumental for foreign interests. In Europe’s history there has been a huge source of conflict whenever in a state there was overt support for irredentist movements within national minorities or even claiming a revision of the state borders. In such cases many states reacted with pre-emptive repression in order to avoid separatism and the redrawing of borders. Since the European Union came to exist in 1957 no new borders have been drawn in Western Europe, as the EU as a supranational organisation affirms solemnly the indivisibility of all member states.

However, the conflict potential between minorities

with kin-states and their factual state is quite high. Each worsening in the relations between a majority and minority reflects on the bilateral relation with the kin-state, the worse are the relation between the minorities and the centre. Historically created stereotypes and concepts of enemy are still very alive in Europe's international relations, due to frequent wars and conflicts during the emergence of the nation-states and the fragmentation of its multinational states in the past (Austria-Hungary, Ottoman Empire) and recent past (Yugoslavia, Soviet Union). The minorities in such kinds of conflicts have been condemned to be scapegoats, exposed to discrimination from their state and titular population in a form of proxy war, representing "the enemy".

The typology of minorities is very relevant not only for understanding a minority conflict, but also for elaborating a solution. According to those features – territoriality, kin-state, multinational or national state – different schemes have to be applied and more or less players have to be involved. The more complex a minority situation is, the more players sit on the table and have to come to terms when regulating the conflict.

#### d) Migrant communities: "new minorities"?

Europe's cultural, linguistic, religious and ethnic diversity derives from the high number of peoples and national minorities, but the immigrants have also contributed considerably to build more complex and colourful societies. Migration in all its forms and with all possible root causes is an age-old feature of Europe's history through the centuries. After the dramatic flows of forced migration during and in the aftermath of the World War II, migration gained a major momentum with the development of the European Community. Millions of workers and their families from the poor countries of Southern Europe migrated to the industrial core areas in France, the Benelux countries and Germany. Great Britain was the destination for hundreds of thousands of migrants from the whole Commonwealth, and Netherlands and France again accepted scores of people from their former colonies. Later, since the late 1990s, Southern Europe (Spain, Italy and Greece), bridging the economic gap with Northern Europe, also increasingly accepted steady migration flows from developing countries. The enlargement of the EU in 2004 and 2007 further fostered migration, due to the considerable differences of wage level, social standards and economic perspectives between the old and new members of the

EU. In 2008 there are about 25 million foreign nationals (including citizens of other member states) living in the EU-member states, which amounts to exactly 5 per cent of the total population.

Today there is not a single European country not affected by migration movements.<sup>4</sup> While still there are consistent migration flows from developing countries into the EU, a major impulse for migration today stems from the EU's enlargement to Eastern European countries. European citizens continue to migrate in other parts of Europe; on the other hand migrants and refugees from other parts of the world continue to arrive. The EU as such – and the Western and Central European countries in particular – are "receiving countries" with different levels of integration of migrants in the society, starting from established communities of immigrants, long-term and contemporary workers, frontier workers and merchants, to seasonal commuting workers between East and Western Europe. Many immigrants came from former colonies, many as refugees, war refugees and asylum seekers. Others are members of ethnic groups who have returned to the country of distant or recent origin (repatriates). Migrant numbers are considerably less in the countries of Central and Eastern Europe than in Northern and Western Europe. Illegal migration also still forms an important part of the migration flows to Europe. International law draws a clear distinction between various categories of migrants, of refugees and minorities, but it does not always precisely distinguish between "new" and "old" minorities.<sup>5</sup>

In Western Europe established communities of immigrants such as the Indians, Bangladeshis and Pakistanis in United Kingdom live alongside with newcomer populations, especially from Eastern Europe. Also, unlike Western Europe, the number of recognised refugees in the countries of the former Soviet block is relatively low. But in those countries live a considerable number of persons who were former citizens of the now dissolved federal Soviet Union. Having failed to obtain citizenship in the new state, these people are stateless or "migrants without moving".<sup>6</sup>

As a result of these recent immigration flows, since the 1960s in particular, in Europe today there are considerable numbers of immigrants with a common cultural, ethnic and religious background in many states. Examples are the South Asian communities in the United Kingdom, the Turks and Kurds in Germany, the Algerians and other Africans in France and the Indonesians in the Netherlands. In some countries, especially in the UK, these groups are referred to as 'new ethnic minorities'.

Like the 'old national minorities' they also distinguish themselves from the majority population in terms of language, religion, culture, colour and lifestyle; they wish to preserve these features and cultural identity and they are in large extent also citizens of those European states, as consisting of the second and third generation of migrant families.

Historical national minorities look at the recognition of new ethnic minorities as groups with scepticism. They form long established communities within their states, they have been settling in their regions for many centuries, they often have not even voluntarily chosen to migrate in that state, but are in that situation due to historical upheavals, the dismantling of multinational empires, the shifting of borders of nation-states or annexation of territories after the World Wars. This confers legitimacy to their claim for recognition of their language, cultural identity, specific political rights or even autonomy.

On the contrary, immigrants arrived mostly by their own decision, out of need, seeking economic and social uplift. They feel still as a part of the culture of their countries of origin and are willing to preserve this heritage. They still do not claim collective minority rights, but first of all social equality and non-discrimination and integration. While 'old minorities', feeling absolutely integrated in their home region, claim recognition on their traditional territory, the 'new ethnic minorities' pose a challenge of integration without cultural assimilation. Indeed in a growing number of states migrant communities also claim cultural rights such as teaching in mother tongue, Islam in public schools and specific rules in some public services (e.g., health services).

Today Europe definitely has to acknowledge that it has become an area of immigration, a region of the world which is the destination of millions of people from other continents who contribute with their work to its economic performance. As the Americas in previous centuries, Europe today and in the next future will have to integrate an increasing number of "non-Europeans", but again the American "melting pot" cannot be the model, if minority rights and ethnic diversity are to be preserved. In this "Short Guide" immigrated 'new minorities' are not referred to, except when dealing with the issue of religious rights and freedoms.

**e) Majority and minority languages of Europe**

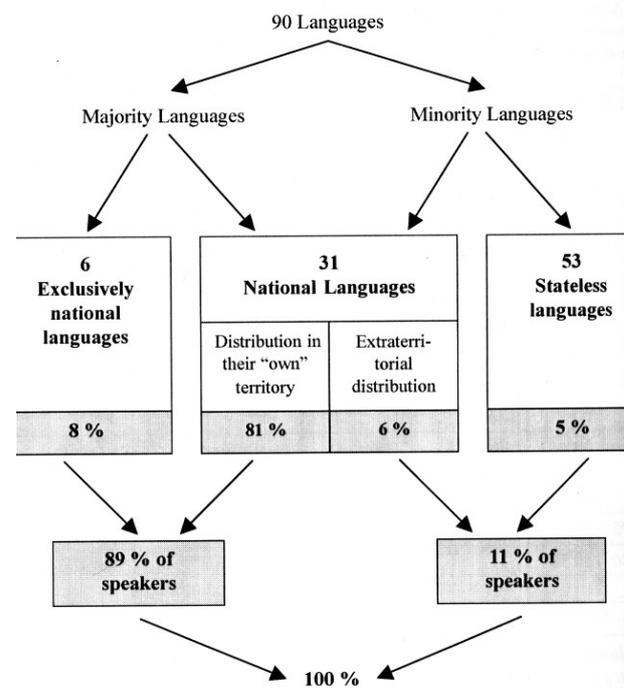
Given the division of Europe in 47 states and the presence of about 90 languages, Europe's languages

can find themselves in three possible positions, apart from heaving separate functions in an international Europe-wide context. They can exclusively be used as the language of one nation-state; they can be an official language in one or more states and at the same time the language of national minorities, and finally they can be 'stateless languages'. While about 11 per cent of the Europeans belong to ethnic-linguistic minorities, only 5 per cent speak a 'stateless language'. The latter is the most challenging position for a smaller language, as the economic and cultural infrastructure of a state is decisive for the perspectives of survival of a language. If even no territorial or other form of cultural autonomy is given, the conditions for survival and development of such a language are definitely the most difficult.

In the following graphics the classification as 'majority language' or 'minority language' has been made according to the criterion of national language. If the language in the state in question is the language of the constituent people or ethnic community and thus is an official language of that state, it is considered a majority language. If it has no national language status, it is a minority language.

**Majority and minority languages of Europe**

(With percentage of estimated number of speakers on all resident individuals)



Source: Christoph Pan/Beate S. Pfeil, *National Minorities in Europe - Handbook*, Vienna 2003, p. 34.

1 John Packer, *The Protection of Minority Language Rights through the Work of the OSCE Institutions*, in S. Trifunovska (ed.), *Minority Rights in Europe: European Minorities and Languages*, TMS Asser Press, The Hague 2000, p.274.

2 Due to lack of space the semantics of the term 'people' cannot further be dealt with in this text. To put it short, in this text it is used in a synonymous way with "social groups speaking the same language as mother tongue".

3 In the European context religion has a different validity as a category for defining minorities and in the very construction of ethnicity. Religion mostly is considered only as a possible part of an "ethnic" or "national" self-identification of a given group, but a secondary element if compared with language and history. The case of the European Jews in the present classification scheme is an exception.

4 Luxembourg has the highest share (38.6 per cent), followed by Latvia (22.2 per cent) and Estonia (20 per cent). In no other country the quota of foreigners exceeds 10 per cent. In some EU-member countries the majority of the resident foreign nationals are citizens of other EU-countries, such as the Portuguese in Luxembourg, the Italians in Belgium, the British in Ireland and the Greek in Cyprus. The number of non-EU citizens has increased between 1990 and 2004 in all EU countries except Belgium and Latvia.

5 As explained in chapter 1.1 there is no universally accepted legal definition of what constitutes a minority. Usually the term 'national minority' refers to citizens of a given state residing in their traditional homelands, possessing specific ethnic, religious and linguistic characteristics, which are different from those of the majority population of that state and which they wish to preserve. Migrants are not living in their traditional homeland.

6 See chapter 2.7, 'The Russian minorities in the Baltic'. Beyond all kinds and all causes of migrations and despite some striking similarities between the two groups, still in Europe a clear distinction is made between old and new minorities. In almost all the states' legislation and international organisations the 'historical minorities' are referred to as 'national minorities'.

## 1.3 Some empirical background on Europe's ethnic minorities

Between 1999 and 2002 in almost all European states census registrations have been carried out. According to the results in 2003 the number of persons belonging to a national or ethnic minority in Europe amounts to 75

million (10.29 % of Europe's total population) divided into 330 national or ethnic groups.<sup>1</sup> In other terms, every tenth European citizen is directly concerned with the minority issue. Even due to the quantitative dimension of the phenomenon, this issue is one of the most important political questions in Europe. Apart from the mini-states like Andorra, San Marino, Liechtenstein, Malta, Monaco, Iceland and the Holy See, which are not faced with minority questions, all remaining 40 European states are home to ethnic and national minorities.

**Table 2 – States and national minorities in Europe: a general overview**

<i>States</i>	<i>Year</i>	<i>Population</i>	<i>Titular nations/ethnic groups in %</i>	<i>Number of minorities</i>	<i>Minority members</i>
1. Albania	2001	3.069.275	97,2	5	86.000
2. Andorra	2005	81.222		0	0
3. Austria	2001	8.033.000	89,0	6	172.000
4. Belarus	1999	10.045.000	83,0	7	1.769.000
5. Belgium	2001	10.263.414	91,3	1	22.000
6. Bosnia-Herzegovina	2001	3.364.000	90,4	3	259.000
7. Bulgaria	2001	7.928.000	78,8	12	1.620.000
8. Croatia	2001	4.437.360	89,6	14	329.000
9. Czech Republic	2001	10.292.933	93,8	8	323.000
10. Cyprus	2001	1.023.044	74,9	1	256.644
11. Denmark	2000	5.330.000	95,1	4	123.000
12. Estonia	2000	1.370.052	65,1	12	497.000
13. Finland	2000	5.181.000	92,1	6	332.000
14. France	1999	58.519.000	86,1	8	5.026.000
15. Germany	2004	82.500.800	91,0	4	172.000
16. Greece	2001	10.260.000	97,4	7	229.000
17. Hungary	2001	10.174.000	89,2	13	1.096.000
18. Iceland	2008	313.376	96,5	0	0
19. Ireland	2002	3.917.203	99,4	1	74.000
20. Italy	2001	56.306.000	93,3	12	2.794.000
21. Kosovo	2000	2.000.000	88,0	7	260.000
22. Latvia	2000	2.456.254	58,3	11	955.000
23. Liechtenstein	2006	35.168		0	0
24. Lithuania	2001	3.483.972	82,1	10	653.000
25. Luxembourg	2001	439.764	99,4	1	2.500
26. Macedonia	2002	2.022.547	66,5	5	602.000
27. Malta	2004	401.000	96,0	0	0
28. Moldova	2004	3.388.071	64,5	9	1.513.000
29. Monaco	2006	32.000		0	0
30. Montenegro	2003	672.000	40,6	5	399.000
31. The Netherlands	2001	15.987.075	92,6	3	520.000
32. Norway	2001	4.521.000	91,3	4	86.000
33. Poland	2002	38.644.000	96,7	14	1.657.000
34. Portugal	2001	10.356.000	97,5	3	147.000
35. Romania	2002	21.680.000	88,3	19	2.513.000
36. Russia (European part)	2002	106.037.100	77,8	45	23.566.947
37. San Marino	2007	30.726		0	0
38. Serbia	2003	7.498.000	78,5	12	888.651
39. Slovakia	2001	5.380.000	85,8	10	703.000
40. Slovenia	2002	1.964.000	88,7	4	15.000
41. Spain	2001	40.847.371	75,9	6	8.936.000
42. Sweden	2000	8.883.000	86,5	4	606.000
43. Switzerland	2000	7.288.000	80,8	2	43.095
44. Turkey (European part)	2007	7.000.000	86,3	3	1.000.000
45. Ukraine	2001	48.457.000	72,7	23	13.923.000
46. United Kingdom	2001	58.789.194	98,6	6	837.000
<b>Total</b>		<b>690.037.700</b>		<b>330</b>	<b>75.004.837</b>

Source: Christoph Pan/Beate S. Pfeil (2003), *National Minorities in Europe*, Vienna, ETHNOS, p. 10, and Christoph Pan/Beate S. Pfeil, *Minderheitenrechte in Europa, Handbuch der europ. Volksgruppen*, Band 2, Vienna 2006. And: [http://www.coe.int/T/E/Social\\_Cohesion/Population/Demographic\\_Year\\_Book/2003](http://www.coe.int/T/E/Social_Cohesion/Population/Demographic_Year_Book/2003)

**Explanations to table 2**

The original version reproduced in the volume quoted above has been slightly corrected, assuming that in the case of the multinational states of Switzerland, Belgium and Bosnia-Herzegovina there are official titular nations (with majority character) and minorities in a strict sense. Switzerland is considered the prototype of a multinational state, based on the concept of 'linguistic communities'. Thus, despite being by numbers a small minority, the Germans in Belgium or the Raetoromanians in Switzerland cannot be considered a minority by constitutional law and rank.

Since the secession of Kosovo from Serbia the new situation with an independent Kosovo had to be considered, whose figures of national minorities are not yet assessed, but only estimated. The Statistical Office of Kosovo for 2003 reports a total population of estimated 1,9 million (88 per cent Albanians, 7 per cent Serbians, 5 per cent others).

The 47<sup>th</sup> sovereign state is the Vatican (Holy See) with 932 citizens (2006).

Turkey's character as a "European country" is disputed. Its population, according to the census of 2007, is 70.586.256. About 7 million Turkish citizens live in the European part of Turkey. If Turkey including its Asian part would be counted as part of Europe, the total number of Europe's population would be 748 million, and the total number of minority members in Europe would increase to 97,252,000; the minority percentage would increase from 10.3 to 12.3%. Turkey's 14 national minorities live mostly in the Asian part of the country, except about 600.000 Pomaks (Islamic Bulgarians), the Greeks and some 100.000 Roma.

Also France's non-European parts of the "Pays d'outre mer" and "Départements d'outre mer" (e.g., New Caledonia, French Polynesia) with their respective minorities have been excluded from the counting. On the other hand Cyprus, which is geographically a part of Asia, is considered politically and culturally fully European with its entire population (including the Turkish North).

Cyprus is divided and almost all members of the Turkish group live in the self-declared "Republic of Northern Cyprus".

For Russia the Russian Statistical Office reports a total population of 145.166.731 (census 2002): 106.037.100 inhabitants of the federative districts of the European part and 39.129.729 of the federation districts of Siberia, Far East and Ural.

Although members of the Council of Europe and culturally linked with Europe, Georgia, Armenia and Azerbaijan are not considered, as they are geographically not a part of Europe. See also: "How far extends Europe?" on the inner cover.

The empirical evidence is offering a new and somehow surprising view on Europe's ethnical and cultural variety:

- 1 There is no European country with more than half-a-million inhabitants that does not have any national minorities.
- 2 Even Portugal and Ireland, which someone held to be "minority-less", are hosting minorities. In Portugal, often considered a country without

minorities, apart from the Roma (Gypsies), are living two Hispanic minorities.

- 3 The remaining countries are hosting between three and 45 minority groups each. Most of the ethnic minorities obviously are living in the European part of Russia (45 groups), followed by the Ukraine (23 groups) and Romania (19 groups).
- 4 The respective share of national minorities in the total national population of the single European states is moving between a few per cent (Greece, Slovenia, Albania) and more than 30 per cent as in Latvia, Moldova, Macedonia, Estonia and Montenegro.
- 5 There are Roma groups in 28 states and German speaking groups (not as titular nations) in 22 states. Russians, after the collapse of the USSR, are a minority in nine European and seven Asian states. Ukraine alone is home to 11 million Russians.
- 6 The number of peoples<sup>2</sup> in Europe is surprisingly high: 91. Some of these peoples or ethnic groups count less than 10.000 members as the Tsachurians, the Karaim, the Kernians and the Livs, the smallest group living in the Baltic States.
- 7 There is a considerable number of languages which are without a state background: whereas 37 languages are used in at least one state as official state language, 53 languages are without a state or nowhere are used as official language. Such languages are spoken by just 5 per cent of the Europeans. Generally, these are also the most threatened languages.
- 8 Turkey, which is a founding member of the CoE in 1949, recognises only three religious communities: the Jews, the Armenians and the Christian-Orthodox. According to a 2008 report prepared for the National Council of Turkey by academics of the Turkish universities, out of its 70.59 million citizens, there were: 50-55 mn Turks, 12.5 mn Kurds, 2.5 mn Circassians, 2 mn Bosnjaks, 1.3 mn Albanians, 1 mn Georgians, 870,000 Arabs, 700,000 Roma, 600,000 Pomaks, 80,000 Laks, 60,000 Armenians, 20,000 Jews, 15,000 Greek-Orthodox and 13,000 Hemshins (total 21,658.000). Turkey has not signed either the FCNM or the ECRML. If the Asian part of Turkey would be included in the minority figures, the overall percentage of Europe's national minorities in its total population would increase from 10.3 to 13 per cent.

The variety of cultures and languages is enriching Europe as language diversity is enriching Asia. This variety is marking not only the Eastern part of the continent, but also the "old democracies" in the West. But a living

culture depends on a living cultural and social habitat as a group. Having acknowledged this fact as a fundamental value along with the fundamental individual right to use and learn one's own mother language in every field of life, there is a growing space for the assertion that equality of rights is needed not only for individuals, but also for peoples or minority groups.<sup>3</sup>

Since 1990 the issue of ethnic minorities in Europe has gained significant new momentum, fostering a growing activity in minority rights research. Whilst in 2008 the existence of 330 national or ethnic minorities with more than 75 million members can be assumed, just about 30 years ago the number of Europe's ethnic minorities had been estimated at 90 ethnic groups with a maximum of 38 million people. How can this expansion of the quantitative weight of the phenomenon be explained?<sup>4</sup>

1. In post-Cold War Europe there is more political transparency and correct demographic data collection and publication. The information technology has also added to the possibility to research and register about ethnic groups hitherto unknown or forgotten.
2. Under the newly gained democratic structures, rule of law and respect of human rights many minorities have found back their identity and resumed the courage to stand up for their rights. The very existence of a national minority<sup>5</sup> does not anymore depend upon previous recognition by official state institutions. The UN-Human Rights Commission confirms with regard to Art. 27 of the International Covenant of Civil and Political Rights (UN ICCPR 1994): "The existence of an ethnic, religious or linguistic minority in a state party of the ICCPR cannot depend upon the decision of that state party, but requires to be ascertained by objective criteria."
3. The very number of European states since 1990 has increased significantly from 31 to 47. Fourteen states, almost a third, have gained or regained independence only in the 1990s. In those 14 states about 140 of the overall number of 330 minorities have been ascertained. Every new state led to the creation of additional national minorities.

Hence, the creation of new states is certainly not the best way to reduce the number of ethnic minorities. The modern means of minority protection are conceived to be accomplished with human rights, democracy and the rule of law, while respecting the territorial integrity of existing states. The real impact of national boundaries, under an ever more expanding European Union, is even weakening, but on the other hand the issue of self-determination by the means of secession is still not

overcome. Several examples of splintered off regions in Eastern Europe and in the Caucasus (Transnistria in Moldova, Kosovo and Serbia, Abkhazia and South Ossetia in Georgia, Northern Cyprus) are proving this fact, and the ongoing low intensity warfare in Chechnya is demonstrating that violence due to national conflict between majority nations and ethnic minorities hasn't disappeared from Europe yet.

Many ethnic minorities, in particular the "stateless groups", are seriously endangered. Ethnic groups can recover and increase by number, but at the same time others are moving steadily towards extinction. On the basis of new empirical data, there is new evidence about how and to what extent national minorities are threatened to get extinct, as the following examples show:<sup>6</sup>

1. Notably the minor, small ethnic groups face the major difficulties to survive due to various reasons. But when can an ethnic or national minority be considered a "small" one? According to some research the critical limit lies at about 300,000 speakers of a language. Below that limit a language is in the long term seriously threatened. About 80 per cent of Europe's 330 national minorities count less than 300,000 members. Thus the majority of those groups strongly rely on minority protection systems if they are to survive.
2. Still there are various states in Europe which are strenuously opposing any real implementation of modern minority protection provisions. Their state doctrine does not even allow the recognition of national minorities (e.g., France, Greece and Turkey). At least 28 national minorities (including all Turkey's minorities) are living under this kind of backward regime regarding minority protection, although their number is shrinking.
3. A further problem is posed by several states which consider the basic rules and acts of non-discrimination of individuals as sufficient and reject any serious measure of positive enhancement of minority members.
4. Serious conflicts over national minorities also occur between neighbouring states (e.g. Greece, Macedonia and Albania).
5. Multinational states are also not necessarily free of ethnic tensions, as Belgium is witnessing.

Is there a correlation between the quantitative share of national minorities on the total population of European states and the stability and internal peace of the respective state? Apparently yes, as the major number of

Table 3 – The states of Europe by percentage of minorities in the population and stability

<i>Minority percentage of the population</i>	<i>Ethnically stable areas</i>	<i>Ethnic tensions</i>	<i>Ethnic conflicts with neighbouring countries</i>	<i>Violent ethnic conflicts</i>
Less than 10%	Austria, Czech Rep., Denmark, Finland, Germany, Ireland, Italy, Netherlands, Norway, Poland, Portugal, Slovenia, Sweden	UK (Northern Ireland)	Albania (with Greece) Greece (with Macedonia and Albania)	
>10-20%	Lithuania, Hungary, Croatia	France (Corsica), Romania and Slovakia (Hungarians)	Bulgaria (Turkey) Turkey (Bulgaria and Cyprus) Russia (Estonia and Latvia) Kosovo (with Serbia) Serbia (with Kosovo)	Russia (Chechnya), Turkey (Kurds)
>20-30%	Belarus, Ukraine	Spain (Basque Country)	Cyprus (Turkey)	
>30-40%		Moldova (Transdnistria)	Estonia (Russia)	
>40-50%	Montenegro		Latvia (Russia)	
Multinational states	Switzerland	Bosnia-Herzegovina (between entities) Belgium (between communities)		

Source: Updated version of a table from: Christoph Pan/Beate S. Pfeil (2003), *National Minorities in Europe - Handbook*, Vienna, p. 33.

states, which are free of ethnic tensions, count less than 10 per cent of minority population. The difficulties in inter-ethnic relations faced by Latvia, Estonia, Bulgaria and Cyprus also seem to be linked with the numerical significance of the minority. This factor could be relevant also for the violent conflicts, as Turkey's Kurds count for not less than 12.5 per cent of the state's total population. Generally it is not the figures that are decisive, but the fundamental approach of titular majority nations to their respective national minorities and the policies and protection measures subsequently applied.

1 Christoph Pan/Beate S. Pfeil, *National Minorities in Europe - Handbook*, Vienna 2003; the figures have been corrected by the author. In this counting the titular ethnic groups of the three multinational states of Switzerland, Belgium and Bosnia-Herzegovina are not considered as 'minorities'.

2 Due to lack of space the semantics of the term 'people' cannot further be dealt with in this text. To put it short, in this text it is used in a synonymous way with "social groups speaking the same language as mother tongue".

3 According to the UN-Declaration of the Rights of Persons Belonging to National or Ethnic, Linguistic and Religious Minorities", 18 December 1992.

4 Christoph Pan/Beate S. Pfeil (2003), *National Minorities in Europe - Handbook*, Vienna 2003, p. 10.

5 The Council of Europe has accepted to use generally the term 'national minorities'.

6 Christoph Pan/Beate S. Pfeil (2003), *National Minorities in Europe - Handbook*, Vienna 2003, p. 11

## 1.4 A brief history of minority rights in Europe

Almost all European states are home to national or ethnic minorities as a consequence of long and complex historical processes. In the given space we cannot trace back the history of the ethnic minorities as such, which came to exist due to the history of state building and shifting of borders, wars and annexations, migration and colonisation. Instead we will focus only on the historical process of the development of minority rights and of the protection of minorities.<sup>1</sup>

### Five periods of legal protection of minorities in the European history

The history of the international legal protection of minorities in Europe began with the Treaties of Westphalia in 1648, which ended the 30 Years War. The 360 years between that date and today can be divided into five historical periods. During the first of those periods, covering basically the Modern Age, the protection of minorities is rather a matter of religion, which is increasingly integrated into international treaties. These treaties contained some clauses to protect communities whose religion was different from that of the majority of the population of the state in which they lived. From the 1815 Congress of Vienna a second phase developed in which the international treaties also included provisions in favour of national minorities. The third stage starts at the end of World War I, when the peace treaties signed in Paris in 1919 set up a system to protect certain European minorities under the supervision of an international organisation with universal scope: the League of Nations. In 1945 the fourth period of international protection of minorities began. Besides the UN a European regional organisation, the Council of Europe, was founded to ensure the protection of human rights and democracy on the whole continent, which was politically divided in two blocks. Finally, the fall of the Berlin Wall in 1989 marks the beginning of the fifth period, in which we are involved today, characterised by new juridical developments both at bilateral and international levels.

### Religious minorities

Whilst in previous centuries of the Middle Ages Europe was divided into two major religious spheres, the Orthodox Eastern and the Catholic Western Europe,

throughout the 16<sup>th</sup> century the religious map of Europe underwent its biggest transformation since Antiquity. The new Lutheran-Protestant forms of Christianity spread across many regions of Central and Northern Europe. Later Calvinism, originated from Switzerland, was successful in Scotland, in the Netherlands, Belgium, France, England and Hungary. The Catholic Church reacted with the so-called Counter-Reformation and regained some areas in Southern Germany and Poland. As a consequence of all this upheaval Europe's religious map became much more complex. In many countries significant religious minorities showed up, which in some kingdoms were suppressed by force. In others, such as France and England, after major social and political conflicts as the 100 Years War, the existence of religious minorities led to a major tolerance and to the overcoming of the principle "cuius regio, eius religio" (who rules a region, decides on its religion).

Unlike religion, language during the Modern Age was not an important factor in creating a collective identity. Social cohesion was achieved more by belonging to a guild, social class, a village or any other institution with a representative element in the Ancient Regime than by sharing a common linguistic or cultural background, which in most cases, was not possible in that historical period. However, the process of consolidation of the European monarchies had a dual effect on the linguistic diversity of the continent. On the one hand, the religious reforms had stressed the importance of the written word of the Bible. This resulted in a great drive to translate the Gospel and other religious texts into many European languages both in Protestant and Catholic countries. This process, along with the invention of the printing press, meant that also smaller languages advanced to written languages. They established a set of literary rules, which led to the homogenisation of related dialects, and eventually to the creation of a common language of a people creating the cultural base for a "national identity".

Besides the older nation-states, since the end of the 30 Years War in the mid-17<sup>th</sup> century, some forms of autonomy of religious communities have been sanctioned for different minorities such as the Protestants in Catholic regions, Jews in various countries, Muslims in Christian areas, Catholic and Orthodox Christians as well as Jews in the Ottoman-Muslim areas. Surprisingly, one of the most advanced systems of recognition of minorities in the first and second period occurred in the Ottoman Empire. This system of religious and cultural autonomy, called the Millet system, was employed

until about 1878 and allowed Jews and Christians to maintain their own laws and customs in the personal realm, operate their own courts, run their schools and impose taxes on their own members. The later abolition of the Millet system and the increasing repression of ethnic and religious minorities added substantially to the resistance of the local peoples of the Balkans against the Ottoman rulers.<sup>2</sup>

## The emergence of the nation-state

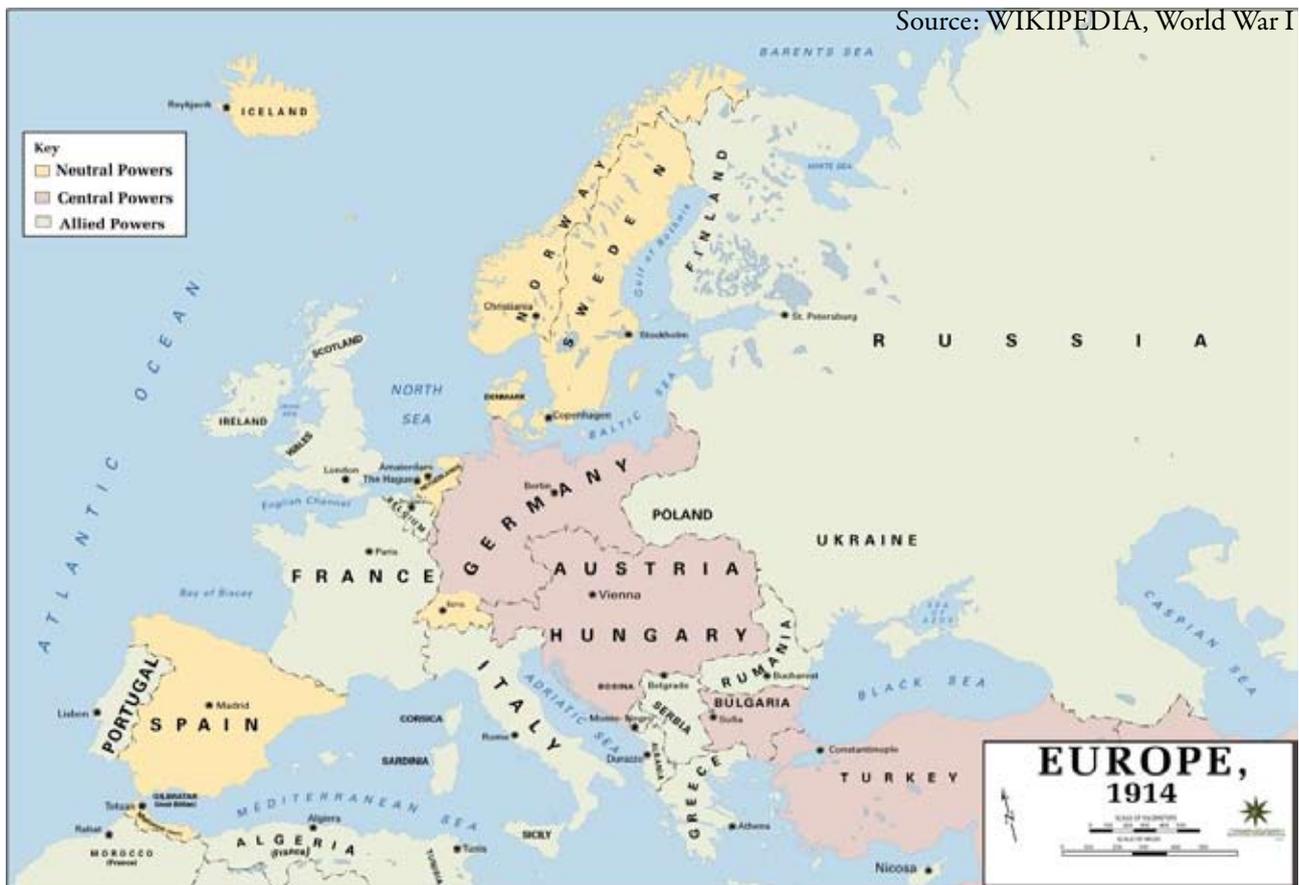
The map of Europe's ethno-linguistic minorities, as it can be observed today, is mainly a result of the transformation of the major empires, which were ruling Central and Eastern Europe until World War I, into nation states. Some Western European 'nation-states' as Spain, France and England much before 1918 established centralised monarchies which did not recognise any smaller people or national minorities as groups entitled with fundamental rights. Some other national minorities came to exist due to national unification processes, such as those in Italy and Germany.

In the 19<sup>th</sup> century liberalism triumphed throughout Western Europe. Liberal revolutions occurred in many countries with the effect that religion wasn't any more the main factor of division. It was replaced by identities built up around a new concept, that of the nation, which soon showed a huge capacity for mobilisation. The three major multinational empires of Austria-Hungary, Russia and the Ottoman Empire were the central targets of such nationalist rebellions. Nationhood in the 19<sup>th</sup> century became the central political issue, and a sense of national identity, based on common linguistic, cultural and historical background, spread over large areas in a hitherto unprecedented way. The Romanticists developed the new concept of a 'cultural nation' and this fostered the creation of nationalist movements aspiring to statehood for their bigger or smaller "nations". This new historical tendency affected the national minorities very deeply, as the new nation-states were very centralist and prone to assimilation policies. In Western Europe only very few national groups, which did not have a state of their own, were able to articulate a significant nationalist movement like the Irish, the Basque and the Catalans. In Central Europe, dominated by the Austro-Hungarian Empire, and in the Balkans ruled by the Ottoman Empire new national identities and movements decisively contributed to break up those empires. But the real explosion came only with the 20<sup>th</sup> century and the World War I.

## The 20<sup>th</sup> century

In the beginning of the 20<sup>th</sup> century in Europe national identities in the multinational empires became stronger and nationalist movements, be it from states or stateless nations, can be found in almost all the regions of the continent. On an ideological level, ethno-national groups or smaller peoples, hitherto parts of Empires dominated by major peoples, developed the new concept of self-determination of peoples. This principle acquired breaking momentum when US-president Wilson included it in his famous proposals for a new stable order in Europe after World War I. But the victorious powers – England, France, Italy and the Balkan states except Bulgaria – were aware of the fact that not every minority community of the defeated empires could obtain independence. Thus, the search for a balance between the interests of the major victorious nation-states and the internal stability by respecting minorities brought about both the founding of the League of Nations, and some self-organisation of national minorities. Already in 1915 and 1916 many of their representatives attended the 1 and 2 'Conference of Nations' and adopted a 'Draft Declaration of the Rights of Nationalities'.

Many smaller peoples regarded the peace agreements of 1919 as a much longed-for opportunity to achieve independence or to be incorporated into their respective kin-state. They involved a radical reconstruction of the political map of Central and Eastern Europe. The new borders were drafted in response to different criteria, some democratic, some in accordance with national frontiers, but mostly the new borders were drawn to suit the geostrategic interests of the victorious powers. Some examples of this can be found in the enlargement of the Alpine area of Italy up to the Brenner Pass which divided Tyrol into two, plus the integration of the German communities of Eupen-Malmedy into Belgium and the strongly restrictive borders of Hungary and some territorial enlargements of Poland, Romania and Czechoslovakia which were not justified on ethnic grounds or were at least not agreed with the neighbouring kin-states of the national minorities living within those states.



## Europe before World War II

By 1920 the disappearance of the Russian, Turkish (Ottoman) and Austrian Empire meant that many people who were subjects of such empires got their political independence. This fact was to increase the number of sovereign states in Europe and, at the same time, reduce the numeric importance of the minority communities. Eight new states were created: Finland, Estonia, Latvia, Lithuania, Poland, Czechoslovakia, Hungary and Austria. At the same time Serbia (now known as the Kingdom of the Serbs, Croats and Slovenes), Romania and Greece would gain new territories, while the “loser” states Germany and Bulgaria ceded some regions to neighbouring states.<sup>3</sup>

As a consequence of all these territorial modifications, the populations belonging to national minorities in Central and Eastern Europe were substantially reduced. In this way, whereas in 1914 one in two inhabitants of that area of the continent was considered as a member of a linguistic, national or religious minority, in 1920 only one in four inhabitants was still in that situation. Even so, the existence of minorities continued to be numerically important, mainly in states such as Czechoslovakia, Romania and Yugoslavia. Yet, whereas before World War I many of these minorities lived side by side with

other minorities within the big multinational empires, after the peace agreements 1919, most of the minority groups would find themselves included in young and strongly nationalised new states, ruled by governments which pursued policies of national homogenisation. Thus the national minorities, whom many instances had a kin-state on the other side of the border, were regarded as a threat to the security of the new states and a constant excuse on the part of some states for advancing territorial claims and irredentism. Interestingly, the USSR, based on the Leninist concept of self-determination of nations and nationalities, remained a remarkable exception in protecting national minorities in domestic law in the period 1918-1940.

The victorious powers of World War I in the peace treaties imposed on the new states the acceptance of an international system to protect the rights of minorities, which was built on four kinds of legally binding treaties:

1. Peace treaties (including clauses for the respect of minority groups living inside national border).
2. Parallel treaties between the Allied Powers and new states in order to protect minorities in newly acquired territories.
3. Specific treaties dealing with specific territories including provisions to protect some minorities.

4. Unilateral declarations: five states (Albania, Lithuania, Estonia, Latvia and also Iraq) were compelled by the League of Nations to respect the rights of minorities.

As a result of these documents national minorities were formally protected in a large area in Central and Eastern Europe from Finland to Greece. On the other hand the national minorities in Western Europe remained affected by indirect or direct policies of assimilation: the development of basic education, mass media and centralised cultural policies weakened the chances of minority language speakers to develop their own efforts for cultural survival. Only Ireland during this period between the wars got its independence (1922).

Only few states in the period between the World Wars dared to enter into autonomy arrangements for regions which are home to national minorities. The first one was Finland, independent since 1917, which not only granted complete cultural and linguistic parity to the Swedish minority, but also established the first full-fledged territorial autonomy for the Aland Islands, traditionally inhabited by Swedish people. In Spain, the Second Republic accorded an autonomy statute to Catalonia in 1932 and in 1936 to the Basque Country and Galicia as well. The latter couldn't come into force as General Franco in 1936 launched the civil war against democratic Spain and its smaller nations.

Besides these, other factors helped to exacerbate the problem of national minorities during this period. Firstly, there were the expansionist tendencies of contemporary geopolitics that encouraged all the states to look for territories into which they might expand on the basis of some historical or geographical argument. Secondly, the drawing up of new borders was accompanied on some occasions by the forced displacement of populations, the aim of which was to get rid of hostile national minorities inside the state. A major transfer of population, affecting half a million people, was made between Greece and Turkey, following the Convention concerning the exchange of Greek and Turkish populations signed in 1923. A similar convention had also been signed in 1920 between Greece and Bulgaria. This naturally provoked the resentment of the respective kin-states. Finally, we cannot ignore the economic crisis of the Thirties that brought to power in many states fascist regimes who used minority communities as a scapegoat, blaming them for their country's problems or using co-national minorities in neighbouring states for aggressive propaganda, such as Nazi Germany from 1933.<sup>4</sup> In Spain and Italy national

minorities and smaller nations suffered the direct effects of fascist dictatorships, whereas democratic France ever since upheld its concept of "one state – one nation" with the absolute supremacy of the French language and culture.

## The period 1945-1989

World War II was the greatest tragedy in Europe's history ever. The atrocities perpetrated during those six years including the systematic annihilation of religious and ethnic minorities by fascist and Stalinist regimes provoked a strong revulsion in the collective conscience of humanity generally, but especially in Europe's political world. The memory of bloodshed in terms of 20 million victims, of many million people condemned to leave their home regions forever and of course the Holocaust led to the general realisation of the necessity of a major international responsibility for the respect and inviolability of fundamental human rights and human dignity. On the other hand, under the impact of ideology stressing the collective rights of peoples in a nationalist sense, as the Nazi did, and the communist parties in another sense, in the Western liberal democracies the importance of the protection of minorities as a group was strongly weakened. Based on their instrumental role for nationalist aggression during World War II, ethnic minorities were even looked upon as a possible threat to peace. The winds of change after the war were rather against national minorities and the juridical achievements of the League of Nations were abandoned.

The new peace treaties signed after the war did not involve big territorial changes to the European map, besides the redimensioning of Germany. While in the 1920s the borders were moved in many cases, in 1945 populations were displaced to ensure a higher "national homogeneity" in the states concerned. Thus, after the war no new states appeared in Europe nor did existing ones disappear, with the sole exception of the three Baltic Republics now integrated into the Soviet Union. However, 17 million people, most of them Germans and Poles, were forced to leave their traditional homelands to live within the new borders of their respective nation-states. This was meant to avoid the presence of "undesirable national minorities" and eventual political manipulations. Population movements resulted in a substantial decrease in the percentage of minority populations in Central and Eastern Europe compared with the previous period.

The second striking consequence of World War II was the division of the continent into two blocks, ideologically opposed and socially cut off from each other. In that situation national minority issues were almost completely left out of the political agenda in both the dictatorial regimes in Southern Europe (Spain, Portugal, Greece) and in the states of Eastern Europe (Romania, Poland, Czechoslovakia, Bulgaria). The only exceptions were the Scandinavian countries, Germany (Declaration Bonn-Copenhagen 1955), Austria and to a certain extent Italy and Tito's Yugoslavia which tried to ensure a harmonious cohabitation among different peoples and a major number of different minorities in one federal state, an experiment which lasted just 40 years.

For 20-30 years minority issues remained hidden, and in a general atmosphere of refusal to redress grievances of national minorities, some of the radical fringes of those communities took to arms, such as South Tyrol, the Basque Country, Corsica and Northern Ireland. In Cyprus a 25-year-old conflict between Greeks and Turks was settled by the military intervention of Turkey in 1974 creating two ethnically divided entities on the island.

However, the strong economic development, the spread of education for all and the advent of mass media (first of all the TV) facilitated the progressive assimilation of minorities into the dominant culture. Nevertheless, since the 1970s regionalist movements, in reaction to state centralism, gained ground in Northern Ireland, Catalonia, Scotland, Flanders, in some forms also in Galicia and Brittany, and in Yugoslavia. Kosovo after Tito's death (1980) in 1981 asked to be accorded the status of a republic. Most of the European states concerned approved constitutional reforms to accommodate these political movements (in Belgium, Great Britain, Spain, Italy and even in France in a much weaker form), transforming into federalist states (Belgium), an asymmetric regionalist state (Spain), according regional autonomy through devolution (UK) or strengthening the existing autonomies (Italy). In Eastern Europe the minorities went through a process of de-politicisation, due to the deprivation of political freedom in the states with a Soviet-type system. Only Yugoslavia and the USSR maintained their decentralised structures, largely neutralised by the overall control and power monopoly of their respective communist parties. Against this background, the political demands of national minorities in Eastern Europe were practically non-existent. The peripheral nationalist movements

within the pro-Soviet countries suffered the same fate until 1989. In this period, apart from the ECHR approved by the Council of Europe in 1950, no special conventions for the protection national or linguistic minorities were set forth.

### From the fall of the Berlin Wall to the present day: 1989-2008

The collapse of the Soviet block in 1989 initiated a new era for the protection of national minorities in Europe. After decades of being sidelined and discriminated, many national minorities in Central and Eastern Europe could freely express their political and cultural aspirations and lobby for their legitimate interests and collective rights. For the first time since 1945, Europe's political map also underwent a radical change, comparable with the modification of borders in 1920. Germany was reunited, the Baltic States got independence and in August 1991 the world witnessed the definitive collapse of the Soviet Union, resulting in 11 new independent Republics. Not only the titular nations of the former Soviet republics, but also some smaller peoples, confined to autonomous territories, took the chance for claiming self-determination (Chechnya within the Russian Federation, Abkhazia and South Ossetia within Georgia, Transdniestria in Moldova, Nagorno Karabakh in Azerbaijan), but with varying success. Other national minorities pushed to obtain protection (Hungarians in Romania and Slovakia, Turks in Bulgaria), or territorial autonomy (Russian and Tatars on the Krim in Ukraine, Gagauzians in Moldova, other peoples in the Caucasus). Czechs and Slovaks in 1991 agreed upon a peaceful separation, whereas the same year the declaration of independence of Slovenia and Croatia and in 1992 that of Bosnia-Herzegovina triggered the implosion of federal Yugoslavia.

In the 1990s Eastern Europe experienced various political movements at a time: the deep desire to escape from an oppressive political regime, the will to recover economic welfare by adopting a capitalist system and a collective aspiration to improve the social standards. The black hole left by discredited communist ideology was often filled by new nationalist movements, which gained majority in various countries. Ethnic groups and national minorities reacted with claiming their fundamental rights as a duty of every modern democratic system. These movements also resulted in some armed conflicts. Besides the 10 years of violence in Yugoslavia (from fighting in Slovenia in June 1991 to the Treaty

of Ohrid in August 2001 which put an end to armed hostilities in Macedonia, with a peak of violence during the Bosnian war 1992-95) generated a deep concern in Europe and in the whole world. It was the first major armed conflict in Europe since World War II, with similar atrocities, massacres and mass deportation: more than 200.000 victims, two million refugees spread over all Europe, concentration camps and the general fear of a new outbreak of national rivalries and hatred throughout Europe. Other territorial or secessionist conflicts remained open. Kosovo's independence on 17 February 2008, foreseeable under the supervision of NATO and the UN, was a final recognition of the right to self-determination of a people which had suffered discrimination and oppression under Serbia for almost 85 years.

But the Yugoslavian war also spurred the general conviction that minority issues were of fundamental importance in Europe; if aspirations and grievances of long-forgotten national and ethnic minorities were not tackled, they could burst out with major violence later. Peace, stability and prosperous co-operation could not be achieved without a stable accommodation of minority rights. Thus the tragic events in the Balkans and Caucasus helped to set up a number of international conferences focused on minority rights and eventually to the elaboration and the approval of a "new generation" of instruments for the protection of national minorities and minority languages.<sup>5</sup> However, in spite of this general breakthrough in juridical efforts to recognition and protection of ethnic and national minorities, with a large number of positive effects, the vagueness of the documents and the lack of coercive measures make their implementation difficult and their efficiency still precarious.

### Towards a European system of minority rights

Due to this particular history, Europe has accumulated a very particular experience with the presence and accommodation of national or ethnic interests. Europe in the 19<sup>th</sup> century was the cradle of the 'nation-state', an ideal with enduring ideological and political power, which has deeply influenced the history and mindset of most Europeans and also emanated to the rest of the world. By history, Europe was transformed into an ethno-national mosaic, composed under uncountable hardships, sufferings and upheavals. Neither the Northern American melting pot nor the Southern American strategy of assimilation and 'mestizaci3n'

were guidelines for the new European approach. Europe has learnt to appreciate and recognise its internal ethnic and cultural diversity, and under the impression of wars, violence and injustice, it has come to the general conviction that national minorities have the right to exist and need to be protected not only in their own interest, but for the sake of the stability and peace in the states and regional communities concerned. This conviction not only has been reflected in many national Constitutions, but also led to the development of some juridical instruments aimed at protecting minority rights. Still the interests of stability, security and unity of the state have conditioned the shape of those legal documents, but what prevail are national constitutions, domestic legislation and government policies. Today, as the League of Nations in 1920s, several international bodies as the CoE, the OSCE and the EU are in charge of promoting the protection of minorities and preventing any form of discrimination and conflict which might escalate to international conflict and human rights violations. Will this be sufficient to ensure the full respect of minority rights in domestic law and politics?

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1 By 'minority' we always refer to the definition given in chapter 1.1 as a group of people with some common linguistic, religious, cultural or ethnic features that make it different from the rest of the population of the same state and which is numerically inferior to the rest of that state's population, has a subjective identification with the group and a common will to preserve this identity. For the history of Europe's protection of minority see: Christoph Pan/Beate S. Pfeil, *Zur Entstehung des modernen Minderheitenschutzes in Europa, Handbuch der europäischen Volksgruppen – Band 3*, Springer Verlag, Wien 2006 (available only in German language)

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5 The FCNM, the ECRML (*European Charter of Regional and Minority languages*), bilateral treaties and the OSCE instruments, which will be explained in chapter 4.

## 1.5 Nation states, human rights, democracy: the general political framework for minority rights

As the development of the protection of minorities in Europe in recent history has shown, today the general framework for a sustainable and just relationship between states and minorities, ethno-linguistic majorities and national minorities appears to be very promising: nearly all European states – except some microstates – are home to several minorities, and thus they share the common goal of settling minority issues to accommodate both sides. All European states – except Belarus – are working democracies with a consolidated tradition of rule of law. All European states are also members of the Council of Europe, based on the ECHR, a human rights treaty which entitles each European citizen concerned to direct legal action before the Human Rights Court in Strasbourg. Finally, the major part of the European states has gathered in a long-term project of economic and political integration *sui generis* in the world, the European Union, based on common values of democracy, fundamental rights, market economy and the preservation of cultural diversity which includes the protection of national minorities.

After centuries of bitter conflicts, injustice and forced assimilation, the state attitudes of collective discrimination and political exclusion are just shadows of the past, which appear to be definitively overcome. The ‘right to identity’ of minorities, going beyond anti-discrimination entitlements, stands out as the overarching guarantee informing the whole notion of minority rights. The pure approach of “hands off”, enshrined in Article 27 of the ICCPR, has been replaced by a large number of bilateral agreements, international conventions and provisions of domestic law to ensure substantial equality and allow a real development of identities. Has Europe by this way become a safe heaven for national minorities? Is it just a question of time that Europe’s minorities will be fully recognised and their interests accommodated? Most probably not.

### Defining national minority rights

The general prohibition against discrimination on ethnic, linguistic, racial or religious grounds contained in Ar-

ticle 14 of the European Convention on Human Rights (ECHR), in force since 4 November 1950, in Article 27 of the ICCPR (1966) and in the UN-Declaration on the rights of persons belonging to ethnic, national, linguistic minorities 1992 does not directly touch upon the question of national minorities as a group, nor does it recognise any collective right or group right. But in many European states, no matter if democratic since longer periods or just since the fall of the Soviet Block in 1990/91, this assumption brought about a policy of tacit neglect and assimilation, omitting positive measures of protection of minorities as groups. Fifty-eight years of experience with the ECHR have shown that the purely formal equal treatment is not enough to solve the discrimination dilemma through democracy and individual human rights alone.

Many grievances are reported from the annual and periodical reports of human and minority rights NGOs.<sup>i</sup> Countless persons belonging to national minorities still cannot use their language in the public sphere, do not have any possibility of enrolling their children in a primary or secondary school with instruction in their mother tongue, have no chance of employment in the public service in their area unless they master the national majority language, are not served by print or electronic media in their language and have no equal representation in local or regional institutions as a group, let alone any cultural or territorial self-administration. Hence, they are compelled to use the majority language whenever they interact with public or state institutions, when they want to be informed, when they wish a good education for their children, when they seek a public job. Fundamental cultural rights in many European countries for national minority members are not respected or are insufficiently realised, such as:

- The right to education in one’s native language;
- The right to use one’s own language in the public sphere;
- The right to establish separate organisations including political parties;
- The right to political representation and participation in decision making;
- The right to maintain contacts with the kin-state or persons and institutions who share the same culture;
- The right to exchange information and use mass media in one’s native language;
- The right to run public or publicly funded media and broadcasting services in their language in the home area;
- The right to use one’s own language in judicial and administrative proceedings;
- The right to use names and topographical names in

the minority language and several other rights linked to the free expression of cultural identity.

The system of individual human rights needs to be integrated by the positive protection of national minorities on an individual as well as a collective basis. Language, for instance, cannot be reduced to an individual right since its exercise depends on an institutional framework based on a collectivity which shares that culture. Culture is the product and heritage of a group of people and its spiritual substratum, and thus it can only be preserved and developed within a group. On the other hand, as national minorities by definition are included in a state with a different, but majoritarian titular nation, they are always exposed to its cultural hegemony, due to the sheer numbers and the economic, social and political power exerted by the national majority. The smaller ethnic minorities are, the more they are structurally excluded from power and cultural production and reproduction

This means that minority rights cannot be realised just in a dimension of individual human rights. Minority rights are a part of fundamental rights, in defence of human dignity against the state. But compared with classical individual rights most minority rights can be exercised only in societal form, such as cultural and religious activities and functions, education facilities, language rights in the public sphere, or the publication of media. Collective rights include not only the right to existence and identity, but also a whole set of fundamental civil, cultural and political rights as a consequence of the recognition. All sovereign states are called to face this responsibility in their legal system.

### Liberal democracy is not enough

Except three multinational states (Belgium, Switzerland and Bosnia-Herzegovina, not counting Russia) the European states are 'nation-states'. In such states typically a major 'titular nation' dominates all spheres of public life and the state apparatus. Liberal democracy, which is the system almost all European states share, does not automatically safeguard the rights of minorities, nor allow them democratic participation to political power. A formal equality, with strict rules of individual non-discrimination, is not enough to ensure substantial equality in political decision-making and social life. One example: if minority members are requested to get the backing of citizens in the whole state for founding a political party in their home region, they are virtually denied this right deriving from the fundamental right to free association. If they have to surmount a threshold of votes cast in na-

tional elections, they will definitely be disadvantaged, as their number will never suffice to reach that level. By consequence they will not be represented in their state's or region's parliament. Viewed from this perspective political representation and decision making in a purely liberal majoritarian democracy does not automatically ensure the political participation of national minorities. The democratic principle of majority by virtue of numbers does not respect the interests of such "structural" minority groups (as ethnic minorities are), especially when cultural, linguistic and "national" affairs are to be tackled. National majorities tend to disregard ethnic minorities and need a permanent supplementary mechanism to protect them. Pan/Pfeili distinguish three types of participation in the political decision-making process in order to grant real equality of minorities with majorities:

- a) Proportional representation (including the right to be represented at all);
- b) Equal representation in matters of vital interests of a minority group;
- c) Autonomy and self-governance for those national minorities, settling in their home-regions, and interested to manage their own internal affairs without interference of national majorities.

Even international law, today in force in the majority of European states, does not encompass specific provisions in this regard. It provides for fundamental principles and recommends some tools for enhancing effective minority participation. But national parliaments in Europe do not necessarily abide by such general provisions. Thus, in case of national minorities living in their traditional home regions, there is a need to move the political power closer to the concerned peoples and groups, to allow the governed local society to choose directly their rulers, and to control and influence more directly the policies carried out on their behalf.

Some states have adopted autonomy arrangements with positive results; also international organisations such as the Council of Europe are increasingly recommending decentralisation of power and new forms of regional democracy, especially when ethnic or national minorities inhabit such regions. However, it has become clear that democracy has to be adapted and corrected if national minorities are to be substantially put on an equal footing. Some serious political crises in the aftermath of the break-up of the Soviet system followed by the secession of the territories concerned have been unleashed due to the lack of political recognition, fair negotiation and political partnership with the representatives of national minorities. Those breakaway re-

gions fear the majoritarian power of the titular nations and lack guarantees of their rights to self-government. Territorial autonomy is one major issue of minority protection in several European states. Democracy can only work when there is a genuine link between the parliament, the government and the people, when the rulers effectively represent the ruled. In the presence of national minorities or minority peoples, in a centralist state there is no such relationship between the ruled and the rulers. Territorial power sharing corrects this flaw of representative democracy in large nation states. Various forms of autonomy (cultural, territorial, local) are mechanisms that promote organisational or institutional correspondence between the rulers and the ruled.

### How can minority rights be enforced?

A third dimension of Europe's general political framework, apart from the general rule of law, is the acceptance of international and supranational conventions and the stipulation of bilateral agreements between two – mostly neighbouring – states. The impulse for developing such a system came from the Council of Europe in its Vienna summit in 1993, which gave rise to a three-fold approach to minority protection:

- A Charter for the protection of regional and minority languages;
- A Convention on the rights of national minorities;
- An additional Protocol on the rights on minorities to the European Convention on Human Rights.

Whereas on the first two the European governments found a compromise, the third section of the minority protection system has been temporarily suspended. It would represent a decisive “third pillar” since only the inclusion of minority rights in the ECHR machinery would give each individual member of a European national minority the right to bring violations of his rights before the European Court of Human Rights (ECOHHR).

The OSCE has been founded to ensure security on the European continent. Therefore not minority and human rights are its central purpose, but stability and peaceful relations among the member states. But conflict prevention, crisis management and post-conflict rehabilitation are intimately linked with the accommodation of minority rights, as history has proved; the OSCE also recognises a responsibility for this issue.

The FCNM is a legally binding regime, ratified by 38

member states of the CoE, but its provisions are couched in a rather vague language, leaving to state parties a considerable discretion to choose the measures and adopt them properly. Generally speaking, the language of “state undertakings” is preferred to the “language of rights”. This touches the important issue of how rights are implemented by the responsible actors in the single states. How can these rights be enforced by international organisations and which role have third parties such as the kin-states? And finally, which rights and possibilities to take legal action and to seek judicial redress have the minorities concerned? These instruments will be illustrated in chapter 4, trying to answer the questions raised.

In Europe there are “political approaches” to minority rights and in a much lesser extent truly legal approaches, which can be enforced before courts, as the provisions of the ECHR or the legislation issued by the European Union. The decisive legal level of minority rights in Europe still is the national one. Multilateral and bilateral treaties still do not have such a prominent role in minority rights as some international conventions and recommendations. But if minority rights are to be seriously treated as part and parcel of the European canon of human rights, to be considered normal law and normal rights addressed to individual members of minorities or minorities as a group, binding instruments are required and national law has to be more strictly conditioned. But before analysing the international instruments of such “soft law” and their impact on the situation of minorities, we have to cast a look on some major current minority issues in Europe and the situation in some states.

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*1 Some examples are the reports of CIEMEN, the Minority Rights Group International, IWGLA, the UNPO and the Society for Threatened Peoples. For the respective websites see the appendix.*

*2 Christoph Pan/Beate S. Pfeil (2003), National Minorities in Europe – Handbook, volume II, Vienna 2003.*



# 2

Minority Issues  
in Europe Today

## 2.1 Threatened languages and linguistic rights of minorities

Languages in the history of mankind have been coming and going for millennia, but in recent times there has been less coming and a lot more going. Some linguists reckon that 10,000 years ago, with just 5-10 million people living on Earth, these peoples spoke perhaps 12,000 languages between them. At present scientists assume about 6,000 languages are spoken. First the shift to agricultural economy, then in recent centuries the colonisation of continents, the international trade, industrialisation, the development of the nation-state and the spread of universal compulsory education have contributed to extirpate thousands of languages. Globalisation, new information technologies and the mass media, in particular the TV, have further accelerated the rate of attrition. Dominant languages as English, Chinese, Arabic, Spanish and Hindi are gaining ground rapidly. Whereas Africa is believed to have still 2,000 languages and Asia and the Pacific 3,000 (Papua New Guinea alone 800), the Americas have, along with the dominant languages English, Portuguese and Spanish, less than 1,000. In Europe only 90 autochthonous languages have survived. Apart from North America, linguistically seen, Europe is the "poorest" continent.

Today the median number of speakers the world's languages is a mere 6,000, which means that half are spoken by fewer people than 6,000 and are thus obviously bound to become extinct. In Europe, the median number of speakers is 544,000 (Avarian in Russia has this number of speakers), so that the dangers might appear less dramatic, but one-third of the European languages (see Table 1 in chapter 1.2) have less than 300,000 speakers, which by linguists is considered also a critical "point of no return". 'Endangered' in more concrete terms means that children no longer learn the language and only adults speak it. In Europe only about a dozen of such languages are on the brink of extinction, but nevertheless there is enough reason to worry about the "lesser used languages".

To somebody the disappearance of a few or even hundreds of languages would not seem to threaten the survival of mankind, but besides the fact that people have the right to learn their mother tongue, the loss of

languages is a loss of cultural variety and value. A 2003 UNESCO paper summed up the reasons why the death of languages is a problem:

"The extinction of each language results in the irrecoverable loss of unique cultural, historical and ecological knowledge. Each language is a unique expression of the human experience of the world... Every time a language dies, we have less evidence for understanding patterns in the structure and function of human language, human prehistory, and the maintenance of the world's diverse ecosystems. Above all, speakers of these languages may experience the loss of their languages as a loss of their original ethnic and cultural identity."<sup>1</sup>

According to David Graddol, in 2050 the world will rely on mainly 100 languages only, while just a thousand of the smaller languages will have survived. Pessimists reckon that around 2100, 90 per cent of the world's languages will be gone and in 2200 the world may be left with just 200 tongues.

### The present and the future hierarchy of languages in the world

The big languages <i>English, French</i>	The big languages <i>Chinese, Hindi/Urdu, English, Spanish, Arabic</i>
Regional languages: <i>Arabic, Chinese, English, French, German, Russian, Spanish</i>	
National languages <i>Around 80 languages serve over 180 nation-states</i>	Regional languages (languages of the major trade blocs) <i>Arabic, Malay, Chinese, English, Russian, Spanish</i>
Official languages within nation-states and other "safe" languages: <i>around 600 languages world-wide</i>	National languages: <i>Around 90 languages serve over 220 nation-states</i>
Local vernacular languages: <i>The remainder of the world's 6,000 languages</i>	Local languages: <i>The world's 1,000 or fewer languages with varying degrees of official recognition</i>
<i>The hierarchy of languages in 1997</i>	<i>The predicted hierarchy of languages in 2050</i>

Source: David Graddol, *The Future of English, The British Council, London 1997*

Out of Europe's 90 spoken languages 53 are minority languages in the sense that they are in no European

state used as official languages and many of them are not recognised on a regional level either. By comparison: in India 18 languages are recognised as ‘official languages’, but some 120 are minority languages. Out of the EU’s 23 official languages just 14 are spoken by a major number of native speakers (+ Catalan), but 7.4 per cent of the EU-citizens speak a smaller or “lesser used” language as their mother tongue.

**Table 4**  
The major languages spoken in the EU

Language	Native language	Total*
1. English	13%	51%
2. German	18%	32%
3. French	13%	26%
4. Italian	11%	16%
5. Spanish	8%	15%
6. Polish	7.5%	10%
7. Dutch	5%	8%
8. Romanian	4%	6%
9. Greek	2%	2%
10. Swedish	2%	3%
11. Czech	2%	2%
12. Portuguese	2%	2%
13. Hungarian	2%	2%
14. Bulgarian	1.6%	1.7%
15. Catalan	1.5%	2%
Other languages	7.4	8%
	100%	

*\*Native speakers + EU-citizens able to conduct conversation in this language. Out of a total population of the European Union of 497 million (2008, est.) more than 40 million people speak a “lesser used language” (not equivalent to “members of national minorities” as many national minorities speak the language of a co-national titular majority of a neighbouring state).*

Apparently most languages disappear because their speakers voluntarily abandon them. But is it really happening by free choice? Whenever a dominant language is associated with progress, modernity and economic success, speakers of minority languages are forced and tempted to learn it, sidelining their own mother tongue. Today we are witnessing the powerful advance of a dozen languages with international if not global importance, which are understood and spoken as first or second language by half of mankind. The same phenomenon is occurring in Europe: the big languages advance, most of the minority languages retreat. They come to be seen as backward and hopelessly useless as always fewer people use it. This “natural process” of languages dying cannot be stopped artificially, some critics assert, arguing that attempts to save moribund languages are a waste of time and money. But the point

is not only the risk of loss of cultural diversity and the loss of inestimable heritage of knowledge embedded in those languages, but the fact that minorities do not voluntarily give up their language, but are forced by hostile conditions. In most cases minority language speakers would learn, use and transmit their language if they were allowed to. In recent decades several minority languages in Europe such as Basque, Welsh, Gaelic in Scotland and Ireland have been successfully revived.<sup>2</sup> The survival of smaller languages is strongly linked to transcription. About two-thirds of the world’s languages have never been written down. There is an urgent need to record what may be about to vanish. In Europe only a few of the 90 odd languages still have no transcription. If they die out, they are definitely gone and a unique heritage is lost. When speaking about hostile conditions, the issue of the use of language turns out to be an issue of fundamental human rights and minority rights, giving rise to the claim of recognition and protection.

### Language rights are human rights

The second argument and probably from an ethical point of view the more important one is the existence of the human right to learn and use one’s mother tongue. If thousands and millions of people are deprived of their language, it means that their fundamental rights have been violated.<sup>3</sup> But in Europe, as well as in other parts of the planet, an economic objection to the effort of preserving a language can be heard, taking as example small languages such as Sorbian in Eastern Germany, Friulian Ladin in the Eastern Alps, the Walser German in the Aosta Valley: why should there be so much money invested in the conservation of such languages? The argument of “affordability” cannot be the decisive criterion when it comes to accommodate fundamental rights of minorities. Language has its intrinsic cultural value, which is not subject to purely economic considerations. If the criteria of economic efficiency would prevail, a coherent policy of language unification along the American model would be the consequence. The process of language loss is not a natural one, but caused by social and political conditions. It is caused by man and can be stopped by man. In language affairs there is no such phenomenon as “natural selection”, but a language becomes less attractive if the cultural production in that language is decreasing, if at no level any public authority is obliged to interact with the citizens concerned in that language, if it is not sufficiently taught in public schools, if there are no attractive media using the language.

The case of the Irish language may be emblematic: the results of decades of active promotion of Irish in Ireland in public life seem rather modest and to some the funding earmarked yearly for this purpose may appear questionable. The number of Irish people who have obtained a passive competence in Irish has risen considerably, but reviving and preserving a smaller language – even if it is the cherished old language of an entire state as Ireland – does require not only financial means, but a clear long-term strategy (language planning) and deep rooted political will to implement it. The second example: in neighbouring United Kingdom, Welsh today is spoken by about half a million of inhabitants of Wales, which is steadily recovering due to the autonomy of that region and the Welsh language policy.

If a minority language is not actively protected and enhanced, it will soon turn to be an “optional” one and later die out. In Papua New Guinea with 800 indigenous languages, some of them in extremely isolated areas, and Amazonia with some 500 smaller languages the conditions may be more favourable for survival, but in the European social framework cultural integration is an ever more powerful process. There aren't any more “isolated cultures” in Europe, just protected by nature or geographical location. Thus, the danger for lesser-used languages is directly connected with some objective facts such as the number of speakers and the status as a ‘minority language’ not in use in any state as official language, not taught as medium of instruction and not present in the media. The level of recognition and protection of minority languages and the strategies of their development depend on political will and commitment, which, in turn, are conditioned by deeply rooted concepts of nation-state.

### Language and the nation-state

In Europe since the beginning of the 19<sup>th</sup> century there has been a tendency to link the concept of ‘nation-state’ with the language spoken by a people, which is the titular nation or majority population of that state. This assumption implies that the existence on the territory of a state of a smaller group speaking a language different from the majority of the citizens is at best an anomaly, at worst a threat to the unity of that state. Thus, there is a serious ambiguity in the term ‘nation’:

Firstly, because states, even perceived as ‘nation-states’, can be composed by several ethno-linguistic communities, and thus be “multinational”, comprising

more official languages with equal status (Switzerland, Belgium, Bosnia-Herzegovina, Luxembourg).

Secondly, almost no European ‘nation-state’, with exception of the micro-states, is linguistically homogeneous, and every state has some traditional ethno-linguistic minorities.

Third, in some regions of the continent the interpenetration of linguistic communities, due to history, is quite strong (e.g., in Spain's historical smaller nations, Brussels, Bosnia-Herzegovina before the war, Northern Ireland, Corsica, the Szeklerland in Romania, etc.). Considerable parts of the population starting from an early age on learn two or more languages.

By consequence most European countries had and have to develop a new concept of nation-state: to be states which are also home to several national minorities, and in turn, are members of multinational or supranational organisations as the EU. As the EU in its institutional architecture has to ensure equal rights to all languages of member states, the single state must seek legal and institutional arrangements which will allow peaceful living together of different ethno-linguistic groups on the same territory. In Europe in about 330 cases a national language is coexisting on regional or local level with a smaller or minority language, but by far not always with equal rights and recognition.

Also the term ‘regional’ or ‘minority language’ may be misleading in some cases. Just three examples:

- 1) Catalanian: although spoken as mother tongue by 6.3 million Spanish citizens (thus by numbers the 20<sup>th</sup> major language in Europe), it is no official state language in Spain (just in Andorra).
- 2) Faröese is a clearly distinct language, spoken only on the Faröer Islands, which have been annexed by Denmark. The Faröese are a minority due to history, whereas Malta, by historical chance a sovereign state, could become a member of the EU and as such the Maltese language is one of the 23 official languages of the EU.
- 3) Basque is the age-old language of the Basque Country, but just one-third of the population masters that language actively and passively. Nevertheless, the majority of the population of that country perceives itself as Basques and Basque as their language, not as a “minority language”.

De facto, in most European states in both the public services and administration and in the commercial life there is a preponderance of the state's national language, the mother tongue of the state's majority population.

Having one lingua franca in administration obviously offers many advantages, having to cater for services in two or more languages brings about additional costs and expenditures. Language is undeniably a necessary component of a wide range of public services. But substantive equality means in such circumstances to oblige all public institutions to an additional linguistic effort and to foster the use of the minority language also in economic and social life. If minority languages are to be efficiently protected, the central states and the lower government levels have to provide human and financial resources to grant such services in all languages spoken in that area. Decentralising its structure and programmes as far as possible can definitely be useful to meet such different requirements.

### The necessity of a language policy

Minority languages are exposed to a double pressure deriving from the risks of the minority status and from the risk of the small number of speakers. Also for major national languages there is a risk of being sidelined by the dominant world languages, in Europe specifically English. Resistance to this pressure is possible through systematic linguistic protection measures and language planning. As Pan puts it, "for a linguistic policy aimed at guaranteeing the survival of a language, it is above all important to avoid the split-up of the language, to further its development and to resist its displacement through a dominant language."<sup>4</sup> For these purposes the development of the language performance is decisive. Performance of a language is measured in terms of terminological capacity. A language which cannot be used for any specialised discourse or any sector of academic research will soon be relegated to a mere dialect, good for conversation with family and friends. If a language cannot keep the pace with the general development in society, technology and economy, the speakers are forced to continuously resort to other languages with a higher performance, in Europe mostly English, French or German. The expansion of performance of a language and its differentiation is directly linked to social and economic development. If a language is not even used as official language on a sub-state level (region, province, Land), sooner or later it will be in dire straits. If there is no pressure for a language to further differentiate and extend the vocabulary and to adapt to modern life, a language relapses to a language of lesser value and utility with the risk of dying out. This risk is acute also for major languages if they fail to achieve a standardised written version and recognition as official language at least in a regional context. The positive chance to escape that fate

is an active policy of protection and development of the minority language and the minority itself. A cultural or territorial autonomy can be the most efficient framework for implementing such a policy.<sup>5</sup>

Nevertheless, there seems to be no alternative for a living in modern European societies than becoming bi- or trilingual. A few languages in Europe will become dominant "communication tools" for work, international information, for official purposes, while the minor languages will be spoken at home, with friends and in the local public sphere. A third language will be useful to know as the official language of one's state. Many linguists point out that for most of humankind for most of the time bi- or multilingualism has been the natural state of affairs.<sup>6</sup> For instance, children in Scandinavia learn English in primary school, which seems to do no harm to their Swedish. But if Sami would not enjoy substantial public support, today it would be close to extinction as it is occurring to several indigenous languages of the North and Far East of Russia. If Europe's language diversity is to be preserved and if the linguistic human rights of millions of Europeans are to be respected, much more robust political steps for empowering minority languages are required.

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1 UNESCO, *Language vitality and endangerment* (2003, available at: [http://portal.unesco.org/culture/en/files/35646/12007687939Language\\_vitality\\_and\\_endangerment](http://portal.unesco.org/culture/en/files/35646/12007687939Language_vitality_and_endangerment))

2 In some European states still there are no official data about the number of speakers of minority languages available. Often they are unreliable or biased by specific state interests. After the fall of the Soviet block and the ratification of the FCNM by most states the official statistics regarding languages has generally improved. The most comprehensive and detailed standard handbook on the numbers and basic features of linguistic and ethnic minorities has been elaborated by Christoph Pan/Beate S. Pfeil in *National Minorities in Europe – Handbook, ETHNOS, Vienna 2003*, and by the same authors, *Minderheitenrechte in Europa, Handbuch der europäischen Volksgruppen, volume 2, Vienna 2006* (available in German only).

3 Besides the many indigenous lesser used languages, a broad variety of languages from other parts of the world are spoken by immigrant communities in the EU-member states: Turkish, Arabic, Russian, Urdu, Bengali, Hindi, Tamil, Ukrainian and Balkan languages are spoken in many parts of the EU. Many older immigrant communities are bilingual, but migrant languages have no formal status or recognition in the EU countries, although from 2007 they are eligible for support from the language teaching section of the EU's Lifelong Learning Programme 2007-2013.

4 Christoph Pan, *Die Bedeutung von Minderheiten und Sprachschutz*, EJM n.1/2008, p.32.

5 The Catalan NGO CIEMEN is promoting a UN-Declaration on linguistic rights. See the proposed text at: <http://www.nationalia.info/en/documentacio/resolution-proposal>

6 See also: [http://en.wikipedia.org/multilingual\\_regions](http://en.wikipedia.org/multilingual_regions)

## 2.2 Autonomy, secession or a multinational state?

### Viable solutions to open ethnic conflicts

Looking at the world's map of regional autonomies, Europe still is home to the majority of working autonomies world-wide.<sup>i</sup> Most of those autonomy systems have been established to accommodate national minorities or "smaller historic nations" or peoples within the states concerned. In most of those cases the autonomy has brought about substantial protection for the concerned ethnic minorities and equality of rights of all inhabitants of the region. In some cases, forms of cultural and local autonomy are adopted in order to ensure self-government in cultural affairs. In most cases autonomy provided these regions with a stable solution of peaceful co-existence and power sharing, both within the region and between the autonomous region and the central state. In none of the 11 European states with working regional autonomies is there a serious debate about cutting them back; on the contrary, in most regions the existing autonomy system is continuously improved in order to grant an ever more appropriate system of self-government.

Spain leads the group of states with a dynamic development towards a more articulated "state of autonomies". In September 2005, Europe's largest autonomous region in terms of population, Catalonia, passed its newly reformed autonomy statute with a large majority of its regional parliament, which in 2006 was also approved by the Spanish parliament and in 2007 by Catalonia's population. In Corsica, local political forces are working on a reform of the still weak model of self-government in order to enrich the system with more legislative powers. In Italy, the general devolution process of the central state's powers to the ordinary regions is pushing the state towards a federal structure, indirectly reinforcing the position of the five regions with special autonomy. The few autonomy systems in Eastern Europe in Crimea (Ukraine) and Gagausia (Moldavia), operating only since about 1994, have resulted in a stabilisation of a difficult ethnic equilibrium. In the Autonomous Republic of Crimea, for instance, the Russians have kept their predominant rule, while the Tatar community, returning after deportation by Stalin in the 1940s, is still to be accommodated. Tatarstan, home of Russia's major "smaller people" - 5,5 million Tatars - offers a positive model of how national conflicts inside Russia could be peacefully resolved in an equitable balance of power between the centre (Moscow) and an ethnically mixed region.

But on the other hand some of Europe's open ethnic conflicts have not been tackled with a solution providing consociational power sharing within multinational regions and a well-entrenched relationship of special autonomy between minorities and states dominated by ethnic majorities. Such conflicts, first in 1974 (Cyprus) and later in the 1990s, following the break-up of the USSR, in five regions in Europe and the Transcaucasian area resulted in the secession of the region by military means and their *de facto*-independence. In other cases such conflicts are still smouldering.

### Case 1: Transdnistria (Moldova)

Transdnistria (total population in 2004: 555.000) is a *de facto* independent region of the Republic of Moldova since 2 September 1990. Beginning with Moldova's emancipation from the Soviet Union from 1990 onwards, protest movements against Moldova's independence started in the region east of the Dnjestr river, predominantly inhabited by non-Moldavians (ethnic Russians and Ukrainians).



*wikipedia.org*

In June 1992 a brief war broke out, as Transdnistrian secessionists were backed by the 14th Russian army stationed in this area since Soviet Union times. In the conflict about 700 people died and some 10,000 had to leave their homes. On 21 July 1992 a cease-fire agreement was signed between the Republic of Moldova and the Russian Federation, obliging the parties to a peaceful solution of the conflict and deploying a trilateral Russian-Moldovan-Trans-dniestrian peace-keeping force. The need of a special status for the left bank of the Dniestr and the right of the population of this area to decide on its own future if Moldova were to reunite with Romania have been the main issues of contention since 1990. Negotiations on an autonomy status such as Gagauzia's so far were unsuccessful. Currently the OSCE is trying to resolve the situation.

## Case 2: South Ossetia and Abkhazia (Georgia)



<http://en.wikipedia.org/>

South Ossetia (about 70,000 inhabitants, majority ethnic Ossetians) was absorbed by Russia in 1801. In 1918, following the Russian October Revolution, the region became a part of Georgia and the Soviet Union. In the Soviet time, under the rule of Georgia's government, it enjoyed some degree of autonomy, including the right to use the Ossetian language as official language and as medium of education. In the aftermath of Georgia's independence in 1991, Georgian became the only official state language. The Ossetian minority felt sidelined and continued to seek greater levels of autonomy, but was faced with increasing nationalism and centralism in the state. A decision by Tbilisi to revoke the autonomy status of South Ossetia in December 1990 immediately unleashed armed insurgency, leaving many villages destroyed. About 2,000 people died and 60,000-100,000 refugees fled from the region. In 1992, Georgia accepted a cease-fire to avoid military confrontation with Russia. Then Georgia pledged not to impose sanctions and to solve the question by political means. A peacekeeping force of Ossetians, Russians and Georgians was established, supported by OSCE mission. Since hostilities resumed in summer 2008, the security situation is volatile. All negotiations are blocked; the sides are mutually suspicious and trapped in conflicting fears about the other's strategies. Russian military and economic aid is vital to South Ossetia, which refuses reunification with Georgia and seeks unification with North Ossetia (Russia).

Abkhazia, a former autonomous region of Georgia under Soviet times, in 1990 was faced with a growing centralist policies of the newly independent Georgia, which was about to cut back its autonomy. With Russia's assistance, the ethnic Abkhaz defeated Georgian forces in a 1992-93 war that saw atrocities on both sides.

Abkhazia lost over half of its population, as an estimated 200,000 ethnic Georgians fled to Georgia's mainland. The Abkhaz now are a slight majority along with a sizeable Armenian and Russian population. Abkhaz authorities have gradually extended their control over the whole territory, but Georgia in 2007 tried to recapture some valleys in the Eastern part. The Georgian minority in de facto independent Abkhazia is very precarious.

In 2008 prospects for an early comprehensive settlement of the key political issues, in particular the final status of Abkhazia, are bleak. Abkhazia insists on the recognition of its independence, but the international community unanimously considers it a part of Georgia, which places priority on the return of the displaced 200,000 Georgian IDPs from Abkhazia who live under harsh conditions in Georgia proper. Abkhazia depends economically and military upon Russia. The sharp deterioration in Russian-Georgian relations in recent years has frozen negotiations to settle the conflict. Neither the local nor the wider political environment is conducive for any breakthrough.

## Case 3: Northern Cyprus



<http://en.wikipedia.org/>

The ethnic conflict on Cyprus between the Greeks and Turks has been temporarily settled by the intervention of Turkey in 1974, dividing the islands into two ethnically homogeneous separate parts. In addition, Turkey proceeded to settle some 100,000 Anatolian immigrants in the Northern part to increase the Turkish population share. In 2004 the UN-backed Annan-plan was accepted by the Turkish Cypriots, but collapsed due to Greek Cypriot rejection. The Greek Cypriot government entered the EU as the sole representative of the divided island. There has been almost no bloodshed since the Turkish invasion in 1974 and the resumption of violent conflict is unlikely. But the Turkish North is being excluded from the benefits of the EU-membership of the South, while its independence is recognised only by Turkey. For Turkey, Cyprus is a major hindrance in its negotiations for accession to the EU, as Cyprus and Greece do not accept any agree-

Table 5 - Europe's break-away regions and regions with considerable secession tendencies

(Transcaucasian states included)

<i>Region</i>	<i>Current status and situation</i>	<i>Land area in km<sup>2</sup></i>	<i>Population</i>	<i>Victims (casualties by violence)*</i>
Northern Ireland	Since 2007 working regional autonomy, run jointly by conflict parties	13.843	1.700.000	3.500
Scotland	Autonomy since 1998, major party SNP seeks referendum on self-determination	78.772	5.100.000	-
Flanders	Distinct federal community of Belgium, strong political movement for separation	13.522	6.200.000	-
Basque Country	Autonomous province of Spain since 1979, majority favours referendum on self-determination	20.664	2.100.000	900
Corsica	Part of France. In 2003 51% of the population voted against a new autonomy statute	8.680	281.000	<800
New Caledonia	Autonomous region of France since 1999. Not before 2014 referendum on self-determination possible	18.575	230.000	<1000
Northern Cyprus	Since 1974 occupied by Turkey. Self declared independent republic.	3.355	264.000	1.800
Transdnistria	Cease-fire with Moldavia in 1992. Self declared independent republic.	3.587	555.000	700
Abkhazia	Cease-fire with Georgia in 1994. Self declared independent republic.	8.600	250.000	7.000
South Ossetia	Cease-fire with Georgia in 1992. Self declared independent republic.	3.885	75.000	2.000
Chechnya	After wars with Russia 1994-96 and 1999 under almost complete control of the Russian army and security forces	15.300	1.100.000	>100.000
Nagorno Karabakh	Cease-fire with Azerbaijan in 1994, de-facto annexation by Armenia	4.400	145.000	20.000
Kosovo	Until 1999 a province of Serbia. Independence since 17 February 2008.	10.887	2.000.000	>10.000

\*Estimated figures of casualties due to violence during military hostilities, guerrilla warfare and terrorist attacks.

See also: <http://www.centrefortheneweuropa.org>: information about the right to secession

ment without a solution of the issue of Northern Cyprus. The fifth case of a breakaway region in the broader European context is Nagorno Karabakh, inhabited mostly by Armenians and claimed by Armenia, which de jure is still a part of Azerbaijan.

### Further possible secessions

Apart from the above mentioned breakaway regions in Europe and Transcaucasia, which established de facto independent entities strongly dependent on neighbouring "protective powers", there are some more regions striving for self-determination by democratic political means. The threat of secession of the Serbian entity of the federal republic of Bosnia-Herzegovina (Republi-

ka Srpska) is not completely ruled out. Since Kosovo declared its independence in February 2008, new calls arose in Serbia and the Serbian parts of Bosnia to "compensate" this loss for Serbia by carving out the Republika Srpska from Bosnia and annexing it to Serbia.

Also in some parts of Western Europe there are strong movements driven by the idea of self-determination, especially in the Basque Country and Scotland. The majority parties in both regions, the Partido Nacional Vasco (PNV) and the Scottish National Party (SNP) are openly proposing not only to reinforce the existing autonomy, but also to be constitutionally enabled to hold referendums on self-determination including the option of secession. In the Basque Country the Partido Nacional Vasco, ruling the autono-

mous region since 1979, endorses a new form of relationship with Spain in the form of a “free association”.

In Flanders the movement for independence is gaining political momentum, due to widespread dissatisfaction among Belgium's Flemish population with the performance of the federal structure of the Belgian state and the popular perception that Flanders is paying the bill subsidising the poorer Walloon South. Recurrent political crises reveal quite strong tensions, but in a hypothetical separation of the two communities the issue of the status of bilingual Brussels would be almost unsolvable.

In Northern Ireland the regional autonomy, a result of the “Good Friday” peace agreement and the Devolution Act of 1998, has taken off under a coalition government of former hardliners on both sides: the Irish Republican Sinn Fein and Ian Paisley's Democratic Unionist Party. A sophisticated consociational government system is tasked with bringing all major political forces of both communities together to share the power for the sake of the region's welfare and peace. But the autonomy regulation and the trilateral agreements between London, Dublin and Belfast comprise also the possibility of a referendum on self-determination if the population of Northern Ireland would ever democratically express such a will. In Corsica the perspectives for self-determination are bleak and unrealistic. Radical fringes of Corsican “patriotic” activists for many years fought for independence or at least autonomy. But in 2003 a slight majority of the island's population even rejected a rather weak form of territorial autonomy. In Corsica the French centralist policy, by supporting immigration, clientelism and political and economic dependency, succeeded to create a popular majority against autonomy. But since 1999, regional autonomy is working in another part of France: New Caledonia (Oceania). This island by its statute after 2014 will have the possibility to hold a referendum about its definitive status.

In several other European regions there are political parties committed to the self-determination of their region (e.g. Sinn Fein in Northern Ireland, Südtiroler Freiheit in South Tyrol, the Republican Party in the Faroe Islands, Sardigna Nazione in Sardinia, the Bloque Gallego in Galicia, Esquerra Republicana de Catalunya and Partido por la Independencia in Catalonia, Inuit Ataqatigiit on Greenland), advocating a popular referendum on the issue. But this does not mean that there is a major secession crisis round the corner. All these democratic parties do not reject the European integration, but are standing up for a direct partnership between

their ethnic communities, perceived as “nations”, with the EU. The independence of their respective regions, rather than a separation from the EU, is seen as a more self-determined integration in a Common European project, built on the idea of a “Europe of Peoples”. But in all of these regions an overwhelming majority of the population is considering autonomy or federalism an acceptable solution which is open to further development.

### Avoiding secession by establishing autonomy or federalism

In this regard three patterns of attributing forms of self-government can be distinguished in Europe. First by transformation of a formerly centralised state into a federal state in a symmetric or asymmetric version (e.g., Belgium, Bosnia-Herzegovina), by devolving powers in symmetric or asymmetrical form to every region as in Spain or in Italy, or by establishing a special autonomy for one or a few specific regions (Denmark, Finland, Portugal, Moldavia, Ukraine, France, the Netherlands, United Kingdom), due to their specific cultural, historical or ethnic features. Autonomy in such cases appears as the exception aimed at accommodating a minority whereas the state as a whole is not inclined to transformation in a federal or regionalist way. A third solution is the creation of different layers of self-government within a large and ethnically heterogeneous country as in Russia in a quite asymmetrical form in order to find appropriate solutions for each specific regional reality.

Thus autonomy is increasingly proposed as a remedy for self-determination conflicts. Consequently even violent fringes of self-determination movements, as the IRA in Northern Ireland and patriotic groups in Corsica, relinquished the strategy of violent confrontation with the central state, as forms of regional autonomy were established. In the complex case of the Basque Country in Spain the armed activities of the ETA have not ceased yet, but an overwhelming majority of the Basque population backs a democratic form of enlarging the present autonomy and eventually achieve self-determination. Apparently a small number of states have acknowledged that autonomy can serve to integrate national minorities into the state and to stabilise the conflict in situations otherwise prone to go out of control. This lesson can be drawn especially from the conflict in Chechnya. On the other hand bi- and multinational states or states with a major national minorities or smaller peoples, faced with self-determination claims, had to adopt extensive provisions for self-governance of ethnically dif-

ferentiated territories. Belgium in a process, which lasted more than 20 years, was transformed into a federal state, consisting of three federal units (the three regions Walloon, Flanders, Brussels). The two ethnic communities are endowed with equal rights whereas inside the federal units (regions) the territoriality principle is ruling. A similar solution on a smaller scale has been found for the German speaking community in the very East of Belgium, which was granted territorial autonomy in its area, but as a part of the Province of Walloon. Bosnia-Herzegovina was driven by force to the current federal system. In 1995, when the war between Bosnian Muslims, Serbs and Croats was stopped by the intervention of NATO, the belligerents were compelled to find a form of power sharing at the central level, while devolving as much as possible powers to the sub-state levels of the entities and 10 cantons. Bosnia-Herzegovina today, as a result of the Peace Treaty of Dayton in 1995, is composed of 10 cantons and one city with special status (Brcko).

The basic question to pose is, whether territorial autonomy in Europe can achieve its objectives, namely granting self-governance, stability and democratic power sharing in a given region and the protection of the national minorities living in that area. Generally, European states are still very sceptical about the right to autonomy. Often the argument used is that its content is too vague and that it cannot be clearly defined. But distinction has to be made between the right and the concrete form of its application. Moreover, there is the concern that the interest of states to preserve full integrity of their territory should not clash with the establishment of an autonomy. Autonomy however, besides the conflict between the central state and the region concerned, often has to tackle a double problem: to grant the protection of the national minority on its traditional homeland, but at the same time to include in the self-governance system all the groups living in that area. Territorial autonomy should benefit a whole regional community, not one group of the population only.

Every autonomy model in Europe has its unique features tailored to the specific problems to be solved. According to the specific premises and conditions of a region and national minorities each autonomy system in Europe shows a particular "architecture" and particular mechanisms to ensure participation, conflict solving, power sharing, minority protection and stability. These autonomies are "works in progress", involved in dynamic processes of reform, correction and transformation. By definition they have to be dynamic, giving space to new answers for a developing society. On the other hand there are some ele-

ments and conditions which have turned out to be key factors of success, as a detailed comparative analysis will eventually demonstrate. New autonomy projects and negotiations have to take it into account, avoiding repeating the harmful mistakes made in some other cases and adopting devices more likely to bring about a successful solution. An ever-deepening process of European integration in the framework of the European Union has definitely been helpful to those autonomy solutions, as they are backed by a legitimate role of the respective kin-states.

### Self-determination through regional autonomy?

Regional autonomy can be defined as a means of internal power sharing aimed at preserving the particular cultural and ethnic features of a region, while respecting the unity of a state. It consists mainly of the constitutionally entrenched permanent transfer of a possibly large extent of legislative and executive powers to one or more regions of a state. Three patterns of establishing regional autonomies can be distinguished. First, there is the "traditional way" to grant autonomy as a special solution to a specific region in unitary states (Moldova, Ukraine, Portugal, France, Denmark, Finland and the United Kingdom) due to its specific cultural, historical or ethnic features. Autonomy appears to be the exception aimed at accommodating a minority, whereas the state as a whole is not prone to transforming in a federal or regionalist manner. A second pattern is the establishment of autonomy in different (asymmetrical) forms for all subjects of a state, as has taken place in Spain and Italy since the 1970s. A third solution is the creation of different layers of self-government within a large and ethnically heterogeneous country (Russia) in a quite asymmetrical form in order to find an appropriate solution for each specific regional reality.

Spain is a "state of autonomous communities" and not only tends to further enrich and improve its regional autonomy systems, but has elevated territorial autonomy to the very principle of state organisation, not only in terms of respecting the rights of historical ethnic and national minorities, but also in terms of subsidiarity in power sharing, efficiency in public administration and democracy in political participation.

The Scandinavian countries Finland and Denmark have set a worldwide standard for a high degree of self-government, proving that even full autonomy need not lead to a process of disintegrating states, or to secession. In Great Britain, opinion polls

in Wales and Scotland confirm the growing consensus on devolution by the regional population.

Thinking about the ongoing warfare in Chechnya, a lesson to be drawn is that autonomy solutions should be envisaged before low-level violence escalates into full-blown ethnic war. What makes these autonomies particularly important is their role as pioneers of autonomy regulations in a part of the continent which since 1990 has been a scenario of rising new nationalism, state centralism and widespread hostility towards autonomy solutions. In this context, Gagauzia, Tatarstan and Crimea – if successful – are paving the way for a range of other Eastern European regions aspiring to full autonomy (the Hungarians in Romania's Szeklerland and in Southern Slovakia, various minorities in the Vojvodina, the Turks in Bulgaria, Ruthenians (Rusyns) in Ukraine, and some minorities in the Northern Caucasus).

One touchstone of autonomy systems, when granted to achieve minority protection, is its capacity to ensure a self-governed cultural development. Thus, for the language policy, the education system, the media and information rights and the preservation of cultural heritage, such autonomy undoubtedly must provide decisive legislative and executive powers. The languages of the national minorities must be recognised as official, along with the state's language. All citizens of the autonomous region concerned must be entitled to communicate in public life in their mother tongue, as far as they are officially recognized.

Regional autonomy combines the two main goals: ensuring full minority protection by self-governance without changing borders, and taking care that the whole regional community concerned can participate in the power. Federal systems bring about the same conditions, but in addition open an institutionalised way for each federal unit to participate in power at the central level on equal footing with the remaining units of the federal state. Asymmetrical federal states such as Russia have been established for the very purpose of granting a high degree of self-governance to the smaller peoples and national minorities. The same principle has inspired Asian federal democracies as well.

In between are regional states which in Europe appear in a double form: asymmetrical (Spain) or symmetrical (Italy), but both seek to ensure higher levels of autonomy to such regions where smaller nations or peoples wish to govern themselves. Other states in Europe are slowly moving in this direction (e.g., Romania and Poland), as also

the regions as such, partly from the presence of national minorities, but mainly due to the claim for a better vertical power sharing, are interested in autonomy solutions.

In 1994, the FUEN (Federal Union of European Nationalities)<sup>ii</sup> presented a draft convention on autonomy rights of ethnic groups in Europe as a document to enhance discussion for a special convention.<sup>iii</sup> Autonomy, in the interpretation of the FUEN, shall mean an instrument for the protection of national or ethnic minorities which, without prejudice to the territorial integrity of the state parties shall guarantee the highest possible degree of internal self-determination and at the same time a corresponding minimum of dependence on the national majority. Generally speaking, there are three types of autonomy:

1. Territorial autonomy for the regions where a minority forms a majority of the local population;
2. Cultural autonomy in traditional settlement areas of a minority where this minority doesn't form the majority of the population,
3. Local autonomy for single administrative units (i.e., in isolated settlements) where a minority forms the majority of the local population.

In 2003, the Parliamentary Assembly of the Council of Europe adopted the Resolution 1334 and Recommendation 1609 on the positive experiences of autonomous regions as a source of inspiration for conflict resolution in Europe.<sup>iv</sup> Territorial autonomy and a special status are the themes of two recommendations adopted by the Congress of Local and Regional Authorities of Europe,<sup>v</sup> which represent the entities of local and regional self-government of the CoE-member states in 1998 (Recommendation No. 43 on territorial autonomy and national minorities) and 1999 (Recommendation No. 70 on local law and special statutes).<sup>vi</sup>

### Autonomy: a viable solution to ethnic conflict resolution

Autonomy arrangements have proved to be a viable option to solve ethnic conflicts and protect national minorities in 11 European countries. Federal systems are working in four European multinational states (Belgium, Bosnia-Herzegovina, Switzerland and Russia) and in Germany and Austria, providing peaceful co-existence within a multinational state. But can federalism or regional autonomy be a realistic option for reintegrating breakaway regions? Or are those cases to be solved by just applying the principle of self-determination as it happened in Kosovo? Can an enlarged regional autonomy or the transformation of regional

autonomy in an entity of a full-fledged federal system avoid secession in such cases where regions with autonomous status or federal units are seeking independence (Basque Country, New Caledonia, Scotland, Flanders)?

In the Treaty of Ohrid, stipulated in August 2001, to solve the conflict between ethnic Albanians and the Macedonian state, dominated by Slavo-Macedonians, Article 1 (2) affirms: "Ethnic problems cannot be solved territorially." But in fact also Macedonia, enlarging the powers of the municipalities and strengthening the equality rights of all ethnic groups in the political participation on State and municipality level, applied several measures linked to specific parts of its territory and to the respective share of minority groups on the total population to accommodate the Albanian claim for self-government. As most of Europe's national minorities are settling compactly on their traditional or "ancestral" homelands, the territorial issue is of utmost importance for their long-term protection. It is a matter of fact that most of the minority issues in Europe have a regional dimension. Ethnic minorities not only claim to have equal rights, but also to be a point of the democratic decision making in their region, to share more public resources for the benefit of the region, to acquire as much powers as possible to rule themselves freely within their territory. In Europe today there are several national minorities, living in their traditional homeland, but part of a centralist state, striving for territorial autonomy. Just three examples may be mentioned here:

1. Corsica, actually a "collectivité territoriale" of France with limited cultural autonomy and almost no legislative powers, already since 1983 has been promised a regional autonomy.
2. The majority of Romania's 1.4 million Hungarian minorities live in the Szeklerland, which is a part of Transsilvania. Whereas Romania's current "draft minority law" sets the framework for cultural autonomy for the minorities, a certain number of Hungarian associations are claiming a territorial autonomy for the Szeklerland, making it an issue for the national elections of 2008.
3. Serbia's multinational Northern region of Vojvodina during the times of the Federal Republic of Yugoslavia, along with the province of Kosovo, enjoyed autonomy. In 1990 this autonomy was abolished by the nationalist Milosevic regime in Belgrade. Now a growing number of minority representatives, first of all those belonging to the around 300,000 Hungarians of Serbia, are advocating the restoration of the autonomy.

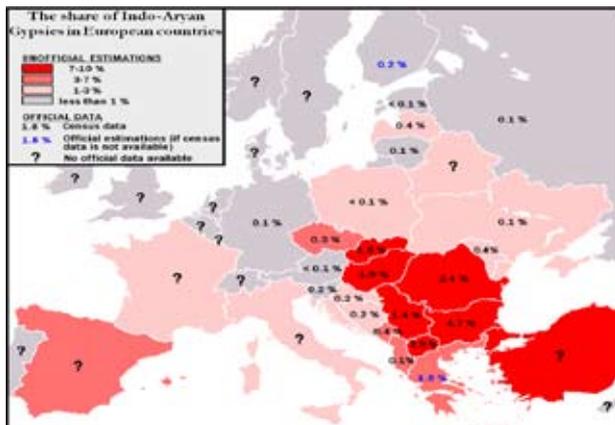
It is widely doubted that minorities have a general right to autonomy for ethno-cultural groups or minorities under positive international law. International law does not provide any duty of states to accord territorial autonomy or self-governance and offers no entitlement for a national minority qua group for territorial autonomy. But, as historical experiences have shown, the device of regional autonomy has a high potential of conflict solving and has ensured peace and stability in minority regions. For some regions divided by ethnic conflict this solution may come too late, due to past political failures, made by both sides, which brought about a loss of mutual confidence. On the other hand there are some decisive elements missing in international law, in particular the issue of the legal entrenchment of an autonomy solution. In a context of democracy, rule of law and working international institutions, there should be a mechanism of "international guarantees" (a protection function assumed by one or more states or by an entire international organisation) safeguarding a specific autonomy arrangement for a given region. Otherwise some breakaway regions will continue to prefer their precarious situation of a non-recognised independence to an unsafe autonomy status within the state they previously belonged to.

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## 2.3 A particular European minority: the Roma

In almost every European country there are more or less significant groups of Roma, who migrated over a long period some 700 years ago from India through the Near East to the Balkans and Central Europe. The Roma, also known as Gypsies or Romany, are a dispersed, numerically significant minority in more than 30 European countries. A reasonable estimate is 5-6 million in Eastern and Central Europe, including Ukraine and Russia, another 2-3 million in Western Europe, summing up to at least 9 million people. Throughout Europe the Roma in most countries are seriously endangered and usually experience active discrimination with respect to education, living conditions, employment, treatment by the authorities and relations with non-Roma. They are presently the most economically, socially and culturally disadvantaged group in Europe.



Source: <http://en.wikipedia.org>

### The difficult integration of the Roma

The Roma are posing specific integration problems referring to their social condition. In most countries they are still victims of discrimination, although governments since decades are trying to conceive integration projects in many fields. The Roma, like some scheduled castes in India, are generally part of the lowest social groups at the bottom of the social hierarchy. In the areas of housing and the labour market, in the education level and vocational training, in health standards and general living conditions the Roma are stubbornly under the average. It seems quite difficult to break this vicious circle. This raises the question whether the Roma

wish to be integrated at all in the mainstream society, maintaining their distinct cultural features or whether they fear that social integration would bring about definitive assimilation.

In the case of Europe's Roma the agenda of social politics are clashing with the rights to protection as an ethnic minority, in this case settling in a geographically dispersed form. Integration, indeed, would mean that the Roma had to adapt their social values and cultural patterns to modern industrialised society and once socially integrated, the Roma groups would be likely to fully lose their cultural identity. This problem is similar in kind with the question of integration or protection in separated areas of many indigenous peoples in India. If a Roma family leaves the Roma settlements or villages to move to a city to mix up with the general majority population, it normally tries to merge and adapt to general patterns of behaviour and way of life, even hiding its ethnic provenience and cultural traditions in order to avoid further discrimination. But this kind of identity shift as a means of breaking the discrimination, at least in the second generation leads to full assimilation. In the perspective of minority rights and protection this kind of policy, often pursued by the former communist governments in Eastern Europe, cannot be a solution. Still Roma representatives, politicians, parties, associations and majority representatives are trying to work out new ways of combining the conservation of Roma culture and traditions with the capability to keep pace with the modern European societies.

### History and background

The pariah status of the Roma throughout Europe and the stereotypes associated with them in modern times date back to their arrival in Europe during the 13<sup>th</sup> century from North-western India. Their arrival coincided with the Seljuk incursions into Europe, the Mongol invasion of Russia in the East, Tatar excursions into the Byzantine Empire in the South and the Moors' occupation of parts of Western Europe. Fearful and suspicious of all foreign arrivals, many Europeans mistook them for Muslims and labelled them Saracens or Egyptians, from which the term Gypsy is derived. Because of the threat from Turkey, the Roma were suspected of being Turkish soldiers or spies and were subject to increasing political, economic and social discrimination. Some authorities forbade the Roma to do business with shopkeepers; some were denied the use of village water supplies. By 1400 state laws against the Roma had begun to appear, and in the

area of today's Romania the Roma were enslaved, a status that did not change officially until 1864. These restrictive policies and suspicious attitude reinforced the Roma's semi-nomadic way of life, separate and exclusive from the non-Roma world. Over time, their isolation and the discriminatory practices of states and societies left the Roma living as outcasts on the edge of the society.

This pattern of discrimination and isolation has persisted to the present, reaching its highest level during World War II, when a minimum of 250,000 Roma were murdered by the Nazis and their allies. Later the state socialist regimes of Eastern Europe followed policies of forced assimilation and settlement that intended to improve the Romas' economic status. However, these policies were often thwarted by local authorities. In Czechoslovakia, for example, many local authorities refused to provide housing and employment for Roma, undermining the state's plans for integration. In Bulgaria, segregation undermined integration policies by producing "ghetto schools", attended exclusively by Roma children. Policies favouring the Roma were also resented by other citizens of the socialist states and evidence of rising prejudice and discrimination was already evident in the 1980s. Today the status of Roma in most European states remains critical. Even in states where public policies toward the Roma have improved, societal discrimination and resistance by local authorities to implementation of those policies have generally had negative effects.

### Poverty and economic discrimination

The Roma generally have the least education and highest rates of illiteracy in Eastern and Central European societies. First, if the Roma at all speak the language of the country in which they live, it is generally as a second language. Because education is rarely provided in any of the numerous Roma dialects, many are functionally illiterate. Second, the semi-nomadic lifestyle of many Roma makes it difficult for their children to attend school regularly. Third, many governments provide the Roma with segregated, substandard schools, and some with no schools at all. In Hungary, for example, many villages populated by the Roma have no schools. In Bulgaria most Roma attend segregated schools, where they lack equal opportunity to learn the Bulgarian language and have little or no chance of getting higher education. Fourth, because mandatory education is not enforced to the extent that it was under the state socialist regimes, where social workers often actively brought Roma children to the schools, the Romas' already low average levels of education are getting even lower. In the

Czech Republic and Slovakia they are sometimes sent to schools for the disabled due to the lack of mastery of the national language.

The low level of education among the Roma contributes to the highest level of unemployment for any group in Eastern Europe, often more than half of the whole communities are without a paid job. Their poverty is reinforced by societal discrimination, which limits most Roma to menial and low-paid jobs. Many of them eke out a living in traditional ways as itinerant craftsmen, sellers, casual labourers and beggars. The Roma in Eastern Europe also suffer substandard housing, health and living conditions. Their high levels of unemployment and low levels of education contribute to these conditions. Ineffective public policies, lack of resources and societal discrimination compound these conditions.

### Stereotyping and violence

The widely held stereotype of the Roma as a lazy, unclean, uneducated, habitual thief remains intact among a huge part of the European population. It is often perpetuated by the media and nationalist politicians and thus reinforces the vicious circle that has contributed to the Romas' historical disadvantage. The negative stereotype is used to justify discrimination, which reinforces the structural poverty of the Roma, contributing to the high level of crime and poor living conditions among them, which again apparently confirms the stereotype.

This stereotype is also responsible for the sharp increase in violent attacks against the Roma, attacks that were generally restrained previously by Socialist regimes in Eastern Europe, but are carried out also in Western European countries, such as recently in Italy. Between 1990 and 1998 over 400 Roma in the Czech Republic were seriously injured in ethnically motivated attacks and 29 were killed. In Serbia in October 1997 a 14-year-old Roma girl and a pregnant Roma woman were beaten to death. In Romania there have been repeated incidents of rioting by villagers attempting, sometimes successfully, to burn Roma homes and drive out their inhabitants. The central state in these countries has had little success in curbing such activities or in arresting and prosecuting the perpetrators.

These problems are most acute in Central and Eastern Europe, where Roma minorities are more numerous. In Kosovo and Bosnia-Herzegovina, the Roma are still faced with collective blaming of "collaboration" with the Serbians during the Yugoslav wars of 1991-1999. In

those countries the Roma barely participate in politics, while there is a pervasive anti-Roma sentiment among state institutions, especially in Slovakia, the Czech Republic and Romania.

### The language of the Sinti and Roma

Romany, the language of the Roma, belongs to the Indo-European family of languages. "Romani" is a term deriving from "romani chib", the language of the Roma people. The word "Roma" stems from the Romany word Rom, which means, "man". The Roma migrated originally from Northern India and probably were a part of the Dom (or Dum or Domba), a caste of migrant workers, musicians, metal craftsmen and travellers. Generally this caste within the Indian caste system was at a rather low rank. The English term Gypsy (in French gitanes, in Spanish gitano) derives from the Greek term for Egyptians, as in medieval times the European population took the Roma for migrants from Egypt, which probably has just been a "stop over" in their long migration from India to Europe. Romany is related to Sanskrit and shows some similarities with languages spoken in Central and North-western India. But it has developed autonomously since about 700 years and has been deeply influenced by several contact languages underway. Also in Europe itself, as a nomadic people, the Romany language underwent intense exchange and influence from European languages. A Northern group of Romany dialects, spoken mostly in the Western and Northern part of Europe, in Poland and the Baltic is the "Sinti", which developed under strong interference from German. There is a Central Romany spoken in Central Europe, Balkan Romany and other varieties. The vocabulary of Romany is deeply influenced by the history of migration, but some 700 words from the Indian origins have survived and also many words from Armenian, Persian and Greek. Today the influence of European languages within Romani is still growing.

### Political restrictions and remedies

European doctrines of minority rights have not been of much help to the Roma so far. The general trend in Europe is that concern for the plight of the Roma is greatest among European institutions, human rights NGOs and national governments. Legislative bodies are less likely to enact remedial policies. And even when they do, local governments are generally the least likely to be concerned about the status of the Roma and sometimes attempt to undermine central government initiatives.

In the town of Usti and Labem in the Czech Republic town councillors sought to build a 4-metre-high wall to seal off tenements populated by Roma. The city of Plzen attempted to resettle hundreds of "socially unacceptable people", a codename for the Roma in a fenced area outside the town. The walls in both places were to be policed round the clock. In a 1997 poll in the Czech Republic, 43 per cent of respondents said that it would never be possible for Czechs and the Roma to co-exist happily, 25 per cent said Czechs should be more tolerant of the Roma, and only 6 per cent thought relations would improve in the next few years.

In two further cases in 2007 Romania and Bulgaria were convicted by the European Court of Human Rights for having failed to pursue justice for Roma victims of violent hate crimes, making it clear that European governments must respond robustly to such acts.

In some cases even the central governments practise overt discrimination against the Roma. The most egregious example comes from Croatia, where Roma are not recognised as a national minority and therefore are denied "nationality certificates", a policy that effectively denies them the right to attend school, the right to employment and sometimes the right to an apartment. Authorities too often tolerate rampant anti-Roma racism and violence, with police sometimes assisting passively without preventing acts of aggression.

On the other hand some Southeast European countries have enacted legislation designed to protect Roma rights and improve their status, but implementation has been made difficult due to prevailing prejudices and social discrimination against Roma and resistance by local governments whose officials often share the same prejudices.

In Macedonia the government has the political will to do something and the ordinary citizens are willing to accept this. Roma are identified as a state minority and acknowledged by leading politicians as one of Macedonia's major nationalities. They also have had some local level success in forming political organisations, electing Roma to the country's parliament, and participating effectively in municipal government. It helps that almost all Macedonian Roma vote. The first reason for this success is the willingness of government leaders to go beyond rhetoric and enact concrete measures to aid the Roma. The second is that negative stereotypes of the Roma are not as strong in Macedonia as elsewhere. In fact, it is argued that the Roma have a better relationship with the Macedonian population because the Macedonians

themselves have been subject to discrimination and are, therefore, more sympathetic. The fact that Roma crime is low may also be a contributing factor. Finally, the divisions among Macedonian Roma are comparatively few.

Also in Bulgaria the accession to the EU triggered some efforts to improve the situation of the Roma with a number of measures: a new health initiative, the training of Romani language teachers, anti-segregation school regulations and increasing Roma representation at the municipal level are aimed at reducing the marginalisation of Roma communities. Integration by enrolling Roma children at all school levels has been in the focus of the Hungarian politics vis-à-vis the Roma issue, along with enforcing anti-discrimination laws. De facto school segregation in Hungary has been ended.

Regardless of central government policies, local authorities in most of Eastern Europe have been criticised for their lack of response to violent attacks that occurred in their presence, authorities do not always investigate attacks, and when perpetrators are apprehended their punishment may be disproportionately light. With this kind of pervasive pattern of state-tolerated discrimination and insecurity, it is not surprising that many Roma have sought refuge in Western European states, not always meeting a better condition as the example of Italy shows. Nevertheless in Italy, after the election victory of the right-wing coalition in April 2008, in various cities anti-Roma demonstrations were held, which ended with arsoning of informal Roma settlements in the suburbs of Naples and Rome. After the accession of Romania several thousands of Roma had migrated to Italy, sometimes settling illegally, but in a tolerated manner. The Italian Government, in order to gain control of Roma migration flows, recently ordered the registration of fingerprints of all Roma children, despite the protest of European institutions and the Catholic church. In Germany many Roma who have constantly settled or even were born there, continue to be denied citizenship. Roma and Sinti are vastly underrepresented in political institutions and their communities are constantly under pressure to move elsewhere.

### New efforts needed to combat the discrimination against Roma

To sum it up, the situation of the European Roma, especially in the Eastern European countries, has worsened since the fall of the communist system. Europe's widely scattered Roma communities remain the

most chronically marginalised groups across Europe. The Roma suffer various forms of discrimination, especially in the labour and housing markets. Some governments have imposed new discriminatory policies on them. Others have sought to improve their status, but most such efforts have been ineffective due to high levels of societal discrimination and a lack of political will and resources. Unfortunately, many Eastern Europeans have used their new-found democratic freedoms to act out deep-rooted prejudices against the Roma. Divisions among the Roma themselves, along with their poverty and limited education, have constrained their ability to challenge governmental and societal discrimination effectively. The prospects are faint in the short or medium term that the favourable conditions that have contributed to the Romas' improved status in Macedonia and Hungary may be replicated elsewhere. If not, the Roma are likely to remain the pariah or dalits of Europe.

#### Links:

<http://www.romaniunion.org>: the International Romani Union (RIU) has observer status with the UN and UNESCO

<http://www.romanationalcongress.webs.com>: the Roma National Congress, umbrella organisation of the Roma civil and human rights movement

<http://www.rroma.org>: information about Roma in Western Europe

<http://www.errc.org>: The European Roma Rights Centre

<http://www.romnews.com>: the "best source on Roma/Gypsies in the Internet"

## 2.4 Europe's indigenous peoples: the Inuit and the Sami

Indigenous peoples constitute a special group among national or ethnic minorities. As it is the case with national minorities, there is no generally accepted definition of the term 'indigenous peoples' in modern human rights law. In some countries terms such as 'Aboriginal peoples' or 'First Nations' are preferred. Two recent international human rights instruments, however, use the term indigenous peoples. The first is the 1989 International Labour Organisation's (ILO) Convention on Indigenous and Tribal People and the second is the UN Declaration on the Rights of Indigenous Peoples adopted on 13 September 2007.<sup>1</sup> The use of the term indigenous peoples in these instruments presupposes the present-day co-existence of another ethnic group that is now dominant, either within the territory of the current state in question, or within an area traditionally inhabited by indigenous peoples. In other words, it is not sufficient that members of an ethnic group are descendants or the original inhabitants of the region or area in question. There must be another ethnic group present in a more powerful situation, before the descendants of the original inhabitants are understood as indigenous in the legal sense of the term. In Europe there are only few peoples, mostly confined to northern and far eastern reaches, which meet this conditions and still maintain traditional subsistence cultures, as the Inuit in Greenland, the Sami in Scandinavia, the Nenets and other Samojedic peoples and the Komi in the extreme North of the European part of the Russian Federation.<sup>2</sup>

The 2007 UN Declaration on the Rights of Indigenous Peoples has been a milestone in the history of indigenous peoples' struggles for their rights and recognition at the international level. The Declaration had been discussed for more than 20 years in the former UN Commission on Human Rights and, later, in the General Assembly, and was passed with 144 votes in favour, 11 abstentions and four votes against. The text recognises a wide range of basic human rights and fundamental freedoms of indigenous peoples. Among these are the right to self-determination, an inalienable collective right to the ownership, use and control of lands, territories and other natural resources, rights in terms of maintaining and developing their own political, religious, cultural and educational institutions, and protection of their cultural and intellectual property. The Declaration highlights

the requirement for prior and informed consultation, participation and consent in activities of any kind that impact on indigenous peoples, their property or territories. It also establishes the requirement for fair and adequate compensation for violation of the rights recognised in the Declaration and establishes measures to prevent ethnocide and genocide. Indigenous peoples all over the world in 2007 celebrated the adoption of the Declaration and used this historic moment to draw attention to their situation and raise awareness within their home countries.<sup>3</sup>

### Distinguishing indigenous peoples from minorities

Indigenous peoples, variously referred to as "indigenous populations", are conceptually distinct from the category of an ethnic, religious, linguistic or national minority, but in practice they overlap because of the common experience of being disempowered, discriminated and marginalised. Minorities, under existing international instruments and standards, are entitled to individual rights. Indigenous rights are both individual and collective rights, the latter being of more relevance. The rights of minorities to traditional lands and the territories they inhabit are far weaker in international (and national) law than the rights of indigenous peoples to such lands. There is no accepted international definition of the legal concept "indigenous". UN human rights bodies declare that indigenous peoples have the right to define themselves and their membership according to their own traditions and customs. The ILO and the World Bank, for instance, state that self-definition as "indigenous" or "tribal" is a fundamental criterion in defining who is indigenous or tribal.

*From: Rita Manchanda (ed.), The No-nonsense Guide to Minority Rights in South Asia, SAFHR, New Delhi 2006*

#### a) Greenland's Inuit

Greenland's Inuit are a very particular case if one is talking about Europe's indigenous peoples. But first of all: is Greenland geographically a part of Europe? Do the Inuit fit in the concept of 'indigenous people' as explained above? If one condition for being qualified as "indigenous" is the presence in the area of another ethnic group, vested with major power, for Greenland this applies only in a limited extent, since Denmark in 1979 afforded a far-reaching territorial autonomy to the island. Having obtained a very special autonomous status within Denmark, self-rule is prevailing in Greenland's

daily life, whereas the powers of the former colonial power, the Danish State, are restricted. This leads to the question whether all geographically non-European territories under administration or sovereignty of European states should be considered as “European”, at least as far as they are included in a European political system.<sup>4</sup> Furthermore, should Russia’s indigenous peoples be considered just limited to the few groups living in the European part of Russia or to all small peoples of the Russian North and Far East subject to the legislation of the Russian Federation?<sup>5</sup> Given the narrow space we concentrate here on the Inuit and the Sami.

Greenland’s population of about 56,000 is composed of 47,000 Inuit and 9,000 Danes. Ethnically and linguistically, the Inuit of Greenland are closely related to the Inuit of Canada, Alaska and Siberia. The majority of them reside in the Southwest and West of the island. Greenland, which has a land area of 2,166,086 sq. km, was originally settled by North American Inuit, and in the 11<sup>th</sup> Century by Scandinavian Vikings. It came under the united Danish-Norwegian Crown in 1380, and under sole Danish sovereignty after the Napoleonic wars in 1814, along with the Faroe Islands and Iceland.

The island remained under Danish control from 1814, as a colony, until the Nazi occupation of Denmark in April 1940, when the United States assumed responsibility for the island’s defence and administration. After the war the island was returned to Denmark and incorporated as an integral part of the kingdom. Its colonial status ended with the new Danish constitution of 1953, which granted the Greenlanders equal rights as Danish citizens, but contained no provision of self-determination of the Inuit. In the 1960s and 1970s, among the Inuit population political awareness of national identity and political rights rose, and consequently, demands for fundamental changes in relations with Denmark. In October 1972, 75 per cent of Greenland’s residents voted against membership in the European Community, but as a result of Denmark’s support for the proposal, Greenland was forced to join. This led to the appointment of a joint Greenland-Denmark commission in 1975 to find ways of granting autonomy or home rule to the island while preserving the Danish sovereignty.

The proposal for a new “Home Rule status” (autonomy) allocated nearly all Greenland’s internal matters to the local political bodies, an assembly and a government. The Home Rule Act of 1979 underwent a general referendum on 1 May 1979. It was approved by a majority of 70.1 per cent of the Greenlanders and hence,

Greenland is presently an autonomous region under the Danish Crown. In April 1979 Greenland elected its first autonomous parliament.



<http://en.wikipedia.org/>

The new autonomy provided Greenland with a major measure of autonomy in its foreign trade relations. Thus, in February 1982 Greenland held a referendum on its membership to the European Community (EC) as apart of Denmark. A total of 53 per cent of Greenland’s electorate voted against membership of the EC, and consequently, with effect from 1 January 1985 Greenland altered its relationship with the EC to that of an overseas territory.

Greenland has a technologically advanced fishing sector and also important subsistence-based hunting and small-scale fishing economy. In addition Greenland receives an annual block grant from Denmark, covering a substantial part of public expenditures. There are important mineral, oil and gas resources which could in a close future make Greenland economically self-sufficient.

As other indigenous peoples of the Arctic region Greenland’s Inuit are now alerted by the climate change. Over 4,500 years the Inuit have survived by adapting to the icy environment. But, according to the UN Arctic

Climate Impact assessment, the Arctic is warming twice as fast as the rest of the planet. The accelerating melt of the ice and permafrost has a direct effect on their lives and damages infrastructure; villages are not anymore connected by an icecap. In Northern Greenland the Inuit mostly still rely on fishing and hunting to survive. The Arctic melt is vastly reducing the habitat for seals, polar bears and walruses. Warmer waters are leading to shifts in populations of fish species. Not only the Inuit's livelihood is at risk, but also their unique culture. Hunting, ice-hole fishing and dog-sledding are at the core of Inuit identity. Even as southern Greenlanders shift to potato cultivation and sheep herding, the new opportunities do not fill the hole of their cultural loss.

## b) The Sami in Scandinavia

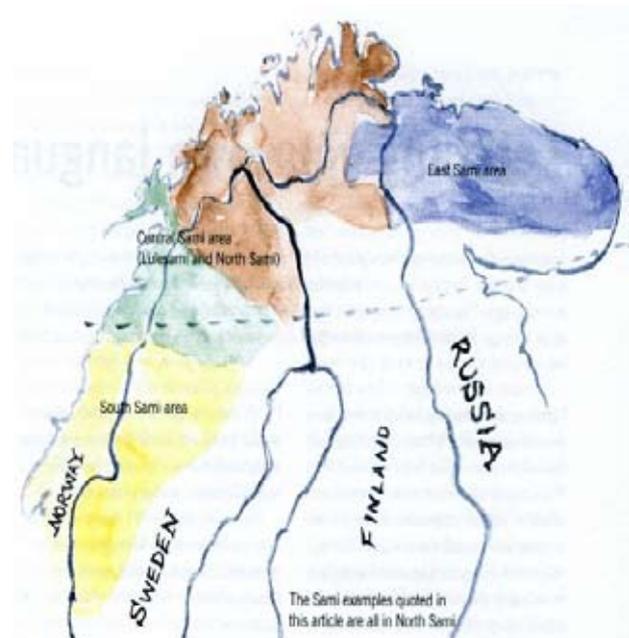
The only indigenous people of Europe's mainland are the Sami, who live in the northern part of Scandinavia and large parts of the Kola Peninsula. Politically, the Sami are represented by three Sami Parliaments, one in Sweden, one in Norway and one in Finland, whereas on the Russian side they are organised in NGOs. The first Sami Parliament session was held in 1989. In 2000, the three Sami Parliaments established an umbrella council of representatives between them, called the Sami Parliamentary Council.

There is no reliable information as to how many Sami there are, but according to Christoph Pan<sup>6</sup> there are 93,000, whereas the Swedish Samediggi gives the figure of 70,000. In Norway a linguistic survey of 1999 found that 23,000 people speak the Sami language, but the real number of Sami is estimated to be much higher.<sup>7</sup>

The Sami's traditional homeland covers large parts of Northern Scandinavia. Their lands were traditionally used for reindeer herding, fishing, hunting and gathering, but in recent decades their territories came under growing pressure of mining corporations, hydropower stations and military activities.

The North-western part of Sweden is based on the Sami's traditional territory. There are three specific laws governing Sami rights in Sweden, namely the Sami Parliament Act, the Sami Language Act and the Reindeer Herding Act. The Sami Parliament in Sweden is not only an elected representation body of the Sami people, but also a governmental authority in charge of implementing the policies and decisions of the Swedish Parliament and government. The Sami Parliament has

to decide on the distribution of state subsidies to Sami culture, to lead work on the Sami language, to take part in social planning and to provide public information on all aspects of Sami life. Only in 2007 the Swedish Sami Parliament was also endowed with issues related to reindeer husbandry, the registration of Sami villages, the determination of Sami grazing areas, membership questions to Sami, the branding of reindeers and holding a register of those brands. Thus the Parliament received administrative duties, but no fundamental powers.



*"Sápmi", as the Sami call their land, comprises 157,487 sq. km in Northern Scandinavia and the Kola Peninsula with about 70,000-93,000 Sami.<sup>8</sup> (Source: Sami Parliament)*

In Norway the Sami are recognised as a people by the Constitution (Article 110a). Norway's Sami have a parliament (Sámediggi), whose members are directly elected from the Sami. The Samediggi regulates its business within the framework laid down by a state Act of Norway (the Sami Act). Norway has ratified all relevant Human Rights Conventions and the ILO Convention No. 169 on Indigenous Peoples. One crucial issue for the Sami – as for indigenous peoples in all continents – is the disposition and use of land and water in their traditional homeland. In 2007 in Norway a special commission was formed to map land and resources in order to allow the state to identify and recognise existing rights in the Sami area. One option is the transfer of significant parts of the land area owned by the state into "Halogaland" (common land), which means a local and regional ownership. The Norwegian "Finnmark Act" gave the Sami a stronger position. The aim is always that the indigenous people, the Sami, should participate in

the management of land areas and natural resources. The Norwegian government regularly is consulting the Sami Parliament on laws and administrative initiatives concerning also the Sami society. The Sami in Norway have achieved the right to raise objections to planning processes that considerably disturb the Sami livelihood and resource base.

In 2000 Norway established a “Sami People’s Fund”. Originally this fund was not accepted by the Sami Parliament until some requirements were fulfilled, mainly the issue of compensation for the elder generation who had suffered Norwegianisation in the 20<sup>th</sup> century. In 2005 the first compensation issues were agreed and the very first instalments of the fund are being disbursed in 2008. The expenditures were earmarked for three main areas:

1. Revitalising the Sami language and culture, among parents and children;
2. Projects of documentation and protection of traditional knowledge;
3. Publishing of Sami literature.<sup>9</sup>

Finland treats its approximately 7,000 Sami as a national minority rather than an indigenous people. This approach is proven by the current disputes over the Sami reindeer-herding territories in Finland’s Samiland, also called Sápmi. The Finnish Sápmi regulations differ from those in the Norwegian and Swedish Sápmi areas, as reindeer herding is not an exclusive right of the Sami. Thus, the Finnish state interprets citizenship with equal rights for everyone. There is a mounting resistance among the Sami against logging corporations, which is one of Finland’s economic backbones.

Forced relocation was common in Sami areas throughout the early 20<sup>th</sup> century as the state expanded its industrial developments. This historical industrial colonisation of Sami lands has led to internal conflicts between some Sami groups. The problem of the appropriation of Sami lands by the forestry industry and devastating impact of forestry and other industrial activities persist. Hence, one important challenge is the need to involve the Sami people in developing new legislation on land ownership, land use and reindeer herding in traditional Sami areas. Still there are no formal negotiations between the Finnish state and the Sami organisations and communities. There are just talks between state authorities and the Sami communities directly affected in order to develop new laws and governance structures for the Sami areas, without touching the general question of Sami land rights.<sup>10</sup> This probably is the main reason, why reindeer

herders are excluded from current negotiations. Finland still upholds the classical doctrine that equal rights mean the same treatment of all citizens. But the situation is more complex as it looks. While both Sami and ethnic Finns practise reindeer husbandry, ethnic Finns generally prefer reindeer farming as a more industrial form of reindeer herding, whereas traditional Sami herding is based on free-grazing and natural pastures. Due to increased industrial development in Sami areas (logging, mining, roads, etc.) also the Sami have been forced to combine the two methods and some have completely adopted the “reindeer farming”. The current Reindeer Herding Act makes no difference between the two forms. But, as provided in the UN Declaration on the Rights of Indigenous Peoples, equality and the recognition of indigenous rights is achieved through recognising difference, not ignoring it. Thus the IWGIA criticises Finland which considers itself a neutral actor without any vested interests and does not recognise the past injustices and the state-sanctioned industrial colonisation of Sami-land.<sup>11</sup>

In 2005 a draft ‘Nordic Sami Convention’ was presented to the governments of Norway, Finland and Sweden, endorsed by all three Sami Parliaments. The issues addressed in the Convention are going on between the ministries concerned of the three countries. There are several conflicts over reindeer grazing areas. A Norwegian-Swedish convention prevents the Sami to carry out cross-border grazing, although traditionally they did not have to respect these borders. Now the two states are working on a new reindeer herding convention. The Sami in Sweden also demand that the Swedish government improve protection for traditional Sami reindeer herding territories, as they are facing increasing pressure on traditional grazing lands for mining and wind-power developments.

The language of the Sami, a part of the Finno-Ugric language family, is endangered. By far not all Sami still speak the Sami language. Nevertheless, the authorities in all three countries make a substantial effort for the use of Sami language in the education system, print information and audio-visual media. The Norwegian Broadcasting Corporation transmits through the Sami Radio about 300 hours of programmes in the Sami language per year, its Swedish counterpart about 220 hours a year. Some of the programmes are not limited to the traditional Sami territories on account of settlement by the Sami in other parts of Sweden. Both countries also include occasional programmes in Sami on television. As for Finland, it inaugurated a new Sami radio station in

Lapland in 1991. In addition, some radio programmes are transmitted to Sami-speakers in all three countries, and there is also trilateral co-operation on programme production in Sami language. In Norway, children in those municipalities officially designated as forming the Sami administrative area, are entitled to receive teaching in or of the Sami language, and the municipal council may make such teaching compulsory. Outside the Sami districts children with a Sami background may also receive instruction in Sami provided that a minimum of three Sami-speaking pupils in a school so request.

The Sami, along with other Arctic peoples, are also affected by the world-wide climate change. In Northern Scandinavia the warmer temperatures have brought about an increase of mosquitoes. Mosquito-borne parasites are increasingly infecting reindeer herds and thus pose a serious threat to the traditional Sami herding culture. Arctic peoples, co-ordinated in the Arctic Council Indigenous People's Secretariat, and in the Inuit Circumpolar Conference (ICC) denounce that the climate change is affecting their lives and threatening their cultures.

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Christina Johnsson, Minderheiten und indigene Völker in Skandinavien, in: Pan/Pfeil, Handbuch der europäischen Volksgruppen Band 3, Vienna 2006, p. 389-410  
 Sami Parliament/Swedish Ministry of Agriculture (in cooperation with the Sami Information Centre), *The Sami – An Indigenous People in Sweden*, Vasteras 2007 (to be ordered on: [www.samer.se](http://www.samer.se))  
 Alexandra Xanthaki, Indigenous Rights in the Russian Federation: The Case of Numerically Small Peoples of the Russian North, Siberia and Far East, in: *Human Rights Quarterly*, Volume 26, number 1, February 2004

#### Useful links:

<http://www.arcticpeoples.org> : The Arctic Council Indigenous Peoples' Secretariat is a support secretariat for the International Indigenous Peoples Organisations that are permanent participants to the Arctic Council.  
<http://www.utexas.edu/courses/sami> : an encyclopaedia in miniature of Sami history, livelihood, culture, literature  
<http://www.iwgia.org>: The Indigenous World – Annual Report 2008  
<http://www.samer.se>: Information portal of the National Sami Information Center  
<http://www.sametinget.se>: the Swedish Sami Parliament website.  
<http://www.un.org/esa/socdev/unpfii/index.html>: Website of the UN Permanent Forum on indigenous issues

<http://www.raipon.org>: RAIPON is the Association of the Indigenous Peoples of the North and Far East of the Russian Federation

- 1 See the full text of the UN-Declaration on the Rights of Indigenous Peoples, 13 September 2007 on: <http://iwgia.org/graphics/Synkron-library/Documents/internationalProcesses/DraftDeclaration/07-09-13ResolutiontextDeclaration.pdf>.
- 2 More information about Russia's indigenous peoples at: <http://www.raipon.org>
- 3 IWGLA, *The Indigenous World - Report 2008*, editorial, p. 10; available at: <http://www.iwgia.org>
- 4 This would refer in particular to France's overseas territories, the *Departements d'Outre Mer* like Guyana, Réunion, Martinique and the *Pays d'Outre Mer* like New Caledonia and French Polynesia. These islands and former colonies are home to various indigenous peoples.
- 5 In the European part of Russia especially the Nenets and Samojedic tribes in the Ural region and Komi-Permjaks and the Komi-Zyrjans in the Republic of Komi would be concerned.
- 6 See Christoph Pan, *Sprachenschutz*, *EJM* n.1/2008, page 14; and <http://www.samer.se>: Information portal of the National Sami Information Center.
- 7 See IWGLA, *The Indigenous World 2008*, p.24.
- 8 Ministry of Agriculture of Sweden/Sámediggi, *The Sami – An Indigenous People in Sweden*, Vasteras 2007.
- 9 See <http://www.samediggi.no>
- 10 IWGLA, *The Indigenous World 2008*, p.36.
- 11 IWGLA, *The Indigenous World 2008*, page 37.

## 2.5 The Balkans: the challenge of national minorities after the splitting up of Yugoslavia

Which minority issues are today afflicting the area after the violent turmoil of the 1990s and the break-up of former Yugoslavia? The countries of former Yugoslavia since 1991 experienced 17 years of splitting up in nation-states, but now the challenge of protecting national minorities is just beginning. The Western Balkans comprise those countries as resulting from the map below, including Albania, Greece, Bulgaria and the European part of Turkey. Sometimes also parts of Romania, Moldavia and Slovenia are included in that geographical area. All the states of the Balkans are home to a considerable number of national minorities:

After four wars leading to disintegration of Yugoslavia (Slovenia 1991, Croatia 1991-1995, Bosnia-Herzegovina 1992-95, Kosovo 1998-99 and a proxy war in Macedonia in 2001), after the expulsion of millions of civilians and the “ethnic cleansing” of entire regions from the Croatian Krajina to Kosovo, after acts of genocide and at least 250,000 war victims, the former federal state of Yugoslavia is completely dismantled and the multiethnic structure of this country geographically slightly modified, but at least six of the seven new nation-states emerged from the ashes of Tito’s Yugoslavia have a high percentage of national minorities or are still multinational, such as Bosnia-Herzegovina. The dream of a “Greater Serbia” has definitely vanished, and on the contrary it hit back on its propagators when even the federal republic of Serbia-Montenegro broke up in 2006 (independence of Montenegro) and 2008 (independence of Kosovo). The Milosevic-regime and its nationalist ambitions, mainly responsible for the politics of aggression and occupation of the 1990s in the Balkans, collapsed and transformed Serbia in a kind of “rump-Serbia” which is still home to a dozen of national minorities.

Table 6 – National minorities in the states of the Balkans

<i>States</i>	<i>Total population</i>	<i>Number of minorities</i>	<i>Total population of nat. minorities</i>	<i>FCNM ratification</i>	<i>ECRML ratification or signature</i>
Albania	3,069,275	5	86,000	Yes	○
Bosnia-Herzegovina	3,364,000	5	259,000	Yes	○
Bulgaria	7,928,000	12	1,620,000	Yes	–
Croatia	4,437,360	14	329,000	Yes	✗
Greece	10,260,000	7	229,000	No	–
Kosovo*	2,000,000	7	260,000	No	–
Montenegro	672,000	5	399,000	Yes	✗
Macedonia	2,022,547	5	602,000	Yes	○
Serbia	7,498,000	12	888,000	Yes	✗
<b>Total</b>	<b>37,257,582</b>	<b>72</b>	<b>4,672,000 (12.5%)</b>		

Source: figures taken from last available census according to Christoph Pan/Beate S. Pfeil (2003), *National Minorities in Europe*, Vienna 2006; ECRML: ✗ratified, ○signed.

\*Kosovo’s population and minority figures only can be estimated. Kosovo’s accession to the FCNM is very likely, but its independence has been declared only on 17 February 2008.

Also parts of Slovenia, Romania, Moldavia and Turkey sometimes are geographically included in the area of the Balkans. Here we preferred to consider the Balkans in a stricter sense.



Source: wikipedia

Finally, in 2001 the bi-national reality of Macedonia could also be tackled with the support of NATO and EU, paving the way to a peaceful solution.

The Treaty of Dayton (1995), focused on solving the Bosnia-Herzegovina conundrum, brought about a practice of double standards in terms of human rights, rule of law and democratisation. The national communities inside Bosnia-Herzegovina had to accept a strict regime of international control, but the directly involved neighbour states of Croatia and Serbia were exempted from complying with such duties as the return of refugees, extradition of war criminals and respect of the rights of minorities. There was also an inherent contradiction with the aim of enforcing human and civil rights of the whole population, and on the other hand promoting economic recovery of the area. As a matter of fact the huge flow of financial aid, public credits and economic co-operation funding supported much more the old nomenclature and power elite, responsible for the disaster rather than the common people, their previous victims. So many people who suffered from the years of war and discrimination felt betrayed by this kind of “peace and stability”.

The area of the former Yugoslavia and the Balkans in terms of ethnic composition is a kind of “European miniature”, mirroring the ethnic diversity of the continent. States and nations are not overlapping, but intermingling, and all attempts to “harmonise” territory and population more or less failed in a double sense:

not all Serbs, Croats, Muslim Bosnjaks and Albanians are now united in respective national communities, but are still spread over several states. The organisation in sovereign states of the Balkans since 1991 has changed considerably, as instead of five states in 1991 there are now 11 independent states including the Republic of Kosovo, but many ethnic conflicts remain and the number of national minorities has been multiplied. The big challenge of the whole area of former Yugoslavia is to find new institutional arrangements for the co-existence of several ethnic groups in some multinational states as Bosnia-Herzegovina and Macedonia and to create generous and reliable legal systems for the protection of national minorities in the remaining states. A simple lesson to be drawn of the bitter experience of separation is this one: all the peoples of the Balkans remain neighbours – in so many cases in a very literal sense, living closely together house to house, village to village – and have to regulate their relationship on the basis of human rights, mutual understanding and co-operation, regardless of the new state borders. There is no alternative to the laborious process to achieve new, binding regulations for the coexistence and protection of minorities. The international community, mainly the EU, can accompany and foster this process, but cannot act as a substitute. On the ground, politics is handled by the people. When the EU established the ‘Stability Pact for South East Europe’ in its ‘Declaration of Sarajevo’ in 1999, the state parties and supporting states of the stability pact of the Balkans signed on the official commitment to “preserve the multinational and

multiethnic diversity of the countries of the region”.<sup>1</sup> This announcement hasn't been just a declaration of goodwill, but reflects an absolute political necessity in all of those states, if long-term peaceful development is to be ensured.

### Which conditions for a new balance?

Political stability does not only result from a positive economic development. Civil rights, democratic rights and freedoms and minority rights are further major conditions. Thus, all new and old states of the Balkans including the “old democracy” of Greece have to build up a new political and ethical relationship with their internal ethnic and religious minorities. If in the past such minorities were looked upon as peoples to be controlled, contained, discriminated against or even assimilated, today this would be incompatible with a perspective of good inter-state co-operation in the Balkans and a future membership of the EU.

Nobody should have too romantic an image of the former multinational Yugoslavia, which often has been compared to federal and multinational India. In Tito's state, too, majorities have subtly excluded some minorities from each kind of political position, deprived others of their economic resources, and failed to put entire peoples such as the Albanians on an equal footing with the other constituent peoples of Yugoslavia. After Tito, Serbia's two barely working autonomy systems in Vojvodina and Kosovo have been rapidly dismantled, marking the beginning of the existential crisis of the whole federation. Also before Tito state politics often were aimed to assimilation, forced population transfer or systematic aggression against entire groups.

In Romania and Bulgaria during the communist era national minorities enjoyed a very low level of protection; and later some of them such as the numerous groups of Roma became scapegoats for the economic hardships and easy victims of a new nationalism. This nationalism tried to fill up the ideological vacuum left by the communist regimes. Finally also Greece, a NATO and EU member since 1981, excelled in discriminating against its ethnic minorities as it even does not recognise any of them.

Which are the most important problems linked to ethnicity to be tackled in the Balkans today?

- The future status of those parts of Northern Kosovo still under Serbian control, and of the Serbian enclaves protected by KFOR after Kosovo's

independence

- A just settlement of minority rights in newly independent Montenegro
- The protection of the rights of various ethnic groups (Hungarians, Croats, Romanians) in the previously autonomous Vojvodina
- The rights of Muslims in the Sandjak (Western Serbia bordering with Montenegro) and of the Albanians in Southern Serbia (Presevo)
- The protection of smaller minorities in Macedonia (Turks, Roma) and the improvement of territorial arrangements for the Albanians
- The protection of the Serbs in Croatia and their right to return in their previous area of settlement in the Krajina region
- The return and reintegration of refugees within Bosnia-Herzegovina; the relationship between the two entities (Republika Srpska and Muslim-Croat Federation) and of the ethnic groups within those entities
- The protection of smaller ethnic minorities in Bosnia-Herzegovina (Muslims in the Republika Srpska and Roma in all cantons)
- The protection of fundamental rights and social and economic upheaval of the Roma in the whole Balkans
- The rights of the Turkish minority in Bulgaria
- The ongoing debate about the rights and status of the Hungarian minority in Romania, in particular in the areas of the Szeklerland
- The need for recognition and protection of minorities by Greece (Pomaks, Aromanians, Albanians, Slavo-Macedonians, etc.)

All the new states, former parts of Yugoslavia, are parties of the above-mentioned ‘Stability Pact for South East Europe’, founded on 30 July 1999 in Sarajevo under the patronage of the OSCE. This process, although a little late, tries to meet the challenge of building a stable peace and co-operation with support of the European community of states. But there are no great powers sitting around the table to decide the fate of nations and peoples as in the Balkans Conference of Berlin in 1878, which was responsible for so many failures in the past, but all states concerned as well as the “supporting states” and international organisations (NATO, UN, UNHCR, World Bank, IMF) including the EU, the USA and the Russian Federation. In this context, the stability pact is working along three major sectors: democratisation and human rights, economy and security.<sup>2</sup> This political framework is serving primarily to enhance the bilateral and multilateral co-operation

among the Balkan states concerned. Referring to the regulation of ethnic conflicts and protection of national minorities, the Sarajevo declaration comprises just very general principles such as:

- The protection and enhancement of human rights
- The development of structures of the rule of law and democratic institutions
- The institution of independent media
- The safe and unhindered return of all refugees to their homes
- The protection of ethnic and national minorities
- Friendly and peaceful relations of good neighbourhood, reconciliation and economic co-operation

How is the protection of national minorities interpreted and translated into positive provisions? Basically four concepts of conflict regulation are currently applied:

- 1) Bilateral and multilateral forms of state government
- 2) Territorial solutions
- 3) Minority rights
- 4) Consociational arrangements of power sharing

Political structures and legal provisions had to be elaborated, based on those principles.

### Bilateral forms of conflict regulation

Especially if national communities rely on a kin-state, those states also have to be involved in the conflict regulation (Serbia and Albania in Kosovo, Croatia and Serbia in Bosnia-Herzegovina). The aim is to prevent that kin-state use its co-national communities in the neighbour state as a tool of confrontation or even aggression. One possible means to regulate such a conflict is the stipulation of bilateral agreements, obliging both state parties to protect the respective national minorities and to establish joint commissions to monitor the process. In all states of the Balkans there are national minorities living with a kin-state. Thus all of them are encouraged to enter into such agreements, especially Albania, which has minorities in Serbia, Montenegro and Macedonia, and Macedonia with Bulgaria and Greece, Serbia with Croatia, Bosnia and Montenegro.<sup>3</sup>

In order to foster this process of bilateral and multilateral co-operation the EU reiterated that all those countries would be accepted as EU-member states, provided that their bilateral problems would have been tackled. Therefore no state in the Balkans could anymore consider its national minorities as a mere "internal affair", but the minority question henceforth was officially considered a legitimate part of the bilateral relations of the states

concerned. The kin-state cannot anymore be blamed of "interference in domestic affairs", if it addresses serious questions raised by the co-nationals concerned within the partner-state. In return the kin-state is committed to fully respect the existing borders and not to support any kind of irredentism or separatist activities.

By that way, on the one hand strong guarantees for existing borders are ensured, and on the other arrangements can be found which make the frontiers more pervious and "soft": this is of particular importance for such minorities which have been cut off their kin-folk and kin-cultural area for many decades. Transborder contacts can be revitalised, transborder co-operation fostered and interregional institutions can be founded in order to improve the cultural exchange, labour market and economic co-operation. Ethnic Albanians, for example, in all of the five states of presence (Montenegro, Serbia, Kosovo, Albania and Macedonia) through such arrangements can be allowed to run common civil "pan-Albanian" institutions and organisations with the consent of all involved host-states (Montenegro, Macedonia, Serbia). Muslims in the whole of Balkans should be allowed to create their umbrella organisations as a part of their freedom of religion and association under the ECHR.

Territorial solutions in the sense of changing de jure existing state borders, after the declarations of independence of Montenegro (2006) and Kosovo (2008), seem to have come to an end in the Balkans, although especially in the Republika Srpska there are still strong voices advocating secession from Bosnia and integration into Serbia. Territorial solution could rather refer to the establishment of new forms of local administrative autonomy or to the restoration of the regional autonomy of the formerly autonomous Serbian province of Vojvodina. It can not be excluded that for the most Northern part of Kosovo, inhabited by ethnic Serbs, an autonomy solution or an accession to Serbia proper will be envisaged.

### Minority rights

Irrespective of bilateral or multilateral treaty obligations it is a central duty of all governments in the Balkans to ensure a comprehensive protection of minority rights. This can be entrenched in the respective national constitutions, as well as in general state laws or specific sector legislation (e.g., minority rights in education, media, public administration, political representation

and other areas). Three categories of rights should be distinguished:

- a) Provisions against discrimination (ethnic, religious, linguistic grounds): members of the minorities must not be discriminated against.
- b) Cultural rights: all members of a minority community should be enabled to work freely for developing their cultural identity, language, religion and traditions. These rights include the right to public education in the mother tongue, media in minority languages and the right to use this language in interaction with public administration and in the judiciary.
- c) The right of participation and self-administration: minorities should be enabled to be politically represented and to participate in decision making concerning their region. They should have a right to autonomous local administration and participation in legislative and executive institutions where minority interests are addressed. They should be with provided organs of self-administration (councils, local parliaments) for exercising cultural autonomy. These are very flexible instruments which can by law be tailored in its details to requirements of each single minority situation, according to the size and settlement pattern of the minority group concerned (Hungary and Slovenia with their comprehensive minority regulations are good examples of how such arrangements can be applied successfully). In Hungary 13 groups are benefiting from such rights, whereas Slovenia's minority laws provide all basic services and rights just to two groups: the Italians and the Hungarians.

In Hungary the ethnic minorities have the right to establish local administrations. These forms of self-administration follow the principle of personal autonomy: it represents all members of a given ethnic community irrespective of their residence. These institutions can be fully or partially identical with the ordinary municipality if in a community more than 50 per cent of the population belong to that minority. Otherwise the members of the minority vote their own representatives. The organs of local self-administration are endowed with several rights regarding information, initiative and consensus by voting: moreover they are in charge of administration of cultural affairs and the education system of the respective ethnic group; they decide on radio and TV programmes in minority language, the financing of secondary schools and the constitution of separate cultural and research institutions.

For some multiethnic regions like the Vojvodina, Eastern Slavonia, Northern Kosovo and some parts of Bosnia, this Hungarian model could be interesting. There should be, however, a 'Charter of minority rights in the Balkans', with a special focus on representation and self-administration which could do both in comparison to the general European framework conventions: be more precise and compulsory in all issues of minority rights. The implementation in domestic law and politics would be monitoring by international commissions with control mechanisms similar to those requested to the state parties of the FCNM. Most of the Balkan states today show a considerable delay in meeting their obligations under the FCNM, and Greece has not even ratified this convention. Positive developments can be observed in Romania (since 1996) and in Bulgaria (since 1997), both members of the EU since 2007.

### Consociational democracy

The basic idea for consociational democracy is that two or more ethnic groups or communities agree on formal and informal rules to share the power and in daily practice stick to it taking all relevant decisions in a joint manner. There is a certain pressure to reach a consensus based on:

- a) Constitution of a power-sharing executive, having all groups represented in the government;
- b) A quota setting for each relevant public organ and position in order to represent all groups in a proportional manner (parliament, government, higher ranks of administration, judiciary, armed forces). The quota is usually determined according to the population ratio.
- c) Veto rights in order to allow each group in case of important issues to block a decision and obtain compromise.
- d) Forms of autonomy: each ethnic group with regard to its "internal affairs", such as culture and education, can rule itself (self-administration) within autonomous institutions.
- e) Mechanisms of conflict settling through appropriate commissions, arbitration and mediation.

Consociational democracy has been a guideline for the architecture of the new Bosnian federal state. The current political system of Bosnia-Herzegovina is an attempt to combine such elements of conflict regulation, although the state is divided into two entities, on the central (federal) level all three constituent groups – the Serbs, Muslims (Bosnjaks) and Croats – have to share

the power. In addition there is the “High Representative of the EU”, who often has to decide as the mentioned troika does not reach any compromise. In such cases not consociational democracy is practised, but reciprocal blocking. In this situation it seems necessary to limit the veto powers of the single groups in both the “state presidency” and the two chambers of the parliament, for instance limiting it to amendments of the constitution or on the budget approval. Also the decision-making process in Northern Ireland and in South Tyrol offer interesting examples of institutionalised power sharing. Such forms of consociational democracy could be useful also in some parts of the Balkans, as for instance in Kosovo, Montenegro, in the Vojvodina and in the North-western region of Macedonia. In the latter case a double power-sharing mechanism can be set up: in all municipalities with an Albanian majority the local Slavo-Macedonian minorities obtain the right to representation and participation in decision making; whereas on the central level the most representative Albanian parties have to be involved in the government. The EU stability pact has to foster the institution of both such devices: local self-administration with cultural autonomy and consociational forms of power sharing. By that way the characterising feature of the political ethnography of the Balkans, namely that often a group is a majority in one region, but a minority in the contiguous one, could be used in a constructive manner bringing the whole system in a more stable balance.

Basically history is an open process, and all actors, be it a state, a political party or an ethnic community, are able to learn from history as other Europeans did, in sometimes very painful and long-lasting processes. South East European countries now, also under the perspective of integrating in the family of states united in the EU, are on this way. They are under strict observation, but also supported by European institutions. Peace and stability has still to be consolidated, but one major pillar of this new structure will be a high standard of minority protection.<sup>4</sup>

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1 See <http://www.stabilitypact.org>.

2 See <http://www.stabilitypact.org>.

3 See also chapter 4.7 on bilateral agreements.

4 For instance the Bulgarian president Petar Stojanow apologised to Bulgaria's Turks for the assimilation policy during the 1980s. In Mostar the “stari Most”, the old bridge and symbol of Islamic presence in Bosnia, destroyed by Serbian troops, was rebuilt with the support of the EU. Such symbolic acts are useful, but not enough.

## 2.6 Europe's Muslims: a "religious minority"?

Europe in terms of religion is not just the equivalent of the "Christian Occident". The historically dominant Christian faith is divided into three major churches, the Roman Catholic, the Orthodox and the Protestant. Within the latter several autonomous churches have been established. The about two million European Jews are scattered over many European countries and cities. Buddhism among Europeans is a fast-growing religion, while also "Neopagan religions" and so-called "free churches" are attracting more believers. A considerable part of the European population does not profess any religious faith.<sup>1</sup>

In some European countries such as Kosovo, Albania and Bosnia-Herzegovina, Islam remained the dominant religion; in other countries of the Balkans several autochthonous national minorities are Islamic by historical tradition. In most Western European countries Islam is gaining more momentum mostly as a result of the migration flows from other countries, which reached the continent during the last four-five decades. Due to the naturalisation of migrants and the presence of the second and third generations of migrant families, born in the European countries, Islam is no longer just a

"religious aggregation of immigrants", but a growing European religion, seeking recognition and participation. The rising importance of Islam comes at a time when a general trend of steady secularisation, privatisation and individualisation of religion and a weakening of the traditional churches' social and political influence can be observed in many countries.

The Muslim presence in Europe has different roots in single parts of the continent. In the Balkans the Muslim population is an autochthonous part of the ethno-religious patchwork which came into being under the Ottoman Empire. In three Balkan states Islam is the prevailing religion, but also in Bulgaria, Serbia and Macedonia considerable historical minorities profess Islam. By far the numerically strongest Muslim minorities live in Russia (around 14.5 million), again most of them as autochthonous peoples as the Tatars, Bashkirs, Chechens etc. In Spain Islam for about seven centuries was flourishing in Andalusia, now due to immigration 700,000 Muslims are living in Spain again. It should be stressed that in many cases the Islamic religion is intertwined with ethnic-cultural features. Many Muslim national minorities in Eastern Europe are distinct from the majority population not just by the Islamic faith, but also by other relevant ethnic features as for example the Tatars, the Caucasian and Turkish peoples, the Albanians. In Western Europe, in turn, the Muslim communities are composed by – apart from some converted Western

Europeans - people immigrated from all continents, speaking dozens of different tongues, with a differing cultural, economic and social background, just sharing the same religious belief. They do not conform as "national" or "ethnic minorities" in the sense outlined in chapter 1.1, but if at all as a religious community.

Generally, unlike the South Asian Islamic and the Arabian countries, religion in Europe is separated from the state and almost all states' constitutions do not recognise any "state religion". The religious communities are expected not to interfere directly in politics. In some Eastern European countries, however, after the dissolution of the communist system, religion has gained new attention and



strength in society: the Orthodox churches became staunch defenders of national values phrased in religious terms, sometimes degenerating into intolerance and chauvinism. Generally speaking, however, the European states, as enshrined in the ECHR and in the EU constitutional treaty, are secular states – except the Vatican – with a more or less clear separation between the state (public) affairs and religious affairs, which are prevailingly taken care of by autonomous communities or churches. The presence of large groups of Muslims in Europe due to immigration, crosscutting ethnic or national groups, does not question the very secular character of these states, but raises the question, whether such religious communities are accepted with equal rights and duties as the established churches, whether they are vested with all rights and duties as pertaining to other religious groups and whether there is a need for protection of this relatively new group against collective discrimination, as it has been necessary for centuries for Jewish communities. Is religious freedom guaranteed for all in Europe? Can migrant communities freely exercise their religion? Which rights can be claimed from public institutions under the omen of religious freedom?<sup>2</sup>

## Religious diversity and the right to religious activity

Under the ECHR (Article 9) everybody legally residing in a CoE member state has the freedom of thought, conscience and religion. This includes, without discrimination among religions by the states, the freedom to manifest religion in worship, teaching, practice and observance. This fundamental right articulates in

- the right for private life and minority lifestyle (Article 8)
- freedom of thought and religion (Article 9)
- freedom of expression (Article 10)
- freedom of assembly and association (Article 11)
- the right to education (Article 2/prot.1)
- the anti-discrimination clause
- the respect for religious convictions of the parents within the public school system (Article 2/prot.1). This means education provided in an objective, critical and pluralist manner.
- the right to run private schools and impart religious teaching

Table 7 – Muslims in Europe (estimated figures for 2004)

Country	Total number (estimated)	Country	Total number (estimated)	Country	Total number (estimated)
Andorra	4,400	Norway	80,000	Slovenia	47,448
Belgium	400,000	Sweden	250,000	Serbia	1,600,000
Germany	3,293,000	Italy	1,000,000	Czech Republic	20,000
France	5,500,000	Portugal	12,000	Turkey (Europ. part)	5,900,000
United Kingdom	1,500,000	Spain	700,000	Hungary	70,000
Ireland	4,000	Malta	4,500	Cyprus	200,000
Liechtenstein	1,527	Albania	2,100,000	Finland	15,000
Luxembourg	9,000	Kosovo	1,500,000	Iceland	321
Netherlands	1,000,000	Bosnia-Herzegov.	2,000,000	Macedonia	750,000
Austria	350,000	Bulgaria	1,100,000	Romania	150,000
Switzerland	330,000	Greece	140,000	Russia (Europ. part)	14,000,000
Denmark	117,000	Croatia	56,777	Latvia	380
Poland	7,500	Lithuania	5,100	Total	42,713,953

Source: Zentralinstitut Islam-Archiv Deutschland; <http://islam.de/8368.php> and [www.islamicpopulation.com/europe.general.html](http://www.islamicpopulation.com/europe.general.html). This source gives a figure of 25 million Muslims in Russia, which is clearly overestimated. According to the last Russian census there are 14.5 million Muslims living in Russia in a total population of 142.5 million. By estimate 14 million of them live in the European part of Russia.

If the population of Europe is estimated with 690 million (including only the European parts of Russia and Turkey), the share of Muslims, again including only those living in the European parts of Turkey and Russia, on Europe's total population would make up 6.2 per cent.

In the European Union, according to this source, there were 15,890,428 Muslims in 2004 (3.5 per cent of the total population of the EU-25). See also <http://www.timesonline.co.uk>.

These general principles have to be translated in juridical provisions. Such provisions could be, for example:

- The duty of public authorities to inform the religious communities and organisations about their rights and chances for funding for particular religious and cultural activities.
- Public regulation of religious activities. Where there is a religious presence in the public space (e.g., prayer rooms at airports or train stations, burial facilities and graveyards, road sign posting for religious centres, etc.) all religions should have access to such facilities.
- Access to public funding of religious activities: all religious communities should have equal access to resources, for example funding for building community halls, multi-religious chaplainries in prisons and hospitals.
- Special requirements for social services: Health and social services have to respect the expectations of specific religious communities, especially in dietary requirements and in services for women.
- The right to benefit of subsidies for private schools: there is no obligation for the states to fund private religious schools. But if the state finances such schools it must open up this opportunity to all religious groups.<sup>3</sup>

Yet, such legal provisions do not always already conform as rights entrenched in State acts, but rather as claims submitted by religious communities. Moreover, equal treatment of all religious communities by the state is not matter of course in all European countries. Many, sometimes well-covered forms of discrimination of religious communities, composed mostly of immigrants, are frequently reported.<sup>4</sup> Often the building of places of worship is prevented by public authorities or unacceptably delayed, public funding for schools and charitable activities denied for arbitrary reasons. Tax exemptions and financing of religious centres through the income taxation is not being applied equally. Certificates of Muslim private schools are not being recognised and Islam cannot be taught in public schools. Muslims therefore call upon the governments to apply the same provisions for tax concessions for charitable or religious activity and training which established churches and other communities are benefiting of.

On the other hand some fringes of the European population are reacting with suspicion and fear to the growing presence of Muslim people and religious activity. Certain manifestations of religions of immigrants and specifically of Islamic groups are perceived as

undermining democratic and pluralist societies. As examples for such differences often are quoted, opposite views on the separation between state and religious institutions, e.g., in education, the relationship between civil law and religious law, the role of women in private and public life, the dress requirements (the disputes on scarves in public service), worshipping days and praying during the working hours and festivity traditions (animal slaughtering), the relationship between the freedom of expression and the protection of religious feelings (debate about the caricatures offensive to Islam) can be quoted. For a number of reasons a public debate is going on in many countries about how to integrate the new Muslim communities into the European society.

### Muslims in the EU and in the UK

Considering Muslim communities living in Western Europe a culturally or socially homogeneous group would be far from reality. These communities trace their origins to a wide range of home countries, with differing historical, linguistic and cultural features and different Muslim religious traditions (Shia, Sunni, Alevites etc.). Some communities have been settled in Europe for decades and have attained citizenship, but there are also many Muslim non-citizens and migrant workers among the 25 million foreign citizens living in the EU (2004). Muslims in Western Europe came in large numbers from Turkey, Algeria, Morocco and Tunisia, Pakistan, India, Bangladesh, some Arab Middle Eastern and African countries (Somalia and Eritrea for Italy), from the Balkans, Indonesia and in smaller numbers from several developing countries with a majority of Muslim population. In Britain, France and the Netherlands, colonial links and relevant rules about the admission of nationals of former colonies created a surge in the 1950s and 1960s to the flow of immigrants from South Asia, Northern Africa and the West Indies. Apart from a certain number of asylum seekers (e.g., Kurds from Iraq, Iran and Turkey) and refugees (from Bosnia-Herzegovina, Kosovo, Palestine) the basic driving force of these migrants was the perspective of a better job, income and living standard, hoping to accumulate savings with which to return to their home countries after a few years. Due to the bleak perspectives of development in many countries of origin there has been a general tendency for them to settle down permanently, seeking family reunification and citizenship.

Muslim immigrants to European countries basically share the problems which migrants generally are faced

with: the hardships of the labour market, the difficulties to find an adequate accommodation, conflicts with the authorities referring to the legal status and its duration, generally high living costs for bigger families, the exclusion from political participation and the challenge to learn one or more European languages. But with regard to other aspects of life, Muslim immigrants differ from migrant groups coming from countries with a Christian background or as individuals not professing any religion: values, customs and lifestyles of Muslim immigrants often are deeply shaped by their religious belief. When faced with the values, life-style and behaviour patterns of European liberal democrats, with different gender roles, civil law and individual freedom many Muslim migrants experience a kind of culture shock, pushing them to be more protective of culture and customs devised by Islam. By parts of the society, in turn, this behaviour is considered as a refusal of "integration", confusing cultural assimilation with social integration. Research shows that Muslim immigrants often face more distrust, hostility and even discrimination than other groups. Islamophobia has been fuelled particularly by the attacks of 9/11 in the USA (2001) and later terrorist attacks by young resident Muslims in Spain (2004) and UK (2005). An increase of religious tension and debate over Islam and its impact in the European society could be observed. A poll in Summer 2007 found that British citizens currently were more suspicious of Muslim communities than any other peoples in the EU as 38 per cent viewed Muslims as a "threat to national security". Conversely, Muslims feel prompted to seek support from their own communities, not formed on ethnic or linguistic features, but on the common faith. By consequence, among all migrant communities, the Muslims coming from other continents are the most prone to gather around their religious life and "religious identity", for sure much more than the migrant communities in the EU originating from other European countries and other continents such as Latin America, organised along national lines.

### Are Muslims discriminated against as such?

Many Muslims communities appear to experience disadvantages and discrimination on the basis of their religious affiliation, and there are clear indications that levels of tension with the majority over the rights to express Muslim identity are rising, particularly since the events of 11 September 2001.<sup>5</sup> But it is difficult to substantiate the extent of discrimination against Muslims, as little data have been collected using religion

as an indicator. However, detailed statistics compiled by the UK government on the situation of racial and ethnic communities indicate higher levels of disadvantage among predominantly Muslim Bangladeshi and Pakistani communities with regard to education, employment, health and social services, and in the criminal justice system, suggesting a need for targeted policies to address the possibility of religious discrimination in the delivery of public services.<sup>6</sup> No comprehensive and reliable statistics on this issue are yet available in the EU, but the 2006 report of the EUMC on the discrimination of Muslims indicates some clear patterns of disadvantage among Muslim communities in some EU-countries.<sup>7</sup>

Apparently existing EU anti-discrimination structures are not sufficient to provide sufficient protection against these forms of discrimination. Though Article 13 of the Treaty on the EU prohibits discrimination on grounds of religion and belief as well as race and ethnic origin, the EU-Race Directive covers only the latter two categories and does not comprise discrimination on religious grounds.<sup>8</sup> Thus, a government may be in compliance with the Race Directive and yet fail to ensure adequate protection to Muslim residents. By contrast, the EU-Employment Directive does require member states specifically and explicitly to prohibit direct and indirect religious discrimination in employment. Also in education, housing standards and other social indicators, the analysis coming from empirical social research is not unequivocal. Where apparently religion seems to trigger discrimination, cases of unequal or unfair treatment can be caused by ethnicity, race or language as well. It has to be carefully analysed whether such discrimination is occurring on strictly religious or on ethnic or racial grounds.<sup>9</sup>

The Racial Equality Directive is yet to be fully implemented in the EU member states.<sup>10</sup> This directive makes effective, dissuasive and proportionate sanctions as a response to ethnic or racial discrimination mandatory. The UK has the most comprehensive system for recording racist crime in the EU. It records more publicly reported incidents and criminal offences than the other 26 member states combined in any year. Other countries, which have implemented a relatively effective legislation fighting ethnic discrimination in the EU, are Bulgaria, France, Ireland, Italy, Hungary, Romania, Finland and Sweden. Some member states collect specific data on anti-Semitic crime and crime with an extremist right-wing motive, but no data are available for crimes specifically due to Islamophobia. Therefore the EU has been urged to include such a clause in an amended version of the Directive.<sup>11</sup>

## Minority rights to Muslim communities?

A large number of Muslim immigrants are there in Europe to stay. Their presence is already having a transformative impact on some EU member states' religious diversity and the character of some urban areas, which in the past had been dominated by Christian community life. As the second or third generation of Muslim immigrants frequently have become citizens, a similar surge in the number of Muslim citizens can be expected in the near future due to family reunifications and demographic development. In 2008 there are almost 17 million Muslims living in the EU, equivalent to 3.4 per cent of the resident population. Demands upon the state to protect and ensure particular services in relation to education facilities, health services, traditional festivities, religious institutions, etc., are increasing. At present, majority institutions, even when they are formally neutral or secular, often implicitly favour the culture and religion of the majority. For example, Christmas, Easter, and other religious holidays are celebrated as public holidays; religious symbols and rituals are often used in public schools and during state ceremonies; and school curricula are informed by Christian traditions and history, even in schools with few, if any, Christians. As more and more Muslims have obtained citizenship, demands upon the state to protect and preserve their identity in relation to education, language, media and political participation, the traditional objectives of minority rights regimes, have increased steadily.

In a number of European regions and urban areas Muslims from different cultural or national background constitute large communities who perceive themselves as "minorities". But are the grievances of Muslim communities an issue of "religious rights and freedoms", covered by the ECHR and constitutionally ensured fundamental rights, or is there a requirement for "minority protection" under the state's legislation covering national and ethnic minorities? Some authors suggest that the traditional definition of minority should be re-examined if it is to retain relevance and utility in modern Europe.<sup>12</sup> But no EU-member state recognises the existence of a "Muslim minority" on its territory, at best the Muslims are afforded the same rights as other religious communities and churches. The UK, though it has adopted an inclusive definition of ethnic minority, does extend minority protection to "ethnic minorities", but not to Muslims as such or other faith communities. The idea to grant the Muslim communities an official minority status, comparable with national linguistic minorities, for Europe's mainstream political doctrine is still unacceptable.

Most European states do not apply the provisions recommended by international conventions (such as the FCNM and the ECRML) to "new minorities" of recently immigrated persons mostly without citizenship, but exclusively to so-called "autochthonous" (historical) minorities.<sup>13</sup> On the other hand, religious groups, no matter whether immigrated or autochthonous, can be recognised as "religious communities" in order to benefit of some rights and advantages reserved by State law for such groups.

Thus, the Muslims in Europe are generally dealt with a double approach: on the one hand there is the fundamental freedom of religion and thought and the principle of non-discrimination, by which the state has to ensure its secular character and not discriminate among religions when according public supports or issuing general provision on religious activities and communities. On the other hand, when the EU acknowledged that Islamophobia is a phenomenon akin to anti-Semitism, the definition of racial discrimination was enlarged to include discrimination on religious grounds. Appropriate legislation was drafted in the Amsterdam Treaty (1997), which came into effect in 2003. The new Article 13 enables the Council to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. However, this new legislation does not offer a comprehensive religious discrimination law similar to that existing for racial or ethnic discrimination even though its purpose is to outlaw discrimination on religious grounds.<sup>14</sup> A new EU-Directive including such a provision is expected.

## Equal rights and non-discrimination

First, Europe upholds the fundamental issue of secularism as the state's interest which has to be balanced against the individual right to freedom of religion. In this legal doctrinal approach the state has a role of neutral and partial organiser of the exercise of religious faith, allowing freedom of expression and of association and ensuring mutual tolerance between religious communities. The central guideline in Europe is this one: the state has to respect and protect all religious beliefs as long as they are not contrary to the European Human Rights Convention and the respective constitution, and if it actively intervenes in religious affairs, it has to accord equal treatment to every community.<sup>15</sup>

Second, the European Human Rights Court ECOHR rejects the idea of a plurality of legal systems, as exist,

for example, in India (the special civil law provisions for Muslims). This means that rules inspired by religion, as the Shari'a, in private law are prohibited, since this would be incompatible with the unity of the law system, democracy and equality of rights. Such a system would be discriminatory and in contrast to the role of the state as guarantor of individual rights and freedoms. In terms of fundamental rights – typically equality of rights between genders or prohibition of discrimination on the basis of gender – there cannot be established a parallel legal system in the European systems of rule of law. Whoever chooses to live in a European country is free to exercise one's religion, but cannot claim a different regime of civil law. For this reason obviously everywhere in Europe it is impossible to adopt the Shari'a as a political and legal system and any kind of self-justice based on the Shari'a, as happening in some major European cities, is liable to attract legal action by state authorities. Political parties advocating the application of the Shari'a (and being in the position to introduce it, as in Turkey, where such a case has been brought before the ECOHR) can be legally incriminated and prosecuted.

Some cartoons and articles published in European media, which offended the religious feelings of Muslims, recently have provoked an enormous outcry in large parts of the Muslim world. The Danish cartoons depicting, among others, the prophet Mohammed as a terrorist were seen as a grave violation of the duty to protect religious faith and tolerance. But in Europe this principle has to be balanced with the fundamental right on freedom of thought and expression. The ECOHR, while upholding the legitimacy of raising topics of public interest, "requires to avoid as far as possible expressions that are gratuitously offensive to others without contributing to public debate and without furthering progress in human affairs, especially if the region concerned is inhabited by a high number of persons affected by the offensive expressions." Finally the Court has legitimised sanctioning and/or preventing forms of expression that spread, incite, promote or justify hatred based on intolerance, including religious intolerance.<sup>16</sup>

Summing it up, Europe's international and supranational institutions frequently make reference to fundamental and overarching principles and ends, as preserving cultural diversity and ensuring social cohesion in a peaceful framework. The approach of assimilation or discrimination of national and religious minorities has been banned. Europe embarked on the way of social integration and the protection of minority identities. Individual and group identities in Europe are created

and transmitted from generation to generation mostly around linguistic and ethnic features rather than religion. As we have seen, the predominant "minority rights issue" in Europe is that of the "national, linguistic or ethnic minorities". With well-proven legitimacy these minorities claim to be recognised as a group and to be endowed with collective rights. As outlined above, when recognising national minorities, the states are expected to grant a complex set of proactive provisions and protection measures, which in some cases touch also a different territorial organisation of power sharing and political representation. No such discourse is accepted with regard to 'religious minorities', whereas "... states cannot refuse to recognise a minimum of core rights, in line with the ECHR and the Strasbourg Court jurisdiction to religious communities".<sup>17</sup> Therefore the issue can be divided into two distinct questions: are Muslims individually or collectively discriminated because of their faith? Are Muslim communities granted all religious rights and freedoms granted to other religious communities? On both issues Europe is called to maintain both its secular tradition and respect and enforcement of human and minority rights, actively combating discrimination on religious grounds and granting equal rights and treatment for all religious communities.

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- 15 Roberta Medda-Windischer states in this regard: "The state has no obligation to fund religious schools, yet if the state chooses to provide public funding to religious schools, then it must provide it to other religions too, without discrimination."
- 16 Roberta Medda-Windischer, *Old and New Minorities*, Medda, p. 10.
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Source of the map on religions in Europe: [www.wikipedia.org](http://www.wikipedia.org)

## 2.7 Nationality based exclusion: the Russians in the Baltic States

By Karina Zabielska



Source: <http://www.lib.utexas.edu/maps/commonwealth/balticstates.jpg>

The term “Baltic States” refers to the three republics situated at the Eastern coast of the Baltic Sea: Lithuania, Latvia and Estonia. Despite the fact that those three countries differ much from each other in terms of history and culture, they are still similar enough to be analysed and brought up together. Subsequently the term “Russians in the Baltic States” or “Baltic Russians” is used referring to Russian nationals (ethnic Russians) inhabiting one of those three republics.

Lithuania, Latvia and Estonia obtained independence after World War I in 1918, but on the basis of the Molotov-Ribbentrop Pact of 1939 they were annexed by the Soviet Union (USSR) in 1940. During World War II the Baltic States fell under control of Germany and after the war became again a part of the Soviet Union. The Baltic States regained their independence in 1991, after the collapse of the Soviet Union and immediately started the process of integration with Western Europe. They joined the UN and OSCE in 1991, the Council of Europe in 1993 (Lithuania and Estonia) and 1995 (Latvia) and the European Union in 2004.

In 1992/1993 the OSCE missions to Estonia and Latvia were established with the main objective to further promote integration and better understanding between the communities in those countries. The mandate of

these missions expired in 2001. The Council of Europe's FCNM was ratified by Estonia in 1997, by Lithuania in 2000 and by Latvia in 2005.

### The Baltic States under Soviet occupation

The Soviet Union, founded in 1922-24 as the successor of the Russian Empire, was conceived as a country of different nationalities. However, the idea of a multi-ethnic federal state with autonomous territorial units was implemented only as far as this was allowed by the concept of restricted linguistic and cultural autonomy, which later revealed to be aimed at subsequent Russification.

After the World War I the Baltic States experienced large-scale immigration from other Soviet Republics, mostly the Russian Federation. Most of today's Russians in the Baltic States are those who immigrated during the Soviet times and their descendants. The majority of these immigrants came as military personnel or industrial factory and construction workers. These waves of migration from other USSR republics were meant as an act of colonisation aiming at slowly russifying the autochthonous population. On the other hand the region offered better living conditions compared to other parts of the USSR, which also encouraged many Russians to move in the Baltic states.

During the period between the World Wars the titular nations in the three Baltic republics constituted a clear majority. In 1938 Estonians constituted 88.1 per cent of the total population of Estonia (8.2 per cent were Russians), Latvians in Latvia made up 75.5 per cent of the total population (Russians 10.6 per cent) and Lithuanians in Lithuania 83.9 per cent (Russians 2.5 per cent). But due to the war, deportations, immigration from other Soviet republics, and the policy of Russification, during the Soviet times the nationality proportions changed considerably. At the point of regaining the independence in 1991, in Latvia there were only 52 per cent of Latvians and 34 per cent of Russians (together with other ethnic Slavic immigrants 43 per cent) and in Estonia 61.5 per cent Estonians and 30.3 per cent Russians. In Lithuania the titular nation constituted 75 per cent of the total population, whereas the Russians were just 10 per cent and the Polish nationals 8 per cent.

During the Soviet times the titular nations of the Baltic States in terms of social and political power became virtually minorities in their own land, just vested with

some linguistic and cultural rights. The languages of the Baltic nations were to a big extent eliminated from the public sphere (public administration, media, etc.) and replaced by the Russian language. This obviously fostered the Russification, whereas the Russian immigrants saw little motivation for learning the local languages: in 1989 only 22.3 per cent of the Russians in Latvia claimed proficiency in Latvian language, in Estonia 13.7 per cent and in Lithuania 33.5 per cent. These proportions changed after the restoration of independence. In 2000, already 58.5 per cent of the Russians of Latvia declared proficiency in the Latvian language.

### Russians in the independent Estonia, Latvia and Lithuania

The language issue in the Baltic States turned to be one of the most important factors mobilising masses to support the independence movements in the late 1980s. The domination of the Russian language constituted a real danger for the Lithuanian, Latvian and Estonian languages that were threatened to become minority languages in their titular countries. Additionally, as mentioned above, the change of the demographic constellation raised the danger of losing the linguistic identity by the titular nations of the Baltic States.

Therefore, the newly restored states of the Baltic in 1991 focused predominantly on the promotion and preservation of the national languages and the protection of majority population on the one hand and softening the consequences of the half-century long Russification on the other. Starting with 1991 the Russian and Baltic nationals changed roles: whereas the Russians became a minority also on the cultural and political level, the titular nations of the Estonians, the Latvians and Lithuanians regained the status of dominant majority peoples. However, 50 years of Soviet regime still influence deeply the interethnic relations in those three young states.

Some of the Baltic Russians, mainly those who had not lived in the Baltic states for a long period of time, left those countries at the beginning of the 1990s, being also motivated by the new authorities to do so. Those who stayed faced problems with adaptation to the new political reality and policies of the newly established republics. The most problematic issue with regard to the Russian population was the question of citizenship on the one hand and of the minority (in this case Russian) language on the other. Today, Russians live mainly in big cities of the Baltic States, where the industry was developing and so the immigrants were settling there. The table below indicates the new ratio between the respective titular nations and the ethnic Russians.

### Citizenship

Estonia and Latvia, when regaining independence, followed the so-called legal continuity approach. According to this assumption, the Estonian or Latvian citizenship was automatically awarded only to those residents (and their direct descendants) of the republics, who had possessed it before the annexation of 1940. Consequently, all Russian nationals who arrived in both republics after World War II were not awarded the citizenship and had to apply for naturalisation, what however required the fulfilment of quite demanding conditions, inter alia good knowledge of the national language and history of the state. The difficulties of the initial language tests became a matter of international contention. Not only Russia, but also the Council of Europe and human rights organisations denounced the new language requirements as too severe, asserting that these provisions for many (mostly old) Russians constituted a serious obstacle to acquire the citizenship. Consequently the tests were simplified, but nevertheless a big number of Russian nationals in Latvia and Estonia could not yet acquire the citizenship of those countries (65 per cent in Estonia and 43.5 per cent in Latvia). Lithuania, where the percentage of national minorities

Table 8 – Ethnic Russians in the Baltic States in 2008

	<i>Number of inhabitants</i>	<i>Titular nation</i>	<i>Russian nationals</i>	<i>Share of resident ethnic Russians with the state's citizenship on total Russian resident population</i>	<i>Other major minorities</i>
Estonia	1,307,600	68.6%	25.7%	35 %	Ukrainians, Belarussians
Latvia	2,268,600	59.6%	28.1%	56.5%	Belarussians, Ukrainians, Poles
Lithuania	3,361,100	84.6%	5.1%	over 90%	Polish (6.3%), Belarussians

Source: <http://www.wikipedia.pl>

is lower than in two other Baltic countries (around 20 per cent out of which 5 per cent comprise Russians), chose quite a liberal approach for awarding Lithuanian citizenship and so around 99 per cent of the country's inhabitants have the citizenship.

In the three Baltic States only the citizens may enjoy the minority status. In Latvia additionally the stateless persons, who permanently and legally live in the country, may enjoy the rights provided by the FCNM under reserve of legally provided exceptions. Therefore a significant number of minority members in Estonia and Latvia are considered just "foreign immigrants" who are not entitled to enjoy the rights of national minorities and are excluded from political participation. In addition, lacking citizenship, ethnic Russians in Estonia are not entitled to establish profit-oriented organisations like commercial enterprises.

### The language policy

Within the second half of the 20th century, the Baltic languages and the Russian languages changed roles from minority to majority language twice. During the Soviet times Russian played the role of majority language in all public affairs and after the restoration of independence became a minority language. However, since for a number of inhabitants of the Baltic States it is still the first language, in the Baltics it still plays an important role in daily communication. The change of roles between the Russian language and the three Baltic languages is still in process. Therefore education of state languages is one of the biggest priorities and challenges in the three young republics.

Soon after the restoration of independence, the language legislation in the three Baltic States underwent substantial changes in terms of imposing restrictions regarding the use of the national languages on the one hand and Russian language on the other. In Estonia and Lithuania new language laws were adopted in 1995 and in Latvia in 1999. Language legislation focused mostly on the protection of the state languages, since these languages were spoken by a relatively small number of people. Additionally, the national majority languages of the Baltic States perform a symbolic function constituting an attribute and a significant emblem of sovereignty. Furthermore, eradication of Russian from public use symbolised also eradication of Russian domination and emphasised new geo-political orientation towards Western Europe.

The promotion of the state languages – Estonian, Latvian

and Lithuanian – is primarily based on restrictions, such as language requirements in employment, obligatory use of the state language in certain areas (public authorities, informational signs, etc.) and operation of governmental or parliamentary bodies monitoring the implementation of language legislation and thereupon punishing the breaches. The use of minority languages is in general restricted to private, cultural and religious life and activities. The oral communication in the state entities might proceed however in the minority language, if both sides master it.

In education, in Latvia and Estonia, generally the state languages are used. In framing special minority programmes, the curricula might be offered in other languages. In any case, however, a part of the subjects has to be taught in the state language. Latvian authorities aim at introducing 60 per cent of the high school subjects to be taught in the respective state languages. Estonia also aims at absorbing the minority schools, first of all those run in Russian language, in the state education system and offers most of the subjects in the state language in order to integrate the national minorities' pupils in the society. In Lithuania minority schools offer the whole curricula in minority language with the exception of the state language education. However, the number of Russian schools has decreased significantly since 1991. On the other hand the number of Polish schools has increased.

In general, it can be stated that the higher the proportion of Russian nationals in each of the Baltic States, the more rigorous the linguistic policy of the country. Lithuania took the most liberal approach, whereas Latvia, the most diverse state among the three, follows the most restrictive policy.

### Conclusion

In August 2007 the ethnic Russians, inhabitants of the three Baltic States, jointly formulated a resolution calling for developing opportunities to integrate them more easily and stopping discrimination. They expressed the need to preserve Russian as the language of instruction and to promote the Russian language and culture. Official state policies of Estonia and Latvia aim at the integration of minority (including stateless persons) members into the society. This policy is primarily based on the teaching of the state language. However, despite growing bilingualism among the minority members, the language issue remain a dividing factor and therefore a conflict potential in all Baltic States, mostly in Estonia and Latvia, to a lesser extent in Lithuania. Due to

the integration with Western Europe, membership in Council of Europe, OSCE and since 2004 in the EU many positive developments took place. It can be expected that the more the countries get integrated into the EU and the stronger they manage to dissociate from the Soviet past, the more liberal the minority policy in the future will be. On the other hand the better the Russian nationals master the state language, the better are their chances to acquire the citizenship of their country.

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# 3

A Roundlook  
on Minority Rights  
Country by Country

## Introductory remarks

# The importance of minority protection on the national level

The recognition and protection of ethnic groups, linguistic communities, minority languages and national minorities is in Europe fundamentally an issue of state level politics. Based mostly on constitutional provisions, which is not yet a general rule, the national parliaments of the single European states approve state acts either for comprehensive regulations regarding the rights of all national minorities of that state, or for the regulation of rights and provision referring to a specific national minority. Such national state acts, in turn, may enable the central governments to take action for promoting and protecting minorities, or may delegate the issue to a lower governmental level (regional, provincial, municipal), depending on the single state's political structure. In Italy, for instance, apart from the presence of five regions with special autonomies established in response of the claims of various national minorities, the central state has enacted a general provision to meet its obligations under Art.6 of the Constitution where the protection of linguistic minorities is enshrined (State Act on Linguistic Minorities No. 482/1999). But the implementation of such a provision, as in many other European states, is demanded to lower government levels, in the Italian case to the so-called "Regions with an ordinary statute". The political representation of national minorities in parliaments and governments and the international implications of the presence of national minorities are, however, features typically retained in the powers of the centre.

Most of the European states had launched some interventions to recognise and promote national minorities (or "regional languages", "local traditions" or "lesser used languages") many years before the first international covenants were discussed and came into force (1992 – UN Declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities, 1994 – the FCNM and the ECRML). Territorial autonomy has been accorded to some specific regions in not less than 11 European states mostly by national laws or constitutional provisions. Apart from two cases based the first on an international entrenchment (Finland's Åland Islands) and the second on a bilateral agreement (South Tyrol), this has been

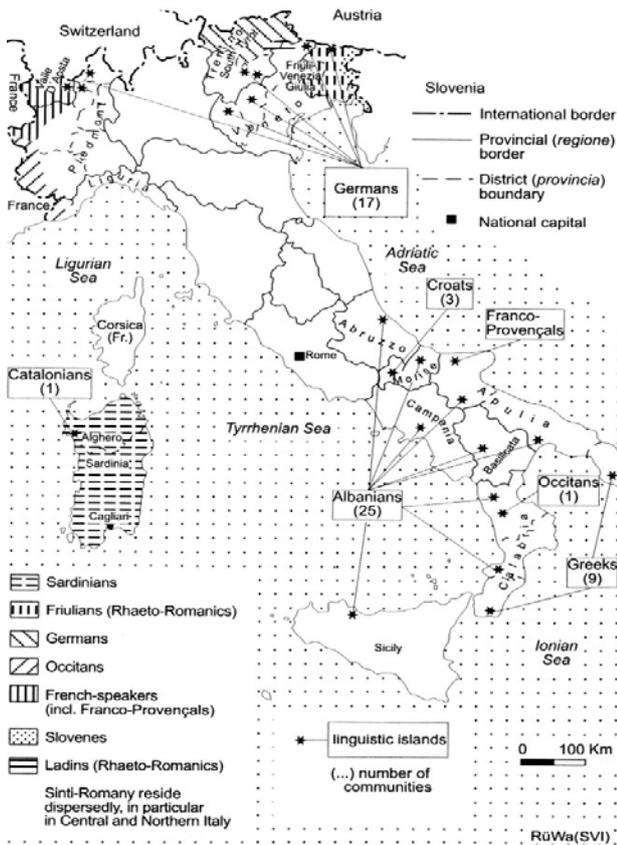
a matter of domestic law. Language policies have been a permanent important issue of the national political agenda in such states with major ethnic communities or smaller peoples as Switzerland, Belgium, Spain, the United Kingdom, and before 1989 Yugoslavia. But it was only in the 1990ies that the need to achieve a certain harmonisation and entrenchment of national minority rights on a continental level in the form of international conventions, ensuring a common minimum degree of protection in the whole area of the CoE, strongly emerged.

Hence, as for the legal basis of minority protection by the states and regions there is a considerable complexity of legislation, made up by national and regional acts of general or just sector policy nature (for instance acts referred only to minority languages, or to the field of education, or to the public administration or to minority rights before courts, etc.<sup>1</sup>) and the related enactment decrees and provisions. A broad field of comparative analysis and evaluation is waiting for the researcher with considerable differences and gaps in the type and quality of the protection and of the corresponding state undertakings. Some more transparency has been provided by the bi-annual reports each state party to the FCNM has to deliver periodically to the Council of Europe.<sup>2</sup> But still an enormous work lies ahead if the politics of recognition and protection are to be critically evaluated and compared. Also when discussing later (chapter 4) the European international instruments of minority protection, the crucial role of domestic law and state government policies has to be kept in mind, if paper work and reality are to be critically compared.

In the following section, 9 states have been chosen as examples of national regulations of national minority issues. The selection is based on two criteria: on the one hand the level of development of minority rights, on the other the location of the respective countries in Eastern or Western Europe. The continent is not anymore politically divided, but it cannot be denied that in the new democracies of Eastern Europe for decades a different approach to minority issues had been applied.

### 3.1 Italy

#### Minorities in Italy



Source: Rüdiger Walter - SVI

Titular group and minorities	Total	In %
Total population	56,305,000	100
Italians	52,876,900	93.3%
Sardinians	1,269,000	2.2%
Friulians	526,000	0.9%
Germans	304,000	0.5%
Occitans	178,000	0.3%
Sinti-Roma	130,000	0.2%
French-speakers	111,600	0.2%
Albanians	98,000	0.2%
Slovenes	60-80,000	0.1%
Ladins (Raetoromanians)	43,000-57,000	0.1%
Catalans	20,000	
Greeks	18,000	
Croats	2,600	
<b>Total minorities</b>	<b>2,794,000</b>	<b>4.9%</b>

Source: C.Pan/B.S.Pfeil, *National Minorities in Europe*, Vienna 2003

Italy, home to 12 “linguistic” minorities, is one of the few European states which has enshrined the protection of ‘linguistic minorities’ in its constitution (Article 6). Generally the legal concept of ‘ethnic or national minority’ in Italy is referred to as ‘linguistic minority’, which are recognised as distinct groups in cultural and historical terms, which have a right to preserve their

identity. Not only individuals belonging to a linguistic minority are the subjects of protection, but the minorities as such, considered as a part of the cultural and historical heritage of the whole community. Italy’s minorities can be divided in three distinct groups:<sup>3</sup>

- a) Minorities, who live in national border regions and due to historical reasons share a common culture and language with the population of a respective kin-state (the Franco-provençals in the Aosta Valley, the German-speaking Tyroleans in South Tyrol, the Slovenes in Friuli Venezia Giulia).
- b) Minority groups with an old tradition in different regions (Albanians, Catalans, Greeks, Croats, Occitans) and regions whose traditional languages are not always spoken, but appreciated by a large part of the respective regions’ population (Sardinia, Friuli).
- c) Roma (Gypsies) or Travellers living mostly in Northern and Central Italy in a rather semi-nomadic or semi-resident way.

The first group is benefiting of a far-reaching protection in the framework of regions with special autonomy statutes, established by the constitution and enacted by state law or enactment decrees. In the Aosta Valley and in South Tyrol there is full parity of the state’s official language and the minority’s language. Unlike the Aosta Valley South Tyrol’s autonomy is also entrenched on the international level, namely on the Italian-Austrian Peace Treaty of 1946. Also the protection of the Slovene minority settling in the North-eastern region of Friuli-Venezia Giulia has an international origin resulting from treaties with former Yugoslavia. In order to establish a comprehensive protection of the Slovenes a Framework State Act for the Slovenian minority has been approved in 2001.<sup>4</sup>

The second category of minorities is scattered over at least 10 regions. Interestingly the Friulans, a Raetoromanian ethnic group, and the Sardinians, one of the oldest Neolatin languages, are probably a majority of the population of their respective region (Sardinia and Friuli-Venezia Giulia), but the language is not any more spoken by all resident people who are “feeling Sardinian or Friulian”. In all those cases the degree and quality of the protection is far below under the level of recognition provided by the autonomy statutes of group a).

The heterogeneous and not compactly settling group of the Roma (Gypsies), besides being a historical cultural minority with Italian citizenship, are also a kind of social minority. Their situation with regard to social integration,

economic welfare and cultural rights is particularly precarious, as also in other European countries. Since 1984 several Italian regions have started to set forth specific regional laws and programmes in order to foster their social integration and cultural emancipation.

For several decades Italy's government maintained that the protection of linguistic minorities under Article 6 of the Constitution was fulfilled by granting autonomy to the three border regions mentioned above. Only in the 1980s more juridical and administrative powers related to minority issues were transferred to the ordinary regions (without special autonomy statute). Hence, since about 25 years a more systematic regional legislation was set forth, especially focused on the cultural and educational requirements of the linguistic minorities not protected so far.<sup>5</sup>

There is a clear difference in the quality and degree of the protection of minorities between the few national minorities which benefit of a territorial autonomy (Germans and Ladins in South Tyrol and Trentino, Francoprovincials in Val d'Aosta, Slovians in Friuli Venezia Giulia) and those minorities who depended exclusively on some irregular financial subsidies from regional institutions which were never really matching the task to protect them effectively from assimilation. Only in the 1990s those "second class minorities" could gain more ground thanks to Italy's ratification of the FCNM and the ECRML. Starting with Sardinia various regions (Friuli, Basilicata, Molise, Sicily) followed with respective regional acts for the protection of linguistic minorities. Finally Italy realised that a state framework law for the protection of ethnic minorities was unavoidable and thus such a law was approved in 1999, 50 years after the constitution of the Republic.<sup>6</sup> This law created the foundations for effectively enhancing the application of minority rights for the Albanians (Arbereshe), Frankoprovincials, Friulians, Greeks, Catalans, Croats, Occitans, Sardinians and Germans and Ladins outside Trentino-South-Tyrol.

### Which rights do the minorities enjoy?

In the given space only the most important rights of Italy's linguistic minorities can be briefly mentioned with particular regard to the linguistic and educational rights. First of all the minorities to be protected are one by one recognised as such, excluding the Roma. The territorial extension of the applicability of these rights was left to the provinces and municipalities. In 2001

not less than 725 (out of a total of 8000) municipalities officially declared to be "municipalities with linguistic minorities", situated in 14 regions, 29 provinces.<sup>7</sup> The law No. 482/1999 reiterates the general prohibition of any discrimination, but does not accord any territorial or administrative autonomy to provinces or municipalities. The perspectives of cultural survival and development strongly depend also on the economic situation of the respective region and the financial capacities of the municipality concerned. Albanians, Greeks and Catalans, also Sardinians living in Southern Italy are faced with considerable lack of funding, while minorities in the relatively wealthier northern regions of Piedmont, Friuli-Venezia Giulia and Veneto enjoy better conditions. Nevertheless also the Occitans, Frankoprovincials and Friulians, despite their major total number, have to struggle to achieve the legal and financial means for their cultural empowerment.<sup>8</sup>

With regard to the language issue, there are five minority languages actually recognised as 'co-official languages': French in the Autonomous Region of Aosta Valley, German in South Tyrol, Ladin in the Ladin area of Trentino and South Tyrol, Slovenian in the province of Trieste, Gorizia and Udine and finally Friulian in the whole Region of Friuli-Venezia Giulia. In 1996 a Regional Law of this North-eastern region accepted the Friulian language as a co-official language, allowing all inhabitants to address the public administration in their language, either Italian or Friulian (or in some parts also Sloven). A total of 176 out of 219 municipalities are recognised as minority municipalities, covering 80 per cent of the whole regional territory. The municipalities with a Slovenian minority follow a different procedure of recognition:<sup>9</sup> Fifteen per cent of the citizens entitled to vote or one-third of the municipal councillors have to apply to the so-called 'paritetic commission', which can declare the recognition, which is to be confirmed by the President of the Republic. In all of those municipalities and provinces the members of the recognised linguistic minorities can interact with the public authorities of that level in their language, in both oral and written form. Also in the organs of those institutions the minority language is allowed. All official documents of the state, the region, the province and the municipalities can be produced in bilingual form. Especially the nine regions with ordinary statute have still to accomplish with most of such obligations.

The use of the respective minority language is allowed also in some parts of the judicial proceedings within the area of settlement of a recognised minority. As far as toponyms are concerned four regions vested with

special autonomy (Aosta Valley, Trentino-South Tyrol, Friuli-Venezia-Giulia, Sardinia, but not Sicily) by Constitutional Law No. 2 of 23 September 1993 are entitled to regulate the subject freely, while respecting the international obligations. Whereas the Aosta Valley and Sardinia are widely or completely applying monolingual toponyms, in South Tyrol and Friuli-Venezia Giulia bilingual toponyms have to be used by law. But if 15 per cent of voters of a given municipality with a linguistic minority claim bilingual toponyms, they have the right to obtain such a provision by the local authorities. In Sardinia 211 out of 377 municipalities have been declared as 'minority regions' (55 per cent of the whole territory). The Occitans are living in 109 municipalities of Piedmont. The most scattered minority is the Albanian, present in 46 municipalities: 27 in Calabria, five in Basilicata, five in Sicily, four in Molise, three in Puglia, one in Campania and one in Abruzzi.

The national minorities in Italy's border regions since many decades have the right to public education in their mother tongue, but the application is rather different:<sup>10</sup>

- a) The Germans of South Tyrol have a separate education system from the kindergarten to the university level.  
The Ladins of South Tyrol have a bilingual school system (Italian-German) with Ladin as a special subject, the Ladins of Trentino have bilingual schools with Italian and Ladin as medium languages.
- b) The Francophones of the Aosta Valley have a bilingual school system with French and Italian.
- c) The Slovenes of the provinces of Udine, Gorizia and Trieste have the right to education in Slovenian on all school levels, university excluded.

## South Tyrol's autonomy



Apart from Sicily and Sardinia, the Aosta Valley and Friuli-Venezia Giulia, in 1948 a special autonomy statute was granted to the Region Trentino-South Tyrol, based on constitutional law, which accomplishes Italy's obligations under the Italian-Austrian Peace

Treaty of 1946. South Tyrol, Italy's northernmost province, was annexed by Italy in 1919 although at that time more than 93 per cent of its population were German speaking Tyroleans. Today out of its almost 500,000 inhabitants about 70 per cent are Germans, 26 per cent Italians and 4 per cent-odd Ladins. But South Tyrol's autonomy, accorded with the basic end to ensure protection to the two ethnic minorities, was connected with the neighbouring, fully Italian province of Trento, ensuring an Italian majority on the regional level.

When in 1972 South Tyrol's autonomy was reinforced shifting the bulk of powers to the two provinces, the region transformed to a less important institution. Today, after further amendments in 2001, South Tyrol can exert self-government in a wide range of legislative and executive competences. The participation of all official ethnic groups in the autonomous government and decision making in public bodies was allowed by consociational arrangements. There is also a high degree of cultural autonomy for the three official groups, especially in educational issues. One basic rule for political representation and a key for the distribution of public service jobs and resources is the "proportionality rule" referring to numerical strength of the three official ethnic groups. The principle of equality of all residents regardless of their group affiliation however is strongly upheld. When in 1972 South Tyrol's autonomy was reinforced shifting the bulk of powers to the two provinces, the region transformed to a less important institution. Today, after further amendments in 2001, South Tyrol can exert self-government in a wide range of legislative and executive competences. The participation of all official ethnic groups in the autonomous government and decision making in public bodies was allowed by consociational arrangements. There is also a high degree of cultural autonomy for the three official groups, especially in educational issues. One basic rule for political representation and a key for the distribution of public service jobs and resources is the "proportionality rule" referring to numerical strength of the three official ethnic groups. The principle of equality of all residents regardless of their group affiliation however is strongly upheld. Due to this territorial autonomy the social and cultural position of South Tyrol's two autochthonous minorities, the Tyroleans and the Ladins, has been fully restored. According to the analysis of renowned scholars, the protection of the language rights has achieved an advanced level compared with most minority areas in Europe. The regional autonomy has built a framework where every citizen, irrespective of ethnic group, can expect that one's specific cultural identity would be respected.

Whenever a minority language is used as language of instruction, the state's official language, Italian, has to be taught as 'priority second language'. The teachers have to belong to the respective linguistic minority. During the last 25 years the remaining smaller minority languages such as Friulan, Catalanian, Sardinian, old forms of German spoken in the province of Trent and in Veneto are allowed as language of instruction in the primary and secondary level, but mostly they are taught only as subjects for some hours per week. Other minority languages as Albanian, Greek and Croatian are taught only in private schools. According to Article 4 of the new Minority Law No. 482/1999, all primary schools in minority municipalities are obliged to use the minority language as a medium for teaching, but with some flexibility. The single schools, vested with some autonomy with regard to their curricula, can create their own teaching schemes according to the needs and wishes of the parents and the traditions of the local communities. A complex set of initiatives for the promotion of didactical and training facilities in the minority language has to be created. Despite many difficulties, about 100 such projects are annually implemented over all regions concerned.

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 Marko/Palermo/Woelk (ed.), Tolerance established by Law. The Autonomy of South Tyrol: Self-Governance and Minority Rights, Martinus Nijhoff, The 2008  
 Thomas Benedikter, The World's Working Regional Autonomies, ANTHEM, London/New Delhi 2007

### Useful links:

<http://www.eurac.edu/miris>: The Italian constitution  
<http://www.provinz.bz.it>: the portal of the Autonomous Province of Bozen/Bolzano (South Tyrol)  
[http://www.provinz.bz.it/lpa/autonomy/autonomy\\_statute\\_eng.pdf](http://www.provinz.bz.it/lpa/autonomy/autonomy_statute_eng.pdf): the autonomy statute of South Tyrol  
<http://www.erionet.org/site/basic100021.html>: website on other linguistic minorities of Italy  
<http://www.limbasarda.it/eng/index.html> Information on the Sardinian language

2006, p.219.

4 State Law No. 38 of 14 February 2001: "Provisions for the protection of the Slovenian minority of the Region Friuli-Venezia Giulia".

5 Christoph Pan, *Minderheitenrechte*, Vol. 2, p. 222.

6 State Law No. 482 of 15.12.1999: "Provisions for the Protection of the Historical Linguistic Minorities".

7 211 Sardinian, 176 Friulian, 109 Occitan, 53 Ladin, 46 Albanian, 41 Frankoprovençal, 34 German, 28 Slovenes, 18 Greeks, five French, three Croats, one Catalan.

8 Christoph Pan, *Minderheitenrechte*, Vol. 2, p. 225.

9 Based on Article 3, Law for Slovenian minority No. 38/2001.

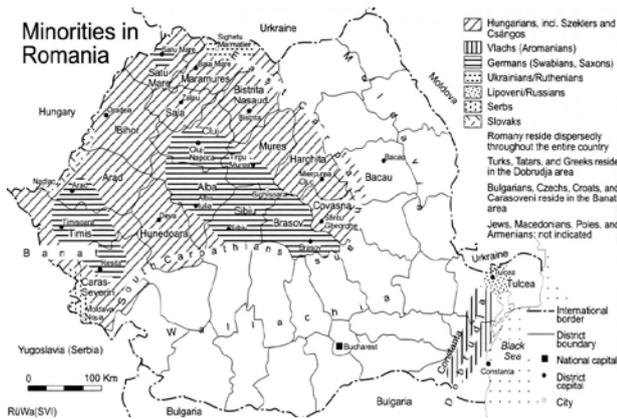
10 Christoph Pan, *Minderheitenrechte*, volume 2, page 232-234

1 *European Network for Regional and Minority Languages and Education*, available at: <http://www.mercator-education.org>; EURAC Research, *Minority Rights Information System MIRIS*, at: <http://www.eurac.edu/miris>.

2 [http://www.coe.int/T/E/human\\_rights/minorities](http://www.coe.int/T/E/human_rights/minorities): in this website the main monitoring results related to the FCNM country by country can be found.

3 Christoph Pan, *Minority Rights in Italy*, in: C. Pan/Beate S. Pfeil (ed.), *Minderheitenrechte in Europa*, volume 2, Vienna

### 3.2 Romania



Source: Rüdiger Walter - SVI

Titular group and minorities	Total figures	In %
Romanians	19,159,400	89.5
Hungarians	1,435,747	6.6
Romany	535,250	2.5
Ukrainians	61,353	0.3
Germans	60,088	0.3
Lipoveni/Russians	36,397	0.2
Turks	32,596	0.2
Tatars	24,137	0.1
Serbs	22,518	0.1
Slovaks	17,199	0.1
Bulgarians	8,092	
Croats	6,789	
Greeks	6,513	
Jews	5,870	
Czechs	3,938	
Poles	3,671	
Armenians	1,780	
Macedonians	731	
<b>Total minorities</b>	<b>2,262,669</b>	<b>10.5%</b>

Source: C.Pan/B.S.Pfeil, *National Minorities in Europe, ETHNOS, Braumüller, Vienna 2003 and official census data 2002.*

In addition to the listed minorities there are about 50,000 Aromanians (sometimes, but outside Romania, also called Vlachs), whose number can only be estimated. They are not recognised as national minority, as the distinctiveness of this language from modern Romanian is disputed.

Romania is a rather young state, as only in 1878, it was recognised as an independent state in the form of a monarchy. After World War I Romania could expand its territory to the huge region of Transylvania inhabited by most of Romania’s national minorities today, but lost considerable parts of its territory because of the Ribbentrop-Molotov-Pact. During World War II it managed, however, to maintain most parts of Transylvania when in 1944 regained the Northern region of Transylvania that had been awarded to Hungary under Nazi pressure.

Today more than one-tenth of Romania’s population

belongs to a national minority. There are not less than 20 officially recognised single minorities. But this particular ethnic diversity is not always perceived as culturally enriching, but by nationalist forces also as a “threat to the unity of the nation and the state”. In the 1990s, as the political environment was poisoned by nationalist rhetoric, fuelled by the right-wing “Greater Romania Party”, the Romanian state passed several years in “inertia” with regard to national minorities.<sup>1</sup> Starting with 1996 and the involvement of the Hungarian minority into the national government, a period of slow absorption of European standards in minority issues began, and since 2000 Romania showed signs of slow transformation and the first steps towards the creation of a consensus-oriented political culture in the protection of national minorities. Constantin assumes that also the EU conditionality, posed since 1997 for Romania’s accession to the EU, had a great impact in shaping its minority policies when it met the political will: “...it seems that in Bucharest there is feeling that the job (of accession to the EU) was done so there is no need for further legal and institutional development of the present system of minority protection.”<sup>2</sup> However, recently Romania’s Parliament has also ratified the ECRML.

One of the most important steps in Romania’s minority politics was the adoption by the Parliament of the new Law on Public Administration No. 251/2001 which established the principle that persons belonging to national minorities have the right to use their mother tongue in administrative-territorial units where the respective minority represents at least 20 per cent of the population. In December 2001 the ‘National Council for Combating Discrimination’ was established, a specialised body of public administration with the role of implementing the principle of equality among all citizens and dealing with cases of discrimination.

The strongest minority, the Hungarians, since 1990 were politically represented in a quite unitary platform, the ‘Democratic Alliance of the Hungarians of Romania’ (DAHR), which currently is represented in the Parliament with 22 deputies and 10 senators and repeatedly enters in the government coalition, like recently in 2004, when the post of the Vice-Prime Minister was also assigned to the DAHR’s president. The co-operation between the SDP and the DAHR resulted in some positive results, as “...it seems that a change occurred at the level of party’s elite who decided to recognise the legitimacy of the rights of national minorities and to follow the path of European integration.”<sup>3</sup>

The protection of national minorities in Romania is based on constitutional provisions, domestic law and international conventions ratified by Romania. Article 6 of Romania's Constitution reads: "The State recognises and guarantees the rights of persons belonging to national minorities to the preservation, development and expression of their ethnic, cultural, linguistic and religious identity," provided that the respective application measures do not impinge on the principle of equality of all citizens. Article 4 (2) of the Constitution states that Romania is "the common and indivisible state of all its citizens irrespective of their race, nationality, ethnic origin, language or religion." The national minorities, however, refused to be considered an integral part of the "Romanian people" as reported by Article 4, paragraph 1.

On 1 February 1998 the FCNM, signed and ratified already in February and May 1995, entered in force in Romania. Under domestic laws following the FCNM the following 20 national minorities are officially recognised: Magyars (Hungarians), Roma (or Gypsies), Germans, Ukrainians, Russians, Turks, Serbs, Tatars, Slovaks, Bulgarians, Jews, Croats, Czechs, Poles, Greeks, Armenian, Albanians, Italians, Ruthenians and Macedonians. Minority issues were also regulated in the Treaty of friendship, stipulated by Romania and Hungary in 1996, which was the basis for a long-term Romanian-Hungarian dialogue on minority issues.

The new draft law on the status of the national minorities, first presented in the national Parliament in 2005, goes a step ahead, recognising the identity of the national minority communities as a fundamental value of the Romanian state. Article 14 of this draft law is of utmost importance as it prohibits any measure which could lead to a modification of the demographic composition of the traditional settlement area of the minority concerned, as well as the redrawing of administrative units and constituencies causing disadvantages to minorities.

### The linguistic rights of the minorities

Romania's official language is Romanian, and therefore the ruling language in public administration is Romanian. But the law on local administration<sup>4</sup> contains exceptions favouring the national minorities in such administrative units where at least 20 per cent of the population belongs to a minority:

1) The members of the local councils have to be provided with an agenda of the sessions in their

mother tongue;

- 2) The decisions of the councils are published in the minority language;
- 3) Citizens belonging to a minority are entitled to use their mother tongue when interacting with the local administration orally or in writing;
- 4) Persons fluent in the respective minority languages should be employed in the public relations office of such administration;
- 5) All toponyms and names of institutions as well as official announcements have to be published in both Romanian and the minority language. No hindrance is allowed in Romania for the use of minority languages in private and commercial affairs. If requested in areas with 20 per cent of minority members, toponyms, street names and traffic signs have to be bilingual.

Furthermore, if one fifth of the council's members belong to a minority, their language can be used in the sessions. Official documents are written in Romanian. If an official representative of an administration does not know the minority language, his administration is obliged to provide a translator. As it takes time to train a bilingual staff, the implementation will need more time as Romania's bureaucracy previously did work in no other language than Romanian. When Romania in 2005 reported to the Council of Europe (under its obligations deriving from the FCNM), it listed about 250 municipalities in 23 counties, where the national minorities held more than 20 per cent of the population, mostly Hungarian communities. But those administrative units have only partially accomplished with their duty to interact with the minorities in their officially recognised language. By 2006 around 75 per cent of the municipalities have implemented the legislation.

In the judiciary, minority members are entitled to use their mother tongue; otherwise the court has to provide a translation service. The state's judiciary, on its part, is obliged to train its officials, police personnel, secretaries and translators in order to meet those requirements.

### Minority rights in education

According to the Romanian school order,<sup>5</sup> all national minorities have the right to establish school departments or classes for the education of their children in their mother tongue. Whereas in the primary schools the classes can be taken exclusively in the minority language (except Romanian as a subject), in the secondary

school geography and history have also to be taught in Romanian. But the subject “history” should also embrace the history and traditions of the minorities. If members of national minorities attend schools with Romanian as tuition language, they have the right to be provided with classes in their mother tongue, literature, history and traditions in their own languages, but as optional subjects. The state universities are entitled, whenever there is such a need and request, to provide institutes and departments working with minority languages.

Actually in Transylvania’s region with a strong Hungarian minority, a conflict is reported about the languages to be used in the universities of the major city of Cluj Napoca/Kolozsvár. The former separate Hungarian university Bolyai in 1959 has been forcibly united with the Romanian Babes-University, sidelining almost completely Hungarian as a medium of academic instruction. Although today Hungarian as a language of instruction is used in various faculties and academic courses, the Hungarian academic world in February 2006 in an urgent appeal asked for the restoration of the separate Hungarian university. They argued that just some academic activities in Hungarian within a Romanian speaking university could never sufficiently cater for the educational needs of 1.5 million Hungarians living in Romania. Although under the current Romanian law such an institution would be legally possible, the government seems to be reluctant under pressure of far-right nationalist forces. Summing up, the minority rights and presence in Romania’s school system are improving, but altogether just 5.5 per cent of all pupils are receiving the major part of lessons in their mother tongue vis-à-vis a total share of minority member on the total population of about 10-12 per cent.<sup>6</sup>

## Representation and further minority rights

According to Article 40 of the Constitution all members of a national minority are free to establish political parties, trade unions and other organisations, provided they respect the Constitution. They are entitled to have free contacts within the state and trans-border co-operation with kin-states and organisations of the same ethnic origin. In 1992 there were 13 minority representatives in the Parliament, in 1996 15 and in 2000 18. Such organisations receive annually state funds (a practice compared by critics with “alimonies” linked to political acquiescence) and therefore are not very critical towards the ruling parties.<sup>7</sup> In 1993 was established a consultative body of the government called ‘Council for National Minorities’, comprising representatives of the

national minorities and civil servants from ministries. The minorities are also involved in the ‘department for interethnic relations’, directed by a state secretary. Since the institution of this organ in 1997 it was always a Hungarian to be appointed with this charge. In October 2004 a National Agency for Roma was established, tasked with fostering social integration and cultural rights of the Roma.

The right to information in their own languages is of crucial importance for national minorities. Newspapers, periodicals and other publications are subsidised by the state. In Romania there are both programmes on national TV and radio channels in minority languages, regulated by the Law on Audiovisual No. 504/2002, but generally the access to public electronic media by all national minorities is regarded as insufficient.<sup>8</sup> The Hungarian and the German minorities are provided with print media products of all kind and are generally quite active in the public cultural life of their regions, whereas the Roma, despite their considerable number, not only are in a socially precarious condition, but do not enjoy a noticeable public information service in their own language.

All officially recognised national minorities are represented in the national Parliament. The election law guarantees to each minority a seat in the Parliament if one of their organisations reaches just 10 per cent of the average number of validly cast votes in the entire country necessary for the election of a deputy.<sup>9</sup> In this case the national minorities can be represented in Parliament with one seat. As an exception in favour of minority organisations they can get a seat even if they don’t obtain the necessary number of votes for a deputy. There are 18 MPs representing each of their respective national minority organisations, but on the other hand after the last elections of 2004 there are currently 22 deputies and 10 senators elected as candidates of the Democratic Alliance of Hungarians in Romania (DAHR). In Parliament they form their own group and have repeatedly been a partner in the national coalition government with Romanian parties. About 200 of Romania’s majors (elected presidents of municipalities) are members of national minority, mostly Hungarians, Roma or Germans.

There is actually no right to autonomy for national minorities, territorial, cultural or local, except the possibility to freely spend the subsidies granted to the national minorities by the state. In Romania the concept of autonomy is regarded as more or less a step towards

secession and all political forces advocating regional autonomy are blamed to plan a hidden attack on the national sovereignty. Even local administrative autonomy by the state security service is still classified as subversive activities against the unity of the state.<sup>10</sup> Nevertheless the new draft "Act on Minorities" of 2005 comprises also cultural autonomy for national minorities. This would vest the minorities with the powers to decide by their own about the matters referring to cultural and linguistic issues, religious affairs, the education in the mother tongue, the establishment of media and participation to public media, conservation of the cultural heritage and the management of the necessary financial means. These rights and powers should – according to the draft law on minorities – be managed by the so-called 'National Council of Cultural Autonomy' as autonomous administrative boards to be elected in free and secret elections by the members of the national minority.<sup>11</sup>

The draft law on the status of national minorities has been repeatedly discussed in the Romanian Parliament, but has not yet been approved. In this draft the minorities are recognised as constitutive factors of the Romanian state, and the law mentions explicitly the minority groups which are recognised as such, as "...the groups that are communities of Romanian citizens that can be regarded as traditional and historical minorities because they were living on the territory of Romania from the moment the modern Romanian state was established, having their specific ethnic identity expressed by culture, language or religion and they wish to preserve, express and promote their identity".<sup>12</sup>

The National Council of Hungarians from Transylvania maintains that not only cultural autonomy, but full-fledged territorial autonomy for the Hungarians should have been a precondition for Romania's accession to the EU. Other Hungarian organisations stated, that "...78 per cent of those who live in the Szeklerland believe the territorial autonomy issue to be more important than the EU-accession and without autonomy there would be no future for the Hungarians."<sup>13</sup>

Today, a person belonging to a national minority in Romania can rely on a specific legal framework in order to defend his linguistic rights regarding public administration and justice and in the education system; on the other hand it is clear that there is still space for development and improvement.<sup>14</sup> But generally Romania has a problem with implementing those acts and provisions as the rule of law is still under construction and the state lacks the financial means for its proper application. Today, it is facing two major challenges

with regard to minority issues. On the one hand the integration of the huge Roma minority poses serious social problems. Discrimination against the Roma, especially in the labour and housing markets, health care and education system, is widely practised and there is still a long way to go until real equality is achieved with the majority population. On the other hand the Hungarian political elite is increasingly supporting a project of territorial autonomy, citing some successful examples in Western and Eastern Europe as South Tyrol and Gagauzia, which were not disrupting the respective state's unity. But for such an arrangement Romania's political elite does not seem mature yet.

#### Useful links:

<http://www.ecmi.de/emap>: mapping of ethnic conflict (Baltics, Balkans, Northern Ireland)

<http://www.ispmn.gov.ro>: The Institute for Studying National Minorities Issues (ISNMI)

<http://www.dri.gov.ro>: The Department for Interethnic Relation of the Romanian Government: the Draft Law on the Statute of National Minorities in Romania

<http://www.rmdsz.ro>: the Democratic Alliance of the Hungarians in Romania

<http://www.rnromi.ro>: the Roma of Romania

<http://www.adz.ro>: the General German Newspaper of Romania, published by the Democratic Forum of Germans of Romania.

<http://www.romanianjewish.org>: the Union of Jewish communities of Romania

<http://www.regione.taa.it/biblioteca/minoranze/romania1.pdf>: Romania's Constitution

*1 See also for some following considerations, Sergiu Constantin, Assessing the efficiency of EU conditionality in the area of minority protection – The case of Romania, in: Europa Ethnica, No. 2/2007, p. 81-91, Braumüller, Vienna 2007.*

*2 Constantin, Assessing, p. 90.*

*3 Constantin, Assessing, p. 87*

*4 The old law on public administration was abrogated by Law No. 215/2001.*

*5 E.g. the Law on Education No. 84/1995, which amended previous laws on education.*

*6 Christoph Pan, Minderheitenrechte in Europa, volume 2, Vienna 2006, chapter Romania, p. 408.*

*7 Constantin, Assessing, p. 83.*

*8 Christoph Pan, Minderheitenrecht, p. 410-411.*

*9 Art. 9 (1) of Law No. 35/2008.*

*10 Christoph Pan, Minderheitenrechte, p. 414.*

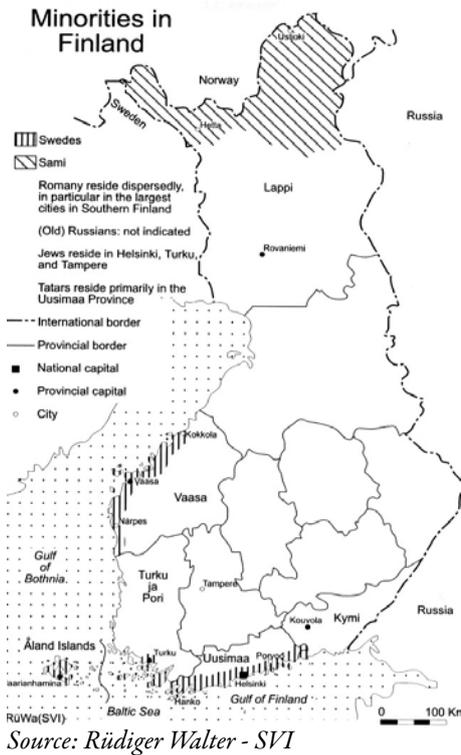
*11 See also the comment of the Venice Commission on this issue available from: <http://www.????>*

*12 Art. 3 of the Draft Law on National Minorities.*

*13 Constantin, Assessing, p. 88.*

*14 Constantin, Assessing, p. 90.*

### 3.3 Finland



Titular nation and minorities	Total	In %
Total population	5,181,115	100
Finns	4,773,576	92.1
Finland-Swedes	293,691	5.7
Old Russians	20,000	0.4
Roma	7-10,000	0.2
Sami	6,400	0.1
Jews	1,300	
Tatars	900	
<b>Total minorities</b>	<b>332,291</b>	<b>6.5%</b>

Source: C.Pan/B.S.Pfeil, *National Minorities in Europe, ETHNOS, Braumüller, Vienna 2003.*

Finland for seven centuries was a part of Sweden, but in 1809 it was taken over by the Russian Empire keeping some autonomy as a “Grand Duchy” under the Tsar, but Swedish remained the official language of Finland. Directly after Russia’s October revolution in 1917 Finland became an independent state. For a long time the Swedish character of Finland’s West coast remained untouched. The influence of Swedish language and culture in Finland was at its peak in the 18<sup>th</sup> century when the Finnish language and culture were spoken principally among the peasantry. In the second half of the 19<sup>th</sup> century the Finnish language slowly obtained a status of a state language on equal footing with Swedish. Whereas in 1900, 85 per cent of Finland’s population was ethnically Finnish, in 2000 it rose to 94 per cent.<sup>1</sup> Since 1 January 2001 Finland is divided in 19 regions plus the Åland Islands, an autonomous region since

1921.

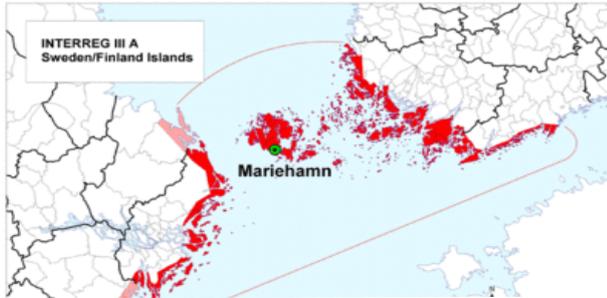
The term ‘national minority’ in the Finnish legal system is not in common use, as Finland’s Constitution contemplates the Swedish group not as a minority, but as a group with equal rights with the majority population. The Finnish state, a party to the FCNM since 1995, considers that the FCNM provisions in Finland are applicable to six minorities: the Finland-Swedes, the Sami, the so-called Old Russian, the Roma, Jews and Tatars. The Swedish do perceive themselves as Swedish-speaking Finns, as a cultural group which constitutes the national population, but nevertheless they take advantage from various minority laws. The Sami do not only comprise people who speak the Sami language, but also persons descending from Sami in the second and third generation (for the matter see also chapter 2.4). Old Russians are the descendants of Russians immigrated in the 19<sup>th</sup> century until 1917, the year of Finland’s independence. Almost all of the 10,000 odd Roma of Finland speak Finnish as mother tongue and also the Jews who immigrated to Finland in the 19<sup>th</sup> century have Finnish as their mother tongue. The Tatars, stemming from the Wolga region, live mostly in and around the capital Helsinki. Language minorities, in the perspective of the Finnish government are also the people using sign language as their “mother tongue” or communication facility.

Due to various historical, political and cultural factors Swedish in Finland enjoys a particular position. Finnish and Swedish are even considered ‘national languages’, and all citizens have the right to use either language in dealing with the government or local authorities.<sup>2</sup> The Swedish minority in Finland amounts to almost 300,000 persons or 6 per cent of the population. The linguistic rights of the Swedish speakers are guaranteed in section 17 of the Finnish Constitution<sup>3</sup> and by the 1922 Language Act. The majority of Swedish speakers in Finland live in bilingual municipalities, but there are also monolingual Swedish municipalities in Ostrobothnia and in the Southwest of Finland. A municipality is bilingual when there are at least 8 per cent or 3,000 resident Swedish-speaking persons.

As for the representation of the national minorities there are several separate bodies, officially recognised. The ‘Swedish Assembly of Finland’ monitors the interests of Swedish-speaking Finns. The Sami Parliament, connected with the ‘Samediggi’ of Norway and Sweden, attends to the Sami language, culture and interests. The ‘Advisory Board on Roma Affairs’ functions as a co-operation body between the Roma and the authorities.

In addition, Finland has established the institution of the 'minority ombudsman', in charge of monitoring and promoting the general interests of ethnic minorities in Finland.<sup>4</sup>

## The Åland Islands



<http://en.wikipedia.org/>

The Åland Islands are a monolingual Swedish-speaking group of islands in the Baltic Sea between Finland and Sweden. Not less than 6,554 islands form the archipelago, only 50 of which are permanently inhabited. Nearly 40 per cent of the 27,000 Ålanders live in Mariehamn, the administrative centre and only city on the islands. The Åland Islands' official language is Swedish. While the Åland Islands have been part of the Swedish cultural area since ancient times, in 1809 they came into Russian possession by historical coincidence. At the end of the Tsarist Empire in 1917, the Åland Islands' inhabitants were denied self-determination and became a part of the newly independent Republic of Finland. Sweden disputed this change in status, and the issue was settled by the League of Nations in 1920, when Finland recognised the Ålanders' right to maintain their culture, language and traditions and to enjoy a demilitarised and autonomous status<sup>5</sup>. The Autonomy Act of 1921 established the first official territory with autonomous status in Europe.

The autonomy of Åland has been expanded through two major revisions to the Autonomy Act in 1951 and in 1991. The first revision was initiated after the World War II, when in Finland a new generation of politicians came to power. The 1951 revised Autonomy Act introduced the specific 'right of domicile' (a kind of regional citizenship), although elements had already been included in the previous Act. National symbols were created (a flag, stamps and a national museum). A regional movement to reinforce the existing autonomy developed in Åland over the following decades, leading to the approval of the third Autonomy Act<sup>6</sup>. The aims of

the 1991 revision, enacted with the mutual consent of both the Finnish government and the Åland legislative assembly, was to more clearly define the legislative responsibilities of the state and of the provincial authorities, to transfer additional areas of responsibility to Åland and to provide for later transfer of increased authority in other areas, expanding the autonomy into the economic sphere. Satisfactory knowledge of Swedish was added as a requirement for regional citizenship.

## Language and culture policy on the Ålands

The Åland Islands are 94 per cent Swedish-speaking, and form a monolingual Swedish-speaking province of Finland that recognises two official languages: Finnish and Swedish. The Åland Islands' Swedish language and traditions stem from their 650 years of Swedish rule, and are strongly protected by the provisions of the Autonomy Act. Swedish is the only official language in use, and all state officials must know Swedish. Official letters and other documents sent to Åland by the Finnish state must also be written in Swedish.

Åland has an extensive autonomy in the field of education. The medium of teaching in all publicly financed schools is Swedish. While English is a compulsory subject, Finnish is only optional. Since opportunities for tertiary education are limited, most of those who wish to pursue a university degree leave to study in Sweden or Finland, and are less likely to return afterwards.

The inhabitants of Åland have a strong sense of identity and, when asked whether they consider themselves Swedish or Finnish, they reply that they are "Ålanders". Whether or not they constitute a separate minority from the rest of the Swedish-speakers in Finland is subject to debate. Because of their isolation, however, a strong Ålandic identity developed to distinguish them from the Swedish-speaking population in the mainland of Finland, which strongly identifies itself with Finland. Over time, the Ålandic identity has evolved, and today many Ålanders describe themselves as Europeans, Nordic, Finlanders and Ålanders.

Today the attitude of most Ålanders towards autonomy is positive, and both the Finnish and the Åland governments present this autonomous region as one of Finland's successful policies for safeguarding the rights of minorities in Finland. The region has always been very peaceful, and while calls for independence were heard for the first time in the political debate during the

1999 election campaign, the prospects of a separatist movement developing in the near future are highly unlikely.

The Åland Islands can be considered a successful case of conflict regulation through the gradual development of autonomy based on compromise between the conflict parties, although in its early years the establishment of autonomy did not always go smoothly. While the arrangements of 1921, 1951 and 1991 contain many elements of minority protection, the territorial aspect of the autonomy is the main concern on Åland. The attitude of Sweden, which shares the cultural and language features with Åland, contributed to the success. Sweden renounced to the Åland Islands both in the 1921 agreement and after World War II, when the Ålanders expressed their wish to reunify with Sweden. Sweden, which remains a party to the agreement, has continued to contribute to the stability of Åland's autonomy regime by refraining from criticising Finland's handling of the Åland question.

### A successful minority policy

Despite of constituting only 5,8% of the Finnish population, the Finland-Swedes for historical reasons are not only in the position of a recognised national minority, but rather form a "national group in Finland". Apart from the Åland Islands, unlike other minorities in European countries the Finland-Swedes do not dispose of a specific territory. Nevertheless, according to Finnish legislation, Finland is a bilingual nation with two national languages. There are parallel educational institutions in both Finnish and Swedish and both languages are compulsory at school. Presently the situation of the Swedish language in Finland seems to be good and there is no lack of pupils in Swedish schools. A new group of "bilingual persons", fluent in both languages has emerged. "They switch their language naturally, even in the middle of a sentence and feel at home in both contexts. So who are these persons, are they Finns, Finland-Swedes? To which group they belong? Officially, in the census can belong to only one, but if you ask them, they say: We belong to both!"<sup>7</sup> This experience reflects a common phenomenon which can be observed in many European regions with two or more co-official languages.

The preservation of the identity of the Swedish-speaking minority in Finland has largely been achieved. The combination of wide-ranging provisions in the spheres of language and education, as well as regional citizenship aiming at the protection of the cultural peculiarity of the Finland-Swedes has contributed to allaying fears

that their language and identity would be lost through eventual assimilatory state policies or immigration processes. Without doubt Finland, along with the other Scandinavian countries, can present a good record of minority rights in the European context.

### References

Lars Ingmar Johansson, *The Autonomy of Åland: Background and Present Situation*, Åland Peace Society, Mariehamn 1995

Thomas Benedikter, *The World's Working Regional Autonomies*, ANTHEM, London/New Delhi 2007

Catharina Lojander-Visapää, *New bilingualism in the bilingual Finnish context*, in: *Europäisches Journal für Minderheitenfragen*, Springer, No.2 2008, p.109-118

### Useful links:

<http://www.aland.fi> and <http://www.ls.aland.fi>: The Åland's government official website

<http://www.lagtinget.aland.fi/eng/act.html>: The Åland Autonomy Act 1991

<http://www.vn.fi/vn/english/index.htm>: The Finnish constitution

<http://virtual.finland.fi/finfa/english/minorit2.html>: The autonomy regime of Åland

<http://virtual.finland.fi/finfo/english/minorit.html>: other minorities

<http://virtual.finland.fi/netcomm/news/showarticle.asp?intNWSAID=26740>: other minorities

<http://www.folketinget.fi>: the Swedish Assembly of Finland

<http://www.finlex.fi/en/laki/kaannokset/2003/en/20031086.pdf>: Finland's Sami Language Act

Finland's ombudsman for minorities: <http://www.vahemmistovaltuutettu.fi/intermin/vvt/home.nsf/pages/index3>

1 Christoph Pan, *Minderheitenrechte*, Vol. 2, p. 149.

2 *Information on the Language Act concerning Swedish and Finnish*: <http://www.om.fi/20802.htm>

3 *For the text of the new Constitution, in force since 1 March 2000, see* <http://www.vn.fi/vn/english/index.htm>.

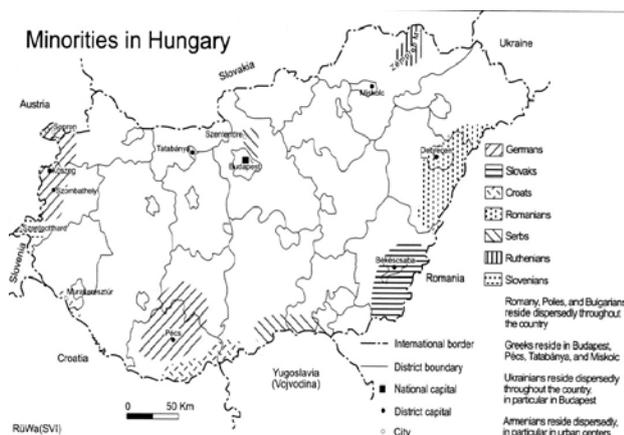
4 *Finland's ombudsman for minorities*: [www.vahemmistovaltuutettu.fi/intermin/vvt/home.nsf/pages/index3](http://www.vahemmistovaltuutettu.fi/intermin/vvt/home.nsf/pages/index3)

5 *Agreement between Finland and Sweden to Guarantees in the Law of 7 May 1920 on the Autonomy of the Åland Islands, 27 June 1921. This agreement is often quoted as an example of a long-standing bilateral treaty. However, the Åland Agreement was not a legally binding treaty. Later it developed into international customary law obliging Finland to safeguard the Ålanders' autonomy. The text is to be found in* Hurst Hannum, *Autonomy, Documents on Autonomy and Minority Rights*, Dordrecht 1993, p.141-143.

6 *Act on the Autonomy 16 August 1991, No. 1144 (in force since 1 January 1993, available at* <http://www.finlex.fi/pdf/saadkaan/E9911144.PDF>

7 *Catharina Lojander-Visapää, New bilingualism in the bilingual Finnish context*, in: *Europäisches Journal für Minderheitenfragen*, Springer, No.2 2008, p.116

### 3.4 Hungary



Source: Rüdiger Walter - SVI

Titular group minorities	Total	In %
Total population	10,162,000	100
Hungarians	9,066,000	89.2
Romany	400-600,000	5.9
Germans	200-220,000	2.2
Slovaks	100-110,000	1.1
Croats	80-90,000	0.9
Romanians	25,000	0.2
Poles	10,000	0.1
Serbs	10,000	0.1
Armenians	3,500-10,000	0.1
Ruthenians	6,000	
Slovenes	5,000	
Greeks	4,500	
Bulgarians	3,500	
Ukrainians	2,00	
<b>Total min.</b>	<b>1,096,000</b>	<b>10.8</b>

Source: C.Pan/B.S.Pfeil, *National Minorities in Europe, ETHNOS*, Braumüller, Vienna 2003.

In Hungary today the national and ethnic minorities make up some 10 per cent of the population. It was mostly during the 17<sup>th</sup> and 18<sup>th</sup> centuries that those minorities moved into Hungary's current territory. Around 1900, more than the half of the population of the Hungarian monarchy was ethnically non-Hungarian. After World War I this proportion changed radically. Some 33 per cent of Hungarians living in the Carpathian Basin (about 3.3 million) found themselves outside the country's borders, while the number of minorities living within the borders declined sharply to a tenth of the population. Among the European peoples, the Hungarians have a major share of their members living outside the titular nation-state, as a minority in all neighbouring states. While trying to take care of those kin-groups, Hungary developed an interesting policy of protection of its own national minorities.

The Act on the Rights of National and Ethnic Minorities (chapter 1, section 1, subsection 2) defines as minority "...all groups of people who have lived in the territory of the Republic of Hungary for at least one century, who represent a numerical minority in the country's population, whose members are Hungarian citizens, who are distinguished from the rest of the population by their own languages, cultures and traditions, who demonstrate a sense of belonging together that is aimed at preserving all of these and expressing and protecting the interests of their historical communities are national and ethnic minorities recognised as constituent components of the state". A characteristic feature of the situation of the minorities in Hungary is that they live scattered geographically throughout the country in some 1,500 settlements and generally they also constitute a minority within these settlements.

According to the 1990 census, 232,751 Hungarian citizens declared themselves to be a member of a national minority and 137,724 stated that their native language was one of the minority languages. But it is reckoned that the true number is considerably higher as many minority members did not want to profess their true ethnic or linguistic affiliation. In the 1990 census, three questions were posed: the identification with a minority group, the native language and the spoken language. This approach derives from the fact that the native or family language not necessarily coincides with the national affiliation or self-perception. Many people speaking daily minority languages profess themselves to be of Hungarian nationality. However, the estimated population is considerably higher and this demonstrates a general problem when it comes to registering exactly the number of minority members.

#### The general approach of Hungary's minority policy

Hungary pays considerable attention to the assertion of national minority rights, as reflected in a number of programmes and provisions of the state. Over the past 15 years the aim of the Hungarian minority policy was to establish a friendly environment for the minorities which should be enabled to preserve their identity and live freely with rights enshrined by law. In 1990 the 'Office for National and Ethnic Minorities' was established as an independent administrative body for the co-ordination of the implementation of the state's minority programmes. The Office assesses the situation of the minorities, drafts minority policy concepts and facilitates

communication between the minority organisations and the government. Hungary's Constitution states that the minorities living in Hungary are constituent components of the state. The Constitution guarantees the minorities collective participation in public life, the free development of their cultures, the use of their native languages and education in their languages. There is a parliamentary commissioner in charge of protecting the rights of national and ethnic minorities, who has to investigate any kind of abuse of the rights of national or ethnic minorities.

The State Act on the Rights of National and Ethnic Minorities, approved in 1993 by the Parliament in Budapest, establishes individual and collective minority rights in the areas of self-government, use of language, public education and culture. Under this Act the minorities have the right to form local and national bodies of self-government. The public electronic media (TV and radio) have a compulsory responsibility to prepare programmes presenting the culture and life of minorities and to broadcast in the native languages. As for the political representation, various members of minorities have been elected from different parties to the national Parliament, but there is still no guaranteed representation of minorities in Parliament.

In 1995 Hungary signed the two most important documents of the Council of Europe regarding minority protection: the FCNM and the ECRML. Subsequently Hungary had to adopt some legal provisions to be in line with his international obligations. It has also undertaken to implement the optional regulations contained in chapter III of the ECRML with regard to the Croats, Slovaks, German, Serbian, Romanian and Slovene language.

### The minority self-government

The minority self-governments are elected at the same time as the municipal councils. During elections every franchised person in the given settlement may cast a vote for each of the given minority. Proof of the success and strengthening of the minority self-government system comes in figures showing that whereas in 1994 and 1995, 823 minority self-governments were formed, following the 1998 elections 1.367 local and nine capital city minority self-governments were formed across the country. The largest growth was evident in

the number of Roma minority self-governments, but the number of German, Slovak and Croatian minority self-governments also increased significantly. As a result of the elections the Bulgarian national minority formed 15 self-governments, the Roma communities elected 768, Greeks 19, Croats 75, Poles 33, Germans 272, Armenians 25, Romanians 33, Ruthenians 10, Serbs 35, Slovaks 76, Slovenes 10 and the Ukrainians five self-governments.

Of the various forms of minority self-government it is worth paying particular attention to the type that is at the same time a settlement (municipal) government and a minority self-government. Minority settlement self-government status confers a kind of local autonomy, opening the way to providing efficient means for the realisation of the interests of minorities. Minority self-governments may determine their protected monuments and memorial sites, the dates of local and national holidays and have the right to run cultural and educational institutions, schools, museums and theatres. They are entitled to independently determine their own organisational and operational regulations. Local minority self-governments have a right to veto proposals if the municipal government is working on regulations concerning cultural, educational or language matters related to the given minority: they also hold a veto in the question of the appointment of a director of minority institutions.

The national minority self-governments represent the given minority at national level. The formation of national self-governments occurs on the basis of electoral assemblies following the formation of local minority self-governments. As such all 13 minorities in Hungary established their own national self-governments in 1999. The national minority self-governments, as partners in legislation and state administration, air their views on planned legal regulations concerning the minorities represented by them. The law grants them the right to the professional monitoring of minority education as well as participation in the formation of the principal educational material used in minority education. As the first decade of practical experience shows, the system seems to be an efficient form of interest representation allowing broad minority participation in matters that concern them both at local and national level. Preparations for the modification of the minority Act are currently in progress. This work is directed towards ensuring that legal frameworks provide even greater assistance in the operation of the self-government system as well as guaranteeing the working conditions needed.

## Minority rights in the education system

For the majority of families belonging to the minorities, the process of passing on the language has broken down and the Hungarian language has become dominant. The various languages spoken by the minorities do not lend themselves to regular refreshment, and thus their role in social communication is waning. This makes the role of the school as a vehicle for passing on the native language all the more important, the responsibility of educational institutions all the greater.

Minority education as a part of the Hungarian public education system must provide all services that are generally provided by public education as a whole. Moreover, the task is not simply to offer these services in the native language, but it is also necessary to create the conditions for studying the native language and passing on an understanding of the culture and history of the people. The Hungarian state guarantees the existence and operation of primary and secondary schools with a mandate to promote "education in the minority language". Under the new law on the national or ethnic minorities in Hungary, the opening of a relevant class or school group is obligatory when requested by the parents of at least eight children belonging to the same minority.

There are three types of schools which try to meet the needs of minority families: first, schools which teach the minority language as a foreign language; second, dual language schools where the humanities (history, geography, literature) are taught in the native language and natural science subjects in Hungarian; and third, schools where all subjects except Hungarian language and literature are taught in the language of the given minority. Unfortunately the number of the latter is low because of a lack of appropriate teachers, the children's inadequate grasp of their native language and other reasons. Some of the schools concerned teach through the medium of the minority language (though only in arts subjects including language, literature, culture, history and geography), but the vast majority have been able to provide only teaching of the minority language as a subject on the curriculum. Since 1988/89, primary schools of the latter type have provided 5-6 hours' teaching of the minority language per week. Still there are a few secondary schools which teach in a minority language or train primary teachers to teach in such a language. Higher education is only exceptionally conducted in minority languages, primarily for trainee teachers. In addition to domestic training and further

training courses, youngsters belonging to national minorities also have the opportunity to participate in part- or post-graduate studies in the mother country on scholarships.

So-called "Sunday-schools" are one special form of minority education which function outside the educational system. In general the organisers and operators of this form of education – typically available for smaller minorities – are the national self-governments, with financing from the Ministry of Education. Minorities arranging "Sunday Schools" make every effort to ensure that the study material is the same in all of their schools, that preparations are made for detailing the requirements for subjects taught in the schools (minority language and literature, minority awareness) and using one of the schools of the given settlement as a base school to get integrated into the public education system. The educational data of the national minorities are not different from those of the majority population. Among the German and Serb minorities the number of graduates from higher education is above the national average.

As regards education there are special problems associated with the Roma minority. Currently slightly more than 70 per cent of Roma children complete primary schooling, but only one-third continue studies into the intermediate (secondary) level. This is far lower than the more than 90 per cent proportion of children of non-Roma families who continue studies at an intermediate level. The situation is made still worse by the fact that a large proportion of young Roma are qualified in subjects that provide them with only limited chances for employment. Less than 1 per cent of Roma hold higher educational certificates. Special programmes for the academic improvement of the Roma are designed to create opportunities and nurture talent among children and pupils belonging to the Roma minority. This form of instruction and education covers students' hostels as well.

### Useful links:

<http://www.ecmi.de/emap>: mapping of ethnic conflict (Baltics, Balkans, Northern Ireland)

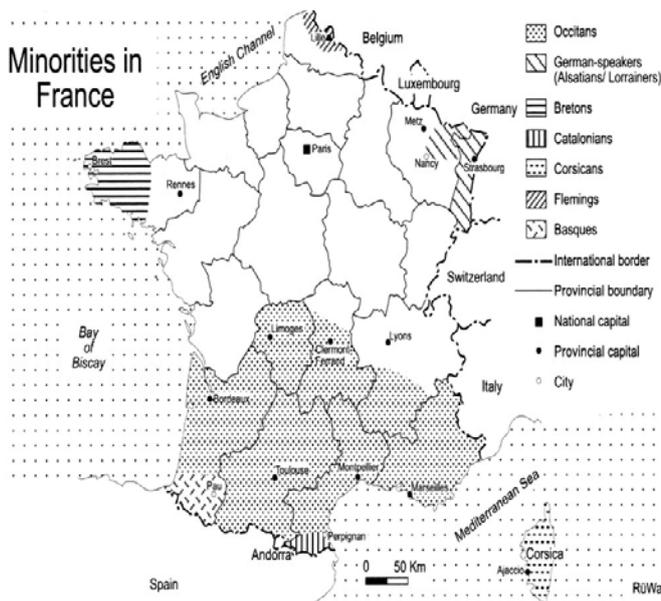
<http://www.helsinki.hu>: Hungarian Helsinki Committee

<http://www.lectlaw.com/files/int05.htm>: Hungary's constitution

<http://www.mfa.gov.hu>: Office for National and Ethnic minorities

<http://www.ohchr.org/english/bodies/cescr/docs/E.C.12.HUN.3-Annex16.pdf>: National and ethnic minorities in Hungary

### 3.5 France



Source: Rüdiger Walter - SVI

Minorities	Absolute figures (estimated)	In %
Total population (census 1999)	58.518.395	100
French	50,229,209	85.8
Occitans	3,000,000	5.1
Germans	1,300,000	2.2
a) Alsatians	900,000	1.5
b) Lothringians	400,000	0.7
Bretons	250,000	0.4
Corsicans	150,000	0.3
Catalans	126,000	0.2
Basques	40,000-100,000	0.2
Flemish	20,000-40,000	0.1
Francoprovincals	60,000	0.1
Total minorities	5,026,000	8.6
Foreign citizens living in France	3,263,186	5.6

Source: C.Pan/B.S.Pfeil, *National Minorities in Europe, ETHNOS, Braumüller, Vienna 2006*. There are no official data on the minorities in France. The data listed above are taken from the Killilea-report of the European Parliament, approved with a huge majority in the EP on 10.2.1994 and from an estimate of Jacques Leclerc, University Laval, Québec (Canada), 2005.

The French state doctrine is based on the indivisibility of the Republic, the equality of all citizens (Article 1 of the Constitution) and the unity of the French nation, excluding the recognition of the very existence of other nations on the state’s territory. Thus France in the process of elaboration towards a European canon of minority rights never played a supportive role, but still is reluctant to adopt the relevant European conventions. France does not recognise any national minority, but only regional

languages. From an official perspective, languages as such Breton, German, Corsican, Basque and Catalan, widely spoken in some regions along with French, are nothing else than “regional dialects”. By consequence, there are no official census data referring to the number of speakers. But in reality at least 5 million French citizens out of 60 (in 2008) speak a language of an autochthonous or native minority: Occitans, Alsatians, Bretons, Corsicans, Catalans, Flemish, Basques, Francoprovincals, without counting other indigenous peoples of the so-called ‘Pays d’outre mer’ (New Caledonia and French Polynesia) and ‘Départements d’outre mer’ (Réunion, Martinique, Guyana etc.). Not one of those minorities is officially recognised. In the juridical doctrine in France there is no minority issue, on the other hand in political reality decision makers in both the regions and the departments are continuously faced with the grievances and claims of minority organisations.

France, which has been the cradle of human rights with the Revolution of 1789, today with regard to the rights of ethnic minorities is lagging far behind vis-à-vis all neighbouring states in Western Europe. France rejected the ratification of the FCNM and even the more flexible ECRML was signed by the French government on 7 May 1999, but has been prevented to enter into force due to a verdict of the French Constitutional Court. Also the French President vetoed the ratification of that Charter by the Parliament.

France’s single minority languages are very different in nature:

- In Alsatia and Lothringia German dialects are widely in use, especially in the rural areas, and German is spoken by many Alsatians who have close ties with the German cultural area.
- In Brittany more or less one-third of the population, along with French, still speaks Breton, an old Celtic language. But compared with Alsatia there is much less public use of the language and less activity with bilingual classes or schools. The preservation of the Breton language is not perceived as a strong political issue, although there is a network of bilingual private schools (DIWAN).
- The same situation can be observed in the Northern Basque Country, where some bilingual Basque-French private schools is all what Basque families can rely on if they wish their children to learn the minority language.
- In the vast area of Southern France still the Occitan language is widely spoken, but split up in different dialects.

- The Catalans live close to the border with Spanish Catalonia.
- In the case of Corsican, the self-administration statutes of 1991 and 2000 have strengthened the role of the language in the public schools, but there is still a debate which kind of Corsican should be used in education.
- Francoprovençal is spoken in the Savoyes in the French Alps, but sometimes considered only an old form of modern French.

Besides those eight traditional 'regional languages' in France's overseas territories and departments (départements and pays d'outre-mer) a major number of indigenous languages are spoken, especially in New Caledonia, French Polynesia and French Guyana.

In France any collective right to recognition and protection of the speakers of a regional or minority language is excluded. When ratifying the ICCPR France made it clear that its Article 27 was irrelevant for the country as there were no ethnic minorities. Today French is the only official language of the republic, enshrined in the Constitution in 1992. Minority languages are not admitted in written interaction between public entities and the citizens concerned. The judiciary works only in French, unless the parties involved know sufficient French. Otherwise translation has to be provided by the authorities.

In the education system there are very limited possibilities to provide teaching, mostly on a voluntary or private basis. Even more restricted is the teaching of subjects of the given school curriculum in the respective minority language. Today there is an optional teaching of Breton, Basque, Catalan and Occitan and Corsican. Since 1971 regional languages can be taught for a maximum of 3 hours per week in primary schools and 1 hour in secondary schools. But all those activities can be established only on voluntary basis. Only in Corsica since 2002 it has been possible to introduce some hours of Corsican in the kindergarten and primary schools whenever the parents are not opposed to it.

In 2001 – after President Chirac's refusal to ratify the European Charter of Regional and Minority Languages – the Minister of Culture Jack Lang adopted new guidelines for the teaching of regional languages, in order to avoid the ratification of that Charter and accomplish with it at least some of the provisions contained therein. In the year 2003/04 there were not less than 326,000 pupils of schools of any level in France

learning a regional language for 1, 2, 3 hours per week and 39,000 students were even studying some subjects in the regional language in the framework of private bilingual schools (or public schools limited to Corsica).

The public electronic media (Radio and TV) are obliged to take into account the regional languages and thus there are about 7-8 hours per week of broadcasting in such languages as Alsatian, Occitan, Corsican, Breton, Basque and Catalan. The liberalisation of the electronic media has brought about a flourishing of private stations, which are often broadcasting exclusively in the minority languages. Among the print media, monolingual newspapers were forbidden by law after World War II in Alsatia. Alsatia's bilingual journals have to contain at least 25 per cent of articles in French.

### Autonomy in Corsica and Brittany?

Corsica, with an area of 8,680 sq. km, is the fourth largest island in the Mediterranean Sea after Sicily, Sardinia and Cyprus, located north of Sardinia. In France, Corsica is referred to as one of the 26 regions of France. Officially it is defined as a 'territorial collectivity', which enjoys slightly more administrative powers than other French regions. Unlike other "overseas territories of France" Corsica is considered a part of the French mainland.

Corsica's claim for autonomy is based on both historical and cultural-linguistic reasons. In 1982, 96 per cent of the island's inhabitants of Corsican origins (just 70 per cent of the total population of around 280,000) understood and 86 per cent regularly spoke the Corsican language, a form of medieval Italian related to the Sardinian language. Corsican still now is not a compulsory language of instruction in schools, but can be offered as an optional subject. As Corsican has no official status, its administrative and legal role is minimal. It can be used occasionally in contacts with the public administration and before courts, as long as the officials themselves know the language. But mastering Corsican is no requirement for having access to public employment.

There are several movements on the island calling for real territorial autonomy of Corsica from France or even full independence. Autonomy proposals focus on the promotion of the Corsican language, more legislative powers for an autonomous Corsican region and full financial autonomy. While among the island's population there is some support for autonomy, polls show that a large majority of Corsicans are opposed to

full independence. Some nationalist Corsican groups carried out violent campaigns since the 1970s, including bombings and assassinations, usually targeting officials and buildings representing the French government. France even to peaceful protest responded with an overwhelming police force and political repression, generating sympathy for the independence groups among the Corsican population. Nevertheless, political forces supporting asolution based on self-determination of the Corsicans at local elections hardly gather more than 20 per cent of the electorate.

In 2000, the French Prime Minister Jospin agreed to an increased autonomy for Corsica in exchange for an end to violence. The proposed special autonomy for Corsica would have included greater protection for the Corsican language and some legislative powers. According to UNESCO classification, the Corsican language is currently in danger of becoming extinct. However, the plans for such autonomy were opposed by the Gaullist opposition in the French National Assembly, who feared that this would lead to calls for autonomy from other regions such as Brittany, the Basque Country and Alsace, eventually threatening France's unity. In a referendum on 6 July 2003, a narrow majority of Corsican voters opposed the project of the Paris government to grant major autonomy to the territorial collectivity of Corsica.

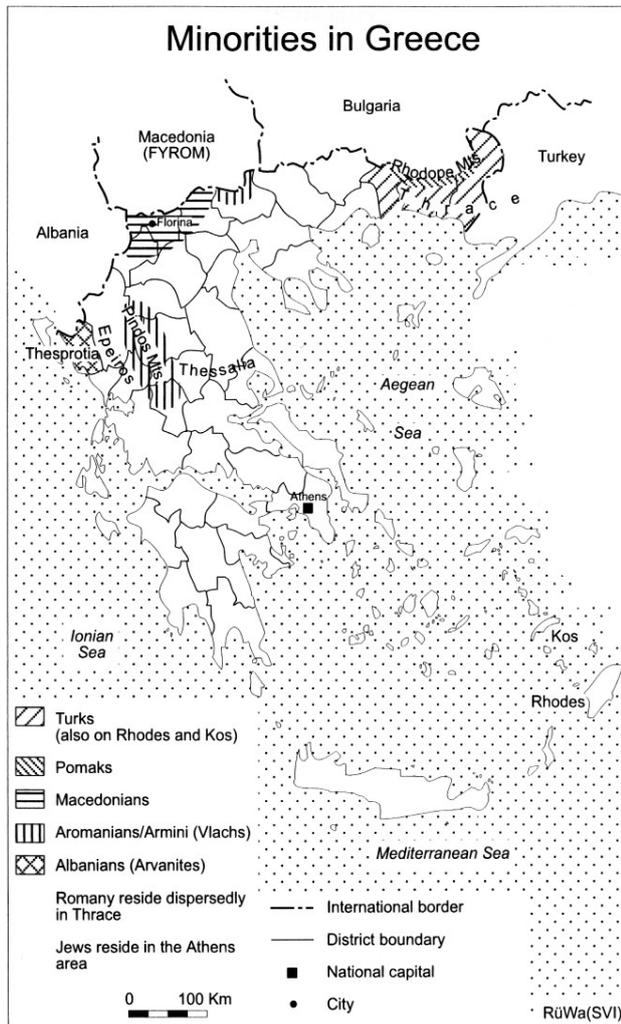
The cultural region of Brittany – a peninsula in North-western France once an independent kingdom and duchy – today is split between the region of Brittany and some parts attached to neighbouring départements and regions of France. The land area of this cultural region is 34,034 sq. km with a population of about 4.2 million. The duchy of Brittany kept specific laws and taxes until 1790, when French revolutionaries withdrew all the “privileges”. French today is the only official language and spoken throughout Brittany, while the two regional languages, Briton and Gallo, have no official status. Nevertheless they are supported by regional authorities within the few possibilities allowed by national laws. Until the 1960s Briton still was spoken and understood by the majority of Brittany population. Now the Briton language and culture is making a strong revival as other Celtic cultures (in Galicia, Ireland, Wales and Scotland), supported by a private education network called Diwan. Regionalist parties, advocating territorial autonomy, are gaining ground, but are far away from being majorities. The centralised nature of the French state and its emphasis on a unitary identity has prevented France from adopting a positive approach and more constructive

policy towards its 5 million citizens speaking a smaller language. This attitude, in turn, has prevented the eight regional cultures and languages in assuming a better role in the social and cultural life of the respective regions. Still today, French policies under its new President Sarkozy reflect Paris' traditional approach to national minorities: no official recognition and at best some alibi rights in order to gain a minimum of international acceptance.

#### Useful links:

<http://www.catalogne-nord.com>: the Northern Catalans of the region Languedoc-Roussillon  
<http://www.sked.infini.fr>: various associations dealing with the preservation and enhancement of the Breton language and culture  
<http://www.ofis-bzh.org>: Office for the Breton language, supported by the Region Brittany with support of the French Ministry of Culture  
<http://www.soule-xiberoa.fr>: The region of Soule, one of two Basque regions of France  
<http://www.eke.org>: the Basque Cultural Institute in Bayonne, the major Centre of Basque culture in France, a reference for all Basque cultural associations in the area.  
<http://www.diwanbreizh.org> : the Briton network of private schools  
<http://www.univ-corse.fr> : the Corsican University of Corte, the only public university of the island.  
<http://www.olcalsace.org>: the Alsatian office for language and culture, established by the initiative of the Alsatian Regional Council. The Institute is working according to the formula “Regional language with two dimensions” (Alsatian dialect and standard German)  
<http://www.mdsk.net>: Flemish cultural organisation named by a Flemish poet, born in 1649 in Dünkirchen, support all initiatives of Flamands in France.

### 3.6 Greece



Source: Rüdiger Walter - SVI

Titular group minorities	Total	In %
Population	10,939,771	100
Greeks	10,660,771	97.4
Turks	59,000	0.5
Macedonians	40,000	0.4
Aromanians	40,000	0.4
Pomaks	39,000	0.4
Albanians	23,000	0.2
Romany	22,000	0.2
Jews	6,000	
<b>Total minorities</b>	<b>229,000</b>	<b>2.1</b>

Source: C.Pan/B.S.Pfeil, *National Minorities in Europe*, ETHNOS, Braumüller, Vienna 2003

In mid-19<sup>th</sup> century Greece, constituted as an independent state in 1830, was still characterised by a high ethnic-cultural variety, especially in the North (Thessalia, Macedonia, Thrace). But after the dramatic “population exchanges” with Bulgaria and Turkey (1920-25) the

share of ethnic minorities in Greece's total population sank below 15 per cent. After the peace treaties of Sévres (1920) and Lausanne (1923), only persons with Islamic faith were provided with some protection by the Greek state. Ethnic minorities had a worse time later. Jews were persecuted during World War II, Albanian Muslims were deported, Slavic-speaking Macedonians during the Greek civil war of 1946-49 were brutally fought against. If such minorities today on the Greek territory count less than 3 per cent, it is due to the protracted efforts by the Greek political elite to create a “purely Hellenic country”. Still today there are no officially recognised ethnic or linguistic minorities, but only religious minorities. Thus, in the Greek general census no ethnic affiliation is registered, but only the membership to a religious community. Consequently, only the Muslim people in Western Thrace are recognised by the state, including the ethnic Turks, Roma and Pomaks. The number of the Slavo-Macedonians in Greek Macedonia even by Greek authorities is estimated between 150,000 and 200,000.<sup>1</sup>

In the Greek civil society, generally there is an attitude of refusal when it comes to respecting minority rights. Given a long experience of violent conflicts with Turkey during the 19<sup>th</sup> and 20<sup>th</sup> century, many Greeks look upon minorities as a possible threat to the state's unity and security. The Greek public opinion upholds a self-image of “homogenous nation” with a high percentage of population sharing xenophobic and ultra-nationalist attitudes. Today Greece is still in conflict with its neighbour Macedonia, as it never recognised the very legitimacy of that state's name, on which it claims to have the patent.<sup>2</sup>

When Greece in the late 1990s was pressured to sign and ratify some international conventions on minority protection, the government half-heartedly accepted to reform some of its discriminatory provisions, but soon after had to withdraw its proposals, as the public reaction was generally hostile, branding those attempts as a threat to the unitary and indivisible Hellenic people. The OSCE High Commissioner for National Minorities, Max van der Stoep, intervened to point out that recognising a minority was absolutely not equivalent with attributing neighbouring states the right to raise claims on Greek territory. Greece's minorities indeed do not claim any kind of self-determination or autonomy, but request minority protection. There is no region in Greece where a national minority is in a majority position, but the minorities refuse to be discriminated against or to be assimilated into the majority population.

The only minority with a recognised legal status is the Muslim minority in Thrace (120,000 or 0.95 per cent of the population), predominantly Pomaks (Muslim Bulgarians), Turks and Roma. There are a number of other minorities, as the Arvanites (ethnic Albanians), the Vlachs (Aromanian), the Slavo-Macedonians and Bulgarians. Given the very restrictive Greek policy vis-à-vis minorities many of the members of such minorities do not feel free to profess their ethnic affiliation, but rather prefer to hide their cultural identity in order to avoid disadvantages in daily life. Individuals and associations, which dared to openly define themselves as Macedonians or Turkish, often have been targeted by physical attacks, criminal procedures and acts of discrimination in various forms. Although Greece is a party to the International Convention against Racial Discrimination (1965), discrimination on a national, ethnic and religious basis is a widespread phenomenon.<sup>3</sup> Particularly the Roma are often victims of such actions. Moreover, Greece is not a real secular state as the Greek-Orthodox Church by the Greek Constitution is the dominant religion, a kind of “state-church”. Although religious freedom is also ensured by the Constitution (Article 13), the smaller religious communities suffer disadvantages and hardships. Only the Muslims in Thrace enjoy some rights in the education system, as they are allowed to learn Turkish as a subject in compulsory schools, but due to many practical problems these schools are working under quite difficult conditions.<sup>4</sup>

### Useful references and links

Richard Clogg (ed.), *Minorities in Greece: Aspects of a Plural Society*, London: Hurst and Company 2002

<http://www.florina.org> : the political party of the Macedonian minority (the party’s name is “rainbow” as Greece prohibits parties on ethnic basis).

<http://www.gundemgazetesi.com>: political weekly magazine AGENDA for the Turkish speaking communities in Greece (also English articles)

<http://www.abttf.org> : the Federation of the Turks of Western Thrace, reports also on other minorities in Greece.

<http://www.arvasynel.gr>: Alliance of the Greek Arvanites (Albanians)

<http://www.kemo.gr>: Greek center for research on minorities

<http://www.regione.taa.it/biblioteca/minoranze/grecia2.pdf>: Law 694 on the schools of Muslim Minorities in Western Thrace (in English version)

<sup>1</sup> Christoph Pan, *Minderheitenrechte*, Vol. 2, p. 204.

<sup>2</sup> Thus it defines Macedonia as FYROM (Former Yugoslavian Republic of Macedonia).

<sup>3</sup> See MRG, *Annual Report 2008*; available at: [www.mrg.org](http://www.mrg.org).

<sup>4</sup> See Christoph Pan, *Minderheitenrechte*, Vol. 2, p. 198.



Source: Rüdiger Walter - SVI

### 3.7 The Russian Federation

After the dismantling of the former Soviet Union the Russian Federation was created as an independent federal state. In March 1992, 19 of the 21 republics of the former RSFSR (Tatarstan and Chechnya did not sign the treaty) agreed to enter in this federation and, by signing a federation treaty on 12 December 1993, formally approved the new Russian Constitution, defining the state a “democratic, federal republic based on the rule of law”.

After the fusion of some subjects, the Russian Federation in mid-2008 consists of 83 units, typically referred to as “Subjects of the Federation”, which are divided into six different types:<sup>1</sup>

- 21 republics
- 47 regions (oblast)
- 2 cities with federal status
- 9 autonomous kraia
- 4 autonomous okrugs
- 1 autonomous oblast.

The number of federal subjects is expected to shrink in the coming years due to the further process of merging

with neighbouring entities. In addition, there are seven ‘Federal districts’, which have only co-ordinating functions. The status of the subjects of the federation is determined both by the federal Constitution and by the Republican and regional constitutions or charters.<sup>2</sup> The Russian Federation as a whole is sovereign, its constituent units are not. As the only source of power the federal Constitution mentions the “multinational people of Russia”.<sup>3</sup> The Russian Federal Constitution of 1993 proclaims the equality of all federative subjects vis-à-vis the central government, combining both principles of ethno-federalism and territorial federalism.

Only in five republics and two autonomous districts (okrugs) the titular nation forms also the majority population, whereas in 21 out of 31 autonomous subjects the ethnic Russian population is the majority. This multinational composition of Russia’s federal subjects resulted from an arbitrary drawing of borders during the Soviet times. Last, but not the least, several peoples have been victims of forced migration and collective deportation by Stalin’s regime.<sup>4</sup>

In Russia today officially there are ‘national or ethnic minorities’, but also ‘nationalities’ and ‘peoples’. The

titular nations of autonomous subjects are not considered as 'minorities'. Thus Beate S. Pfeil distinguishes three kinds of minorities:<sup>5</sup>

- 23 titular ethnic groups who have a co-national state or even a kin-state outside the Russian Federation
- Ethnic communities without any kin-state
- Indigenous smaller peoples (especially in the North and East of Siberia)

In the European part of Russia there are many autochthonous (indigenous) ethnic minorities or peoples, by numbers quite small in the total population. In the whole Russian Federation the Russians make up 89 per cent of the population, in the European part alone 86 per cent. In most federal subjects there is a rather strong Russian majority population, although the particular structure of the Russian state could suggest a major variety of peoples with their own federal subjects. This is due to the main principle of constitution of federal subjects, which in the Soviet times had mainly been an ethnic-national one. Each ethnic community was accorded a regional or territorial unit, which also took as official name the name of the titular nation regardless of their majority or minority position within the given territory. Russia since 1917 ideologically considers itself a "free federation of free peoples", as if the state had been constituted on a voluntary base by free decisions of peoples. According to this formulation the Russian people accepts a role as "primus inter pares", while as the subject of the Russian sovereignty the "multinational people of the Russian Federation" is determined. In all the federal subjects along with Russian, the language of the titular nation is the official language. In four federal subjects there are two titular nations. The protection of national or linguistic minorities, which are not titular nations of any federal subjects, is under the responsibility of the single federal subjects. In the case of the small peoples of the North and East (indigenous peoples) there are special federal regulations for protection, in order to protect also the ecological system in Northern Siberia, which provides the livelihood for those peoples.

### Territorial autonomy and minority rights

In the former USSR, out of more than 100 different peoples, only 53 had their own national entities (republics, regions, districts). Those entities differed in legal status. For instance, the 15 Soviet Republics and 20 autonomous republics had constitutions, but the eight autonomous regions and 10 autonomous areas had no constitution. The peoples were not represented equally

in the Soviet of Nationalities, the second chamber of the Supreme Soviet. On the other hand, not all autonomous entities were organised along ethnic lines<sup>6</sup>. But the ethnic division of the former USSR was complicated by administrative and political divisions in territories and regions with various peoples split up or scattered in different entities. For political reasons, autonomous entities were disestablished or, conversely, turned from districts into regions or from regions into republics.

If there is a guideline for territorial autonomy to enable national minorities to be a majority on their traditional homeland, in the Russian Federation this principle often was not or could not be respected. In the Bashkir, Buryat, Karelian, Komi, Mordvinian, Udmurt and Yakut Autonomous Soviet Socialist Republics, the Russian population outnumbered the peoples after which the republics were named. Except in the Northern Ossetian, Tuva and Chuvash autonomous republics, the autochthonous ethnic groups were smaller in number than the rest of the population, with the same situation in most of the autonomous areas and regions. Hence, territorial autonomy in the form of autonomous republics, regions and areas, due to previous political decision and cultural-geographic circumstances, in most cases had to be conceived as "consociational self-government", while specific provisions provided "cultural autonomy" in order to ensure the protection of ethnic identity. Under the federal Constitution, all constituent entities have equal rights. This equality, however, exists largely only on paper. Critics of the Federation's present nation-state institutions cite the following shortcomings:

1. The unsettled question of what role and position the Russian people should occupy in the system of inter-ethnic relations;
2. The national autonomous entities have, in a way, been given more rights than the "Russian" regions;
3. Russians in some of the autonomous republics have become "second class citizens";
4. National republics and regions differing in geographical extent and population size are accorded the same rights;
5. National minorities such as the Germans, Poles or Greeks have been left out of the nation-state system;
6. Ethnic groups and minorities living outside the entities established within the Federation for their particular nations are not given proper opportunities to develop their cultures.<sup>7</sup>

The political debate after the re-shaping of the Russian Federation in 1993 led to the question of how multi-

ethnic Russia should accommodate its ethnic-cultural diversity. Should the division of the Federation into ethnic constituent entities continue, even though this concept was showing clear limits? The conclusion could be "...that neither an absolutely 'non-ethnic' structure nor an ethnic-cum-geographical approach will solve Russia's problem. The time has come to begin gradually to introduce elements of cultural autonomy. This is essential for the nationality question that must be settled for nations, not for geographical areas".<sup>8</sup>

### National cultural autonomy

A major step in this direction was the approval of the 'National Cultural Autonomy Act' on 17 June 1996. Art. 1 defines national cultural autonomy, which

- i) constitutes a form of national cultural self-determination by citizens of the Russian Federation associating themselves with particular ethnic communities;
- ii) is also a means by which Russian citizens can protect their national interests as they explore different avenues and forms of national cultural development;
- iii) is a voluntary (non-political) assemblage rooted in the free expression of citizen's will as they associate themselves with a particular ethnic community;
- iv) comes about for the purpose of independently attending to matters related to the preservation of and respect for the language, culture, traditions and customs of citizens belonging to different ethnic communities.

National cultural autonomy is a new element in Russia's nationality politics. In the Soviet era a hierarchical ranking of nation-state entities was imposed. Cultural autonomy was neglected to highlight the territorial aspect, while Russians, and the communist party, largely dominated the political sphere. The concept of cultural autonomy should provide for a new, comprehensive legal basis to enable ethnic communities – small, unevenly distributed, indigenous and other – to preserve and develop their distinctive identities, traditions, languages and cultures, education systems. But the law did not provide a specific or exhaustive list of such ethnic communities entitled to cultural autonomy, and remains quite vague with regard to the form that this autonomy should take.

However, the National Cultural Autonomy Act marks a break with the traditional approach to the question

of inter-ethnic relations in Russia. From 1996 on, in organising the different autonomous entities of the Federation, beyond territorial autonomy, the whole range of cultural rights of citizens belonging – by free choice – to an ethnic or national community had to be legally taken into account. By introducing this principle, post-Soviet Russia will gradually move away from the dominant tendency to give precedence to the autochthonous population. It remains to be seen whether this tendency undermines the very character of the autonomous entities, which had always stressed the issue of territorially consociational and ethnically inclusive governance.

Although human rights and the rule of law as the federal principles are formally respected and Russia has ratified the FCNM on 21 August 1998, there are very serious shortcomings in Russia's legislation and political practice on national minorities. Besides the humanitarian tragedy of Chechnya, a still smouldering crisis in the Caucasus, the international community and international human rights organisations continue to raise criticism in the face of the increasing restriction on press freedom and political liberties, the limitation of the freedom of expression and the media, of free association and political representation. This also deeply affects the situation of national minorities.

### The language rights of national minorities

According to Article 2b, paragraph 2, of the Russian Constitution, there is a general fundamental right to use its own mother tongue. The general freedom of using the language has validity for the private sphere, social relations and cultural activities, but not in communication with public authorities. The only official state language on the entire territory of the Federation is Russian (Article 68, p. 1), while the Republics are allowed to establish their own official languages along with Russian. All the other subjects under the language law (Article 3) are only entitled to regulate the language in education, not in the sphere of public authorities. If there are areas with compactly settling ethnic communities or ethnic groups without their own federal subject, the responsible subjects can regulate the use of such minority languages in the public sphere. But only the Republic of Sakha has already caught this opportunity. All Republics have declared the language of their respective titular nation as an official language along with Russian. Article 15,4, of the Language Act provides that citizens are allowed to interact with public organs, enterprises and institutions

in their own languages, but the answer may always be in Russian.

Judicial proceedings in Russia have to be carried out in Russian language. In the Republics at some levels of the judiciary also the respective co-official language can be used. All parties of such a procedure, who are not able to communicate in those languages, are entitled to be assisted by a translator, but in practice this is rarely the case.

The toponyms according to Article 23 of the Language Act are generally on the language of the respective federal subject. But those subjects (Republics, okrugs, regions, oblasts) are entitled, whenever a major ethnic community is settling in a compact form on its territory, to adopt the toponyms of the minority language. In traffic signs only Russian is allowed.

### The education system

The Constitution (Article 26) generally attributes to each citizen the right to freely choose the language of his education.<sup>9</sup> But the respective federal Acts limit this fundamental right to “general education” according to the possibilities given by the public education system. The state is obliged to establish the requested number of school institutions or to establish groups and classes within the schools in order to grant this right. Russia’s Act on Cultural Autonomy offers two additional possibilities:

- The parallel instruction of language, culture and history of an ethnic minority within a school with Russian medium schools;
- Additional institutions of education which can integrate the public education with activities in the minority language.

The Republics are generally entitled to regulate the use of the language in their education system, both the respective state language (along with Russian) and of “other languages”. In reality most of the Republics do not exceed in their Constitution this general obligation. Only Tatarstan’s Constitution guarantees the right to education in Tatar and Russian. Also Burjatia and Tuva allow in their respective language Acts the use of minority languages in the school system. Besides the various single systems of languages in the federal subjects, Article 10 makes sure that the state language Russian has to be taught in every institution of general or vocational kind. The Council of Europe does not retain the current

legal framework of use of minority language as sufficient for the needs and rights of minorities in Russia.<sup>10</sup>

In daily practice the overwhelming majority of non-Russian pupils and students are attending Russian schools. Only in the case of the Jakutians, Tuva and Altaians the students enrolled in schools of minority mother tongue are respectively 75 per cent, 70 per cent and 50 per cent.<sup>11</sup> All in all there are 38 languages which are admitted also as medium languages in public education system: sometimes only in primary schools, in some other cases also during the eight-year compulsory school, partially only on the high-school level. There are a few schools using the minority language as the exclusive language of instruction, but mostly they combine Russian with minority languages. As subjects in Russia altogether 75 languages are currently taught, including the minority languages.

### Other rights of national minorities

Are there legal restrictions in the Russian Federation against the constitution of ethnic or national organisations and parties? Political parties based on racial, national and religious features are prohibited, but ethnic minorities find it difficult to constitute parties due to another restriction, set forth by the Political Parties Act of 2001: only an organisation with a total membership of at least 10,000, with a minimum of 100 members in at least 44 federal subjects, is allowed to be registered as a political party. Nevertheless there are a multitude of “national-cultural associations”, 14 of which even established at the federal level; in turn many of such social organisations gather in umbrella organisations on federal level, e.g., the ‘Federation of the smaller peoples of the North and the Far East’.

There are no special rights on political representation of Russia’s national minorities and smaller peoples on the federal level. In fact minority members of both chambers of the Federal Parliament are elected as representatives of federal parties, not as minority representatives. Theoretically the smaller national groups should be represented in the Federation Council, which comprises two representatives of each federal subject. But in most federal subjects where these titular nations are in numerical minority they do not have many members in that assembly, whose powers are quite limited. On the other hand representatives of smaller peoples and minorities are regularly elected in good number in parliaments and assemblies of the single federal subjects.

As for the rights on information, the law on cultural autonomy and the Media Act do not explicitly contain any restriction with regard to the use of a language. But the Language Act provides that media published on federal level have to be written or broadcast in Russian, whereas media at the republic level can be published in minority languages as well. In Russia there are more than 400 daily newspapers and magazines in 59 languages of different peoples or ethnic communities and 300 radio and more than 400 TV programmes in 69 minority languages.<sup>12</sup>

### Useful sources and links:

Dmitry Gorenburg, *Minority Ethnic Mobilisation in the Russian Federation*, Cambridge University Press 2003

<http://www.ica.ras.ru> : Institute for Ethnology and Anthropology of the Russian Academy for Sciences

<http://www.anco-rt.ru>: the national-cultural organisations of Tatarstan.

<http://www.adygheya.ru> the official website of the Federative Republic of Adygeja

<http://www.volgagermans.net> : the Germans of the Volga are the most relevant group of the German minority of Russia.

<http://www.fjc.ru>: Jewish communities of Russia

<http://www.regione.taa.it/biblioteca/minoranze/russia1.pdf>: Russia's constitution

<http://www.regione.taa.it/biblioteca/minoranze/russia2.pdf>: Law on the languages of the peoples of the Russian Federation

<http://www.regione.taa.it/biblioteca/minoranze/russia3.pdf>: Federal Law on the National and Cultural Autonomy

8 *ibid.*, p. 218.

9 For "People" this right derives also from Article 68.3 of the Constitution. See Christoph Pan, *Minderheitenrechte*, Vol. 2, p. 428.

10 Christoph Pan, *Minderheitenrechte*, Vol. 2, p. 429.

11 *Ibid.*, p. 430.

12 *Ibid.*, p. 431.

1 See Art. 65 of the Constitution of 1993. Russia's 21 autonomous republics are: Adygeja, Altai, Bashkortostan, Buryatia, Dagestan, Ingushetia, Kabardino-Balkaria, Kalmykia, Karachay-Cherkessia, Karelia, Komi, Mari El, Mordovia, Sakha (Yakutia), North Ossetia-Alania, Tatarstan, Tuva, Udmurtia, Khakassia, Chechnya, Chuvashia; two autonomous cities: Moscow and St. Petersburg; 10 autonomous districts are: Aga Buryatia, Chukotka, Evenkia, Khantia-Mansia, Koryakia, Nentsia, Permyakia, Taymyria, Ust-Orda-Buryatia, Yamalia; one autonomous oblast: Jewish autonomous oblast. The 53 regions are listed at: [http://en.wikipedia.org/Russian\\_Federation](http://en.wikipedia.org/Russian_Federation).

2 Andreas Heinemann-Grüder, *Föderalismus in Russland*, in Gerhard Mangott (Hg.), *Zur Demokratisierung Russlands*, Band 2, NOMOS Baden-Baden, 2002, S. 79-114.

3 The Russian Constitution can be found at: <http://nbmccd.cc.tx.us/contracts/lrc/kc/constitutions-subject.html>.

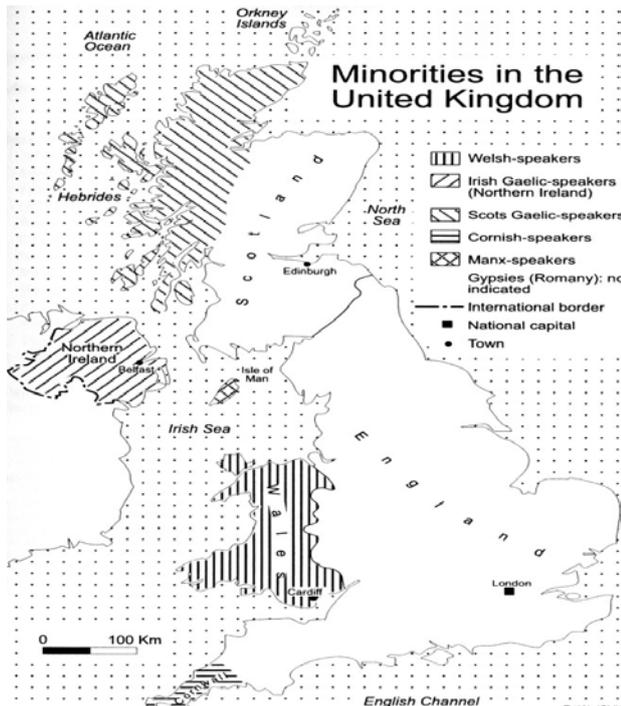
4 Beate S. Pfeil, *Minderheitenrechte*, Vol. 2, p. 420.

5 *Ibid.*, p. 421-422.

6 Vladimir Katashkin/Aslan Abashidze, 'Autonomy in the Russian Federation: Theory and Practise', in: *International Journal on Minority and Group Rights*, 10/2004, p. 203-204.

7 Kartashkin/Abashidze, 2004, p. 205.

### 3.8 The United Kingdom



Source: Rüdiger Walter - SVI

<i>Titular group minorities</i>	<i>Absolute numbers</i>	<i>In %</i>
Population	58,789,200	100
English native speakers	57,951,900	98.6
Welsh speakers	543,000	0.9
Irish Gaelic speakers	140,000	0.2
Scots Gaelic speakers	63,000	0.1
Cornish speakers	1,000	
Manx speakers	300	
Roma(Gypsies, Travellers)	90,000	0.1
Total minority language speakers	837,300	1.4

Source: C.Pan/B.S.Pfeil, *National Minorities in Europe, ETHNOS, Braumüller, Vienna 2003*

The United Kingdom is a multinational construct which is composed of several peoples and historical regions such as Northern Ireland, Scotland, Wales, and the Channel Islands. Consequently, regional identity has a traditional importance, while until recently the notion of ‘minority’ held little significance. It is rather reserved for minority communities of immigrants who originate from other countries of the Commonwealth. The notion ‘national minority’ in the UK is not legally defined. The state report, submitted under the FCNM in July 1998 – UK ratified the FCNM on 1 May 1998 – assumes groups of a distinct race as people determined by colour, race, nationality or ethnic or national origin, comprising

- a) Ethnic communities (mostly immigrated from former colonies or the Commonwealth);

- b) Scots, Welsh and Irish as historical nationalities;
- c) Gypsies (Roma) and Travellers (in Northern Ireland).

Cornish and Manx haven’t yet been recognised as separate languages or nationalities.

The UK’s principal motto in matters of minority or nationality is that “everything is permitted except what is expressly forbidden”.<sup>1</sup> The government’s policy is mainly focused on promoting and preserving cultural diversity. The members of ethnic minorities should be empowered to fully participate in the cultural life, also maintaining their original cultures, traditions, languages and values. The UK, if compared with “continental Europe”, has the most open approach with regard to the “new minorities”, which in UK not by chance are defined as ‘ethnic minorities’.

#### Fundamental minority rights

For want of a formal Constitution the protection of minority languages and rights in UK is based on several single Acts, like the Act on Welsh Judiciary 1942, the Welsh Language Act 1967 and 1993, the Nationality Act 1981 and the Education Act 1996. Prevention of discrimination of ethnic minorities is to be enforced by the Act on Race Relations of 1976, amended in 2000. Discrimination on ethnic grounds is banned in all spheres of life, from employment, housing and education to supply of private and public services. Every person concerned, feeling discriminated against on such grounds, has direct access to the courts. In the UK there also a ‘Commission on Racial Equality’ has been established, independent from the government, in charge of preventing discrimination and enforcing substantial equal rights.

In addition to these provisions, aimed at protecting especially minority communities immigrated in recent decades, the protection of traditional or historical minorities as the Gaelic-speakers in Northern Ireland and Scotland and the Welsh speakers in Wales is provided principally through the devolution of the British state’s structure, along with some special State Acts. The milestones of this process have been three popular referenda in 1997 (Scotland and Wales) and in 1998 (Northern Ireland), which nearly contemporarily led to the approval of the corresponding three devolution Acts of 1998. By this process all three historical ‘nations’ – but excluding England – obtained regional territorial autonomy. Without any doubt Scotland is the strongest

sprout of the devolution process, whilst Wales only in 2006 could obtain real legislative powers. The issue of Northern Ireland for nearly a decade has been blocked by a political deadlock caused by the rival Unionist and Republican parties, but finally the 1998 Good Friday Agreement, transformed in the Northern Ireland Act of the 19 November 1998, could take off in 2007, giving way for a joint home rule of the region.

These three regional autonomies are now the fundamental institutions entitled to regulate minority issues such as the language policy, cultural policy and the education system on the regional level. As Gaelic languages in all three autonomous regions are spoken by a minority of the population, the autonomous policymakers are challenged not only to protect, but also to revive and actively promote these languages.

### The minority language policy

In the UK the official language on its whole territory is English. Only in Wales also Welsh has the status of a co-official language. Moreover, when ratifying the ECRML the UK has committed itself to promote also the Gaelic languages in Northern Ireland and Scotland. The Welsh Language Act of 1993 determines that in public administration and the judiciary principally English and Welsh have to be considered equivalent. Gaelic as an official language of Scotland and Northern Ireland has a more symbolic than practical value. But the recognition and promotion of the Gaelic language in Scotland lies in the power of the Scottish Parliament. In Scotland's Western Island about 40 per cent of the inhabitants have indicated Gaelic as their mother tongue.

The most widely spoken minority language in UK is Welsh, which is spoken by around 500,000 people. Although that is not quite 1 per cent of the population of the whole country, it amounts to 20 per cent of the population of Wales and a much higher proportion in the traditionally Welsh-speaking areas of North and West Wales. Welsh is thus in a much stronger position than Gaelic in Scotland or Irish in Northern Ireland. Although significant use has already been made of Welsh in the past in the public services of both central and local government, and the relevant local offices are normally able to deal with members of the public in the language of their choice, the status of Welsh has been enhanced considerably by the enactment of the Welsh Language Act 1993. Without declaring Welsh an official language, this Act lays down the principle that in the conduct

of public business and the administration of justice in Wales the English and the Welsh languages are to be treated on a basis of equality. Every public body which provides services to the public or exercises statutory (public) functions in Wales is required to prepare a scheme specifying the measures which it proposes to take in order to give effect to that principle. Also the Wales Devolution Act of 1998 puts the two languages on an equal footing.

Welsh is also accepted in the judiciary, but the members of the Welsh minority themselves are still reluctant to use it. In any legal proceedings in Wales, the Welsh language may be spoken by any party, witness or other person who desires to use it, and any necessary provision for interpretation shall be made accordingly. Public officials, newly admitted to the civil service in Wales, have to be fluent in Welsh and most of the written information for the general public has to be drawn up also in Welsh.

There is a special authority, the 'Welsh Language Board', in charge of implementation of all language schemes. Among the tasks of this authority is the approval of the schemes prepared by public bodies and investigation of apparent failure to carry out a scheme of complaints by persons claiming to have been affected by such non-compliance. If necessary, the Board may refer such matters to the Secretary of State for Wales.

In Northern Ireland the Irish Gaelic is subject of various British regulations, but unlike Scot Gaelic and Welsh, this language has no real official status in the six counties. English is the only language of administration, although sometimes the Westminster or Belfast government is publishing some documents also in Irish Gaelic. The autonomous region of Northern Ireland since 1998 is committed to foster bilingualism, nevertheless Irish Gaelic is still far from being spoken or understood by a majority of the Catholic part of the society. It is reckoned that out of 1.7 million inhabitants of Northern Ireland only about 140,000 speak Irish Gaelic to a certain extent.

### The minority languages in the education system

In all parts of the UK English keeps on being the prevailing language of instruction in the education system on all levels, except Wales where the medium of instruction can be English or Welsh or a combination of both. In the Welsh national school curriculum the

Welsh language plays a central role. With just a few exceptions all children between 5 and 16 have to learn Welsh as first or second language. The Commission for the Welsh Language is in charge of elaborating the rules for the teaching of both official languages of the region. Every school located in Wales has to offer Welsh either as medium language or as a subject. Wherever the medium language is English, Welsh has to be a compulsory subject. In schools with Welsh as medium language the teaching of English is not compulsory until the age of 7. One-third of all primary schools in Wales are using Welsh as only language of instruction, and on the secondary level 22 per cent of the schools are 'Welsh schools' according to the official definition: in such schools, besides the subjects English, Welsh and Religion, more than half of the "national curriculum" in Wales has to be taught completely or partially in Welsh language.

Apart from the obligation on all schools to teach Welsh to all pupils, Wales' local education authorities are required to respond to the reasonable demands of parents in relation to the education of their children, including the provision of education through the medium of Welsh. In the light of local circumstances, therefore, the local education authorities divide schools into three categories according to the role assigned to the Welsh language in each. However in North and West Wales, where there is a much stronger concentration of Welsh speakers, the proportion of the schools of the first category is far higher. In these areas English-monoglot children may also be obliged to attend schooling mainly through the medium of Welsh.

Scotland is financially supporting the teaching in Gaelic as a medium language with an increasing number of students. There is a particular need for teacher training in Gaelic for the kindergarten and primary school level, but also the training of teachers in secondary levels is enforced. Now Gaelic is present as medium language in 60 primary schools (1,800 pupils) and 14 secondary schools (1,300 pupils). Many more students are learning Gaelic as their second language.

Also Northern Ireland since 1989 has adopted Irish Gaelic as an additional part of the school curricula. Under the Devolution Act of 1998 the UK and the Republic of Ireland were obliged to maintain the linguistic variety.

As for the languages spoken by immigrated ethnic communities different rules are applied. In British schools there are pupils with more than 200 different

mother tongues and 60 of the languages of those ethnic groups are also used in some special schools. Without a sufficient knowledge of English these children would have to face major disadvantages in social and professional life, and as British citizens could not fully participate to the political life. Thus, first of all the British government every year is investing considerable funds to promote the learning of English among children from non-English speaking families. At the same time as a part of the national curriculum the UK recognises the right of the pupils to learn also their mother tongues, but poses the main responsibility to preserve the knowledge of the mother tongues to the ethnic communities themselves. Therefore several ethnic minorities (not autochthonous minorities) have established private schools, working in leisure time or Saturdays, to preserve their cultural tradition, efforts financially supported by the local school administration.

### Minority languages in the media

In UK there is a very liberal regime of information in both the print media and the electronic media. When it comes to grant broadcasting licences the public authority responsible is obliged to take into account the local needs and interests. Ethnic minorities thus find it easy to run their own radio and TV channels. The British Broadcasting Law of 1996 sets out that all regions of the UK have to be covered with TV programmes.

The BBC in Wales and Channel 3 in Wales are catering special programmes in Welsh language. The TV channel Sianel Pedwar Cymru (S4C) works exclusively in Welsh with 14-15 hours per day. Radio Cymru is 100 hours per week on air. Also in Wales with its 500,000 Welsh-speakers in the field of audio-visual media interesting progresses have been achieved. Wales not only has its own Welsh-language radio service (Radio Cymru), which broadcasts some 104 hours a week, but also, since 1981, a separate Welsh television channel under an independent authority which broadcasts on average 32 hours of Welsh programmes a week, of which the BBC is required to contribute at least 10. The remaining Welsh programmes may be bought in or self-produced, sometimes in co-operation with foreign companies. The costs are met partly by revenue from television licences. The 'Gaelic Broadcasting Commission' (Comadaigh Craolaidh Gaidhlig – CCG) is obliged to finance Gaelic radio features which are broadcast by Radio Alba 45 hours per week.

BBC Northern Ireland has some 150 hours of Gaelic

on its programme, but Northern Ireland is also covered by all channels and programmes from the Republic of Ireland. In addition to radio and TV, there is a variety of magazines in Gaelic and Welsh.

In response to demands from the Gaelic community in Scotland, provisions were included in the Broadcasting Act 1990 requiring the Secretary of State for Scotland to make payments to a Gaelic Television Fund to finance the production of television programmes in Gaelic. All television companies have access to this fund. The financing thus provided is intended to secure an increase in the amount of television programmes in Gaelic from 100 hours per year to about 300 hours.

Generally what is of utmost importance for the historical national minorities in the UK is that the state in 1998 embarked in a long-term devolution process which transferred substantial powers from London to Scotland, Wales and Northern Ireland. Each of those regions, since 1998, has its own parliament and government, but in the case of Wales until recently this regional assembly had only quite limited legislative powers. Due to the devolution the autochthonous minorities have a comprehensive potential for self-government, in particular in cultural affairs. Whereas in Northern Ireland regional autonomy has created the political space for reconciliation and co-operation between the two opposing groups, in Scotland and Wales a huge majority of the population has approved the autonomy process.

### **Useful sources and links:**

Neil Colmn Mc Cabe, *Comparative Federalism in the Devolution Era*, Lanham, Lexington books 2002

Murray Pittock, *Scottish Nationality*, Basingstoke/New York, Palgrave 2001

<http://www.bwrdd-yr-iaith.org.uk> : the Authority of Welsh Language, in charge of the codification, the instruction and adult education in Wellsh language.

<http://www.bord-na-gaidhlig.org.uk>: website of the authority for the enhancement of the Gaelic language in Scotland.

<http://www.scotsindependent.org>: news magazines supporting the Scotch cultural and political movements.

<http://www.travellerslaw.org.uk> : Roma (Travellers) with special focus on political and legal issues.

<http://www.regione.taa.it/biblioteca/minoranze/regnunito1.pdf>: Race Relation Act 1976

<http://www.regione.taa.it/biblioteca/minoranze/regnunito2.pdf>: Welsh Language Act 1993

<http://www.regione.taa.it/biblioteca/minoranze/regnunito3.pdf>: Gaelic Language Scotland Bill

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*1 Christoph Pan, Minderheitenrechte, Vol. 2, p. 608.*

### 3.9 National minorities in Poland

By Karina Zabielska



a question on nationality and the language spoken within the family. According to those data Poland had 38,230,100 inhabitants, out of whom 96.74 per cent (36,983,700) identified themselves as Poles, 1.23 per cent (471,500) declared themselves as belonging to a minority nationality, whereas the remaining were foreign nationals. However, the estimates of the Ministry of Internal Affairs published in the First State Report concerning the implementation of the FCNM differ much from the official data, as shown by the table above. It can be assumed that only the most convinced members of national minorities declared their true nationality.

#### The genesis of Poland’s minorities

Multiculturalism and tolerance has a very long tradition in Poland. The country has always been home not only to several peoples, but also to different religious communities. Religious minorities until 1945 were also numerically important among the predominantly Catholic Polish society. The Jews, in particular, benefited from the tolerance: while they were just 0.6 per cent of the population at the beginning of the 16<sup>th</sup> century, in the second half of the 18<sup>th</sup> century they reached 7 per cent. This climate of tolerance attracted also Germans, Armenians, Karaimians and Tatars. At the end of the 18<sup>th</sup> century Poland was divided and annexed by the neighbouring powers Prussia, Russia and Austria. When Poland was reconstituted as an independent state in 1918, 31.1 per cent of its population consisted of minorities.

Minorities	Total (census figures)	Estimated figures
Population (census)	38,115,000	
Germans	147,094	300-500,000
Bielorussians	47,640	200-300,000
Ukrainians	27,172	20-30,000
Roma	12,731	20-30,000
Lemks	5,850	60-70,000
Lithuanians	5,639	20-30,000
Russians	3,244	10-15,000
Slovaks	1,710	10-20,000
Jewish	1,055	8-10,000
Tatars	447	5,000
Czechs	386	
Armenians	262	5-8,000
Karaim	43	2,000
<b>Total minorities</b>	<b>253,273</b>	<b>660-1,020,000</b>

Source: Official data from the 2002 national census and estimated figures from: [http://www.coe.int/T/E/Human\\_Rights/Minorities/](http://www.coe.int/T/E/Human_Rights/Minorities/)

Official data regarding the size of Poland’s minorities have been collected in the census 2002. For the first time since the World War II the census contained

It was World War II that changed its ethnic composition dramatically, depriving Poland of its multinational character. This was due to several causes. First of all the occupation by Nazi Germany brought about the extinction of Poland’s Jewish population along with the Roma. Moreover, the war led to a shift of the Eastern and Western borders, causing deportation and forced migration of millions of people. Poland lost nearly one-third of its pre-war territory in the East, where mainly Ukrainian, Bielorussian and Lithuanian minorities were living. In addition, until 1950 more than 3.2 million Germans had to leave the country. Treaties were stipulated with the republics of the Soviet Union to carry out an exchange of population. By those huge manipulations it was attempted to prevent future ethnic conflict and Poland, after this period of conundrum during and after World War II, was transformed in a quite homogenous nation-state with only about 1.5 per cent minority population. There weren’t any more minority

conflicts in the People's Republic of Poland. At those times a new concept was propagated as the bedrock of a restrictive minority policy: the moral-political concept of the unitary, socialist society. The state policy towards minorities brought about a homogenisation of the social structure. Identity preservation rights were limited, and assimilation and exclusion from the social life were taking place. However, that policy was faintly institutionalised, so minorities' activities were tolerated to some extent.

### Minority policy after 1989

The turning point seems to have occurred in 1989, the year of the first democratic elections. The first freely elected Prime Minister Tadeusz Mazowiecki emphasised that Poland was a home country also for national and ethnic minorities. Also a Parliamentary Commission on National and Ethnic Minorities was appointed. The democratisation processes after 1989 opened to the minorities new legal possibilities and ways of taking part in public life. One has to mention the new Law of Assembly, the Law on Freedom of Religion and the Law on Political Parties. Of great importance were also international developments and the international concern regarding minority issues in Eastern Europe. United Nations, OSCE and Council of Europe were determined to set the standards of minority protection. As a country aspiring to the membership of the European Union, Poland had to create a certain level of minority protection. Many bilateral agreements with the neighbouring countries (covering inter alia minority issues) were concluded. Poland ratified the FCNM in 2000.

### Definition of a national and ethnic minority

In contrast to most of the documents on minority rights – of both international as well as domestic character which do not contain a coherent description of a subject of those documents – the Polish Minority Law contains definitions of national and ethnic minorities as well as the enumeration of minorities, which fulfil the criteria provided by the Act. According to Article 2(1), a national minority is a group of Polish citizens, which fulfils jointly the following conditions:

- 1) Is smaller in number than the rest of the population of the Republic of Poland;
- 2) Is essentially distinguished from the rest of citizens by its own language, culture or tradition;

- 3) Is guided by the will to safeguard its language, culture or tradition;
- 4) Is conscious of its individual historical national community and is oriented on its expression and protection;
- 5) Its ancestors have resided within the present territory of the Republic of Poland for at least a hundred years;
- 6) Identifies itself with the nation organised in its own country.

The definition of ethnic minority differs from the above on two points. An ethnic minority is conscious of its individual historical ethnic community and does not identify itself with the nation organised in its own country. According to the criteria listed upon there are nine national minorities – the Armenian, Bielorrussian, Czech, German, Jewish, Lithuanian, Russian, Slovak and Ukrainian minority – and four ethnic minorities, namely the Karaimes, Lemkos, Roma and Tatars.

### The legal status of minorities in Poland

The main law regulating the status of national minorities in Poland is the Act on National and Ethnic Minorities as well as Regional Language, passed in 2005 (hereinafter *Minority Law*). Up to the point of passing of the Act, the legal status had been regulated on the basis of international treaties to which Poland is a party, adequate provisions of the Constitution and ordinary law developing the constitutional provisions. In the Constitution of the Republic of Poland of 2 April 1997, the legal status of national minorities is stipulated in Art. 35. It guarantees the freedom to maintain the identity of minorities and develop their culture, and gives the right to establish institutions designed to protect and preserve their national identity and culture. Of particular importance within the framework of ordinary law is the Act on Polish Language, the Act on Educational System and its executive provisions which regulate the rules of teaching the minority languages and being taught in the minority language as well as oblige the state to finance that education from state budget. The Act on Radio and Television contains relevant regulations concerning the consideration of the needs of national and ethnic minorities in programmes of public radio and television. The minority rights of a political character are guaranteed by the Electoral Law for the Sejm and Senate of the Republic of Poland.

## The Act on National and Ethnic Minorities as well as Regional Languages

The main objective of the Minority Law is the regulation of all issues connected with the preservation and development of the cultural identity of national and ethnic minorities as well as the development of the regional language. The Minority Law also defines the ways of implementing the principle of equal treatment as well as the tasks and competences of the bodies responsible for those issues. The Minority Law constitutes an Act of complex character. It defines the main terms, specifies the tasks and competences of the public authorities responsible for minority issues and regulates the fundamental rights of people belonging to minorities, as well as the methods of implementation.

Fundamental rights like equality rights and prohibition of discrimination, freedom of association and assembly, freedom of religion and belief, freedom of opinion and right to receive and circulate information have been guaranteed by the Constitution of the Republic of Poland from 1997. The Minority Law also guarantees all these fundamental rights specifically to the minorities.

### Linguistic rights

The Polish Minority Law provides for language rights in different fields. It guarantees a right to use and spell minority names and surnames in accordance with the principles of spelling of the minority language, including the right to register them in documents of marital status and identity card. This regulation is of great importance, as after World War II, many people were forced to change their names and surnames in accordance with the Polish principle of spelling.

Moreover, the Minority Law guarantees the right to freely use the minority language in private as well as in public, to disseminate and exchange information in the minority language, to display information of a private nature in the minority language, and to learn or be taught in the minority language. The introduction of such regulations was possible thanks to the wording of Art. 27 of the Constitution, according to which Polish is the official language of Poland, but also stating that this provision does not infringe upon national minority rights resulting from ratified international agreements.

A novelty in the frame of the Polish legal system was the introduction by the Minority Law of the so-called

auxiliary language, which enables the use of minority language in communications with municipal institutions. It means, in practice, that persons belonging to national or ethnic minorities have the right to address municipal bodies in their own language in both written and oral form. The reply is usually formulated in the official language, but by explicit request it may also be obtained in the auxiliary language. An auxiliary language can be used only within municipalities where the number of inhabitants belonging to a minority is no lower than 20 per cent of its total population. According to this criterion, the auxiliary language has been introduced in 51 municipalities (28 inhabited by the German minority, 12 by the Bielorrussian, one by the Lithuanian minority and 10 by people speaking the Kashubian language.<sup>1</sup> The use of the auxiliary language is also connected with the opportunity to use the additional names of places and topographic objects, as well as names of streets.

### Educational and cultural rights

According to the rules provided by the Act on Education System, public schools are obliged to enable the preservation of national, ethnic, linguistic and religious identity, and in particular, the study of the language, history and culture. The activities of public schools in favour of national minorities are financed by the state. The measures supporting the activities aimed at the protection, preservation and development of minority cultural identity contain financial subsidies from the state budget for the support of activities of cultural institutions: publishing books and magazines, production of television programmes and radio broadcasts, operation of libraries, and popularisation of knowledge of minorities.

In the school year 2005/2006 there were in total 725 units offering education of or in the minority language: 34 schools with instruction in a minority language, 17 bilingual schools, 614 schools with additional teaching of a minority or the regional language and 60 interschool groups learning a minority language. Instruction in the mother tongue is possible in kindergartens, primary and secondary schools. Depending on the number of interested pupils, education can be provided in three ways: schools with instruction in minority language, bilingual schools (in Polish and minority language), and schools with additional teaching of a minority language, obligatory for the minority members.

## Bodies responsible for issues of national and ethnic minorities

According to the provisions of Minority Law, there are three bodies responsible for minority affairs. Two of them are institutions of public administration: the minister of internal affairs and the head of a province (the so-called voivode). The third body is the Joint Commission of the Government and National and Ethnic Minorities. The minister and the voivodes coordinate government policy in relation to minorities and initiate changes in that policy. The voivodes counteract the violation of minority rights and discrimination of people belonging to minorities and render opinions on programmes in favour of minorities. The main tasks of the Joint Commission, consisting of the representatives of minorities and the ministries, are to pronounce opinions on activities aimed at the implementation of rights of minorities and opinions on programmes aimed at the development of the cultural identity of minorities.

## Final remarks

Minority Law has not introduced any radical changes in the provisions concerning safeguards of the right of national and ethnic minorities. However, it provides for cohesion between various laws on the one hand and particular units of state administration on the other. Above all, the Minority Law contains regulations aimed at the development and preservation of minority national and ethnic identity, while it does not implicate any regulations falling into the scope of political rights of minorities.

Minorities in Poland are in general well integrated into the Polish society. However, comparing to the average life conditions of the majority population, there is a difference regarding the Roma. They face discrimination and exclusion from the society. State authorities take measures aiming at the integration of the Roma into the society. However, still much has to be done in terms of health care, unemployment, nutrition and dwelling.

### Useful sources and links:

[http://www.mswia.gov.pl/portal/en/10/Ethnic\\_and\\_national\\_minorities\\_in\\_Poland.html](http://www.mswia.gov.pl/portal/en/10/Ethnic_and_national_minorities_in_Poland.html) : Ministry of Interior and Administration, Republic of Poland, Ethnic and National Minorities:  
[http://www.mswia.gov.pl/portal/pl/353/4392/Tlumaczenia\\_Ustawy\\_o\\_mniejszosciach\\_narodowych\\_i\\_eticznych\\_oraz\\_o\\_jezyku\\_region.html](http://www.mswia.gov.pl/portal/pl/353/4392/Tlumaczenia_Ustawy_o_mniejszosciach_narodowych_i_eticznych_oraz_o_jezyku_region.html) : English version of the Act on National and Ethnic Minorities as well as Regional Language:  
[http://www.coe.int/t/e/human\\_rights/minorities/Country\\_specific\\_eng.asp#P678\\_36715](http://www.coe.int/t/e/human_rights/minorities/Country_specific_eng.asp#P678_36715)  
<http://www.vdg.pl>: the Alliance of the German social-cultural communities of Poland  
<http://www.ltnamai.sejni.pl>: the cultural association of the Lithuanians of Poland  
<http://www.bialorus.pl>: the Bielorrussians of Poland  
<http://www.mswia.gov.pl>: Poland's Ministry of the Interior and administration, with a section on ethnic and linguistic minorities.  
<http://www.regione.taa.it/biblioteca/minoranze/polonia1.pdf>: Poland's Constitution  
<http://www.regione.taa.it/biblioteca/minoranze/polonia2.pdf>: Law on the educational system (1-9-1991

[http://www.coe.int/t/e/human\\_rights/minorities/Country\\_specific\\_eng.asp#P678\\_36715](http://www.coe.int/t/e/human_rights/minorities/Country_specific_eng.asp#P678_36715)  
<http://www.vdg.pl>: the Alliance of the German social-cultural communities of Poland  
<http://www.ltnamai.sejni.pl>: the cultural association of the Lithuanians of Poland  
<http://www.bialorus.pl>: the Bielorrussians of Poland  
<http://www.mswia.gov.pl>: Poland's Ministry of the Interior and administration, with a section on ethnic and linguistic minorities.  
<http://www.regione.taa.it/biblioteca/minoranze/polonia1.pdf>: Poland's Constitution  
<http://www.regione.taa.it/biblioteca/minoranze/polonia2.pdf>: Law on the educational system (1-9-1991

### 3.10 The diversity of minority rights standards

As mentioned in the introduction, given the space constraints in this 'Short Guide' only 10 examples of state legislation and policy on national minorities have been briefly illustrated.<sup>2</sup> The presentation of these 10 cases also has a methodological intention: whoever wants to analyse European minority policies more closely, has to delve deep into domestic minority policies, set forth by more or less 40 states, leaving aside the eight microstates not faced with minority issues. Thirty-six of these states are already a party to the FCNM, which, along with the ECHR and the ECRML, is going to form the cornerstones of a common legal space for minority protection in Europe.<sup>3</sup> It is of particular relevance monitoring in which quantity and quality the domestic legal provisions meet the standards required by the international European conventions.

Also, just considering the situation of national minorities in the 10 states as illustrated above, it becomes sufficiently clear that in Europe there is a considerable diversity of solutions in terms of minority rights. Both the kind of solution applied and the quality or performance of the measures offer a picture which is far from a homogeneous application of international standards. There is the radical application of the territoriality principle in language rights as applied in Belgium and Switzerland; there are forms of advanced personal or cultural autonomy in Estonia and in Hungary; there are different forms of regional or territorial autonomy in 11 states; there are strict regimes of co-officiality of smaller languages as in Spain, Finland and Denmark; on the other hand there are states such as Greece and Turkey which even deny the very existence of any ethno-national minority. These 10 examples clearly demonstrate not only the impressive diversity of minority issues the states concerned are called to tackle, but also the considerable differences between the single national legislative approaches and between the quality of the levels of protection ensured. On the one hand states like Finland, Denmark and Hungary have an advanced standard of minority protection, and on the other states like Greece, France and Turkey are lagging far behind. Although the FCNM ratification process has triggered a new dynamics in developing and enacting provisions for minority protection by national parliaments and governments, the differential among European states still is remarkable. Even the EU member states, in the

absence of any decisive power in the matter of the EU, are far from having established a coherent general scheme of protection and active promotion of national minorities. The remaining 29 states with their respective minority policy are to be classified within this ranking or between the two poles of the Nordic countries at the top and Greece and Turkey at the bottom. It has to be recognised that the new dynamics in setting norms in national minority issues in the past 15 years have spurred many states to start new efforts for keeping pace with the forerunners. A process has been initiated which could eventually lead to a virtuous cycle.

The examples discussed above should however recall that with the given constitutional legal framework and the given political organisation of Europe the still prevailing normative level on minority issues is the domestic one. In Europe today the single-nation states are still the key players when it comes to defining the legal guidelines and the practical implementation of measures to protect national minorities. It should be kept in mind that, unlike federal states such as India, Russia and Canada, the member states of the Council of Europe have to abide by general conventions and charters, but maintain a huge flexible space to regulate minority issues in domestic law.

In this regard, including fundamental rights and legal provisions for national minorities in the list of conditionalities required for accession of candidates to the EU has been an efficient tool to increase the attention to this issue in many Eastern European states. This mechanism is bound to play an important role in the EU policy towards the seven counties of the Western Balkans, in the perspective of joining the EU within a decade from now. The Stability Pact for South Eastern Europe is the first comprehensive prevention strategy, which should provide a framework for regional co-operation and integration into European and Euro-Atlantic structures, taking account of the important issue of minority protection.

*1 According to data of 2002 census there are 52,665 persons speaking the Kashubian language, which is protected as a regional language under the scope of Minority Law.*

*2 The most comprehensive and detailed presentation of minority rights in all European states is to be found in Christoph Pan/B.S. Pfeil, *Minderheitenrechte in Europa*, Volume 2, Vienna 2006, 722 pages (published only in German language).*

*3 These instruments will be illustrated in chapter 4 of the present text. Also Azerbaijan and Armenia as CoE-members have ratified the FCNM, but in this context are not considered European countries.*

**Table 9**  
**Complete list of the current situation of ratification of the FCNM and ECRML (May 2008)**

◆ Ratification, accession or succession

○ Signature not yet followed by ratification

<i>States</i>	<i>Framework Convention National Minorities</i>	<i>Charter of Regional Minority Languages</i>	<i>Number of minorities</i>	<i>Minority members</i>
1. Albania	◆		5	86.000
2. Andorra			0	0
3. Austria	◆	◆	6	172.000
4. Belarus			7	1.769.000
5. Belgium	○		2	88.445
6. Bosnia-Herzegovina	◆	○	3	259.000
7. Bulgaria	◆		12	1.620.000
8. Croatia	◆	◆	14	329.000
9. Czech Republic	◆	◆	8	323.000
10. Cyprus	◆	◆	1	256.644
11. Denmark	◆	◆	4	123.000
12. Estonia	◆		12	497.000
13. Finland	◆	◆	6	332.000
14. France		○	7	8.133.000
15. Germany	◆	◆	4	172.000
16. Greece	○		7	229.000
17. Hungary	◆	◆	13	1.096.000
18. Iceland	○	○	0	0
19. Ireland	◆		1	74.000
20. Italy	◆	○	12	2.794.000
21. Kosovo			7	260.000
22. Latvia	◆		11	955.000
23. Liechtenstein	◆	◆	0	0
24. Lithuania	◆		10	653.000
25. Luxembourg	○	◆	1	2.500
26. Macedonia	◆	○	5	602.000
27. Malta	◆	○	0	0
28. Moldova	◆	○	9	1.513.000
29. Monaco			0	0
30. Montenegro	◆	◆	5	399.000
31. The Netherlands	◆	◆	3	520.000
32. Norway	◆	◆	4	86.000
33. Poland	◆	○	14	1.657.000
34. Portugal	◆		3	147.000
35. Romania	◆	○	19	2.513.000
36. Russian Federation	◆	○	45	24.156.000
37. San Marino	◆		0	0
38. Serbia	◆	◆	12	888.651
39. Slovakia	◆	◆	10	703.000
40. Slovenia	◆	◆	4	15.000
41. Spain	◆	◆	6	8.936.000
42. Sweden	◆	◆	4	606.000
43. Switzerland	◆	◆	2	48.000
44. Turkey			14	7.383.000
45. Ukraine	◆	◆	23	13.923.000
46. United Kingdom	◆	◆	6	837.000
<b>Total ratifications</b>	<b>36</b>	<b>21</b>	<b>342</b>	<b>85.003.307</b>

Source: *Minority Rights Annual Report 2008*. Turkey's minorities are included in this list according to an estimate by C. Pan, *National minorities - Handbook, Vienna 2003*. For the actual list of ratifications see: <http://conventions.coe.int/Treaty/EN/CadreListeTraites>.

# 4

International Instruments  
for the Protection of  
Minority Rights in Europe

## 4.1 Why international instruments of minority protection are needed

Since in Europe nearly all states have ethnic or national minorities there is a mutual dependence between majorities and minorities with positive and negative aspects. The state borders, drawn by history, and the settlement areas of the ethnic groups and peoples in Europe often simply do not coincide. Apart from the potentially destabilising effect of this fact, the presence of ethnic minorities is a challenge for the recognition and protection of their fundamental rights. Europe has been the cradle of the ideology of the nation-state. This concept is contrasting with the presence of hundreds of ethnic and national minorities, which are claiming their fundamental rights and in many cases insisting on "internal self-determination" as a group. From that perspective quite often ethnic or national minorities living in states with ethnically different majorities are facing the suspicion of being a kind of "fifth column" of their respective 'kin-state' or at least are considered "nationally not enough reliable". But finally it has generally been recognised that the minority question is a common problem of all European states, triggering off a growing awareness that this destabilising effect can be neutralised just tackling this issue on an international level with general rules set out in internationally agreed frameworks. Exactly this is happening for about the last 15 years in different European political and legal frameworks.

### The first framework: the OSCE

Only since the collapse of the Soviet bloc in 1990 the need for a new relationship between states and different ethnic groups living on its territory gained more attention. This was fostered first by the CSCE (Conference on Security and Co-operation in Europe), in particular the Copenhagen Document of 1990. Its catalogue of principles on the protection of ethnic, cultural, linguistic or religious minorities is of such significance because it is the first time that 30 European states reached an agreement on minority rights. The whole CSCE process started already in 1975 with the Final Act of the Helsinki Conference and culminated with the Copenhagen Document of 1995. This politics of recognition of minorities began with a common

statement by CSCE experts in Geneva in 1991: "Issues of national minorities and the fulfilment of international agreements on the rights of minorities are a legitimate international question and do not represent just an internal affair of a given state." This new principle has been confirmed by the Moscow Conference on Security and Co-operation regarding the human dimension in 1992. Since stability and peace cannot be established without a satisfactory settlement of minority questions, the French Prime Minister Balladur in 1993 initiated the Stability Pact for Europe which is aimed to provide security and stability for central and eastern Europe through:

- the encouragement of good neighbourliness including border and minority questions;
- regional co-operation; and
- strengthening of democratic institutions.

These purposes should have been achieved through a network of bilateral agreements containing minority provisions also. The Stability Pact for Europe has been signed and ratified by 52 state parties and has been most relevant for all the candidates for accession to the European Union: Latvia, Lithuania, Estonia, Czech Republic, Slovakia, Poland, Slovenia, Bulgaria, Romania and Hungary. In case of problems during the implementation of the pact's provisions it was arranged to adopt the rules and mechanisms of the OSCE for peaceful assessment of conflicts.

### The second framework: the Council of Europe

The Council of Europe (CoE), founded in 1949 as a comprehensive association of all European states based on the ECHR, has created two international conventions aimed at accommodating the minority question. These are the European Charter for Regional and Minority Languages (ECRML), adopted in 1992, and the Framework Convention on the Protection of National Minorities (FCNM), adopted in 1994. Both instruments came into force in 1998 when a sufficient number of national parliaments had ratified the text.

### The third framework: the European Union

The European Council, the supreme decision-making body of the EU, adopted the 'Copenhagen criteria' in 1993, as fundamental premises for accession to the EU with regard to its Eastern expansion. Priority was put on the criterion of full respect of institutional stability

as a guarantee of democracy and rule of law, and on full respect for human rights and the protection of minorities. A new candidate should be in the position to start negotiations on accession to the EU only after having met these obligations. These criteria again are among the most important issues in the accession negotiations with further candidates in South-eastern Europe (Western Balkans).

The process of European integration does not entail a “harmonisation of cultures”. Europe, as reiterated in the Lisbon Treaty of 2007, is bound to be a mosaic, not a melting pot. All EU citizens should strengthen the awareness to belong to the EU, while respecting the diversity of national and regional traditions and cultures. The EU leadership therefore has promised to respect and promote the cultural difference and cultural heritage of Europe’s peoples. The major driving forces of European integration historically have been economic and commercial, and the powers of EU in the field of culture are limited to Title IX and Article 128 of the Lisbon Treaty for the adoption of incentive measures and recommendations.

### The fourth framework: the bilateral relations between states

In Europe, neighbouring states often share a particular feature: there are co-national minorities living beyond the border and vice versa. Also, if two states are not concerned by such minority situations in a reciprocal manner, sometimes they share the fundamental interest to accommodate the interests of a single co-national minority living in one of the partner states for the sake of a friendly relationship. By this way minorities can even form a bridge or a link between the states. *Vis-à-vis* some early examples of bilateral agreements containing provisions for the protection of national minorities, stipulated in the aftermath of World War II, especially since the 1990s such agreements have been signed in a major number.

### Binding conventions or additional protocol?

The CoE’s summit in Vienna 1993 gave rise to a threefold approach to minority protection:

- A Charter for the protection of minority languages;
- A Convention on the rights of minority members;
- An additional Protocol on the Rights of minorities

to the European Convention on Human Rights.

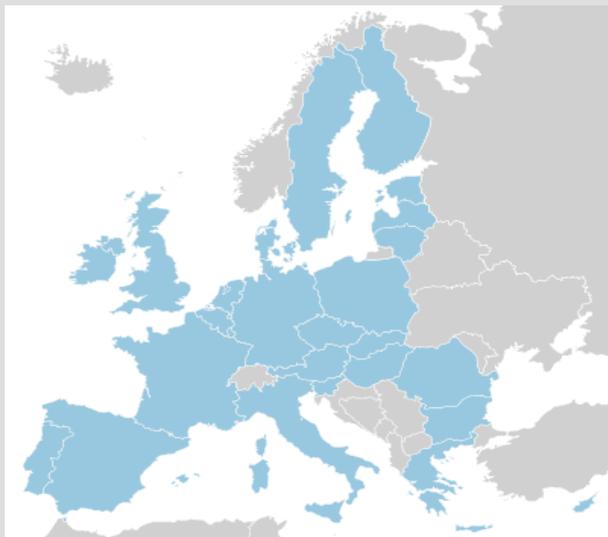
Whereas on the first two the European governments found a compromise, the third section of the minority protection system has been temporarily suspended. It would represent a decisive “third pillar” since only the inclusion of minority rights in the ECHR would give each individual European citizen the right to bring violations of one’s rights before the European Court for Human Rights (ECOHHR).

A fourth pillar of a complete minority protection system would consist in a “Right of national minorities to autonomy” as a means to internal self-determination and self-governance, to be recognised in the form of a special convention.<sup>1</sup> This issue has been discussed in chapter 2.2. When such a draft convention was presented to the CoE in 1994 many European states even refused to discuss the proposal, considering autonomy as a possible threat to their territorial integrity, whereas the supporters argued that autonomy does not infringe upon the integrity of a state, but prevent instability and violent secessionist movements.

In terms of international law a collective right means that a group is subject of the right, and hence a minority as a whole is entitled with rights, not just its individual members. A group is considered to be substantially different than the simple sum of its individual members. Efficient minority protection requires a combination of collective and group rights. A member of a national minority can keep one’s identity only if one’s group or people has the possibility to exist and develop. Collective rights integrate individual rights and may not violate them. The states have been very reluctant to recognise collective rights of national minorities, as the strictly individual right approach of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 18 December 1992 shows.<sup>2</sup> But slowly the international community begins to acknowledge that group rights are also legitimate means to solve minority conflicts. However, even without touching the sensitive issue of collective rights Europe’s states, united in different international organisations, have adopted a framework of principles and conventions in order to recognise and protect the rights of members of national minorities.

## The European Union (EU)

The European Union (EU) is a political and economic union of 27 member states, which had been founded with the Treaty of Rome in 1957 as the European Economic Community (EEC). The EU was established in 1993 as a result of the signing of the Treaty on the European Union (otherwise known as the Maastricht Treaty), adding new areas of policy to the existing European Community. With almost 500 million citizens, the EU combined generates an estimated 30 per cent share of the world's nominal GDP in 2007. The EU has developed a single market through a standardised system of laws which apply in all member states, guaranteeing the freedom of movement of people, goods, services and capital. Fifteen member states have adopted a common currency, the Euro. It has developed a role in foreign policy, representing its members in the World Trade Organisation, at G8 summits and at the UN. 21 EU countries are members of NATO. It has developed a role in justice and home affairs, including the abolition of passport control between many member states under the Schengen Agreement.

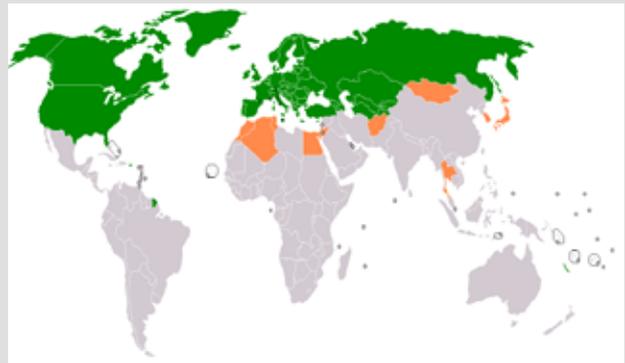


The EU is a hybrid of intergovernmentalism and supranationalism. In certain areas it depends upon the agreement between the member states. However, it also has supranational bodies, able to make decisions without the agreement of members. Important institutions and bodies of the EU include the European Commission, the European Parliament, the European Council, the European Court of Justice and the European Central Bank. EU citizens elect the Parliament every five years. The Treaty of Lisbon was signed in December 2007 with the intention to amend the existing treaties to update the political and legal structure of the union. The ratification process was scheduled to be accomplished by the end of 2008; however, the rejection of this treaty in the Irish referendum of June 2008 has left its future unclear.

Source: <http://en.wikipedia.org>

## The Organisation for Security and Co-operation in Europe (OSCE)

The OSCE is an ad hoc organisation under the United Nations Charter (Chap. VIII), and is concerned with early warning, conflict prevention, crisis management and post-conflict rehabilitation. Its 56 participating states are from Europe, the Caucasus, Central Asia and North America and cover most of the northern hemisphere. It was created during the Cold War era as an East-West forum (CSCE).



The political direction to the Organisation is given by heads of state or government during summits. Summits are not regular or scheduled but held as needed. The last summit took place in Istanbul in 1999. The high-level decision-making body of the Organisation is the Ministerial Council, which meets at the end of every year. In addition to the Ministerial Council and Permanent Council, the Forum for Security Co-operation is also an OSCE decision-making body. It deals predominantly with matters of military co-operation, such as modalities for inspections according to the 1999 Vienna Document. The OSCE Secretariat is located in Vienna. The Parliamentary Assembly of the OSCE issues resolutions.

The oldest OSCE institution is the "Office for Democratic Institutions and Human Rights" (ODIHR), established in 1990. It is based in Warsaw and is active throughout the OSCE area in the fields of election observation, democratic development, human rights, tolerance and non-discrimination, and rule of law. To prevent election fraud the ODIHR has observed over 150 elections and referendums since 1995, sending more than 15,000 observers. In 1993 the OSCE established its own High Commissioner on National Minorities. The Office of the OSCE Representative on Freedom of the Media, established in December 1997, acts as a watchdog to provide early warning on violations of freedom of expression in OSCE participating States. The Representative also assists participating States by advocating and promoting full compliance with OSCE norms, principles and commitments regarding freedom of expression and free media.

Source: <http://en.wikipedia.org>

## The Council of Europe

The Council of Europe, founded in 1949 by the Treaty of London, is the oldest organisation working for European integration with a particular emphasis on legal standards and protection of human rights, democratic development and the rule of law in Europe. The Statute of the Council of Europe was signed in London on that day by 10 states: Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden and the United Kingdom. Many states followed, especially after the democratic transitions in central and Eastern Europe during the early 1990s, and the Council of Europe now integrates nearly all states of Europe. It is today an international organisation with legal personality recognised under public international law that serves 750 million Europeans in 47 member states.

At the heart of the Council of Europe lies the European Convention on Human Rights and the European Court of Human Rights through which the convention is enforced. It is to this court that Europeans can bring cases if they believe that a member country has violated their rights. The Council of Europe's work has resulted in standards, charters and conventions to facilitate co-operation between European countries and further integration. The seat of the Council of Europe is in Strasbourg (France). English and French are its two official languages. Its two statutory bodies, the Committee of Ministers and the Parliamentary Assembly, also work in German, Italian and Russian.

See: <http://www.coe.int>

These three continental organisations were decisive in the process of setting international legal and political standards for minority protection in Europe: as a more politically active organisation the OSCE, as a law-setting institution the Council of Europe, and as a supranational organisation covering both dimensions, but in a smaller geographical extension, the EU. But it is due to the intense interaction between various organisations and decision levels, that political initiatives, elaborated in different organs, could finally converge in legally binding international documents, today ratified by the majority of the European states (the FCNM). The state parties are obliged to adapt their domestic legislation concerning national minorities to the international conventions, ratified by their respective parliaments. Apart from the European integration process, the level of domestic law of the single states is still the absolutely most important level of regulation of minority issues in Europe, whereas the regions, despite their growing

importance as legislative institutions in some states, by far have neither the necessary powers nor the financial means to tackle this issue.

The European framework of minority law resulted from complex negotiations between different actors and necessarily is a compromise which could not yet satisfy all national minorities. As a matter of fact the power elites behind the Council of Europe, the OSCE and the EU are not continental elites of European politicians, but representatives of national governments and parliaments thinking in terms of national interests. It is up to the political dynamics within the single member states to adopt the corresponding national Acts, to convince the domestic public opinion and to ensure the practical implementation of domestic law on national minorities. On an international level in Europe still there is no conceptually uniform and well co-ordinated policy towards national minorities. The political influence of national and ethnic minorities themselves in terms of political representation and lobbying capacity is rather limited. In most European states the representation of such minorities is very small in national parliaments, but nearly non-existent in state governments, although regularly politicians, members of national minorities, are elected to the European Parliament and the Parliamentary Assembly of the CoE. Besides the political forces and federations of minority organisations, also human rights NGOs, academic research institutions and platforms of local and regional institutions, such as the CLRAE<sup>3</sup>, collaborate to exert continuous pressure for a common approach to minority protection cutting across national and party political formations. The resulting international conventions, which will briefly be presented in the following section, are an important step for creating legal obligations, but for the concerned minorities the decisive one is the reception of such principles in national law and its implementation "on the ground".

1 Christoph Pan/Beate S. Pfeil (2003), *National Minorities in Europe – Handbook, Vol. II*, Vienna, 2003, pp. 278-286.

2 The juridical developments in the framework of the United Nations and their effects on European minority rights are not treated in this Short Guide. The most important concrete step in this regard was taken on 18 December 1992, when after long and exhaustive proceedings the General Assembly passed the Declaration on the Rights of Persons Belonging to National or Ethnic, Linguistic and Religious Minorities. This Declaration represents a step forward when compared with Art. 27 of the International Covenant of Civil and Political Rights (ICCPR) of 1966, as the rights of persons belonging to minorities, individually or collectively exercised, are recognised.

3 See <http://www.coe.int/congress/>

## 4.2 The Framework Convention for the Protection of National Minorities

The origin of the Framework Convention for the Protection of National Minorities (FCNM) can be found in Recommendation 1134 (1990) of the Assembly of the Council of Europe, in which the CoE's parliamentary body defined some principles that should be applied to the protection of national minorities, and in the "Vienna Declaration" of the OSCE summit of 9 October 1993, which expressed the wish that the CoE should comprehensively transform the OSCE's political commitment to minority protection in legal provisions. On 5 February 1995 the Convention was adopted by the Committee of Ministers and came into force on 1 February 1998 after having been ratified by 12 member states.<sup>1</sup>

The FCNM is the first multilateral and legally binding instrument devoted to the general protection of European minorities. Its aim is to protect the existence of national minorities within the respective territories of the state parties. The Convention seeks to promote the full and effective equality of national minorities by obliging the states to create appropriate conditions enabling persons belonging to national minorities to preserve and develop their culture and to retain their identity. It sets out principles relating to persons belonging to national minorities in the sphere of public life, such as freedom of peaceful assembly, association, expression and thought, conscience and religion and access to media, as well as in the sphere of freedoms relating to language, education and cross-border co-operation.

### What commitments do states undertake when they ratify the FCNM?

The provisions of the FCNM cover a wide range of issues, including, inter alia:

1. Non-discrimination and the promotion of full and effective equality (Art. 4)
2. Promotion of conditions favouring the preservation and development of culture, religion, language and traditions (Art. 5)
3. Prohibition of forced assimilation (Art. 5)
4. Freedom of assembly, association, expression, thought, conscience and religion (Art. 7-8)
5. Access to and use of media (Art. 9)
6. Linguistic rights (Art. 10-11):
  - use of the minority language in private and in public as well as its use before administrative authorities
  - use of one's own name in minority language
  - display of information of a private nature in the minority language
  - topographical names in the minority language
7. Educational rights (Art. 12-14)
8. Participation in public life (Art. 15)
9. Participation in economic, cultural and social life (Art. 16)
10. Transborder contacts (Art. 17)
11. International and transborder co-operation (Art. 18)

Compliance with Article 4 requires not only the adoption of (possibly comprehensive) legislation protecting all persons against discrimination, both by public authorities and private entities, but also effective remedies against such acts of discrimination.

Of outstanding importance is Article 10 which guarantees the right to use the minority language in private and public life. Its second paragraph, concerning the right to use this language in communication with the public authorities, is heavily qualified. Not only is the right contingent on finding a high geographical concentration of members of the linguistic minority required, but it is also weakened by discretionary phrases like "where such a request corresponds to a real need", and "as far as possible". The effective application of this provision could thus be seriously questioned.<sup>2</sup>

Article 11, regarding the right to learn the minority language and being taught or receiving instruction in a minority language, is equally cautiously formulated. The states appear not to have an obligation to take positive measures regarding the right to learn the minority language. Particularly the right to instruction in a minority language is, just like in other relevant international documents, foreseen only as an alternative to teach that language as a subject. The opinions of the Advisory Committee show that in this field it gives more weight to the demand by parents or pupils than to the alternatively requested territorial concentration. From the opinions we can conclude that in presence of at least seven to 10 pupils requesting the teaching of the minority language, the state has to provide for this possibility. This can be considered as a minimum standard. When it comes to the use of the minority language as a medium

of instruction, again, the economic possibilities of a state come into play. Here, a state should provide for this service in case of at least 15 pupils requesting it. Together with the requirement of territorial concentration, Article 14, Paragraph 2, also contains vague conditions like “as far as possible” and “within the framework of their education system”.

Regarding the autonomous development of national minorities there is nothing more than the statement that “the parties shall create conditions necessary for the effective participation of persons belonging to national minorities in cultural and economic life and in public affairs, in particular those affecting them” (Article 15).

### Who is responsible for monitoring?

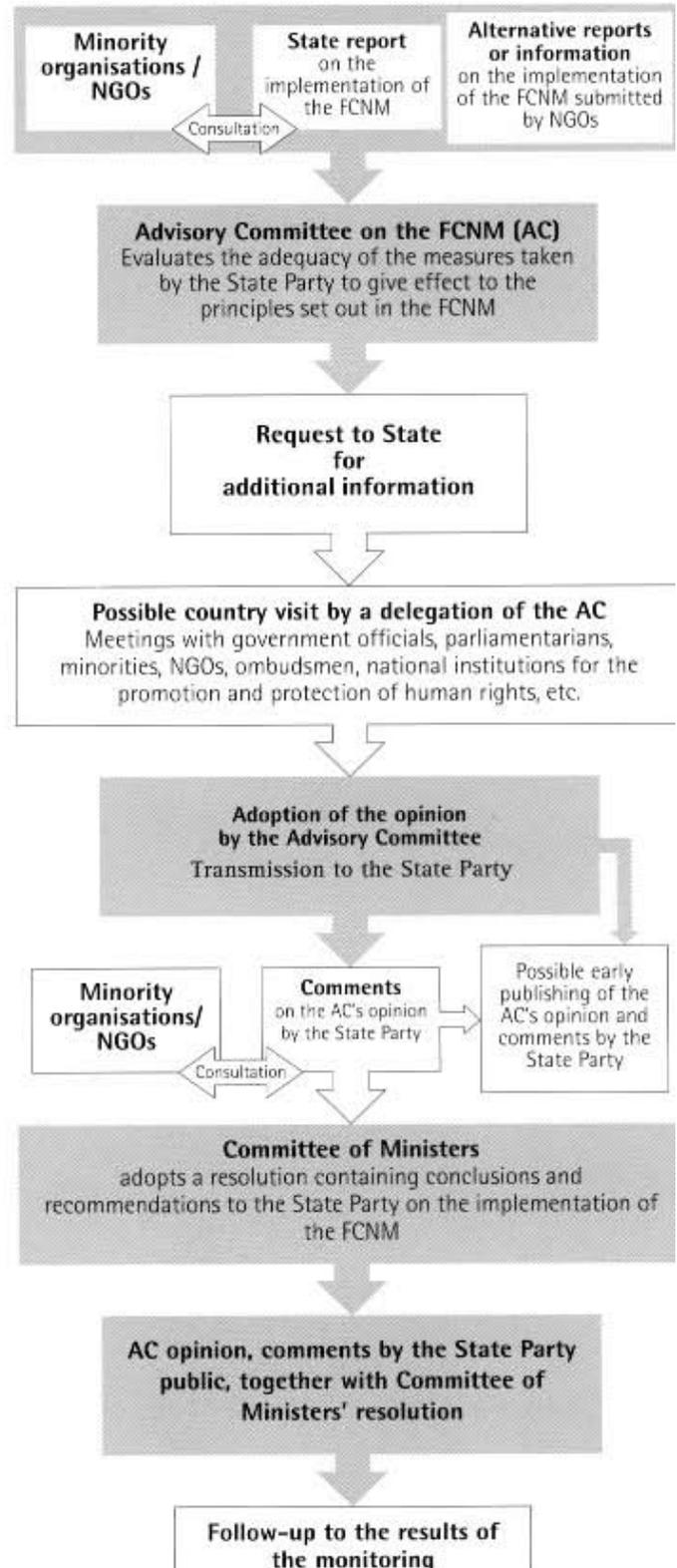
The Committee of Ministers and the Advisory Committee, made up of independent experts, are both involved in the monitoring of the FCNM. Based on a reporting system, the monitoring procedure requires each state to submit a first report within one year of entry into force of the Convention and additional reports every five subsequent years, or upon a specific request of the Committee of Ministers. Where it requires specific additional information, the Advisory Committee also sends states written questionnaires. The drafting of state reports often involves a process of consultation with minorities and NGOs, who are also encouraged to submit alternative reports and information. These reports are examined by the Advisory Committee, which makes use of a wide variety of written sources of information from state and non-state actors. The Advisory Committee has also developed the practice of carrying out country visits where it meets with government officials, parliamentarians, representatives of minorities, NGOs, specialised bodies and other relevant interlocutors.

### What happens once the Advisory Committee has completed its assessment?

Following examination of a state’s report, the Advisory Committee adopts an opinion that is transmitted to the state concerned, which has an opportunity to comment on this opinion. It is open to states to make public the Advisory Committee’s opinion at this stage, a possibility a number of states have taken up. In preparing their response,

## How is State compliance with the Convention monitored?

### Framework Convention for the Protection of National Minorities (FCNM) Supervisory mechanism



Source: Secretariat of the Framework Convention for the Protection of National Minorities, Directorate General of Human Rights, Council of Europe, Strasbourg

state parties may also choose to benefit from further consultations with minority and non-governmental organisations.

Next it is for the Committee of Ministers to adopt a resolution containing conclusions and recommendations of the state on the implementation of the Framework Convention. This resolution is made public together with the comments by the state party and the Advisory Committee opinion, if the latter has not been made public at an earlier stage. Governments, however, are invited to keep the Advisory Committee regularly informed in response to the monitoring process. A wide range of actors are encouraged to undertake ongoing follow-up activities in order to promote effective implementation.

### How has the FCNM been implemented?

In 2008, the Framework Convention on the Protection of National Minorities has come into force for 39 European and Transcaucasian states. Four governments (Belgium, Greece, Iceland and Luxembourg) have signed but not ratified the Convention. No signatures have been registered by Andorra, France, Turkey and Monaco.<sup>3</sup>

The implementation of the FCNM brought about divergence in both the choice of the goals and the choice of the means, due to the diverging interests of the states and the national minorities. There are different strategies to tackle the respective needs and interests. Some states try to involve their minorities in solving the problems like Hungary and Finland; others are not even interested to reach a consensus with their minorities. This is simply the continuation of a pattern of state actors' behaviour tracing back to the constitution of Europe's nation-states. France, with its deep-rooted tradition of centralist organisation, is only slowly setting new steps towards the recognition of its minority languages.

There are many minorities in Europe which are still not politically organised and technically prepared to assume a role of full self-representation, as they still have to solve the problem of democratic legitimacy which is essential in a democratic system with the rule of law. Therefore, not a few minorities have not yet been capable of participating in the process of elaborating objectives and projects, tools and proposals for their own protection.

The control mechanism established by the FCNM is mainly based on the state reports on the implementation

of the Convention, the first one to be delivered within a year and the following ones every five years. At the end of 2007, all countries but Georgia, Latvia, Montenegro and the Netherlands had concluded their first and some even their second monitoring cycle. Most of them reported about the new legislation put into force since the 1990s in the field of minority protection. This legislation very often is still to be improved and applied, but the first steps have been set and are fostering a growing dynamics towards recognition and protection of minorities. It is sometimes astonishing to observe real U-turns of state behaviour from ignoring the very existence of a minority to a friendly attention and activity. A new political culture of appreciating ethnic minorities as a general enrichment is slowly spreading over the continent. From the single state reports some major issues are resulting:

1. More than 50 per cent<sup>4</sup> of the states do not anymore have any problem with recognising their traditional minorities. Most of them in the next census will register the ethnic and linguistic affiliation of their citizens, if they have not done it yet. Some states (for instance Finland, Norway and Sweden) have gone further: beyond the already recognised minorities they are recognising more of them.
2. About 50 per cent of the states have already created the legal prerequisites for the non-discrimination of members of minorities and the formal equality for all legal aspects. Of course full compliance by facts is yet to be delivered, especially regarding the Romany.
3. The factual equality in terms of equal opportunities of all minorities in most states is still lying ahead and seems in many fields a long way to go.
4. The right to use the mother tongue when dealing with public institutions and in the judiciary in many states is still quite inadequate. Sometimes existing legal provisions are simply not applied. In some cases this is due to the fact that minorities have no concentrated settlement area, rendering any language facilities more difficult.
5. Public education in the mother tongue of the minorities is assured in a few states only. Most of the states are still lacking the legal basis or haven't yet implemented it.
6. The compliance with assuring the right to free association is much better now as two-thirds of the states have met their obligations.
7. The right of members of ethnic minorities to have cross-border contacts with their fellow persons and organisations sharing the same culture, language, history and traditions is guaranteed.

8. The right to information requires the equal access of minority members to all audio-visual and print media. In only one-eighth of the states this right is definitely assured, but not for all minorities living there.
9. Major problems, apart from some more progressive states, have arisen with the political representation of the minorities, with the right to self-government and administration, with autonomy, with safeguarding the legal protection and enforcing the laws.

### Flexibility: strongpoint or weakness?

The FCNM tries to give the states parties a high degree of flexibility with respect to its implementation and to encourage the participation of the maximum number of states. Due to their formulation as principles, most of the provisions contained in the FCNM are not directly applicable, but oblige the state parties to set forth legislative and executive measures appropriate to implement the provisions of the Convention. However, some courts have already made reference to the FCNM as a source of rights and obligations, as a source of interpretative inspiration or as “European standard”<sup>5</sup>

The FCNM does not contain any definition of the term ‘national minority’. This initial claim was rejected on a pragmatic basis because of the great difficulties involved in reaching a general consensus amongst the different states in such a definition. The lack of a definition has, however, enabled the Advisory Committee to comment on the choices made by the states in either their instruments of ratification or in their state reports and has contributed to an opening up of certain provisions of the FCNM also to so-called “new minorities”.

On the other hand, according to the explanatory report to the FCNM, the rights included in the Convention apply to the persons belonging to minorities and there is no reference to collective rights for the minority groups as such. This individualistic approach, following the UN Declaration on Minority Rights of 1992, recognises the right of any person to be considered as a member of a national minority, regardless of his or her ethnic, linguistic or religious identity (principle of free declaration of affiliation to a group)

Generally the FCNM carries many flexible formulations open to different interpretations depending on the interests and attitudes of the states. A good example is Art. 14.2: “In areas inhabited by persons belonging

to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as is possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.” Formulations of this kind clearly give national governments a good deal of discretion on whether and, if so, how, to make provision for minority language education.

Such clauses have often been criticised as offering the states an easy way out from their responsibilities. Packer claims that there must be the opportunity for the free, informed and genuine expression of such demand and considers these requirements as objective matters to be determined by reference to objective criteria to be evaluated by independent and impartial actors.<sup>6</sup> Reliable statistical data are part of these objective criteria the Advisory Committee is constantly calling for, as only such data make it possible to take reasonable decisions and action for the protection and promotion of minorities. In any case, these clauses require action on the part of the state and do not aim at minima, but rather, are open-ended and maximum-oriented.

Also the monitoring mechanism, being a non-judicial mechanism based on state reports, has often been criticised as weak, not providing for the necessary tool to limit the flexibility left to states in the implementation of the FCNM. After one decade of activity of the Advisory Committee one can, however, claim that this mechanism has deployed a great potential in contributing, first, to an improvement of the conditions in which minorities live and, second, to the identification of European standards of minority protection. One of the most important aspects of the monitoring of the Advisory Committee is the dialogue-based approach, which continues even beyond the strict period of monitoring.

Summing it up, the FCNM can be considered one of the major steps forward in creating legally binding international conventions for the protection of national minorities. But it still is giving the states a wide margin within which to operate, within the respect to the existence of national minorities and the rule of non-discrimination. Its adoption shows in a way the fear generated by the Yugoslavian conflict, in the sense that neglect of protection for national minorities could provoke political instability, mainly in the Eastern and Central part of Europe. The Convention in its form and content offers a minimum level of protection, but both

its mechanisms for implementation and control are still not sufficient to ensure an efficient protection. After the approval of the FCNM, representatives of national minority organisations (for instance the FUEN) continued to press for the elaboration of an 'Additional Protocol to the European Convention of Human Rights' to include the rights of persons belonging to national minorities, particularly in the cultural field, but so far to no avail.

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Palermo, Francesco, *Domestic Enforcement and Direct Effect of the FCNM*, Brussels May 2006.

*1 The complete text is available at:*

<http://conventions.coe.int/Treaty/EN/Treaties/Html/157>

*2 However, in the monitoring of states' compliance with this provision, the Advisory Committee (AC) has tried to limit the discretion left to the states in the implementation of this flexibly worded Article. It has, for instance, declared that a part of the minority population as high as 50 per cent of the population living in a certain area would go beyond the requirement of "substantial numbers", whereas legislation that granted the use of a minority language with public authorities with 20 per cent or 15 per cent of the population belonging to a certain minority were welcomed by the AC. Concerning the requirement of the "real need" – which might be questioned in case the minority population is able to communicate in the state language – it is important to note that in the view of the AC the command of the state language by persons belonging to national minorities is not a decisive criterion for the language to be used in dealings with administrative authorities. The limiting clause "as far as possible" was meant to take into consideration the different financial possibilities of state parties, which is, however, maximum oriented.*

*3 See the appendix for the complete overview on ratifications of the FCNM and the ECRML.*

*4 See Pan, Minderheitenrechte in Europa, Band 2, Vienna 2006, Table 'Minderheitenschutz in Europa – Rangordnung 2006', p. 19; see also chapter 2.7 on an „interim balance sheet“.*

*5 See on such cases Francesco Palermo, 'Domestic Enforcement and Direct Effect of the FCNM. On the Judicial Implementation of the (Soft?) Law of Integration', in Annelies Verstichel et al., The FCNM: A Useful Pan-European Instrument? (Intersentia, 2008), pp. 187-214.*

*6 John Packer, 'Situating the Framework Convention in a wider context: achievements and challenges', in Filling the Frame: Five years of monitoring the Framework Convention for the Protection of National Minorities (Council of Europe Publishing, Strasbourg, 2004), pp. 43-51, at 46.*

## 4.3 The European Charter for Regional or Minority Languages

This Charter (in short: ECRML) has been adopted as a Convention by the Committee of Ministers in its meeting of 25 June 1992, with the abstention of Cyprus, France, Greece, Turkey and the United Kingdom. France, Greece and Turkey had opposed that the Charter had the nature of a convention and proposed to consider it as a "recommendation". The Charter was opened for signature by the member states on 5 November 1992 and came into force on 1 March 1998 after having been ratified by the first five countries. It forms a part of the core of legally binding regulations of the CoE for the protection of national minorities in Europe.<sup>1</sup>

The primary conceptual basis of the ECRML is the assumption that "the protection of the historical regional or minority languages of Europe, some of which are in danger of eventual extinction, contributes to the maintenance and development of Europe's cultural wealth and traditions" (preamble). Hence, the main purpose of the ECRML is to protect and promote regional or minority languages as a threatened element of Europe's cultural heritage. So, the ECRML tries to ensure the use of these languages in the private and public sphere, such as in education and the mass media, allowing their use also in administrative, judicial, economic and social fields. The Charter does not establish individual or collective rights for the speakers of regional or minority languages, but sets out the obligations of states for their legal systems and political undertakings.

The object of the Charter, as defined in Article 1, 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 and different from the official language(s) of that State". The ECRML does not seek to protect minorities or minority members as such, but the languages. It does not create any rights for minority language speakers, even if it refers in the preamble to the inalienable right to use a regional or minority language in private and public life. If a state decides to establish rights for the speakers of the minority languages, they will be rights just under national law.

The Charter clearly aims (Article 7, Para 2) at substantive equality: "Positive measures aimed at bringing about a greater equality between the users of regional or minority

languages and the rest of the population are not to be considered as discriminatory against the majority.”

In Part I the ECRML defines its terms of reference excluding from its contents the non-European languages which have recently appeared in the member states as a consequence of immigration. Although the protection is not limited to languages with a linguistic dominion in a given territory, the purpose of the ECRML is to develop the use of the languages traditionally spoken in the continent, regardless of their official status, that is to say, the languages which are used in limited areas of the territory of a state or which are part of the heritage of minority groups not concentrated in any specific part of such territory. ‘Regional languages’ are languages spoken within a whole region, whereas speakers of ‘minority languages’ can settle also in a dispersed form or be a minority even at regional level.<sup>2</sup>

The ECRML refrains from giving a list of regional or minority languages in Europe which are object of the required domestic legislation. In this respect, each state, at the time of ratification, must declare which regional or minority languages are spoken within its jurisdiction and what dispositions of the ECRML will be applied to each of them, whilst being aware of the different socio-linguistic realities and the structure of the ECRML. This includes in Part II a list of basic principles that must be implemented with respect to all the languages concerned, while Part III contains more specific provisions allowing the states, within the limits and requirements spelled out in the Charter, to decide freely which provisions to apply for a given minority language. Finally, the ECRML establishes in its Part IV measures for the monitoring of its implementation, including the creation of a European Committee of Experts.

### Which protection is granted by the ECRML?

First of all there is a prohibition (Article 7, 2) of discrimination relating to the use of such a language. Positive measures aimed at bringing about a greater equality between the users of regional or minority languages and the rest of the population are not to be considered as discrimination against the majority. But non-discrimination alone cannot actively protect minority languages. Hence, the ECRML provides for concrete measures to promote minority languages and recommends guarantees for its use in all major spheres of public life (public administration and public services, education, media). The protection is divided in two

different levels: the first one, contained in Part II, refers to the general programmatic aims and principles to which the states are obliged. Within the second one, addressed in Part III, out of 100 possible measures the states are free to choose just 35 as minimum, but single sectors of policies are to be covered through a minimum number of measures (the so-called *à la carte*-system).<sup>3</sup> The ECRML’s approach combines a common core of state undertakings and a high degree of flexibility for each sector of public provision.

The state policies, legislation and practice in respect of the regional or minority languages should be guided by the following objectives and principles:

1. Recognition of the regional or minority languages as an expression of cultural wealth;
2. Respect of their geographical area when defining administrative divisions;
3. Facilitation and/or encouragement of the use of such languages, in speech and writing, in public and private life;
4. Appropriate measures for the teaching and study of regional or minority languages at all appropriate stages;
5. Promotion of transnational exchanges for regional or minority languages used in identical or similar form in two or more states.

Part III converts these general principles into concrete measures to be taken in specific fields: education, judiciary, administration and public services, the media, cultural activities and facilities, economic and social life and transborder exchanges. However, in order to take account of the great diversity of objective situations of minority languages a threefold modulation is built in:

- a) Part III applies only to those languages specified by each state at the moment of ratification.
- b) Article 2(2) specifies that, for each of these languages, the states are to select those provisions of Part III which they undertake to apply.
- c) Finally, many articles of Part III contain in paragraphs and sub-paragraphs several graduated options from which the states are required to choose the most appropriate in each case.

However, the states may not choose arbitrarily between these options, but should do so “according to the situation of each language”.

The states ratifying the ECRML then commit themselves to a greater or lesser extent to protect and promote the use of regional or minority languages in the domains of education (Article 8), judicial authorities (Article 9),

administrative authorities and public services (Article 10), access to media (Article 11) and also in the domains of cultural, economic and social activities (Articles 12 and 13). The ECRML in Art. 9 also envisages the use of minority languages in the judiciary. The Charter provides that states have to apply a minimum of 35 paragraphs or sub-paragraphs, including at least three chosen from each of the Articles 8 and 12 and one from each of the Articles 9, 10, 11 and 13. For each sector the ECRML offers a range of provisions, starting from a relatively high standard (e.g., instruction in minority language) to a relatively low standard (instruction of the minority language).

All this flexibility has raised some criticism, first of all from the minorities concerned. On the other hand, as illustrated in chapter 1.2 and 1.3 of this Short Guide, the situation and context of the 53 lesser used minority languages, which are not official in any country, and 300 odd minorities in Europe is so different, that a common denominator for a minimum set of rights and provisions could have hardly been found. Indeed, in the ECRML there is no reference to criteria such as the character of national minority language (which in other states might be used as official languages) and lesser-used “stateless” languages, either to the number of speakers, or its form of settlement, or its status in neighbouring countries.

However, the ECRML for the most part is conceived in territorial terms in the sense that protection is to be accorded for a particular geographical area or “...within the territory in which such languages are used”. But again, the Charter does not define those territories or does not specify any percentage of minority language speakers on the total regional population in order to entitle them with specific linguistic rights. There is no examination of geographical areas to which the criteria should be applied and even the criteria itself are vague. Finally, the ECRML does not provide any specific clause referring to the protection of “non-territorial” languages such as Romani, spoken by communities of Roma who seldom can be identified with a particular area of a region or state, although such languages in general terms are recognised as deserving protection.

### The enforcement of the ECRML

Given that the Charter does not create any justiciable rights for linguistic groups or their individual members, it naturally does not institute any kind of judicial review of its application. However, to ensure that

the implementation of each state's undertaking is nevertheless effectively monitored, provision is made for a system of political control, which comprises:

1. three-yearly reports by the state parties on the action they have taken in pursuance of the Charter's provisions;
2. examination of these reports, as well as of any information submitted by interested bodies or associations, by a Committee of Experts composed of persons of the highest integrity and recognised competence in the field;
3. submission by the Committee of Experts to the Committee of Ministers of its own report with appropriate proposals for recommendations which the Committee of Ministers might make to the state concerned.
4. the official reply of the state parties concerned;
5. recommendations of the Committee of Ministers to the state parties.

In addition, the Secretary General has to make a detailed report on the application of the Charter to the Parliamentary Assembly every two years. This monitoring mechanism, although relying on the relatively weak “reporting system”, has so far offered a strong motivation for state parties to be more proactive in the implementation of an efficient minority rights protection system.

### The effect of the ECRML

In March 2008 the ECRML has been in force for 10 years. Twenty-three member states of the CoE have ratified the Charter so far; a further 10 have signed it. There are eight EU-member states (Belgium, Bulgaria, Estonia, Greece, Ireland, Latvia, Lithuania and Portugal) that have neither signed nor ratified the ECRML for various reasons.

The Parliamentary Assembly of the CoE from 1995 onwards required new member states to commit themselves to acceding to the Charter and urged members to ratify or sign it. The decisive responsibility lies with the national parliaments and governments to make all efforts first to accede, later to comply with the ECRML.

The Committee of Experts has so far carried out 36 evaluation reports on the states' compliance with the Charter.<sup>4</sup> “With the monitoring work it has carried out over the years, the Committee has slowly developed a

“case law” for each Charter undertaking which has led to a consistent approach and has set standards for minority language protection. It has detected gaps even in those cases where the Charter was probably not expected to have any added value.”<sup>5</sup>

This led to the adoption of several domestic Acts for guaranteeing the linguistic rights of minority language speakers, for example:<sup>6</sup>

1. the German Land of Schleswig Holstein adopted a law regarding the use of North Frisian in relations with administrative authorities;
2. the adoption of the Sami Language Act in Finland;
3. Acts on the use of Sami, Finnish and Meänkieli in courts and administration in Sweden;
4. in 2001 Austria amended its Broadcasting Act and included the provision of regional or minority language programmes in the public service mandate of the ORF;
5. the Croatian authorities stated that the long process of adoption of the 2000 Act on the Use of the Languages and Scripts of National Minorities was speeded up by the application of the Charter;
6. following a recommendation of the Committee of Ministers in 2001 to “create conditions that will facilitate the use of North Sami before judicial authorities”, Norway set up the first bilingual court, where Sami is now used in 25 per cent of the cases.<sup>7</sup>

One more positive result of this first decade of application of the ECRML is the fact that the Charter has enhanced the dialogue between the speakers and state authorities and improved the institutional representation of minority language speakers at every level.

Although the domestic legal framework is improving, the Committee of Experts often remarks that the practical implementation lacks behind. Parayre takes note of a number of structural problems which continue to hamper the implementation of the Charter, such as reporting delays and non-compliance with recommendations made by the Committee of Ministers.<sup>8</sup> Recurring reasons for this are:

- Conflicts on competences between government levels, especially between central states and regions.
- Lack of resources: the states have to ensure financial means for covering additional costs of language provisions.
- Lack of political will. It has been observed that the lack of political will among the state actors is mostly

due to historical reasons.

The ECRML seems to be designed for a limited purpose: it does not recognise minority language rights, or accord specific language rights to recognised languages, but provides a limited range of “undertakings” to protect minority languages. The approach adopted by the ECRML enables countries to apply only those provisions which the state thinks to be appropriate for the need of the respective minority language. This method allows for a huge space of flexibility which appears as an advantage to many states, and a disadvantage to the national minorities which are not entitled to challenge concrete provisions under a precise text of international law. As such the ECRML is a typical result of a compromise between governments, which leaves the states too wide a margin of discretion. Without a more detailed guidance for specific spheres of life for the implementation of the various provisions it risks to remain a covenant which symbolically allows states to present themselves as protectors of minority languages, while the reality on the ground remains highly questionable.

The ECRML might appear to be an instrument with a lesser impact than the FCNM as only the languages are protected, whereas the Charter does not grant any right to speakers of certain minority languages, let alone recognising rights of a group of minority language speakers. But as languages, at least in the European social reality, are the main distinctive features of cultural identity, their recognition, protection and active promotion is of utmost importance. Adopting effective means to protect and promote a minority language often is the immediate official public commitment to a comprehensive responsibility for the minorities as such.

The ECRML represents a remarkable step forward in improving of the legal standards in Europe, as in no other continent or on the UN or UNESCO level any such convention has been stipulated. But, formulating the protection measures quite weakly, leaving too much discretion to states, not formulating individual and collective rights at all and renouncing on efficient tools of enforcing such rights before international courts, the ECRML from a perspective of national minorities is hardly sufficient. The factual contribution of the ECRML to minority protection is rather limited. Apart from the fact that not even half of Europe’s states have ratified the Charter, it gives too high a flexibility to the states lacking any clear obligations and rights. Thus “regional and minority languages remain a threatened aspect of Europe’s cultural heritage and many challenges still lie ahead of us.”<sup>9</sup>

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## 4.4 Minority protection in the framework of the OSCE

The OSCE was established in 1975 in Helsinki as 'Conference on Security and Co-operation in Europe' and at its Budapest summit in 1994, during the Balkan wars, was renamed OSCE. Its primary task is early warning, conflict prevention, crisis management and post-conflict rehabilitation under Chapter VIII of the UN Charter. In a comprehensive approach it addresses a wide range of security-related issues including those related to national minorities and the linguistic rights of members of these groups. The OSCE has adopted a number of documents relevant for the rights of national minorities and established the office of the High Commissioner on National Minorities (HCNM).<sup>1</sup>

The work of the OSCE on minority issues flows from the so-called "Human Dimension", approved by the CSCE in Helsinki in 1975 and its different guarantee mechanisms. The most relevant documents adopted within the framework of the OSCE concerning national minorities in Europe appeared in the years following the fall of the Berlin Wall. The minority issue was one of the main subjects of discussion during the Copenhagen meeting on the Human Dimension in 1990, when an agreement was reached on a list of rights that should be granted to national minorities, although it was not possible to agree on any definition of minority. As a consequence of this, one of four chapters of the final document of this meeting is specifically devoted to the rights of persons belonging to national minorities, including the right to use the mother tongue, education in mother tongue, and non-discrimination. The political significance of the Copenhagen Document lies also in the fact that the OSCE member states accepted that the protection of national minorities was a fundamental goal of the OSCE to maintain human rights, fundamental freedoms, democracy and the rule of law.

The so-called 'Charter of Paris for a New Europe', signed on 21 November 1990, reiterates the determination of the then 34 participating states in the CSCE to promote the rights of minorities. In the follow-up meeting in Helsinki in 1992, an OSCE High Commissioner for National Minorities was appointed with the main task to provide early warning and, if necessary, to activate mediation procedures when tensions involving national minorities seem likely to develop in such a way as to threaten peace and stability in the continent. His work,

<sup>1</sup> The text is available at:

<http://conventions.coe.int/Treaty/EN/Treaties/Html/148.htm>.

<sup>2</sup> Article 1, p. a), excludes languages of the migrants, but it covers also "non-territorial languages". Article 1, p. c) states: "non-territorial languages means languages used by nationals of the State which differ from the language or languages used by the rest of the State's population, but cannot be identified with a particular area thereof."

Article 7, p. 5 states: "The Parties undertake to apply the principles listed in para 1 to 4 above to non-territorial languages. However, as far as these languages are concerned, the nature and scope of the measures to be taken to give effect to this Charter shall be determined in a flexible manner, bearing in mind the needs and wishes of the groups which use these languages."

<sup>3</sup> Beate S. Pfeil, *Minderheitenrechte*, vol. 3, Vienna 2006 p. 474

<sup>4</sup> See: [http://www.coe.int/t/dg4/education/minlang/Report/Default\\_en.asp](http://www.coe.int/t/dg4/education/minlang/Report/Default_en.asp).

<sup>5</sup> Sonia Parayre, 'The 10<sup>th</sup> anniversary of the European Charter for Regional or Minority Languages', in *Europäisches Journal für Minderheitenfragen*, Nr. 2/2008, Springer, Wien 2008, p. 128.

<sup>6</sup> *Ibid.*, p. 129.

<sup>7</sup> Sonia Parayre, *The 10<sup>th</sup> anniversary*, p. 128.

<sup>8</sup> *Ibid.*, p. 129.

<sup>9</sup> *Ibid.*, p. 129.

starting in December 1992, later followed the lines drawn by the Copenhagen Document of 1993, although the lack of a definition of minority within the European institutional framework has allowed him to intervene in respect to minority groups of a very different nature. According to his mandate, the High Commissioner cannot have dealings with groups that support terrorism. His mediating activities are periodically published from his office in The Hague and by the OSCE itself.

In this respect it is remarkable that, so far, the entire work of the High Commissioner has been developed around the situation of minority groups, either in Central or Eastern Europe or in the former Soviet Republics, and there has not been any action on minorities living in the territories of the Western European countries. Special attention was drawn on national minorities with bordering kin-states, potential source of intra-state tension if not conflict. In his attempts of conflict solving the HCNM has to approach all actors as an independent, impartial and co-operative actor. He promotes dialogue, engages in preventive diplomacy, and issues reports when an OSCE member state does not meet the international norms and standards.

The work of the HCNM consists mainly in quiet diplomacy, informal dialogues behind closed doors, confidential exchange of information and consultation with independent experts. Moreover, there are periodic reports to the chairpersons and the permanent Council of the OSCE. Whenever the HCNM engages in the detailed treatment of specific issues he send formal letters to governments. This is the so-called formal written dialogue with the OSCE-member states. This exchange of letters indicate the practical, problem-solving and assistance-oriented approach as the HCNM raises specific issues and makes precise recommendations. With general recommendations, addressed to individual states, the HCNM tries to match the need for general guidelines (e.g., the Oslo recommendation regarding the Linguistic Rights of National Minorities of February 1998). A typical example of a dispute between the HCNM and governments is the role of linguistic proficiency requirements for the accession of minority members to public employment. Furthermore, the HCNM makes regular surveys of state practices and publishes reports on the Linguistic Rights of National Minorities in the OSCE-area (currently from 51 states). The OSCE Missions provide support to other OSCE institutions, especially the HCNM, by means of monitoring, maintaining direct contacts, and contributing analyses and performing tasks. John Packer

notes that generally good inter-institutional co-operation within the OSCE has extended to inter-organisational co-operation with other inter-governmental organisations, in particular the Council of Europe, the European Commission, the UN High Commissioner for Refugees, the UNDP, and also to sub-regional organisations such as the Commissioner of the Council of Baltic Sea States.<sup>2</sup> There should be no doubt that a significant part of the contemporary challenge is due to the effect of the European notion of the 'nation-state' with its ideal of the pure cultural-linguistic 'nation' or at least the linguistic majority, dominant in the respective states: "...The substantial distance between public policy and law (reflecting the nation-state ideal) on the one hand and the pluri-lingual reality of almost every state to varying degrees on the other demonstrates that most European states have yet to conform their thinking and governance to either the socio-cultural reality of their populations or to the international standards to which they are committed."<sup>3</sup>

## References

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1 *The High Commissioner for National Minorities*: <http://www.osce.org/hcnm>. In August 2007 the former Norway foreign minister Knut Vollebaek became the third HCNM of the OSCE.

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3 *Ibid.*, p. 274.

## 4.5 Minority protection in the European Union

### General developments

Since 1 January 2007 the EU encompasses 27 countries with about 500 million of Europe's 750 million inhabitants. The enlargement process is still far from being concluded. After the accession of Romania and Bulgaria the next enlargement will probably embrace the Western Balkans and Turkey. Seven Balkan states with some 20 million inhabitants are aspiring for EU membership, while a long and stony path is expecting Turkey on its way into the EU. Are minority rights and minority protection issues in the European integration process? While the UN, the OSCE and the Council of Europe have unfolded a broad range of activities on the issue of national and ethnic minorities, the EU seems to be much less engaged. This, in history, is mainly due to the fact that the integration process has been first of all an economic project, more and more embracing political aspects too, but leaving central constitutional and cultural matters to the member states. The need to transfer political powers to the Union in order to harmonise minority protection principles, laws and politics towards ethnic minorities has never been an important issue yet, although the preservation of cultural diversity is of increasing importance amongst the policy-priorities of the EU.

The EU, in fact, is not an international, but a supranational organisation, which produces an impressive amount of law which trumps national law and which is directly applicable in the national legal systems in a broad range of policy sectors. In fact it is estimated that nearly two-thirds of all legal provisions in the member states directly or indirectly stem from the Union. However, every single Act of the EU needs to be founded on a particular article of the EU-Treaty, where all its powers are precisely enumerated. This limitation is though by far counterbalanced by the important fact that the EU can – unlike the OSCE – go far beyond mere political statements and very flexible covenants, since it has the power and means to put in force concrete and binding legal instruments. Since a direct EU commitment to national minority issues would have binding force in legal terms for each member state, the EU members still have been reluctant to include this matter amongst the EU competencies, considering it a classical core affair of the individual member states.

With the completion of the creation of the European Union (Treaty of Maastricht, 1992) and the completion of the single market (1993) the European integration opened up to more political spheres. The Amsterdam Treaty (in force since 1 May 1999) even allows the Union to play a very prominent role in fighting various forms of discrimination, including discrimination based on ethnic origin.<sup>1</sup> However, the EU still lacks the legal powers to develop a full-fledged policy in the area of the protection of minorities – despite the fact that at least

Table 10 – The EU and its ethnic minorities

<i>The EU and its last steps of enlargement</i>	<i>Inhabitants</i>	<i>Minorities (absolute numbers)</i>	<i>Members of minorities</i>	<i>Share of minorities in total population in %</i>
1. EU-15 (2003)	375,418,000	73	32,138,000	8.6
2. EU-25 (2004)	450,559,000	156	38,174,000	8.5
3. EU-27 (2007)	480,190,000	187	42,306,000	8.8
<b>Europe (47 states)</b>	<b>690,037,000</b>	<b>330</b>	<b>75,004,000</b>	<b>10.3</b>

Source: Christoph Pan/Beate S. Pfeil (2003), *National Minorities in Europe, Vienna 2003*, based on the last available census data. The original version has been corrected by the author. As in table 4, Turkey and Russia are included only with the respective European part.

The next candidates for EU-membership are Croatia, Turkey and Macedonia.

EUROSTAT estimates the total population of the EU-27 in 2008 at 497 million. WIKIPEDIA quotes the total figure of the EU-27 for January 2007 at 495,128,529. Further statistics: <http://epp.eurostat.ec.europa.eu/pls.portal>.

30 millions of EU citizens speak a regional or “lesser used” language as their mother tongue.

The ‘Charter of Fundamental Rights’ of the EU was solemnly proclaimed by the Nice European Council in December 2000, but the text regrettably does not contain any specific minority rights provisions which might be enforced by the European Court. This is mainly due to the fact that the text collects the common constitutional and ECHR acquis. The EU has generally appeared rather hesitant to develop a broad approach to minority issues, in a general perspective. Hence, the activities of the EU relating to minorities, also after the Treaty of Nizza (2000), remained rather scarce. They can be divided into four groups:

1. Measures of mainly political character, developed by the European Parliament, in promotion of cultural diversity and preservation of the cultural heritage;
2. Measures undertaken by the European Commission, the Council (and the Parliament), characterised by a functional approach;
3. Measures taken in the framework of the EU foreign policy, without touching the internal sphere of the EU;
4. Not minority-oriented policies, which still are relevant to minority issues. These include areas such as human rights policies, anti-racism policy, refugee and asylum policy, etc.

Among all European institutions (Parliament, Council, Commission, various courts) the Parliament is the organ which has shown the most intensive interest in national minority issues. A range of resolutions dealing with ethnic and linguistic minorities have been approved by the Parliament:

- 1981: Resolution on a ‘Community Charter of Regional Languages and Cultures’ and on a ‘Charter of Rights of Ethnic Minorities’ (Report Arfé 1981/83)
- 1983: Resolution on Measures in favour of Linguistic and Cultural Minorities
- 1987: Resolution on the Languages and Cultures of the Regional and Ethnic Groups in the European Community (report of Mr Kujpers, 1987)
- 1994: Resolution on Linguistic Minorities in the European Community (report of Mr Killilea)
- 2003: Resolution with recommendations to the Commission on European regional and lesser-used languages in the context of enlargement and cultural diversity (report of Mr Ebner)
- 2005: Resolution on the protection of minorities and anti-discrimination policies in an enlarged Europe, adopted on 8 June 2005 (report of Mr Moraes).

All these documents invite the member states to recognise their linguistic minorities and create the basic conditions for the preservation and development of their languages. The legal acts should at least cover the use and encouragement of such languages and cultures in the sphere of education, justice and public administration, the media, topographic names and other sectors of public and cultural life. The 1994 resolution for the first time led also to concrete measures and programmes of the EU to promote minority languages. Another example for the Parliament’s strong insistence on minority rights is the “Resolution on racism, xenophobia and anti-Semitism and on further steps to combat racial discrimination.” It states that combating discrimination against immigrants and religious minorities is “integral to any comprehensive policy against racism and xenophobia.” Last but not least, mention must be made of some European Parliament resolutions regarding specific minorities (in Albania, Romania, resolutions on discrimination of the Roma in several countries).

A second group of measures taken within the EU implies measures of technical nature as, for instance, a budget sustaining institutions and activities favouring minorities. The European Bureau for lesser used languages (EBLUL)<sup>2</sup>, based in Dublin, acts as a lobby group on behalf of the now 40 odd millions of EU citizens who speak more than 40 minority languages. It also acts as a co-ordination centre for activities related to minority language. Partly through EBLUL, the EU has commissioned and financed a huge number of studies, research and publications on minority issues.<sup>3</sup> The EU in 1987 has also set up the MERCATOR network,<sup>4</sup> tasked with meeting the growing interest in minority and regional language communities and regional languages in Europe and the need for these language communities to work together and to exchange experiences. The network gathers, stores, analyses and distributes relevant information and documents.

The Treaty of Maastricht (1992) already gave the European integration process a clear trans-economic dimension by establishing a political union. Also, the cultural dimension of the European integration and the culturally homogenous character of each member state is now fully acknowledged. This laid to the assumption of an article in the EU Charter of Fundamental Rights which states in Art. 22, “The Union shall respect cultural, religious and linguistic diversity.” As the former EU Commission president Prodi put it: “...we must never forget that Europe is all about diversity. Therefore it need us to respect and reap the rewards to diversity.

European integration has always been about diverse peoples with varied cultures...Diversity is one of Europe's greatest treasures."<sup>5</sup> Starting from this positive concept of cultural diversity, be respected and protected, the EU tried to enshrine it in its Constitutional Treaty and spur all member states to protect actively their minority cultures and languages. As the Constitutional Treaty could not be approved, the Lisbon Treaty of December 2007 adopted a similar formulation:

"The Union is formed on values of respect for human dignity, freedom, democracy, equality, the rule of law and respect of human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."<sup>6</sup>

On the basis of this relevant reference in primary EU law the EU could, once this (or a similar) provision enters into force (the Treaty of Lisbon has to be ratified by all member states but was however rejected in a negative referendum in Ireland in mid-2008) develop its own "EU-reading" of the term 'minorities' and related policies. Finally, it seems of utmost importance to mention that according to the first Multiannual Framework of the newly established EU Fundamental Rights Agency based in Vienna, the protection of minorities will form part of the Agency's mandate.<sup>7</sup>

### Minority protection in the EU's foreign relations

Since 1992 minority protection has gained particular importance for neighbourly relations with Central and Eastern Europe with the prospect of accession to the EU. The 'Pact on Stability' was adopted at a Conference in Paris in 1995 by the representatives of 52 member states of the OSCE, which also later became responsible for its implementation. This pact confirmed the crucial importance of minority issues for European politics, under the shadow of the wars in former Yugoslavia. The European Council too saw in the pact, despite its geographically wider dimension, a means by which to exercise some influence on the candidate countries in the political sphere.

In June 1993 in Copenhagen the European Council (that is, the EU institution bringing together the Heads of States and Governments) approved a set of criteria which every state interested in accession had to meet. One of the political criteria of Copenhagen, besides democracy,

rule of law and human rights, is that the candidate for accession demonstrates respect for and protection of minorities. Subsequently, the European Commission analysed and discussed in detail the situation of ethnic minorities, regretting various discrimination situations in some candidate states.<sup>8</sup> The accession agreements adopted later contained short-term and medium-term priorities also. For instance, in 1998 the Czech Republic, Hungary, Bulgaria and Romania were invited to improve the integration of the Roma (Gypsy) population. By that way the Copenhagen criteria turned out to be a kind of "structural or founding principle" of the enlargement process, which are to be respected in any state applying for membership of the EU. Unfortunately, not all "old" member states of the EU would go away with a positive verdict when analysed under the Copenhagen criteria for minority protection, for instance France and Greece, since stricter basic principles and rules for minority protection were still not elevated to primary EU law. Although not legally binding, the Copenhagen criteria have to be applied to any further accession candidate state, first of all to Turkey and the Western Balkan countries.

In conclusion, we must recall that neither in the EU law system nor in its external relations there are fully binding provisions on the issue of minority protection – with the important exception of anti-discrimination law, where the EU has taken an important role in order to fight discrimination based on criteria such as ethnic origin or race. Hence most of the minority involvement of the EU consists of political declarations and accession criteria. Despite the latter there is no formal reciprocity, which would compel all EU-member states to implement those criteria in their internal legal order. Hence, minority protection is not legally defined on a EU level and equally provided by all member states. As a consequence minority protection is not yet a part of the so-called "acquis communautaire", even if developments are currently moving in this direction. It will primarily depend on the political opportunities and priorities focused inside the EU-27, if minority issues are to be reinforced. In political terms it seems quite impossible that the future EU will step back on this issue being it a significant part of all accession negotiations.

### The EU and ethnic minorities: a long way ahead

Summing it up, the protection of ethnic or national minorities inside the EU system is still characterised

by contradictions, but open to further improvement. The relevance of the issue in the last 15 years has been constantly increasing. Whereas in the 1980s the European Parliament pushed the necessity of preserving the linguistic and cultural heritage of national minorities, after 1992, the new concept of cultural diversity opened a new space to politics of recognition and promotion of ethnic minorities. The process of the enlargement of the EU to Eastern Europe in the 1990s brought minority protection to a stricter political dimension in external relations too. There is an increasing tendency to provide minority protection in the EU system too – a tendency confirmed by the fact that the Treaty of Lisbon (2007) would for the first time in the history of EU-integration introduce the term ‘minorities’ in legally binding Primary Law (that is, the text of the Treaties). Today the overall conditions for establishing minority protection in the EU and in national law are considerably better than 15 years ago, but still it depends on the political willingness of the member states whether this legal basis is going to be enforced.

Measures aimed at enacting the effective and complete equality between members of a national minority and the members of the majority population of a given state hence cannot be considered acts of discrimination anymore. This is a very significant step forward in protecting minorities, now binding law in all 36 states which are party to the FCNM, but not the EU-member state France. There might be in this context a conflict between international law and EU law. Whereas international law partly calls for affirmative actions fostering minority identities, the rules of the EU Common Market tend to forbid any sort of unequal treatment. In cases of doubt the EU might give priority to its own law and consider measures of affirmative action of members of a minority as an act of discrimination. This at least is the idea one might get if one looks at the restrictive attitude the European Court of Justice showed when confronted with quota for women in employment. So far only the protective system of South Tyrol provided insights how the common market and the protection of minorities interact and interrelate. The experience so far shows that the relationship between European Market and regional minority protection belongs “much more to a symbiotic world of mutual fertilisation than to an aggressive world of conflicting interests”.<sup>9</sup>

However, what remains is the assessment that the EU’s approach to minorities is at best ambiguous. On the one hand there is evidence that the EU is more and more recognising not only the existence of minorities, but also

even their very needs as groups. On the other hand major political and institutional developments in recent years suggest that the EU is more committed to individual rights, particularly in the moves to complete the single market, the application of Regional and Cohesion Policies, and the manner in which the Committee of the Regions has been established along functional, rather than cultural lines. Whilst the group rights approach in respect of ethnic minorities appears to have gained some ground in recent years, it is still “trumped” by the individual rights approach which grants all individuals the right to be different, whilst maintaining their full rights of citizenship. Instead of clearly emphasising the need to grant ethnic minority rights as collective rights also in EU-enlargement negotiations and in its foreign policy in general the EU prefers a traditional approach of illusionary minority protection based on individual rights.<sup>10</sup>

### The Fundamental Rights Agency (FRA)

The EU’s European Monitoring Centre on Racism and Xenophobia (EUMC) on 15 February 2007 became the EU Agency for Fundamental Rights (FRA). This institution, based in Vienna, is tasked with developing policies relating to fundamental rights for EU institutions and member states, keeping a focus on xenophobia, racism and anti-Semitism. Its purpose is also to assist member states in adopting EU law touching matters of fundamental rights. The FRA offers its “think-tank” when member states are regulating fundamental rights and planning implementation measures. Racism, xenophobia and intolerance continue to be priorities within its extended mandate. The Report on Racism and Xenophobia in the Member States of the EU is the first major publication of the FRA, which has involved all its national offices, also from Romania and Bulgaria.<sup>13</sup> In many countries there is no evidence, if in 2006 even one legal action against discrimination on ethnic grounds has been taken, although most countries already have such acts and procedures in force. Some countries as Latvia, Malta and the Czech Republic had not yet passed the necessary domestic legislation to implement the EU Racial Equality Directive of June 2000. <http://fra.europe.eu>

In the foreseeable future, the European Union is unlikely to commit itself formally to a group rights approach in the accommodation of ethnic minority claims. Factors likely to prevent this include institutional disagreements and different policies toward minority nations inside and

outside the Union. As the EU grapples with economic and monetary union, enlargement, institutional reform and the need to remain economically dynamic in an increasingly competitive global economy, it is unlikely to change its ambiguous approach to the issue of ethnic minorities. However, what should be further enquired and studied is the exact division of labour between the member states and the European Union, on the one hand, and the Union and other international players, on the other. As regards these interrelationships there seems to be potential for further improvement. Finally, to end with a promising tone, the Union has to offer new methods of governance which seem very useful for the protection of minorities in a system of multilevel governance.<sup>11</sup> Using the so-called 'Open Method of Co-ordination' in areas such as social inclusion, integration or employment policy offers a permanent dialogue between the EU and its member states that can address the issue of how to best protect minorities who contribute so much to the diversity the Union wants to be united in.<sup>12</sup>

*EU law does not necessarily refer to the diversity within states (i.e., referring to minorities) but rather to the diversity between states (i.e., the preservation of national identities). See on this important distinction Gabriel N. Toggenburg, 'The Debate on European values and the case of cultural diversity', in *European Diversity and Autonomy Papers*, EDAP 2004/1.*

*6 See Article 1 of the Treaty of Lisbon aiming at the introduction of a new Art. 3a, Para 2 to the EU Treaty: "The Union shall respect the equality of the Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government..." See Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, in *Official Journal C 306 of 17 December 2007*.*

*7 The mandate just refers to "minorities", whereas the Parliament was pressing for a more specific reference to traditional national minorities as well as linguistic minorities. The fact that this proposal has not been taken up by the Council, however, does not restrict the mandate of the Agency. See on this Gabriel N. Toggenburg, 'The role of the new EU Fundamental Rights Agency: Debating the "sex of angels" or improving Europe's human rights performance?' in *European Law Review*, June 2008, pp. 385-398.*

*8 A detailed analysis on how this criteria was applied in practice can be found in Gwendolyn Sasse, 'Minority Rights and EU Enlargement: Normative Overstretch or Effective Conditionality?', in Gabriel N. Toggenburg, (ed.), *Minority Protection and the enlarged European Union: The way forward*, LGI Books, Budapest, 2004, pp. 59-84.*

*9 See Gabriel N. Toggenburg, 'Regional autonomies providing minority-rights and the law of European Integration: experiences from South Tyrol', in Joseph Marko et al. (ed.), *Tolerance established by Law. The Autonomy of South Tyrol: Self-Governance and Minority Rights*, Martinus Nijhoff, 2008, pp. 177-200.*

*10 The 'Bolzano/Bozen Declaration', released on 1 May 2004, comprises a package of policy proposals for an enlarging EU in the area of minority protection. The declaration assumes a rising importance of the EU when it comes to the protection of European national minorities taking into account the overall principle of subsidiarity (powers should be devolved to the government level which manages them in the most efficient way). The declaration highlights what is politically and legally possible within existing policy and demonstrates how the protection of minorities can be strengthened in a consistent manner. The full text can be downloaded from <http://www.eurac.edu/pecede>.*

*11 For details on this new tendency see Gabriel N. Toggenburg, 'A remaining share or a new part? The Union's role vis-à-vis minorities after the enlargement decade', *EUI Working Paper 15* (2006).*

*12 Remember that the EU Constitution proposed to equip the Union with an overall motto of 'United in Diversity'. See on this Gabriel N. Toggenburg, 'Unification via Diversification – what does it mean to be "united in diversity"?', in *EUMAP feature 'Enlargement Day'*, 1 May 2004, online at <http://www.eumap.org/journal/features/2004/bigday/diversity>.*

*13 See FRA, 2008 Report on Racism and Xenophobia in the Member States of the EU, available at: <http://fra.europa.eu/fra/index.php>*

*1 The most well known example of the Union in this area is the so-called "Race Directive". See in detail: Gabriel N. Toggenburg, 'The Race Directive: A New Dimension in the Fight against Ethnic Discrimination in Europe', in *ECMI European Yearbook on Minority Issues 2002*, Kluwer Law International, 2002, pp. 231-244.*

*2 See the site: <http://www.eblul.org>.*

*3 See the EU-publication: *Languages: Europe's asset on: [http://www.europa.eu.int/index\\_eu.htm](http://www.europa.eu.int/index_eu.htm) and the leaflet "Many tongues, one family" on [http://www.europa.eu.int/comm/dgs/education\\_culture/guide/liste\\_en.pdf](http://www.europa.eu.int/comm/dgs/education_culture/guide/liste_en.pdf).**

*4 MERCATOR is based in three centres: Catalonia (language legislation), Friesland (language and education), Wales (minority language and media); see also <http://www.mercator-education.org>.*

*5 Note however that the preservation of diversity in terms of*

## 4.6 Bilateral agreements for minority protection

By Emma Lantschner and Karina Zabielska

Bilateral agreements typically stand at the end of a conflict or a period of suppression, during which relations between neighbouring countries were rendered difficult. This could be observed in the case of the agreement concluded between Finland and Sweden on the status of the Åland Islands in the aftermath of World War I as well as in the Gruber-De Gasperi Agreement (Austria-Italy), which laid the basis for the autonomous status of South Tyrol after World War II. Bilateral agreements appeared again after the collapse of communism. In the first half of the last decade many countries in Central and Eastern Europe concluded bilateral agreements aiming at guaranteeing stability through respect of their borders and settlement of long-standing disputes. Such agreements often also contain commitments regarding their respective minorities. The first bilateral treaty after the fall of communism was the Treaty of Good Neighbourliness and Friendly Co-operation between Germany and Poland, signed on 17 June 1991. Between 1991 and 1994, 18 similar treaties have been signed by Belarus, Bulgaria, Croatia, Czech Republic, Germany, Hungary, Latvia, Lithuania, Moldova, Poland, Romania, Russia, Slovakia, Slovenia and Ukraine. In recent years, the former Yugoslav countries also became very active in the field of minorities, not only by adopting national (constitutional) laws on minorities, but also by concluding bilateral agreements on minorities with their neighbours. There exist two types of bilateral treaties:

- 1) Neighbourhood treaties regulating different issues relating to bilateral relations, inter alia status of respective minority groups; or
- 2) Minority treaties devoted explicitly to the protection of minorities (for example bilateral treaties concluded by Serbia).

Both types of treaties, encouraged by the Council of Europe, the OSCE and the European Union, have the double aim of guaranteeing reciprocally the recognition of current boundaries and protecting the national minorities that very often symmetrically inhabit the different states of the Eastern and Central parts of Europe. The structure of these treaties shows many similarities. After the initial declarations on the mutual recognition of borders and mutual adhesion to international standards, a second section is normally devoted to the protection of national minorities recognising some fundamental rights, such as the right of the minority to preserve its own identity, the right to

effective participation in the national or local decision-making processes, linguistic and cultural rights, mainly in the educational field, rights concerning media, freedom of association, establishing and maintaining contacts across the border and preservation of their material and architectural heritage. Less often included are rights concerning the creation of Euro-regions for economic co-operation, improvement of transportation links, or collective rights. Some of the treaties incorporate literal dispositions from political documents by the United Nations, the Council of Europe or the OSCE, thus giving them a legally binding nature between the parties.

### The implementation mechanism of bilateral agreements

The implementation mechanism of bilateral agreements is generally considered to be one of the weaknesses of this instrument. It can be examined from the political as well as the legal perspective, the political aspects of implementation having received primacy over the legal possibilities.<sup>1</sup> There are four possible procedures for the implementation and monitoring of bilateral agreements.

Most of the treaties concluded in the beginning of the 1990s have been included in the Pact on Stability.<sup>2</sup> Article 16 of the Declaration of the pact states that “the States party to the OSCE Convention establishing the International Conciliation and Arbitration Court may refer to the Court possible disputes concerning the interpretation or implementation of their good-neighbourliness agreements”. The role conferred in this context on the OSCE has been, however, the subject of lively controversy, some OSCE states consider that the guarantee mechanisms provided for, in particular the opportunity given in certain cases to third states to raise disputes, could be abused especially by the kin-states of the minorities referred to in the bilateral agreements. So far, OSCE countries have never made recourse to this provision.

Article 15 of the Pact on Stability further states that the parties “with regard to the observance of ... commitments in the implementation of the agreements and arrangements included in the Pact, [can] resort to the instruments and procedures of the OSCE, including those concerning conflict prevention, peaceful settlement of disputes and the human dimension”. This also includes the opportunity to consult the High Commissioner on National Minorities (HCNM) on problems regarding

the implementation of bilateral agreements. This provision has never been applied either.

Use of domestic remedies in the form of court proceedings might be another possible monitoring instrument, as long as the constitutional system allows treaty rules to operate directly in domestic law, and the rights are self-executing. Since self-executing provisions in bilateral agreements are rare, there is little likelihood of rights included in a bilateral agreement being effectively invoked before a court.

In the light of the above, the Joint Intergovernmental Commissions (and their Sub-Committees on Minorities),<sup>3</sup> which are established under many bilateral agreements, can be considered as the most effective implementation mechanisms.<sup>4</sup> Joint Commissions can contribute to confidence building and play an important role by having established a forum for discussion where minority issues can be addressed and where the ground for decisions, which will only be taken at a higher level, can be prepared. Furthermore, an ongoing dialogue to channel and refocus debate in a productive manner has thus been created.<sup>5</sup>

Nonetheless, there would still be room for further improving their functioning and effectiveness. Joint Commissions are politically charged bodies, comparable to a governmental advisory organ, evaluating the overall implementation of bilateral agreements in the field of minorities, adopting recommendations which are addressed to the respective governments. The destiny of these recommendations depends on the political will of the government. No sanctions can be imposed if the recommendations are not implemented.

Joint Commissions are not comparable to a judicial body that supervises the abidance of the law of the citizens of a certain state. It is not a mechanism which assists a person whose rights have been violated. There is no formal procedure foreseen for persons who want to bring to the Commission's attention facts that run contrary to a provision laid down in a bilateral agreement. Its decisions are not directly binding on anybody.

The most important factor that has an impact on their effectiveness is the political goodwill of the contracting parties to implement the agreement and the recommendations resulting from the work of the Joint Commissions. This political will is conditioned by the internal development of the state in question, and its general state of democracy.

The participation of minority representatives should

be ensured both in the implementation process as well as during the drafting and conclusion of the bilateral agreement itself. In most of the cases the agreements are negotiated in the absence of the minority community they were designed to protect. States with a larger minority community tend to be reluctant to involve the minorities, while the kin-states expressly enforce their involvement.<sup>6</sup>

When it comes to the implementation of the recommendations it has to be ensured that it is not curtailed through governmental decrees or circumvented through too large margins of discretion for the state authorities or the administration. Implementation is often also hampered because of a lack of (or untimely) funding. Another obstacle for the implementation of certain recommendations arises from the difficulty of an efficient involvement of the private sector.

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Even if there is the permanent danger of politicisation of the work of the commissions and inefficiency, it has to be considered a positive fact that the minority issue is extensively discussed in the government when transforming the recommendations into a governmental decree and the consequent awareness of minority issues in the work of the government. By making the documentation of the work of the Joint Commissions available to a broader public, public awareness can also be raised.

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## Conclusions – Strengths and weaknesses of bilateral agreements

Every minority situation presents its own particular characteristics and there is consequently no standard means of resolving the multitude of problems that each case presents in a national context. On the whole, bilateral treaties constitute a useful and sometimes even essential addition to the international regime for the protection of persons belonging to national minorities. If effectively implemented, the substantive rights included in the existing bilateral agreements hold a considerable potential for the development of minority protection.

In this perspective, the use of bilateral agreements in comparison to general minority regulations included in international and regional instruments has the advantage that they take into account the specific historical and traditional needs of the minorities concerned.

The conclusion of these treaties often reflects a remarkable relaxation of tensions between treaty parties,

and their implementation can further stimulate a climate of good-neighbourliness and co-operation. Besides having this effect, bilateral treaties constitute important instruments for the prevention of conflict between states, by providing a clear framework for contacts and contributing to transparency in the actions of the kin-state in support of the minority in question.

In addition to strengthening confidence and stability among and in border regions, bilateral treaties give legal force, through confirmation and/or incorporation, to international instruments that are not legally binding documents.

Bilateral agreements must certainly not lower or compromise existing obligations or commitments.<sup>7</sup> To replace specific national provisions by reference to international conventions, such as the Framework Convention for the Protection of National Minorities, which contains more general standards, could in a specific case be such a regression.

Further concerns may arise from the fact that vague wording and formulations potentially obstruct the effective implementation of the provisions. Bilateral treaties may also have disintegrative effects as they normally protect only kin-minorities. Other groups of inhabitants might be placed in a less favourable position, in particular minority groups without a kin-state. Tensions among minority groups within a given country could thereby be created. Bilateral treaties and their state of implementation, in particular of their minority regulations, usually reflect the actual political orientation of the states concerned and are subject to strong political influence. The basic precondition for efficiency of a bilateral agreement is the political will to apply that agreement in practice, as there is no possibility of sanctioning the non-implementation.<sup>8</sup>

Notwithstanding this weakness of the monitoring and implementation mechanism and in order to make the best of the situation, it is of utmost importance for the minorities concerned to seek every kind of possible involvement or participation in the process of negotiating and drafting of an agreement and afterwards in the implementation and monitoring of the same.

The essential part of this essay was published as a section of the following article: Emma Lantschner, 'Bilateral agreements and their implementation', in Alexander Morawa (Hrsg.), *Mechanisms for the implementation of minority rights* (Council of Europe Publishing, Strasbourg, 2004), pp. 203-224.

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<sup>1</sup> Kinga Gál, 'Bilateral Agreements in Central and Eastern Europe: A new Inter-State Framework for Minority Protection?' ECMI Working Paper No. 4, 1999, at [http://www.ecmi.de/doc/download/working\\_paper\\_4.pdf](http://www.ecmi.de/doc/download/working_paper_4.pdf), 2-3.

<sup>2</sup> Florence Benoît-Rhomer, *La question minoritaire en Europe*, Council of Europe Publishing (Strasbourg, 1996), 31-37. *The Pact on Stability (not to be confused with the Stability Pact for South Eastern Europe) is also known as the "Balladur Plan" because it was proposed by the French Prime Minister Edouard Balladur. The Pact was adopted by the representatives of 52 member states of the OSCE at the conference held in Paris on 20-21 March 1995. It consists of a Declaration and a list of bilateral agreements which the participating states decided to include.*

<sup>3</sup> Hereinafter *Joint Commissions*.

<sup>4</sup> Emma Lantschner and Roberta Medda, 'Bilateral approach to the protection of kin-minorities', in European Commission for Democracy through Law (ed.), *The protection of national minorities by their kin-state*, (Strasbourg, 2002), pp. 107-133, at 119-120; Kinga Gál, 'Bilateral agreements ...', 13.

<sup>5</sup> Patrick Thornberry, 'Hungarian Bilateral Treaties and Declarations', in Arie Bloed and Pieter van Dijk (eds.), *Protection of Minority Rights Through Bilateral Treaties. The Case of Central and Eastern Europe* (The Hague, 1999), pp. 127-161, at 159.

<sup>6</sup> Emma Lantschner and Roberta Medda-Windischer, 'Bilateral approach ...', p. 126.

<sup>7</sup> Max van der Stoep, 'Minority Rights, Participation and Bilateral Agreements', *Address of the High Commissioner on National Minorities of the OSCE to an international seminar on Legal Aspects of Minority Rights: Participation in Decision-Making Processes and Bilateral Agreements on Minority Rights* (Zagreb, 4 December 2000), 4, at: [http://www.osce.org/bcnm/documents/speeches/2000/bcnm\\_speech2000\\_8.pdf](http://www.osce.org/bcnm/documents/speeches/2000/bcnm_speech2000_8.pdf).

<sup>8</sup> Kinga Gál, 'Bilateral Agreements ...', p. 18.

## 4.7 An interim balance sheet on the protection of minorities in Europe

Both international legal instruments on minority rights and languages illustrated above, the FCNM and the ECRML, the initiatives set by the EU and the OSCE as well as several bilateral treaties in recent years have triggered a considerable dynamics in the recognition and protection of ethnic minorities in Europe. Not only the Eastern European countries are fully involved in this evolution, but to a certain extent even the Caucasus region. Whereas the emphasis of the FCNM is lying in fundamental features and encompassing all basic issues of minority protection, the ECRML is focusing in a more detailed, but flexible way on the linguistic and cultural questions. The implementation of the ECRML is linked to a broad set of practical and technical decisions, while the FCNM in many aspects provides provisions for minority protection in rather generic terms. Based on the new protection instruments in international law a new era has began in Europe: it is a historical innovation that in most European states a general legal system of minority protection has been activated. The process of implementation will certainly require many years. It is not exactly foreseeable which kind of dynamics it will produce and which solutions for all single situations it will create.

The FCNM since 1998 has come into force in 39 major European states (out of 47 CoE-member states), while in four states governments had put their signature, but parliaments later denied the ratification. Among the relevant states just Greece, Belarus, France and Turkey still keep aside as their very *raison d'état* does not recognise any national minorities at all. The 'Language Charter' has been adopted by 21 European states, but 10 governments have already given their signature without a ratification following. For both instruments, multiphase control mechanisms have been developed within the Council of Europe. These mechanisms have been applied since 1999.

### Evaluation and international standard setting

In the face of so many different legal regimes in the European states applying to national minority issues the question arises: how are they to be judged? In this context

"judging" may have several aspects. On the one hand it can be assessed whether the national legislation in the 39 state parties of the FCNM respected fundamental legal principles and the international conventions were ratified by the respective states.

Table 11 – The development of minority protection in Europe 2001-2006<sup>1</sup>

States	2001	2006
1. Albania	12	16
2. Austria	16	16
3. Belarus	7	7
4. Belgium	22	22
5. Bosnia-Herzegovina	13	14
6. Bulgaria	9	11
7. Croatia	15	19
8. Czech Republic	14	14
9. Denmark	20	20
10. Estonia	13	15
11. Finland	20	22
12. France	8	8
13. Germany	16	16
14. Greece	4	4
15. Hungary	19	20
16. Ireland	18	18
17. Italy	17	18
18. Latvia	11	11
19. Lithuania	16	17
20. Macedonia	11	16
21. Moldova	11	12
22. Serbia-Montenegro*	12	13
23. The Netherlands	15	15
24. Norway	17	17
25. Poland	12	15
26. Portugal	9	10
27. Romania	13	13
28. Russian Federation	10	10
29. Slovakia	11	15
30. Slovenia	16	16
31. Spain	19	19
32. Sweden	17	17
33. Switzerland	19	19
34. Turkey	1	3
35. Ukraine	9	9
36. United Kingdom	16	16
<b>Total</b>	<b>488</b>	<b>523</b>
Average	13,55	14,53

\*In the first half of 2006 Montenegro and Serbia still were federated. The eight microstates and Kosovo (independent since 2008) are not considered, nor are the Transcaucasian states.

1=identity; 2=non-discrimination; 3=formal legal equality; 4=equal opportunities; 5=use of the mother tongue; 6=education in mother tongue; 7=right to free association; 8=free exchange and contact; 9=information; 10=political representation; 11=autonomy; 12=participation in decision making; 13=legal remedies for minorities. 13 single rights, which can be fully recognised and applied (2 points), partially applied (1 point), or not applied (0 points).

Source: Christoph Pan/Beate S. Pfeil, *Minderheitenrechte in Europa, Handbuch, Vol. 2, Vienna 2006, and p.16-23, specifically p. 20.*

On the other, it could be analysed whether the regulations applied are achieving their ostensible aims, e.g., protecting minority languages, enabling minority children to have a complete instruction in the mother tongue, guarantees of political participation of minorities, etc.

In practical politics there are always various options and tools to be weighed against the criterion of efficiency and acceptance. Such an assessment for Europe is a complex operation since there are so many different *de facto* situations and each case has to be judged in its own context. According to Pan/Pfeil the average level of protection of minority rights in the period 2001-2006 has improved slightly.

From this still rough scheme of evaluation it emerges that 18 states have met their obligations to an extent of more than 50 per cent, whereas more than one-third (14 states) have respected 35-50 per cent of their obligations. Just four major states (France, Belarus, Greece and Turkey) are lagging far behind. It has to be acknowledged that only in the 1990s many states have complied with a wide range of minority rights, often under the obligations assumed with becoming first a candidate and then a full member of the EU. The rapidity of the diffusion of juridical provisions and fundamental norms, now generally entrenched in the respective Constitutions, is respectable, but there is still a lot of work ahead.

Three-quarters of all European states have already inserted basic provisions of minority rights and protection in their Constitutions removing this issue from the reach of simple majority decisions in the national parliaments. Taking into account that this evolution has taken place over barely the last 10 years, these results are not negligible.

The "old" 15 EU-member states have complied to a major extent with duties under both legal instruments, FCNM and ECRML, whereas the majority of new member states and the membership candidates are concentrated in the middle range. Additionally the EU in its foreign and security policy has set standards for the protection of minorities, but on the other hand it has no powers to interfere or regulate these issues inside its "old members" which have full competence regarding minority questions. If this sort of double-standard policy is to be overcome, it would require a unanimous decision by all member states. But this is unthinkable, unless France, Turkey and Greece give up some of their dogmatic positions.

## A summary

The new developments in the field of minority protection in Europe, reflected in the adoption and application of international law, can be summarised as follows:

1. The mutual dependence among states regarding ethnic minority issues requires its internationalisation in order to neutralise its potentially destabilising effect. Since 1991 it has been definitely recognised that minority questions are a legitimate international issue and not anymore an exclusive internal affair of the respective state. This is a principle, which, enshrined in Article 1 of the FCNM, has been formally accepted by 36 European and the three Transcaucasian CoE-member states.
2. The frame of the European Pact for Stability has laid the basis for more than 100 agreements for bilateral and regional co-operation, regulating sometimes, among other issues, also the protection of minorities. Thus all state parties to those agreements have gained recognition as kin-states.
3. With respect to the kin-state role of some states, distinction must be made between minorities with a kin-state and minorities without a kin-state.
  - Minorities with a kin-state are generally national minorities protected by a bilateral or multilateral agreement. Their kin-states have been accorded a certain amount of clearly defined rights on behalf of the respective minority and can intervene on both levels, *vis-à-vis* the partner state and the CoE.
  - Minorities without a kin state are generally entitled to call upon the control institutions of the ECHR under the universal prohibition of discrimination. As an alternative the CoE as controlling body of the international protection instruments (FCNM and ECRML) can be appealed to, in order to seek political redress in the competent organs of the CoE.
4. The weakness of bilateral agreements of minority issues lies in the missing control of the implementation and in the lack of sanctions. This only partially can be compensated through the control mechanisms, created by the Council of Europe for the international instruments FCNM and ECRML.
5. The protected national minorities have a double juridical relationship to both states, the one of residence and the kin-state with whom they share the cultural, ethnical or linguistic identity.
6. The primary responsibility for the protection of minorities lies with the states of residence. But

the kin-states also play a significant role for the protection of the minorities, trying to conceive and develop all kinds of links and promotion with them. By this way they contribute to keep Europe's cultural diversity alive. Thus a sort of secondary responsibility of the kin-states on behalf of the protected minorities in neighbouring countries can be asserted.

7. States of residence and the kin-states have different interests in minority protection. Whereas the issues which count more for the states of residence are equality before the law and social integration of the minorities, the kin-states are primarily interested in keeping a high level of protection for their "relatives" in the neighbouring state. Both interests are legitimate, but need to come into a rational balance.
8. The primary and secondary competence for the protection of a minority is in a complementary relationship with each other. The protection function of the residence state is completed by measures of promotion of the kin-state and also reverse. This is basically a win-win-scenario.
9. Whereas the residence state is obliged to exercise its primary powers on minority protection under national law, the secondary competence of the kin state is partially based in codified international rules and law.
10. There is no doubt that the measures adopted by the kin-states on behalf of the persons belonging to national minorities touch upon very sensitive aspects. They also affect foreign nationals inside the territory of the kin-state and produce effects outside the national borders.
11. There is a need for codification of the newly created international rules under official international law, which is claimed also by the Parliamentary Assembly of the CoE.
12. There is a need to elaborate and discuss a new juridical framework on territorial and personal (cultural) autonomy. Several positive examples of working territorial autonomies in Italy (South Tyrol, Aosta Valley, Friuli), Finland (Åland Islands), Denmark (Faroe and Greenland), Portugal (Madeira and Azores), Moldova (Gagauzia), Ukraine (Crimea), Spain (all regions) and United Kingdom (various regions) prove the fundamentally beneficial effects of this concept for both minority rights and political stability.

In conclusion, the protection of minorities in Europe still does not offer a very homogeneous picture. In

Western Europe, with very few exceptions, the political problems arising from the existence of national minorities in the different states are normally considered an internal matter that can be dealt with constitutional means. On the contrary, in Central and Eastern Europe the differences between the political borders and ethnic frontiers are regarded as a risk to the stability and security of the zone. To cope with this situation, similar to the one experienced after World War I, the Western powers, gathered today around the flags of the EU and the NATO, are demanding more or less openly that the countries wishing to become members of these organisations (supranational in character, not only international) must ratify multilateral and bilateral treaties that ensure respect for both the borders and the national minorities living within their respective territories. While in 1920 the League of Nations was the body in charge of overseeing the treatment of minorities and trying to prevent any trouble which might one day escalate into an international conflict, nowadays this role is played by different institutional bodies, the OSCE, the Council of Europe and the EU, in a fundamental preventive mission. Nevertheless, the shortcomings of the current system are also very obvious, such as the huge flexibility contained in the clauses of the international treaties in force and the almost complete absence of international pressure mechanisms that could ensure its enforcement.

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## 4.8 Instruments of “soft law”: sufficient guarantees for minority rights?

The idea of human rights, including the individual and collective rights of national or ethnic minorities, came into being from the need of protection of individuals and groups vis-à-vis the nation-states' power. Through international codification the states should be obliged to ensure the adoption of such rights in national law and their respect in domestic politics. Most of the UN conventions refer to individual human rights, only exceptionally also groups and peoples are subjects of international rights (e.g., formerly colonised peoples, indigenous peoples). The majority of states so far are not willing to enter strict legal obligations vis-à-vis minorities as a group.

On the other hand legal obligations also do not have any efficiency, if not matched by a corresponding political practice. Both legal and political agreements require the active co-operation of state parties. Today international covenants or declarations (e.g., for the protection of women, children, migrant workers, religious rights and freedoms, minority members, indigenous people) cannot also be easily enforced if a state does not co-operate; legal actions and proceedings before international courts are a rare event, and sanctions against the states responsible occur even more rarely. The 1992 UN Declaration on the Rights of Members of National or Linguistic, Ethnic and Religious Minorities has no binding effect, but just creates political obligations and maybe contributes to customary international law. The same applies for the UN Declaration on the Rights of Indigenous Peoples, approved in September 2007. Such documents, however, are useful for enhancing the political will and mounting moral pressure among the states concerned, creating international customary law.

Conversely, if states do not comply with provisions of soft law, there are no such sanctions as produced by international treaties and there is no violation of international Acts. States argue that the legal quality of an international document is not decisive, but political reliability and coherence is more important. International organisations argue that, based on conventions with soft law character, they can intervene on behalf of minorities by political arguments, and state parties feel obliged to legitimise or change their policies towards minorities. As states want to avoid international courts, they at least enter in a stronger form of political agreement.

Against this background instruments of “soft law” have been approved as conventions without a binding legal effect like a genuine treaty, mostly due to the fact that it has turned out to be extremely difficult to create new international law. Some scholars doubt if soft law is law at all.

Which kind of documents does soft law comprise? Mostly declarations of international organisations and conferences, international conventions not ratified but signed by governments, international conventions with a high degree of flexibility and vagueness, which are not directly applicable in national politics. Soft law gives the state parties a wide frame of possible action with an elastic interpretation. They can test some policies, change and adapt them freely. Governments by signing a soft law just agree to accept general normative provisions. This kind of approach does not enhance the reliability of the core of international law.

Nevertheless soft law has its proven efficiency as it serves also as a confidence-building measure. States can express political intentions without entering legal obligations, but expecting partners to do the same. However, international conventions such as the FCNM and the ECRML always require ratification by the national parliaments and some obligations referring to information and reporting. Political agreements among partner states can be stipulated without a treaty, which at least expose a state to a kind of “political group dynamics”. Much of the impact of the OSCE for instance is based on soft law. The very role of the High Commissioner on National Minorities has been established without an international treaty. He is acting for conflict prevention and conflict resolution especially by establishing a dialogue between conflict parties and third parties as the OSCE. In several cases his soft law-based diplomatic action has been successful.

Soft law may be attractive for states and governments, but from the point of view of national minorities, the weaker part of the partners concerned, they are just a second best solution or an emergency. It would be preferable if the international community could agree on procedures for creating international law more easily. Soft law generally integrates “hard”, treaty-based international law. If it is applied, minorities won't complain, but if not, there is little space for political and no space for legal action.

A further problem arises from the fact that states consider such “soft law” as exhaustive to cope with specific international obligations. They keep full flexibility in

the application and just risk political reproach and diplomatic pressure if they do not comply with. Russia's war in Chechnya has been responded or sanctioned just with the suspension from the CoE, which did not have any real impact on its respect of human and minority rights in the conflict area. Turkey's oppression policy and violent repression of the political resistance of the Kurdish people has not resulted in any sanction by the CoE. International regulations in such cases turn out to be definitely too soft.

Does soft law pave the way to create a "European legal space"? For sure political declarations and general agreements create a certain base for further steps in international law. They are a step forward, preparing the field, but remain just a second best solution. In the perspective of the party directly concerned – many millions of Europeans belonging to ethnic, linguistic, national minorities – it would be better to seek a general treaty such as the ECHR with stricter forms of control, with a machinery of international legal remedy comprising the right to complain and legal action by both the minority communities concerned and the kin-states. This indeed would bring Europe closer to a continent-wide system of legal protection of minorities.

The UN does not provide sufficient legal provisions on minority rights. The international law provision on this matter par excellence, Article 27 of the ICCPR, is too general for providing any meaningful protection. This provision has been further developed by the 1992 UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, the first international instrument devoted exclusively to minority rights. The ECHR, in force since the end of 1950, follows another approach, as it not only covers the whole range of individual rights, but also offers legal remedies for the individuals concerned, after having exhausted the domestic judiciary, to enforce their rights. The ECHR as an example of "hard law" is one of the most successful and far-reaching systems for the protection of human rights worldwide. But considering the jurisprudence of the ECHR on language rights it can still be argued that individual human rights accommodate only to a very little extent language rights adapted to the special situation of minorities.

In Europe two documents, established by the CoE, are currently conforming the legal or "soft law" framework of protection of minorities: the FCNM and the ECRML. The FCNM in various articles takes up individual human

rights of the ECHR and adds special requirements for the purpose of safeguarding the specific fundamental rights for minorities. The FCNM is the first international treaty with a multilateral, general protection regime for minorities, but it shows various shortcomings:

- 1) The term 'framework convention' is equivocal under international law. Such a convention would list up some principles and general orientations, but the definition of the tools and provisions is left over to state governments.
- 2) The formulation of many provisions of the FCNM allows a huge flexibility and offers many possibilities to evade duties. States can freely choose the forms of application of the rights.
- 3) The mechanism of control and monitoring is quite weak, but being already the content of the FCNM not very precise and strong enough, at least the control should be efficient.
- 4) The control of the implementation of the Convention in the national politics is vested only with the governments (the Committee of Ministers of CoE), assisted by a special advisory committee, which elaborates the experts' opinion preparing the decisions. Eventually it is a political and not a juridical process. The Advisory Committee is nominated directly by the governments, not by the Parliamentary Assembly.

The ECRML is also a convention *à la carte*. Although accepting such conventions as the FCNM and the ECRML and willing to respect political obligations, many states still shy away from legal entrenchment of minority rights and from a coherent and convinced adoption of FCNM principles in their national law. But national minorities have to rely on stable laws and provisions. Minority rights cannot be left just to political goodwill, but need a clear codification in the domestic law. In turn, legal provisions are inefficient, if there isn't any political willingness to implement them.

Politics by experience are arbitrary and non-committal if no precise law has been set. In addition, there is a need for neutral control and means of sanctions for enforcing the implementation. Political documents and legally binding conventions can integrate each other. Politically binding documents are important to pressure states towards minority protection with diplomatic and political means, but a legal entrenchment of minority rights as a part of constitutions and human rights covenants remains the optimum, if a European international legal system of minority protection is to be achieved.

## 5. Conclusion: some way ahead to achieve the minorities' 'right to identity'<sup>1</sup>

Europe shows two faces when we look at the history of its minorities. There are many good examples of periods of peaceful co-existence, mutual respect and tolerance between states, majority populations and minority groups. Some states provided the protection of their rights and allowed the preservation of their culture and identities, some international organisations established a legal framework to enforce their rights. But in history there have also been many cases of discrimination and oppression against national and ethnic minorities, and harsh conflict between states and nationalist forces on one side and smaller peoples or minorities at the other. Ethnic cleansing, population exchange, pogroms and genocide are also part of Europe's history as the often quoted spirit of tolerance and respect. After having illustrated some of the major issues of minority conflicts, the national legal arrangements and the international legal instruments and conventions for the protection of national minorities we come to draw a conclusion on which point these experiences have arrived.

In Europe two approaches of minority protection can be observed in the political practice of national governments, parliaments and international institutions. On the one hand a broad process of codification of minority rights has taken off in various forms: constitutional clauses, national law, supranational or bilateral treaties, international conventions. On the other hand a flexible use of political instruments can be observed, as declarations of intention and agreements between political actors have been followed by political action programmes and initiatives of governments, but without any possibility that remedy can be obtained by legal action. The efficiency and performance of both approaches depend mainly on the general political constellation and on the historical and cultural framework.

<sup>1</sup> *Which is the ultimate end of minority rights protection? In its 1994 General Comment No. 23 on Article 27 of the ICCPR the Human Rights Commission stated that: "The protection of the rights in Article 27 is directed to ensure 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. Accordingly, the Committee observes that these rights must be protected as such and should not be confused with other personal rights conferred on one and all under the Covenant." This 'right to identity' captures the essence of minority rights within the corpus of international human rights.*

## The next step: recognition of group rights?

Within the approach based on legal codification of minority rights two options were intensely discussed in the 1990s: should the Council of Europe strive for an additional protocol to the European Convention of Human Rights (ECHR), transforming minority rights into individual rights? Or should a separate convention on minority rights be achieved, which could set a framework of minimum standards of minority rights? Could eventually even group rights of national and ethnic minorities be enshrined in such conventions?

All political players knew that certain rights, as typically the public use of language and the exercise of religion, can only be enjoyed as a community. It was also acknowledged that there should be absolute freedom of individuals to choose whether they wanted to belong to a minority group or not. Nevertheless the state representatives, gathered under the banner of the Council of Europe, clung to the individual approach creating the formula "Rights of members of national minority individually or in community with others", giving in to the notorious hostility of many states against any kind of group rights.<sup>2</sup>

Eventually this option led to the decision that group rights and self-government on ethnic grounds should not be recognised. This was a major concession to all states which were reluctant to the idea of a binding convention on minority rights. Therefore the Council of Europe opted for the elaboration of a framework convention, instead of an additional protocol excluding any possibility to obtain their rights deriving from such a convention by legal action. As also in the past several CoE-members did not obey to norms set by conventions and recommendations the member states agreed to establish at least a robust monitoring system. This allows the Parliamentary Assembly to exercise political pressure whenever a state party is not accomplishing its duties of minority protection under the FCNM and ECRML. But the only real sanction which the CoE is able to apply is the suspension or exclusion of a member state.

Another doubt was raised when the FCNM was adopted: the CoE stressed that with ratifying the FCNM the first comprehensive, multilateral treaty on the protection of national minorities had been achieved. Formally indeed the FCNM is legally binding international law. But is this document legally and politically efficient? Or is it just the beginning of a process of codification? Is it a very bland compromise as it hasn't been possible to adopt a

<sup>2</sup> CoE, Recommendation No. 1201, Article 11.

document containing rights for individuals and groups? To which degree state parties are also legally obliged to adopt precise provisions under the FCNM? The current system, viewed from a perspective of the minorities, leaves many questions unanswered.

### Formal and substantial equality required

A system of minority protection consists of a machinery of rules and legal mechanisms allowing national minorities to preserve and develop their distinctive identity while safeguarding peaceful coexistence with the majority of the titular nation of a given state. Two basic principles form the main pillars of such a system: the prohibition of discrimination on the one hand, and a package of provisions aimed at actively protecting and promoting the culturally distinct characteristics of the minority groups on the other, which in Europe are mainly focused on the language. Typical demands of linguistic minorities concern the institutional foundations of cultural reproduction and more specifically the use of minority languages in the public media, the public education system and communication with the public administration. According the status of co-official language to a minority language is the first step, but it is not enough to ensure substantial equality of the use of this language in public life.

The first pillar guarantees formal equality of the members of a minority with those of the majority population, while the second pillar has to ensure substantive equality. Real equality can indeed require differential treatment for people in different circumstances. National or ethnic minorities need appropriate means to retain their cultural identity, which means: they need not only to prevent discrimination in public life, but to create a whole environment where they can freely and effectively develop and live their culture. This means establishing not only clear rules for equal access to public services to be handled in the respective languages of the region concerned, but basically also providing a system of cultural production and reproduction covering all needs of the minority group. In other terms: for a minority group it wouldn't be sufficient to have optimal regulations for the use of its language in the education system, in public administration and in the media, if at the same time many members of the minority would be compelled to emigrate due to poor living conditions, unequal access to social services and public employment and economic backwardness of their home region. Both aspects of minority protection are closely connected.

Today in Europe this double approach for an efficient system of minority protection at least on an international level (CoE, EU, OSCE) is widely accepted, but the reality in the individual European states often differ considerably from the general principles. While the non-discrimination principle in all its manifestations is firmly established in the legal structure of the individual states, providing also a range of legal remedies, many states are still reluctant to adopt positive measures of active minority protection. Herein lies the major challenge for the future: overcoming the structural resistance of the central states' apparatus, convincing national majority elites and the general electorate about the intrinsic value of minority protection, contrasting fears among the majority population that minority rights could threaten the unity of the state, insisting that minority protection is not just a matter of "public credo", stressing the common heritage of cultural diversity, but is a daily effort in all spheres of public life to respect and enhance different cultural identities.

Is international and constitutional law the appropriate form to regulate the rights of national minorities? Law is produced by central parliaments, and international law the simple juxtaposition (common minimum denominator) of the states that are members of a given international organisation. Many national minorities are lacking substantial power, political unity and effective organisation, and thus are distant from the decision-making centres, without any chance to ever play a significant role in the national political arenas. This imbalance influences all juridical developments in this field, where often the expectations of the population concerned and the interests of the law-making institutions simply do not coincide. Although some legal developments have shown a high degree of validity, in most cases the real solution depends on political circumstances, whether a national minority can actively intervene to shape political concepts and succeed in getting respected its fundamental rights, the preservation of its cultural identity and the state's cultural diversity.

# APPENDIX

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- <http://www.forumfed.org>: the Forum of Federations, the world organisation of federal states
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- <http://www.osi.hu>: The Open Society Institute (Soros Foundation)
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- <http://www.freedomhouse.org>: reports on the development of democracy in all countries
- <http://www.iwgia.org>: the International Working Group for Indigenous Affairs, Copenhagen
- <http://www.gfbv.org>: the International Association for Threatened Peoples (GfbV), Göttingen (Germany)
- <http://www.amnestyinternational.org>: Amnesty International, London, General secretary
- <http://www.hrw.org>: Human Rights Watch, independent human rights organisation
- <http://www.peacereporter.net>: association of journalists covering ongoing wars
- <http://www.romaniunion.org>: the International Romani Union (RIU)
- <http://www.errc.org>: The European Roma Rights Center
- <http://www.romanationalcongress.webs.com>: the Roma National Congress, umbrella organisation of the Roma civil and human rights movement
- <http://www.samediggi.no>: the Samediggi (Parliament of the Sami)
- <http://www.gdm.ras.eu.org>: Groupement pour les droits des minorités (Group for the rights of minorities)
- <http://www.ihf-hr.org>: International Helsinki Committee (Human Rights Organisation)
- <http://www.eurojewcong.org>: the European Jewish Congress
- <http://www.endangeredlanguagefund.org>: NGO for endangered languages worldwide
- <http://www.uni-koeln.de/gbs/>: Gesellschaft für bedrohte Sprachen (endangered languages, Germany)
- <http://www.uoc.es/euromosaic/web/homeam/index1.html>: the Index of the EU-program EUROMOSAIC
- <http://www.minorityrights.org>: the world directory of minorities

Europe is an ethnic and cultural mosaic, not a melting pot. Some non-Europeans are wondering about so many states on such a relatively small continent. But under the stratum of national diversity are further layers: regional identities deeply rooted in history, religious pluralism and a large number of ethnic and national minorities in almost every country. Distinct from the dominating national cultures, they wish to preserve their identity, to cherish their traditions, to use their languages in all spheres of life. For this purpose not only recognition is required, but a complete set of minority rights has to be ensured.

After bitter experiences in history, marked by discrimination exclusion and violence of all kind all over the last century, since the 1990ies the development of minority rights entered in a new era. While the nation states are definitely acknowledging the necessity of modern forms of minority protection, international legal instruments with „soft law“-character have been adopted to set basic principles and minimum standards. Slowly the European community of states is moving towards the creation of a common legal space for national minorities.

This short guide offers an introduction into Europe's world of ethnic minorities and some of its major issues of ethnic conflicts and minority discrimination. Then a brief assessment is given about the minority situation in some of its single states and an overview on the international conventions for the protection of national minorities, allowing a final judgement about whether Europe is on the right track to safeguard its „ethnic mosaic“ or not.

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