The Educational Rights of the Muslim Minority under Greek Law

Iris Kalliopi Boussiakou

Abstract

The right of the Muslim minority of Western Thrace to receive education in the mother tongue is provided by the Treaty of Lausanne and the educational bilateral agreements—the Educational Agreement (1951) and the Cultural Protocol (1968)—signed between Greece and Turkey. Due to certain particularities in the educational system, however, minority students do not have adequate opportunities to gain knowledge of the Greek or Turkish language. The major problems the Muslim minority faces in education include: a mixed system of administration, outdated textbooks, poorly-educated teaching staff and the absence of an efficient school curriculum. This article will provide a critical analysis of the existing legislation on education provided to Muslim students in the minority schools of Western Thrace. Secondly, an examination will be made of the level and status of minority education in the light of current international human rights treaties documents for the protection of minorities. The existing inadequacies of the educational system will be addressed to provide a series of effective solutions and recommendations in favour of the advancement and improvement of education in minority schools. The article will therefore examine the principle that education needs to be made available and accessible at all levels to the members of a minority group and, most importantly, it needs to adapt to the socio-linguistic and cultural needs of minority students.

I. Introduction

Greece officially recognizes the existence of only one religious minority, the Muslim minority in Western Thrace.[1] The Treaty of Lausanne, which was signed between Greece and Turkey at the end of World War I, provides for the rights of the Greek minority in Istanbul and the Muslim minority in Western Thrace.

Administrative interventions on the part of the Greek government against the members of the Muslim minority up until the beginning of the 1990s, however, resulted in the socio-economic and political isolation of the Muslim minority in Western Thrace.[2] It is worth mentioning that the reformation of minority education is

[1] Western Thrace is a county in northern Greece, which is composed of three towns: Rodopi, Komotini and Evros. The Muslim minority is composed on an ethno-linguistic basis of Muslims-Turks, who speak Turkish; Pomaks (Muslim Slavs), who speak a Bulgarian dialect; and Roma, who have their own oral dialect.

[2] Dia Anagnostou, "Collective Rights and State Security in the New Europe: The Lausanne Treaty in Western Thrace and the Debate About Minority Protection", in Constantine Arvanitopoulos (ed.), *Security Dilemmas in Eurasia* (Institute of International Relations, Panteios University of Social and Political Science, Athens, 1999), 131.

not only a problem for the Muslim minority but is also a wider issue in Greek society. The advancement and improvement of minority education would not only benefit the Muslim minority, it would also facilitate the minority's integration into Greek society, ultimately benefiting both the minority and the majority.

The persistence of the Muslim minority living in an isolated community can quite often create a sense of '*fanaticism*' among the members of the minority and cause tension between the Christians and Muslims of Western Thrace, as well as between the state and the minority.

II. The Right of the Muslim Minority to Use their Own Language under International Law

The right of the members of a minority group to use their own language has been recognized in international treaties even before the creation of the United Nations. In the case of the *Minority Schools in Albania*,[3] the Permanent Court of International Justice suggested that the rights of minorities to operate private schools is consistent with the principle of assisting minorities, who might be disadvantaged by their status. These factors seem to confirm that if public authorities do not permit a minority to carry out its educational activities in its own language, the state may face great potential for destabilization.

Current international human rights instruments and treaties contain provisions concerning the right to education of minorities in a non-official or minority language.[4] Article 27 of the International Covenant on Civil and Political Rights (ICCPR) appears to be a "long-established and continuous legal continuum" regarding the rights of linguistic minorities to use their language. One might argue that it also

[3] For a more detailed analysis on this topic, see Permanent Court of International Justice, "Advisory Opinion on Minority Schools in Albania", Series A/B (1935), No. 64.

[4] For example, see Article 14 of the 1995 Framework Convention for the Protection of National Minorities (FCNM); Article 8 of the 1992 European Charter for Regional or Minority Languages; and Article 4 of the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by General Assembly Resolution 47/135 of 18 December 1992. In regard to the right and value of education, see Manfred Nowak, "The Right to Education", in Asbjorn Eide, Catarina Krause and Rosas Allan (eds.), *Economic, Social and Cultural Rights* (Martinus Nijhoff, Dordrecht, 1995), 189–213; and Kate Halvorsen, "Notes on the Realization of the Human Right to Education", 12 *Human Rights Quarterly* (1990), 341–364.

includes the right to establish, manage and operate their own educational institutions where their language is used as the medium of instruction.[5]

The exact degree of use of a minority language as the medium of instruction required will vary according to the particular context of each situation; for example, the extent of demand for such instruction, the degree of use of the medium of instruction and the state's ability to respond to these demands. The mere presence of a small group of individuals would not automatically give rise to a right to receive instruction in a minority language in a public school.

The acquisition of the majority or official language must also form part of a state's non-discriminatory educational policy.[6] It is essential that members of a minority learn the official language of the state, otherwise they would suffer from low fluency in the majority language, would be excluded from educational opportunities and ultimately suffer isolation from the rest of the community. This type of situation would constitute discriminatory practice against current international human rights standards. It is essential to reach some type of equilibrium between the overall number of individuals sharing the same language and a state's obligation to provide education in the minority language.[7]

Article 8 of the European Charter for Regional or Minority Languages (EChRML) provides that states must seek a level of use of a minority language that best fits their demographic reality, since Article 8 is applicable "according to the situation of each language". Therefore, the larger the number of speakers of a regional or minority language and the more linguistically homogenous the population in a region, the stronger the option that should be adopted to accommodate the linguistic and cultural needs of the population.

Several factors ought to be considered when examining the sufficiency of numbers of speakers in a territory, such as the geographical location, the availability of

[5] Fernand de Varennes, *Language, Minorities and Human Rights* (Kluwer Law International, London, 1996), 158.
[6] Charles Ammoun, *Study of Discrimination in Education* (United Nations, New York, 1957), 90. See also Article 14, FCNM; and OSCE, "Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE", para. 4, at http://www.osce.org/documents/odihr/1990/06/13992_en.pdf.
[7] See UN Declaration on the Rights of Persons Belonging to National, Ethnic or Religious and Linguistic Minorities; OSCE, "Document of the Copenhagen Meeting …"

transportation and the age of children.[8] If one looks beyond the purely demographic factor, there are other reasons for a more favourable attitude towards a minority group; for example, the proximity of a kin-state and the political tensions in the region. States should adopt a more flexible and generous attitude towards the protection of minorities' rights in their territory, especially those minority groups that have been long established in a geographical area. This would seem to be a fair and balanced response to the special needs of a minority group constituting an educational policy based on the principles of equality and non-discrimination.

Even when the number of a minority is large enough to require public education in the minority language, the state would still be under an obligation to provide teaching instruction in the official or majority language. The state authorities would have to ensure that these individuals are not excluded from participating in the larger society in order to avoid any inequalities or to prevent restriction of access to resources and benefits available to the majority.

A state's non-discriminatory educational policy would have to provide public schooling in the primary language of the students, since it is recognized that one's primary language is the best medium of instruction in the early years of education.[9] This policy of education must reflect the demographic and linguistic facts of the country where the minority group lives.

The UNESCO Convention against Discrimination in Education prohibits discrimination based on several grounds, including language.[10] According to Article 1(2) of the Convention, education refers to all types and levels, including access to education. The right to education granted to "persons or group of persons" includes the establishment and maintenance of separate educational institutions to comply with the wishes of the parents of the students for religious or cultural reasons. This depends on the educational policy of each state, as long as it is not exercised in a manner that prevents the members of the minority from understanding the culture and language of the majority.

[8] Varennes, *Language, Minorities and Human Rights* …, 205.
[9] *Ibid*.
[10] Article 1(1), UNESCO Convention against Discrimination in Education.

A certain degree of uniformity has to be maintained regarding school policy on minority education. On the other hand, members of a minority group may require some form of autonomy in minority schools in order to carry out their own educational activities. The right to choose the type of education a group wishes to follow is directed for the benefit of the individual members of such a group. In essence, the right is effective only in the context of a minority group that is free 'collectively' to maintain separate schools, since the choice of different languages by members of the minority might lead to 'linguistic' or even 'cultural' confusion.

The ability of a minority to create and operate private schools where the minority language is used as the medium of instruction is one of great importance but one where, strictly speaking, neither freedom of expression nor non-discrimination would be of much assistance, especially if the establishment of such private schools were forbidden. Public authorities are not obliged to provide any financial assistance to private schools; however, if they decide to do so, minority educational facilities would also have to be treated in a non-discriminatory manner.

III. The Minority Educational System of the Muslim Minority under the Treaty of Lausanne

The Muslim minority in Western Thrace is the only minority group in Greece that enjoys a special educational status to receive instruction in its mother tongue and use its own language at school.[11] The Cultural Protocol of 1968 provides for the right to use the mother tongue in minority education.[12] The level of education provided to the Muslim students depends, on a legal and political level, on the standard of education provided for the Greek minority in Turkey on the basis of reciprocity.

The Turkish government has often exercised political persecution and economic discrimination against the Greek minority. As a result, the number and size of the minority population has decreased dramatically. The Greek minority witnessed the

[11] Memorandum of the Greek Government to the General Secretary of the League of Nations on the Status of the Muslim Minority in Western Thrace, "Comparative Examination of the Implementation of the Minority Provisions of the Treaty of Lausanne in Greece and Turkey", 5 March 1925, LN/C. 130.1925 VII. This memorandum was prepared by the Ministry of Foreign Affairs (MoFA) for the Greek Prime Minister Eleftherios Venizelos (Venizelos File, MMAEB/58).

[12] Part I, para. 1.2 of the 1968 Greek–Turkish Cultural Protocol expressly refers to the use and teaching of the minority language in the minority schools of Western Thrace.

closure of many of its schools. This situation has had a negative effect on the status of Muslim schools in Western Thrace.

The Muslim minority exhibits a very low level of education in comparison to the majority population in Greece. The principle of reciprocity upon which the minority educational system is based constitutes a serious obstacle to the constructive learning of Muslim students in minority schools. The text of the Treaty of Lausanne does not seem to correspond to the educational needs of the Muslim students. The minority system of education should be reconstructed according to the principles of *multiculturalism* and *multilingualism*. In this context, Muslim students will have sufficient opportunities to learn the official language of the state as well as to receive effective instruction in the Turkish language.

One of the main problems the Muslim minority in Western Thrace faces today is the very low level of education provided in the minority schools. Among the most dramatic consequences is the high level of Muslim students who tend to drop out because of the burdensome and inappropriate educational practices. Many Muslim students leave school at an early stage or choose to emigrate, usually to Turkey, due to the isolation they suffer in Greece from the general system of communication, including the Greek language, social values and the media.[13]

The right to education is provided by Article 16 of the Greek Constitution,[14] which defines the scope and aim of education "for the development of an ethnic and religious consciousness". The content might vary, however, according to the 'ethnic consciousness' the Constitution intends to promote, since it is not very clear if it refers exclusively to the 'Greek ethnic consciousness' or to each 'minority ethnic consciousness' that Greek citizens of a minority group share. According to the intentions of the legislature, it would seem that such a concept would have to refer to the promotion and development of a 'Greek ethnic consciousness'. The Cultural

[13] Ibrahim Onsounoglou, "Critique of Minority Education: The View of the Minority", 63 *Synchrona Themata* (1997), 61–64.
[14] Articles 16(1–2) of the Constitution of Greece.

Protocol of 1968 provides for the principle of 'non-interference' with the ethnic identity and religious faith of Muslim students.[15]

The 1951 Educational Agreement signed between Greece and Turkey provides for educational exchanges between the two countries and allows mutual recognition of diplomas received in the other country.[16] As a consequence, many Turkish-speaking people have left Greece to go to Turkey, where they can receive teaching degrees and return to teach in minority schools in Western Thrace. The Educational Agreement was characterized by the absence of concrete legal obligations.[17] Most of its articles started with the phrase, "as they wish …", resulting in the absence of any specific legal obligations. Thus, the wording of the Educational Agreement was rather general and vague.[18]

The 1951 Educational Agreement was abolished and replaced by the Bilateral Agreement on Cultural Cooperation in 2000 (hereinafter "the Bilateral Agreement"). The Bilateral Agreement is based on the context of strengthening the political relations between Greece and Turkey on an educational level.[19] The educational cooperation between the two countries is based on an international model of the Council of Europe, the OSCE and UNESCO.[20]

IV. The Legal Status of the Minority Schools of Western Thrace

Article 40(1) of the Treaty of Lausanne established the framework for the minority education of the Muslim minority.[21] The legal nature of the minority schools is based

[15] Ministerial Decision No. 55369 of 16 May 1978, "On Issues of Registrations, Transfers, Studies, Examinations, Degrees and other School Issues of Minority Schools of the Muslim Minority in Western Thrace", *FEK B'* (1978) No. 501. Article 17 of this Decision also provides for the principle of non-interference with the ethnic or religious identity of Muslim students on the basis of reciprocity, according to the principles of the Treaty of Lausanne.

[16] Law No. 2073 of 1952, "On the Ratification of the Greek–Turkish Educational Agreement", *FEK A'* (1952) No. 103 (abolished according to the Greek–Turkish Agreement on Cultural Cooperation on 4 February 2002).

[17] According to the introductory report of the Greek government to the parliament, the Bilateral Agreement complies with the recommendations made by the Council of Europe to the member states to form educational agreements among them.

[18] The only Article that was legally binding was Article 8 in the Educational Agreement.

[19] See Article 1(1) of the Bilateral Agreement.

[20] See Article 3 of the Bilateral Agreement.

[21] Konstantinos Tsitselikis, *The International and European Status for the Protection of Linguistic Minority Rights and the Greek Legal Order* (Ant. N. Sakkoulas, Athens, 1996), 361–362; Kiriakos N. Kiriazopoulos, *Restrictions in the Freedom of Teaching Minority Religions* (Sakkoulas, Thessaloniki, 1999), 343–345. See also Ministerial Decision No. Z2/0210 of 24 December 1987, "In Regard to the Registration of Muslim Students of the Religious Schools in Ehinos and Xanthi into Christian High

on a mixed legal status.[22] Its provisions relate to both public and private education. Thus, the minority schools function with a semi-autonomous status. Laws No. 694 and 695 of 1977 provide the basic provisions for the structure of minority education.[23]

The members of the Muslim minority view the mixed system of administration as a major detriment.[24] They believe it allows the state to interfere with the internal affairs of the minority without providing the necessary means of support. They further believe that the minority is not able to effectively participate in the decision-making process regarding minority education.[25]

Article 41(1) of the Treaty of Lausanne applies exclusively to the Muslim minority in Western Thrace and the Greek minority in Istanbul. Thus, the terms 'minority', 'minority member' and 'members of a minority' refer exclusively to the Muslim minority of Western Thrace. The establishment of minority schools is connected with the territorial principle, meaning that a substantial number of Muslims must exist within a geographical area of Western Thrace for the provisions of the Treaty of Lausanne and the legal provisions on minority education to apply.

Considering modern circumstances of internal emigration, the territorial principle may no longer be sufficient in practice for the effective protection of the linguistic and

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Schools" (unpublished); Law No. 2621 of 23 June 1998, "In Regard to the Regulation of the Organization and Function of Technological Educational Institutions and Other Provisions", *FEK A'* (1996) No. 136; and Ministerial Decision No. C2/5560 of 25 November 1999, "The School Programme of the Religious Minority Schools", *FEK B'* (1999) No. 2162. The right to establish and manage private schools or other educational institutions is also found in Article 16(8) of the Constitution and Law No. 682 of 1977, "In Regard to the Private Schools of General Education and School Accommodation", *FEK A'* (1977) No. 224.

[22] Pangiotis Poulis, "The Legal Framework of Operation of the Minority Schools in Western Thrace", 5 *Dikoitiki Diki* (1994), 1001–1017.

[23] Law No. 694 of 1977, "In Regard to the Minority Schools of the Muslim Minority of Western Thrace", *FEK A'* (1977) No. 264; and Law No. 695 of 1977, "In Regard to the Regulation of any Issues Concerning the Educational and Administrative Personnel of the Minority Schools and the Special Pedagogical Academy of Thessaloniki", *FEK A'* (1997) No. 264.

[24] Onsounoglou, "Critique of Minority Education …", 62; Mercil Erdogan, "The Educational Problem of the Turks in Western Thrace and the Greek Policy", 4 *Turkish Culture* (1966).

[25] The minority schools are placed under the supervision of the MoERA according to Articles 3 and 4 of Law No. 694 of 1977. See also Ministerial Decision No. Z2/365 of 11 August 1992, "In Regard to Issues of the Coordinate Office of Minority Schools of Primary and Secondary Education", *FEK B'* (1992) No. 44; Ministerial Decision No. Z2/239 of 11 June 1999, "The Structure of the Official Council of Minority Education", *FEK B'* (1999) No. 1269; and Legislative Decree of 27 May 1953, "In Regard to the Appointment of Supervisors in the Muslim Schools of Western Thrace", *FEK A'* (1953) No. 176. See also Lambros M. Baltsiotis, "The Greek Administration and Minority Education in Western Thrace", in Konstantinos Tsitselikis and Dimitris Christopoulos (eds.), *The Minority Phenomenon in Greece* (Kritiki & KEMO, Athens, 1997), 316–339.

cultural rights of the Muslim minority.[26] A substantial number of minority members have migrated to the major cities in search of better socio-economic opportunities. In view of the difficulties involved, it would be useful to extend the provisions for minority education outside the area of Western Thrace.[27]

It is important to note that parents who are members of the minority have the option to register their children in Greek-speaking public schools.[28] In the last few years, the 'elite' of the Muslim minority has increasingly been sending its children to non-minority schools. It is a common phenomenon, however, that if a Muslim family decides to register their children at a Greek public school, they face exclusion from the rest of the minority. Very few students, mostly those who live in urban centres, study in non-minority schools. Those students often experience a cultural conflict directly between their family and their community and indirectly between the family itself and the Muslim minority.

The family itself will also suffer pressure from the wider Muslim community, since sending their children to a Greek–Christian school is perceived as constituting a rejection of the Muslim identity. According to the members of the Muslim minority, there is a strict separation between the minority schools for the Greek–Muslim students and the Greek schools for the Greek–Christian students.[29]

The Muslim students who decide to study in Greek schools are treated with suspicion by the school authorities and face discrimination and prejudice. The students of primary education study in minority schools and are, therefore, not directly exposed to such discrimination.[30] However, this type of discrimination exists on an institutional level, in the educational system itself. It might be advisable that the Muslim students

[26] For example, the internal immigration of the members of the Muslim minority towards larger urban centres such as Athens in large numbers has increased demands from Muslim students to receive instruction in their own language to preserve their ethnic identity.
[27] See Council of Europe, "Explanatory Report of the European Charter for Regional or Minority Languages", 1993, at http://conventions.coe.int/treaty/en/Reports/Html/148.htm.
[28] *Ibid*. paras. 79–89.
[29] Onsounoglou, "Critique of Minority Education …", 63.
[30] See Legislative Decree No. 3065 of 1954, "In Regard to the Establishment and Function of the Turkish Schools of Basic Education of Western Thrace and the Regulations of Issues Regarding the Supervision of these Schools", *FEK A'* (1954) No. 239 (supplemented by Legislative Decree No. 1109 of 1972, "In Regard to the Modification and Replacement of Legislative Decree No. 3065 of 1954", *FEK A'* (1972)); and Ministerial Decision No. 1422951 of 1957, "In Regard to the School Programme of the Minority Primary Education", *FEK B'* (1957) No. 162.

attend minority schools during their primary education, as it is important for the preservation of their cultural and religious identity.

One can observe some form of 'cultural' conflict within the Muslim minority on a collective and individual level. The members of the minority fear that the majority language and culture would dominate within their community and ultimately lead to a 'shift' within the majority culture and language. It is in the personal interest of the members of the minority group to have a certain degree of competence and knowledge of the majority language to be able to profit from socio-economic opportunities. The members of a minority group must maintain a sense of 'solidarity' and 'ethnic identity' in harmony with their traditions and culture while becoming integrated within Greek society.

V. Secondary Education of the Muslim Minority in Western Thrace

According to the Treaty of Lausanne, the Greek government is obliged to provide a special system of education to the Muslim minority in their language during primary education. The Greek government, after World War II, expanded the special minority status to secondary education,[31] since compulsory education was determined at the international level to be for at least nine years.[32] Nowadays, there are two minority high schools: Celal Bayar High School in Komotini[33] and another in Xanthi.[34]

They provide places for approximately 400 students, despite the fact that there are 8,500 students attending minority primary schools. The Greek government argues that, under the Treaty of Lausanne, they are only obliged to provide a bilingual education during primary school. According to modern needs, basic education is considered to be both primary and secondary. The shortage of spaces in the two minority high schools has effectively resulted in many students of the Muslim

[31] Ministerial Decision No. C2/933 of 3 March 2000, "Timetable of Forms A, B and C of Minority Lyceums", *FEK B'* (2000) No. 372.
[32] Article 16(3) of the Greek Constitution.
[33] The Celal Bayar High School was established according to Legal Decree No. 2203 of 15 August 1952, "On the Establishment of a Secondary School under the Name of 'Celal Bayar Secondary School' in Komitini", *FEK A'* (1952) No. 222 (and was modified by Legislative Decree No. 2256 of 1953, *FEK A'* (1953) No. 240). The minority high school in Komotini was the first minority school established in Western Thrace during the period of political rapprochement between Greece and Turkey in the 1950s; thus, it was named after the Turkish Prime Minister Celal Bayar.
[34] The high school in Xanthi was established according to the decision of the Minister of Education and Religious Affairs, Decision No. 2867 of 1965, "In Regard to the Function of the Minority High School of Xanthi", *FEK C'* (1965) No. 142.

minority not completing the mandatory nine years of education, let alone entering higher education.

The shortage of spaces in minority high schools disproportionately affects girls, mainly due to religious and cultural factors. The Muslim religion does not allow the free association of male and female students in schools. A Muslim family in Western Thrace would not usually allow their daughters to attend a non-Muslim school. Under these circumstances, the female members of the Muslim minority do not possess sufficient knowledge of the official language. Consequently, Muslim women within the minority have very limited chances of employment outside the home and are usually dependent financially upon the male members of their family.

It is quite often the case that the male members of the Muslim minority do not go on to secondary education. They usually choose to emigrate to Turkey to continue their studies.[35] In any case, there are a substantial number of minority students who attend minority high schools or religious high schools. The Muslim students who choose to study in Greek high schools find it very hard to compete with their fellow Christian students, since they have poor and insufficient knowledge of the Greek language due to the 'cultural' and 'linguistic' isolation suffered within the minority educational system.[36]

The existence of only two high schools in the region of Western Thrace prevents access to education for Muslim students.[37] The Greek government further abolished the introductory examinations into high school[38] and replaced them with a lottery system.[39] This type of decision needs to be reviewed on a legal basis, since education is compulsory for nine years in Greece.[40]

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[35]Association of the Friends of Nikos Raptis, "The School Education of the Minority in Thrace: According to the Experience of the Educators", 63 *Contemporary Issues* (1997), 54–60.

[36] Evagelia Tressou, "The Minority Education in Western Thrace", 63 *Contemporary Issues* (1997), 49–53.

[37] Eleni Kanakikou, *The Education of the Muslim Minority in Western Thrace: Critique of the Educational System and General Suggestions* (Ellinika Grammata, Athens, 1997), 95–96.

[38] Article 7(3) of Law No. 129 of 1967, "In Regard to the Organization and Structure of General Education and other Provisions", *FEK A'* (1967) No. 163, provides that students will be admitted to secondary education provided that they have successfully passed their final elementary school exams. This law was abolished for all Greek schools, except minority schools; this went beyond the limits of constitutionalism.

[39] Ministerial Decision No. Z2/205 of 20 May 1993, "In Regard to the Procedure of Registration of the Students in Minority High Schools". See also Human Rights Watch, "The Turks of Western Thrace:

Article 2(1) of Law No. 1566 of 1985 states that primary and secondary education is compulsory. In particular, Article 2(3) provides that anyone who has custody of a student and omits the registration or supervision of his or her studies is to be punished according to Article 458 of the Criminal Code. In the case of the members of the Muslim minority, the current system of entrance to secondary education contradicts the provisions of the Criminal Code and national legislation, as it does not provide equal opportunities to the members of the minority to obtain a high school education.

The establishment of pre-school education is not provided even though it forms part of primary education. The adoption of pre-school education in the special educational system of the Muslim minority would help the minority students to adapt more easily to their bilingual and bicultural environment. The concept of pre-school education has not been established in the education of the Muslim minority, despite the fact that it constitutes an essential condition for the minority students to familiarize themselves with the majority language and culture.

Pre-school education would help to function as a 'bridge' of cultural reconciliation for the Muslim students. On the one hand, it would help minority students to develop their own culture within their family and community environment. On the other hand, it would provide students with the necessary tools to adapt and familiarize themselves with the culture of their wider social environment. Any efforts made by the Greek government to establish pre-school minority education has been met with strong resistance by the members of the Muslim minority, who believe this type of an educational establishment would constitute assimilation into Greek society and the loss of their ethnic identity.

In any case, the very few minority kindergarten schools operating in Western Thrace have produced some remarkable results. They are recommended at this early stage to help prevent confusion among Muslim students as to their ethnic identity.[41] The Greek government, in the context of establishing minority pre-school education, should consult members of the minority, whose consent and guidance on these matters is crucial for harmonious relations between the minority and the state.

Denying Ethnic Identity", 11(1) *Human Rights Watch Reports* (1999), at http://www.hrw.org/reports/pdfs/g/greece/greec991.pdf.

[40] Tsitselikis, *The International and European Status* …, 357–358.

[41] Kanakikou, *The Education of the Muslim Minority* …, 108.

VI. Higher Education of the Muslim Minority in Western Thrace

The previous system of introduction into higher education that indirectly led to the exclusion of Turkish-speaking students from minority education has been greatly improved.[42] The Greek government, in a positive step, adopted Law No. 2341 of 1995, which aims to overcome the almost prohibitive obstacle of insufficient knowledge of the Greek language that had created difficulties for Muslim students wishing to enter Greek universities.[43]

The provisions of Law No. 2341 of 1995 permit the Minister of Education to give special consideration to Muslim students for admission to universities and technical institutions.[44] A positive result has been the decrease in the number of Muslim students graduating from Turkish universities; ultimately, this means a decrease in Turkish ethnic ideology 'imported' from Turkey. The influence of Turkish ideology within the Muslim minority has quite often resulted in tension in relations between the state and minority on a cultural and political level.

The provision promotes the principle of equal opportunities and aims to positively integrate future generations of the Muslim minority into a higher educational status. It has been observed that students of the majority who continue their education to university level are of a higher socio-economic status than their counterparts of the Muslim minority.[45]

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[42] According to Legal Decree No. 460 of 10 August 1983, the language of the university entrance exams was Greek. Therefore, due to the insufficient knowledge of the Greek language, most minority students chose to continue their studies at universities in Turkey.

[43] Law No. 2341 of 1995, "Regulations of Issues of the Educational Personnel of the Minority Schools of Thrace and the Special Pedagogical Academy of Thessaloniki and other Provisions", *FEK A'* (1995).

[44] According to Konstantinos Tsitselikis, *The International and European Status* …, 359, a university entrance quota (0.5%) and special examinations for admission to universities has been fixed to raise the educational status of the minority and facilitate its integration into the social fabric of the country.

[45] Giles Howard, *Language, Ethnicity and Intergroup Relations* (Academic Press, London, 1977), 269; and Ebeirikos *et al.* (eds.), *Linguistic Heterogeneity in Greece* (Alexandria & Minority Research Group, Athens, 1998), 40 and 64. The government seems to pay attention to the improvement of the skills of Muslim children in the Greek language. Two research programmes funded by the European Union were launched in 1999 and both seemed to produce positive results. In fact, bilingual education programmes can facilitate the integration process by assisting Muslim students with a smooth transition into the Greek-speaking mainstream system.

VII. The Educational Status of Teachers in the Minority Schools

In minority schools, the teaching personnel are composed of Christian and Muslim teachers.[46] The Christian teachers are appointed for the teaching of Greek-speaking classes, whereas the Muslim teachers are appointed for the teaching of Turkish-speaking classes. Legally, the Christian teachers, whether they are permanent (*monimoi*) or temporary (*prosorinoi*), are public employees,[47] whereas the legal context regarding the position of the Muslim teachers is rather more complicated.[48]

The Muslim teachers, who are graduates of the Special Pedagogical Academy of Thessaloniki (EPATH), are hired as public employees. On the other hand, there are a substantial number of Muslim teachers who work on a private contract. They are hired for one to three years in minority schools, according to the provisions of Article 7(1) of Law No. 694 of 1977.[49] This type of contract financially burdens the minority schools, which are subsidized by parents, the minority itself or the government. It further contradicts Articles 2(6) and (8) of Law No. 1566 of 1985, which provides that "primary education is available free from the government" and "the functioning of the schools is subsidized by the government to the local self-administration authorities, which have the responsibility of managing the money".

According to the 1951 Educational Agreement, Greece and Turkey may exchange 35 teachers to provide instruction in minority schools. Greece has limited the number of teachers to 16 because of the small number of teachers required by the Greek minority schools in Istanbul, due to the rapid decrease in the size of the Greek community.

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[46] Ministerial Decision No. Z2/103 of 8 April 1996, "In Regard to the Appointment of Teaching Personnel in the Minority Schools", *FEK B'* (1996) No. 327.

[47] Presidential Decree No. 39 of 1992, *FEK A'* (1992) No. 19. In the context of primary minority education, 760 teachers are hired, of which almost 430 are Muslims. The procedure for hiring Christian teachers is determined according to the provisions of Article 15, Chapter A of Law No. 1566 of 1985, "In Regard to the Structure and Function of Secondary Education and Other Provisions", *FEK A'* (1985) No. 167. The process of hiring teachers for both primary and secondary education is subject to the decision of MoERA.

[48] Ministerial Decision No. 55368 of 16 May 1978, "In Regard to the Appointment of Muslim Teachers", *FEK B'* (1978) No. 520 (abolished by Ministerial Decision No. Z2/19 of 1993, "In Regard to the Appointment of Muslim Teachers in accordance with Private Law Regulations"). See also Article 3(1) of Presidential Decree No. 1024 of 1979, "In Regard to the Position and Status of the Muslim Teachers of the Minority Schools of Western Thrace", *FEK A'* (1979) No. 288.

[49] Ministerial Decision No. Z2/219 of 25 May 1993, "In Regard to the Appointment of Muslim Teachers in accordance with Private Law Regulations", *FEK B'* (1993) No. 172 (modified by Ministerial Decision No. Z2/141 of 1994).

The Christian teachers are graduates of educational academies with a two-year degree. The training of Muslim teachers is conducted at EPATH, established in Thessaloniki in 1969;[50] EPATH's graduates are appointed as teachers in the primary minority schools.[51] While the Christian teachers do not possess sufficient knowledge or expertise on the educational issues of minorities and find it difficult to teach in the minority schools, the Muslim teachers seem to lack effective educational training, as the majority have graduated from universities or higher institutions of a religious orientation.[52]

The Christian teachers who work at minority schools have not been provided with efficient education, information or support to work in minority schools. In particular, they have not received any special training to teach students belonging to a different cultural or religious background. Thus, they seem to face difficulties working in a multicultural environment, due to the absence of any specialized knowledge on minority issues.

The teaching qualifications of the Muslim and Christian teachers must be set at very demanding criteria, requiring specialist knowledge on minority issues together with a strong desire to work in minority schools.[53] According to the provisions of Article 1(2) of Law No. 2341 of 1995, the teachers in minority schools are appointed provided they have passed a special examination to work in minority schools. In any case, the educational knowledge and abilities of the teachers to work in minority schools would have to be strictly defined to provide efficient teaching to the minority students.

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[50] According to Royal Decree No. 31 of 22 October 1968, "In Regard to the Establishment of the Special Pedagogical Academy of Thessaloniki", *FEK A'* (1969) No. 8. See also Royal Decree No. 725 of 1969, "In Regard to the School Curriculum of the Special Pedagogical Academy of Thessaloniki", *FEK A'* (1969) No. 226; and Legislative Decree No. 842 of 1971, "Regarding the Organization and Function of the Special Pedagogical Academy of Thessaloniki" (supplemented by Legislative Decree No. 842 of 1971, "In Regard to the Reorganization and Supplementary Legislation of such Institutions"), *FEK A'* (1976) No. 37.

[51] Ministerial Decision No. 61320 of 30 May 1978, "In Regard to the Duties and Tasks of the Directors, Vice Directors and Teachers of the Special Academy of Thessaloniki", *FEK B'* (1978) No. 523 (modified by Ministerial Decision No. Z2/1125 of 1980, "In Regard to the Entrance Exams of the Students into the Special Pedagogical Academy of Thessaloniki", *FEK B'* (1980) No. 308).

[52] Ministerial Decision No. 61318 of 30 May 1978, "In Regard to the Organization of the Foundation Classes of the Special Pedagogical Academy of Thessaloniki", *FEK B'* (1978) No. 527.

[53] Anna Fragoudaki, Thaleia Dragona and Alexandra Adrousou, "In the Context of Bi-cultural Education and the Education of Teachers", 63 *Contemporary Issues* (1997), 70–75. See also Omilos Filon and Nikou Rapti, "The School Education of the Minority of Thrace: The Experience of the Educators", 63 *Contemporary Issues* (1997), 58–60.

In EPATH, the students have either graduated from high school or Muslim religious schools. The training of the students at EPATH can only be described as inadequate and unorthodox for the purposes of working in minority schools. This is mostly due to the fact that the language of instruction at EPATH is Greek, even though the teachers will be providing instruction in Turkish to the minority students. The local prefect enjoys exclusive discretion in appointing Muslim teachers to the minority schools, which is in contrast with the process of appointing Christian teachers in the same schools.[54]

The practice of EPATH has been to exclude the minority teachers who have graduated from universities in Turkey. The Greek policy has mainly been to exclude teachers who 'carry' with them a Turkish ethnic ideology. In fact, the sharpest criticism on the part of the minority has been directed at graduates of the Academy. The Muslim minority believes that the Christian teachers who come from EPATH practice a policy of assimilation through education.

Most members of the Muslim minority do not accept teachers who are not of Turkish origin teaching at the minority schools, since they do not consider them qualified to teach minority students.[55] The main argument against the graduates of EPATH is that they do not have sufficient knowledge of the Turkish language and are also considered to be 'state representatives'.

The members of the minority believe that the Muslim Turks of Western Thrace who have studied at Turkish universities should be the main teaching personnel in the minority schools. They refer to the 1951 Educational Agreement, which provides for educational exchanges between Greece and Turkey.[56] In the case of the minority in Western Thrace, the educational system should promote the cultural and linguistic expression of the minority. However, it fails to provide students with the necessary

[54] Article 4(2) of Presidential Decree No. 1024 of 1979.
[55] Konstantinos Tsitselikis, *The International and European Status* …, 350–351. The graduates of the Turkish Academies have received ten years of education; the Greek Muslims, 11; and the EPATH teachers, 14. See Article 2 of Royal Decree No. 539 of 1969, "In Regard to the Entrance Exams into the Special Pedagogical Academy of Thessaloniki", *FEK A'* (1969) No. 165; and Article 3(8) of Law No. 695 of 1977.
[56] Ministerial Decision No. 6132 of 30 May 1978.

knowledge and skills for their integration into Greek society or to assist their future participation in the cultural, economic and social benefits of the country.[57]

The absence of communication between the Muslim and Christian teachers is one of the main factors that contribute to the poor minority educational system provided in the minority schools. This kind of institutional gap between the Christian and Muslim teachers begins at an early stage, as they each receive education in different institutions, which ultimately prevents their future cooperation and association in the area of minority education.

The establishment of a Pedagogical Department of Primary Education (PDPE) in the national universities has increased the educational gap between the two institutions;[58] this means that the graduates of the pedagogical department receive a four year education, whereas the graduates of the Special Academy only receive a two year education.[59] The upgrade of studies in EPATH to four years will improve the education received by the Muslim students. It is important that both Muslim and Christian teachers receive training in teaching and working in minority schools for the effective improvement of the educational system of the minority students regarding their cultural needs.

VIII. The School Curriculum of the Minority Schools

Article 41(1) of the Treaty of Lausanne obliges the Greek government to provide adequate facilities in primary minority schools for the teaching of Muslim students in their own language. The teaching of the Turkish language constitutes an important part of the cultural identity of the Muslim minority. The provisions of the Treaty of Lausanne provide for a bilingual system of minority education in Western Thrace, where students receive instruction both in the minority language and the official language.[60] The use and development of the Turkish language as the 'mother tongue'

[57] Evagelia Tressou, "The Minority Education …", 50.
[58] Pinelopi Stathi and Evagelia Tressou, "University Education for the Muslim Minority Education", 63 *Contemporary Issues* (1997), 68–69.
[59] *Ibid*.
[60] Legislative Decree No. 2567 of 1953, *FEK A'* (1954) No. 239. The right to establish and manage private schools or other educational institutions is also found in Article 16(8) of the Constitution and Law No. 682 of 1977. Konstantinos Tsitselikis, *The International and European Status* …, 353. See also Ministerial Decision No. Z/15 of 9 November 1985, "In Regard to the Teaching of Environmental Education in the Minority Muslim Schools of Western Thrace", *FEK A'* (1985) No. 20.

of the wider Muslim minority has reinforced the ethnic consciousness of the members of the minority, transforming it into a ‘cultural entity’.

The books used for the Turkish part of the school curriculum are provided by Turkey, according to the 1968 Greek–Turkish Protocol. There are quite often delays in the delivery of the books and, thus, it has become common practice to use photocopied material. The Muslim students come into contact with the Greek language, officially, for the first time at the school level. The books used for the Greek part of the school curriculum are designed for students who are familiar with the Greek alphabet and Greek language through their family and socio-lingual environment.

One may conclude that, according to these standards of education, the Muslim students do not have adequate opportunities to gain sufficient knowledge of the official language. This may result in inequality of treatment in the minority system of education by providing minority students with the same facilities and textbooks as those students who are already familiar with the Greek language. The teaching material available to the Muslim students for the teaching of the Greek language is wholly incomprehensible and almost meaningless, since these students often feel excluded from the educational system of Greece.

Under these circumstances, it is not possible for the Muslim students to follow the school curriculum in secondary education. A great number of minority students drop out of high school, leaving a very small percentage of students who actually graduate from high school and continue on to higher education. This kind of situation further prevents the integration of the members of the Muslim minority into Greek society and contributes to their marginalization and isolation from the majority population.

The cultural and linguistic composition of the wider Muslim minority does not correspond to the current legal implementation of the Treaty of Lausanne. The exclusion of the other two minority languages used by the Pomaks and Roma violates the right of these groups to learn and use their language in education. They most often experience difficulties adapting to a bilingual education organized in Greek and Turkish. According to the Treaty of Lausanne and the two bilateral educational agreements, the Turkish language became the ‘official’ language of the minority, used as the language of instruction in schools as well as in relations with administrative and

judicial authorities. This is despite the fact that half of the students attending the minority schools do not belong to the Turkish-speaking group.

For a great number of students, Turkish is not even their own language, since the Pomaks speak a Bulgarian dialect and form a distinct linguistic and cultural group. According to the 1968 Cultural Protocol and the principle of reciprocity, Greece was obliged to conduct the school curriculum in Greek and Turkish, to the disadvantage of the other two groups. The Pomak language became the 'secondary' minority language and the Romani language is in an even worse position. The Turkish language and culture have been allowed to dominate within the Muslim minority in Western Thrace, mostly through the use of the Turkish language and politics within the minority, as well as between the minority and the state.

The Turkish-speaking group has been quite hostile to any attempts by the Greek government to introduce the Pomak language into the minority schools curriculum. They believe that the increase of the Turkish-ethnic consciousness among the minority through the mediums of language and religion would facilitate the official recognition of the Muslim minority as an ethnic minority. Even though a substantial proportion of the minority identifies itself as 'Turks', it does not prevent the differentiation of these groups regarding their identity or culture.[61]

The relation between nationality and language is a rather complicated one. In the context of the particular geographical area of Western Thrace, the choice of criterion during the compulsory exchange of populations was religion and not ethnicity or even language. The status and position of the official language needs to be realized within a social and cultural context. Considering the socio-economic value of language, it is essential for the members of the Muslim minority to learn the official language of the society within which they are living.

The status of minority education is apparently very low, since it does not provide sufficient opportunities for the Muslim students to learn the official language or even the minority language and ultimately increases the socio-economic inequalities between the members of the Muslim minority and the Greek–Christians. The two basic elements that describe the majority and minority group, language and religion,

[61] Ebeirikos *et al.*, *Linguistic Heterogeneity in Greece* …, 32.

do not constitute a source of enrichment and development. In contrast, they are factors that result in illiteracy, rejection and social exclusion of the Muslims.

A. The Position of Religious Classes in the Minority Schools

According to Article 39 of the Treaty of Lausanne, religious classes are offered in the minority schools. The teaching of religious classes in the minority schools includes the teaching and interpretation of the Koran, which is directly related to the role religion plays within the internal relations of the Muslim minority.

The teaching of religious classes in the minority schools is highly valued by the members of the Muslim minority, as it provides an understanding of the ethnic identity of the members of the minority within Greek society. According to Article 2 of Ministerial Decision No. 14251 of 1957, it aims towards the "development of a religious identity" among the Muslim students. In addition, the Turkish language, especially through the teaching of religious classes, has developed a symbolic dimension for Muslim students. The students, however, also need to realize the practical and social significance of the Greek language, mostly through the means of education.

A Muslim priest, who has acquired a symbolic role for the religious identity of the Muslim students within their community, has been appointed for the teaching of religious classes in the minority schools. This high degree of religiousness and the preservation of a particular way of life are more easily reproduced in a small and isolated social environment such as the Muslim minority in Western Thrace. Any prospect of integrating into Greek society becomes much more difficult to achieve and further limits the ability of the members of the minority to participate in the economic, political and cultural life of Greece.

B. The School Textbooks of the Muslim Minority

The poor quality of textbooks used for the Turkish part of the school curriculum is quite evident; most of the books are outdated and there are long delays in distribution to the minority schools. The 1968 Cultural Protocol provides for the production and use of textbooks in minority schools for both the Muslim minority of Western Thrace

and the Greek minority in Istanbul.[62] The text of the Protocol is formed on the basis of a series of recommendations, which provide for its flexible implementation. Although both states recognize the need to improve the education provided to both minority groups, they have not yet reached an agreement to introduce a substantive set of rules into their legislation on minority educational issues.

The implementation of the Cultural Protocol is based on the principle of reciprocity, which quite often is used by either state to avoid complying with their respective obligations under the justification that the other state has failed to fulfill its requirements. Both minority groups ultimately suffer in the area of education through the use of ineffective educational agreements between the two states.

The climate of cooperation between Greece and Turkey for writing and publishing school textbooks has not been in compliance with the spirit of the Cultural Protocol. In particular, Turkey has not honoured its international obligations under the Cultural Protocol, since it does not regularly provide the minority students with updated versions of textbooks.

In 1992, the Ministry of Education took a positive initiative and published school textbooks to be used in the minority schools for the teaching of the Turkish language. There was an organized reaction movement by the Turkish-speaking group of the Muslim minority not to accept these textbooks. Ahmet Sadik and Hadjiorhan Ahmet organized massive intrusions into the schools, destroying the textbooks and any other educational materials that were intended for distribution in the minority schools. They were accused under Article 191 of the Criminal Code as the principal perpetrators of incitement of citizens to sow discord, disturbing the public peace and theft.[63]

The books that are unilaterally published by the Greek Ministry of Education are the same as those used and distributed to the Greek schools. They do not meet the special linguistic and cultural needs of the students because they are not designed for non-ethnic Greek students who are not familiar with the Greek language or socio-

[62] See also Ministerial Decision No. Z2/238 of 8 November 1982, *FEK B'* (1982) No. 888; Article 15 of Ministerial Decision No. 55369 of 1978; and Article 7(1)(e)(2) of Law No. 694 of 1977.
[63] For the political action and cases against Ahmet Sadik, see ECtHR, *Ahmet Sadik v. Greece*, judgment of 15 November 1996, Series A, Vol. 10, No. 19; and Talip Kucukcan, "Re-claiming Identity: Ethnicity, Religion and Politics Among Turkish-Muslims in Bulgaria and Greece", 19(1) *Journal of Muslim Minority Affairs* (1990), 63–64.

linguistic system of communication. The non-adaptation of the school textbooks to the particular demands of the Turkish-speaking students constitutes an important factor in the significant ineffectiveness of the current education provided to the minority schools.

The correct and in-depth teaching of the mother tongue of the Muslim minority, as well as of the official language, is not very difficult to achieve. What is actually needed is to revise the school curriculum by paying particular attention to the school books used by the Muslim students to ensure they correspond to the educational needs of students who come in contact with the Greek language for the first time. The new books would need to take into consideration the fact that neither the mother tongue of these students nor the culture, tradition and ethics of the social environment in which they live, are Greek.

The training of teachers should emphasize the need to be able to work in a multicultural environment. It would also be advisable to increase the teaching hours of the Greek language in order to help students cope with any difficulties they might be having in learning and understanding Greek. Under no circumstances, however, should this be done at the expense of the Turkish language; rather, it should be done in the context of the efficient learning and teaching of both languages within a multicultural system of education.

IX. Concluding Remarks

The existence of a separate educational system for the members of the Muslim minority in Western Thrace has resulted in creating an exclusive Turkish ethnic character among its members to the exclusion of the other two groups, the Pomaks and Roma. Further, it has contributed to the cultural and social isolation the minority has suffered, which has, in turn, prevented the integration of the members of the Muslim minority within Greek society.

The system of minority education in Western Thrace does not provide an adequate level of knowledge and teaching to the Muslim students. On the contrary, it seems to operate as a rather ‘dysfunctional’ system, due to the absence of political will of both sides, Greece and Turkey, to improve their bilateral relations in order to improve the education provided to the two minority groups. It is essential for minorities to learn

the official language of the state while at the same time maintaining the minority language to preserve their religion and culture on the principles of multicultural education on a regional and international level.

In the field of education, the Treaty of Lausanne does not seem to provide a sufficient system to educate the Muslim students to acquire a proper and efficient knowledge of the Greek or Turkish language. A review of the Treaty of Lausanne, as well as the Educational Protocols, is required to determine, in a decisive manner, the future of minority education beyond the formal rules that such instruments contain, which, in any case, may no longer apply to modern times.

The improvement of the teaching of the Greek language as well as the training of both the Muslim and Christian teachers is deemed necessary for the protection of minorities under international human rights standards. The educational system of the Muslim minority in Western Thrace needs to be upgraded to meet the educational demands of the students to learn efficiently both languages and secure a better future within the socio-economic and educational framework of Greek society.

The Greek government must look beyond the administrative control of the educational system of the minority and realize the substantial importance of providing effective education to Muslim students. The demonstration of a strong political will is required to restore equal opportunities in education. In order to accomplish this, the members of the minority group need to realize there is no potential ‘threat’ of assimilation and loss of identity if they learn and use the official language of the state.

The political and cultural reality of the region of Western Thrace and the special status of minority education requires a very careful approach towards the improvement of educational planning. Minority education requires effective cooperation between the Christian and Muslim teachers to create educational programmes for the Christian and Muslim population. Although there are several cultural elements that differentiate between these two groups, there are others that unite them.

A culture of respect must be maintained to protect the right to be different and the principles of non-discrimination and equality in educational level. The accomplishment of such a goal requires a satisfactory level of education that takes

into consideration the special social and cultural needs of the members of the Muslim minority in Western Thrace and the Greek minority in Istanbul and aims at the positive and effective integration of both groups in the society in which they are living.

Biographical Note

Iris Boussiakou is a research associate at the University of Leicester, Faculty of Law, working with Professor Robin White on an AHRC funded research project analyzing dissenting and separate concurring opinions in the European Court of Human Rights. She is also a member of the Athens Bar Association and of the Inner Temple. She holds an LLM in Public Law and an LLB from the University of Essex. Her doctoral thesis was entitled "The Legal Status of the Muslim Minority in Western Thrace: Efficacy of the Present Regime in Light of Current International Human Rights", which she completed at the University of Kent.

A Dual Challenge for the Year of Equal Opportunities for All: Roms in the Western Balkans

Eben Friedman

Abstract

The primary aim of this article is to place the current situation of Roms in the Western Balkans in the broader historical context of Roms' experiences since their arrival in the region. A subsidiary aim is to examine some of the ways in which the work of the European Centre for Minority Issues (ECMI) has taken steps to address this situation. Beginning with a discussion of Roms' origins and ethnogenesis, the article provides a broad overview of Roms' experiences in the Western Balkans from their arrival in the region through the post-communist period. Also offered is a brief examination of some of the difficulties encountered in measuring the size of Romani populations in the region. Presenting in more detail the situation of Roms in Macedonia, Montenegro, and Serbia, the article moves next to an examination of ECMI's novel approach to assessing Roms' needs and to the action-oriented follow-on initiatives designed on the basis of the needs assessments. The conclusion of the article is that lasting change in Roms' status is likely to depend in large part on the integration of the countries of the Western Balkans into the European Union.

I. Introduction

Since their arrival in Europe roughly 1,000 years ago, Roms have almost always (if not always) lived worse off than the surrounding non-Romani population. Notwithstanding considerable variation in the degree to which Roms are integrated in individual states, Roms' overall situation throughout the region suggests broad continuity with their past. Since the mid-1990s, there has been a substantial increase in the number of initiatives for the ostensible purpose of integrating Romani populations in Central and Eastern Europe. Whereas in much of the region anti-discrimination policies in general and strategies for the integration of Roms in particular were drafted in response to the prospect of integration into the European Union, the EU seems thus far to have played a less important role in this regard in the Western Balkans (i.e., Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro and Serbia), where accession often seems at best a distant beacon.

The primary aim of this article is to place the current situation of Roms in the Western Balkans in the broader historical context of Roms' experiences since their arrival in the

region. A subsidiary aim is to examine some of the ways in which the work of the European Centre for Minority Issues (ECMI) has taken steps to address this situation. If realization of the article's first aim sets the stage for pursuing the subsidiary aim, laying the groundwork for the former requires first taking a brief look at Roms' origins and ethnogenesis, as well as at some of the difficulties encountered in measuring the size of Romani populations in the region.

II. Origins and Ethnogenesis

Although the nature and timing of the event that resulted in the genesis of the group now called Roms are the subject of some controversy, there is general agreement among scholars from various disciplines that the Roms originated somewhere (or in multiple areas) in the region of present-day northwestern India and Pakistan.[1] On the basis of linguistic evidence, it is also generally agreed that the group of people displaced from this region traveled west through Persia, Armenia and the Byzantine Empire, probably arriving in the Balkans approximately 1,000 years ago.[2]

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[1] See, for instance, Samuel Augustini ab Hortis, *Cigáni v Uhorsku* (Štúdio dd, Bratislava, 1995); Ivan Bernasovský and Jarmila Bernasovská, *Anthropology of Romanies (Gypsies): Auxological and Anthropogenetical Study* (NAUMA/Universitas Masarykiana, Brno, 1999); Angus Fraser, *The Gypsies* (Blackwell, Cambridge, 1995); Heinrich Moritz Gottlieb Grellmann, *Historischer Versuch über die Zigeuner betreffend die Lebensart und Verfassung, Sitten und Schicksale dieses Volks seit seiner Erscheinung in Europa, und dessen Ursprung* (Johann Christian Dieterich, Göttingen, 1787); Ian Hancock, "The East European Roots of Romani Nationalism", in David Crowe and John Kolsti (eds.), *The Gypsies of Eastern Europe* (M.E. Sharpe, Armonk, 1991), 133-150; Emília Horváthová, *Cigáni na Slovensku: Historicko-etnografický náčrt* (Vydateľstvo Slovenskej Akademie Vied, Bratislava, 1964); Anna Jurová, "K otázkam pôvodu a pomenovania Rómov", *Človek a spoločnosť*, 2000, at http://www.saske.sk/cas/3-2000/index.html; Donald Kenrick, *Gypsies: From India to the Mediterranean* (Gypsy Research Center/CRDP Midi Pyrénées, Toulouse, 1993); Arne B. Mann, "Odkiaľ prišli Rómovia?" *Historická revue* (1990) No. 3, 7-9; Elena Marushiakova and Vesselin Popov, *Gypsies in the Ottoman Empire: A Contribution to the History of the Balkans* (Centre de recherches tsiganes, University of Hertfordshire Press, Paris, Hatfield, 2001); Trajko Petrovski, "Jazikot na Romite", 10(474) *Puls* (2000), 62-63; and Albert Thomas Sinclair, "The Word 'Rom'", 3 *Journal of the Gypsy Lore Society* (1909-1910), 33-42, at 14. See also Marcel Courthiade, "O pôvode rómskeho národa - skutočnosť a legendy", *Sam adaj - Sme tu*, May 2001, 4-5.

[2] William G. Lockwood, "Balkan Gypsies: An Introduction", in Joanne Grumet (ed.), *Papers from the Fourth and Fifth Annual Meetings of the Gypsy Lore Society, North American Chapter* (Gypsy Lore Society, North American Chapter, New York, 1985), 91-99; Petrovski, "Jazikot na Romite …"; Trajko Petrovski, "Potekloto i istorijata na Romite", 10(470) *Puls* (2000), 59-61; John Sampson, "On the Origin and Early Migrations of the Gypsies", 2(4) *Journal of the Gypsy Lore Society* (1923), 156-169; and George C. Soulis, "The Gypsies in the Byzantine Empire and the Balkans in the Late Middle Ages", *Dumbarton Oaks Papers* (1961) No. 15, 142-165.

Despite numerous internal divisions, Roms in general refer to themselves by a common ethnonym (singular '*Rom*', plural '*Roma*').[3] Until late in the twentieth century, however, the use of the term 'Rom' was the exception rather than the rule. Instead, Roms have often been called by names that are either derived from the words '*Atsinganoi*' or '*Atsinganos*'/'*Atsinkanos*'/'*Athingani*' or that mistakenly associate the Roms with Egypt. Words derived from '*Atsinganoi*' include '*Cigan*' (Bosnian, Croatian, Macedonian, Serbian, Slovenian), '*Ciganin*' (Bulgarian), '*Cigán*' (Slovak), '*Cikán*' (Czech), '*Czigány*' (Hungarian), '*Sigøjner*' (Danish), '*Ţigan*' (Romanian), '*Tsigane*' (French), '*Zigenare*' (Swedish) and '*Zigeuner*' (German and Dutch). The English misnomer 'Gypsies', like its counterparts in other languages (e.g., '*Gitans*' (French), '*Gitanos*' (Spanish)), can be attributed to the belief common in the middle ages that the Roms had originated in Egypt. Whereas the term 'Rom' is neutral, the term 'Gypsy' often has a pejorative connotation. For this reason, I use the term 'Gypsy' only in presenting policies and statements the declared targets of which are "Gypsies".[4]

III. Identity and Measurement

A. Stigmatization and Confounded Identities

In the Western Balkans, as elsewhere in Eastern (and Western) Europe, estimates of the size of the Romani population vary widely. There are several reasons for this. Perhaps the most important reason is the stigma of being identified as a 'Gypsy', which leads many self-conscious Roms to declare in censuses an ethnicity different from the one with which they identify in daily life. This can happen even where the official census category is 'Rom', as many Roms view the change in the name of the category as merely cosmetic.

Other persons identified from without as Roms confound ethnicity with civic, confessional and linguistic identities. In the first type of confounding, Roms declare themselves members of the titular nationality out of an identification with the state rather

[3] In using the plural 'Roms' rather than 'Roma', I accept Victor Friedman's assertion that "'*Roma*' exoticizes and marginalizes rather than emphasizing the fact that the group in question is an ethnic group" equal to all others, the names for which end in 's' in the English plural. Victor A. Friedman, "The Romani Language in the Republic of Macedonia: Status, Usage, and Sociolinguistic Perspectives", 46(3-4) *Acta Linguistica Hungarica* (1999), 317-339, at 319-320, footnote **.

[4] David M. Crowe, *A History of the Gypsies of Eastern Europe and Russia* (St. Martin's Griffin, New York, 1996).

than with the titular nationality itself. To take an example from outside the Western Balkans, Roms in Slovakia explained to me repeatedly in the course of my data-gathering in Romani settlements there that "Roms are Slovaks". The second variant of confounded identities seems to occur most frequently in former Ottoman possessions. In Bulgaria, Kosovo, Macedonia and Serbia, for example, Roms sometimes declare themselves to be Turks on the grounds of their shared religion (i.e., Islam). Examples of confounded linguistic and ethnic identities, on the other hand, include declarations of Magyar ethnicity by Hungarian-speaking Roms in southern Slovakia and declarations of Albanian ethnicity by Albanophone Roms in Western Macedonia.

Although we can distinguish among them analytically, these confoundings of ethnic, civic, confessional and linguistic identities need not be distinct in practice. In Macedonia, for example, Turkish-speaking Roms (like the Romani population of Macedonia as a whole) are predominantly Muslim, such that a declaration of Turkish ethnicity to a census taker may stem as much from religious as from linguistic considerations. Moreover, some people identified as Roms (or Gypsies) from without do not think of themselves as Roms. Thus, in light of the stigma associated with being a Gypsy and the possibilities for confounding ethnic identity with other identities, it is often unclear whether declarations of non-Romani ethnicity by persons identified from without as Roms stem from instrumental calculations or confusion on the part of self-conscious Roms or whether the same declarations come from persons who do not identify themselves as Roms in any circumstances.

B. Roms versus Egyptians and Ashkali

Any discussion of numbers on Romani populations in the Western Balkans requires also that we give some attention to two other groups: Egyptians and Ashkali. The relevance of Egyptians and Ashkali to a discussion of numbers on Romani populations stems from the fact that members of both groups are generally considered Roms both by self-identifying Roms and by non-Roms. Moreover, some members of each group contest the legitimacy of the other group.

Generally, Egyptians and Ashkali speak Albanian as their first language and do not speak Romani. This fact is integrally related to Egyptian and Ashkali accounts of their own ethnogenesis, as members of both groups use it to claim origins outside the region to which Roms have been traced. Egyptians, of course, trace their roots to Egypt. There is less consensus among Ashkali, as different accounts locate the group's homeland in Iran, ancient Rome and Palestine.[5]

Wherever the Egyptians and Ashkali actually originated, some states in the region have chosen to make their existence official by counting them in censuses. First recognized as a distinct group in 1990 by the (then) Yugoslav state in methodological materials to be used in the 1991 census, Egyptians appear in the results of the 1991 Macedonian census in the number of 3,307 persons.[6] More recently, the Macedonian census of 2002 produced a figure of 3,713.[7] The results of the 2002 census in Serbia, on the other hand, indicate that a total of 814 Egyptians live in Central Serbia and Vojvodina.[8] No separate figures are available on the number of Egyptians in Albania, Bosnia and Herzegovina, Kosovo or Montenegro, and the Albanian government explicitly denies the existence of such a minority.[9] As for Ashkali, the only official figure comes from Serbia, which counted 584 members of this population in the 2002 census.[10]

[5] Elena Marushiakova *et al.*, *Identity Formation among Minorities in the Balkans: The Cases of Roms, Egyptians and Ashkali in Kosovo* (Minority Studies Society Studii Romani, Sofia, 2001).

[6] Ger Duijzings, "The Making of Egyptians in Kosovo and Macedonia", in Cora Govers and Hans Vermeulen (eds.), *Religion and the Politics of Identity in Kosovo* (Columbia University Press, New York, 2000), 132-156, at 140; Marushiakova and Popov, *Gypsies in the Ottoman Empire* …; and Stojan Risteski, *Narodni prikazni, predanija i običai kai Egipkjanite/ Egjupcite vo Makedonija* (Nikola Kosteski, Ohrid, 1991), 10.

[7] While the published results of the 2002 census in Macedonia do not include a separate figure for Egyptians, the relevant data are available by special order from the State Statistical Office.

[8] Ministarstvo za ljudska i manjinska prava Srbije i Crne Gore, *Etnički mozaik Srbije* (Ministarstvo za ljudska i manjinska prava Srbije i Crne Gore, Belgrade, 2004), 14.

[9] European Commission against Racism and Intolerance, "Third Report on Albania", CRI (2005) 23, adopted 17 December 2004, 39.

[10] Ministarstvo za ljudska i manjinska prava Srbije i Crne Gore, *Etnički mozaik Srbije* …, 3. Two other small ethnic groups whose members others tend to identify as Roms are *Kovači* in Montenegro and *Magjupi* in Kosovo. Perhaps not surprisingly, official numbers on the size of these groups are not available.

IV. Roms in the Ottoman Empire

As mentioned above, Roms seem to have arrived in the Balkans well before the Ottomans did in the middle of the fourteenth century. One piece of evidence that supports this contention is the considerable number of Muslim Roms with Slavic surnames in Ottoman registers, which also suggests that many Roms were settled rather than nomadic.[11] Available information on Roms in the Ottoman Empire suggests, on the one hand, that Roms generally lived on the periphery of Balkan society and, on the other hand, that they did not suffer the kinds of systematic repression commonly aimed at them in other parts of Europe. While the sixteenth and seventeenth centuries saw a set of administrative measures aimed at Gypsies, the explanation for the special attention seems to be found in the Empire's fiscal priorities. In other words, while under Ottoman rule religion was emphasized over ethnicity, tax collection was more important still. Policies aimed at the Romani population were accordingly designed to eliminate nomadism and establish a system of self-government that would reduce tax evasion.[12]

The crisis of classical Ottoman institutions in the late sixteenth century led to the emergence of a considerable number of nomadic Roms, most of whom at that point were (still) Christian. From this time on, the distinction between sedentary and nomadic Roms largely determined relations between Roms and non-Roms on the territory of the declining Empire and nomadic Roms were increasingly the subject of complaints from sedentary subject populations.[13] Apparently, problems of this kind subsided by late in the nineteenth century, when an increasing number of Roms—by this time predominantly Muslim—settled permanently in villages as the tax privileges for Roms in or associated with the Ottoman army disappeared.[14]

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[11] Aleksandar Stojanovski, *Makedonija vo turskoto srednovekovie (od krajot na XIV - početokot na XVIII vek)* (Kultura, Skopje, 1989), 132.
[12] Crowe, *A History of the Gypsies* …, 198-199; Fraser, *The Gypsies* …, 75; Marushiakova and Popov, *Gypsies in the Ottoman Empire* …, 35-37; and Muhamed Mujić, "Položaj Cigana u jugoslovenskim zemljama pod osmanskom vlašću", 3-4 *Prilozi za orijentalnu filologiju* (1952-1953), 137-193, at 148.
[13] Michael B. Petrovich, "Religion and Ethnicity in Eastern Europe", in Peter Sugar (ed.), *Ethnic Diversity and Conflict in Eastern Europe* (ABC-Clio, Santa Barbara, 1980), 373-417, at 63; and Olga Zirojević, "Romi na području današnje Jugoslavije u vreme turske vladavine", 25 *Glasnik Etnografskog muzeja u Beogradu* (1981), 225-245, at 245.
[14] Marushiakova and Popov, *Gypsies in the Ottoman Empire* …, 57-58 and 64.

V. Between Ottomans and Communists

If the data on Roms in the Ottoman Empire are generally fragmentary, available information on Roms in the Western Balkans between the late nineteenth century and the Second World War is still more incomplete. In independent Serbia, for example, Roms seem to have been subject to official attempts to assimilate them through sedentarization and conversion to Orthodox Christianity but the extent to which the relevant government decrees were actually implemented is unclear.[15] Documentary evidence on the status of Roms elsewhere in the region during this period is even thinner. Despite the lack of systematic documentation, however, anecdotal accounts by travelers to the Western Balkans in this period suggest a continuation of previously established patterns of generally peaceful coexistence between Roms and non-Roms.[16]

During the course of the Second World War, most of the approximately 28,500 Roms who found themselves in the Independent State of Croatia—which included most of Bosnia and Herzegovina—were killed.[17] In Serbia, on the other hand, the proportion of the pre-War Romani population killed was closer to 20%.[18] Although no statistics are available on the numbers of Roms killed in what is today Albania, Kosovo, Montenegro and Macedonia, the losses suffered in these areas seem to have been relatively small.[19] With regard to Roms' active participation in the war, there seem to have been not only many Romani partisans in the Yugoslav lands but also significant numbers of collaborators with the fascist occupying forces in Albania, where many Roms apparently viewed the Serbs as the greater enemy.[20] Overall, it can be said that, with the notable exception of Bosnia and Herzegovina, Roms in the Western Balkans constituted a

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[15] Crowe, *A History of the Gypsies* …, 210-211.
[16] See, for example, Edith Durham, *High Albania: A Victorian Traveller's Balkan Odyssey* (Phoenix Press, London, 1984); Gustav Weigand, *Ethnographie von Makedonien* (Partizdat, Sofia, 1981); and Rebecca West, *Black Lamb and Grey Falcon: A Journey through Yugoslavia* (Penguin, New York, 1994).
[17] Crowe, *A History of the Gypsies* …, 219.
[18] *Ibid*., 221.
[19] *Ibid*, 221; John Kolsti, "Albanian Gypsies: The Silent Survivors", in David Crowe and John Kolsti (eds.), *The Gypsies of Eastern Europe* (M.E. Sharpe, Armonk, 1991), 51-60, at 56; Elena Marushiakova and Vesselin Popov, "The Bulgarian Romanies during the Second World War", in David Kenrick (ed.), *In the Shadow of the Swastika: The Gypsies During the Second World War* (Centre de recherches tsiganes, University of Hertfordshire Press, Hatfield, 1999), 89-94, at 27-28; and Trajko Petrovski, *Kalendarskite običai kaj Romite vo Skopje i okolinata* (Feniks, Skopje, 1993).
[20] Crowe, *A History of the Gypsies* …, 221.

population stably embedded in the ethnic landscape when the Communists came to power after the war.

VI. Communism and the 'Gypsy Question'

Drawing on the writings of Joseph Stalin, which served as a model for policy toward minorities throughout Eastern Europe, most Communist regimes initially classified Gypsies as an ethnic or a social group arising out of the political and economic conditions characterizing feudalism.[21] Resolving what was commonly called the 'Gypsy Question' in these regimes was thus a matter of eliminating the social space for 'Gypsiness', which the feudal system had maintained in order to bring about the Gypsies' assimilation into a nascent proletarian culture. In this manner, Communist policy makers marked a reified Gypsy way of life for destruction through policies of sedentarization, permanent housing, regular employment and education. If this general pattern characterized the approach of most East European Communist regimes, however, the two Communist regimes in the Western Balkans constituted exceptions to the general rule: Whereas the Albanian Communist regime pursued a variation of an assimilationist policy founded on non-recognition of minorities in general, the Socialist Federal Republic of Yugoslavia was unique in never treating Gypsies as a problem.

A. Albania

Among the many ways in which Albania distinguished itself from other East European Communist regimes was in its official non-recognition of Gypsies as a distinct group of any kind (whether national, ethnic or social). In the 1960s, the regime implemented a set of measures aimed at sedentarizing nomads but it is not clear that these policies were explicitly directed at Gypsies.[22] Similarly, legislation from 1975 aimed at eliminating 'alien influences' in personal names affected Roms with identifiably Romani names but

[21] See Joseph Stalin, *Joseph Stalin: Marxism and the National Question, Selected Writings and Speeches* (International Publishers, New York, 1942).
[22] Hermine G. De Soto, Sabine Beddies and Ilir Gedeshi, *Roma and Egyptians in Albania: From Social Exclusion to Social Inclusion* (The World Bank, Washington, D.C., 2005), 11.

the law seems not to have targeted Roms specifically.[23] Writing about Albania's Egyptian population in 1981, Enver Hoxha expressed the view that "under socialism, there are no distinctions between them and the others. There is no segregation among us, nor racism or apartheid against them; they have cast off their roots completely."[24] Notwithstanding their official non-existence as Roms (or even as Gypsies), it is likely that many Roms in Albania benefited from the regime's policies of providing employment and social services to all citizens.

B. The Socialist Federal Republic of Yugoslavia

Like most of its contemporaries throughout Eastern Europe, the Socialist Federal Republic of Yugoslavia distinguished among 'nations' (or 'peoples'), 'nationalities' (or 'national minorities') and 'ethnic groups'.[25] The distinctions among groups corresponded to rights accorded the groups in question: whereas nations (with the exception of Muslims) were entitled to their own republics and the elevation of their languages to official status at the federal level, nationalities were guaranteed linguistic and cultural rights in the republics of their residence.[26] As an autochthonous population exhibiting "a

[23] Maria Koinova, *Roma of Albania* (Center for Documentation and Information on Minorities in Europe - Southeast Europe (CEDIME-SE), Glyka Nera, 2000), 12.
[24] Cited in De Soto, Beddies and Gedeshi, *Roma and Egyptians in Albania* …, 11.
[25] While there is no Yugoslav legal document containing a definition of these ethnopolitical categories or a list of the groups belonging in each category, Yugoslav scholars have offered analyses of the categories themselves and the members of each. On these accounts, nations are groups the majority of the members of which live on Yugoslav territory and which lack a state outside the Socialist Federal Republic of Yugoslavia: Serbs, Croats, Slovenes, Macedonians, Montenegrins and, after 1971, Muslims. See Dubravko Škiljan, *Jezična politika* (Naprijed, Zagreb, 1988), 67. Insofar as the largest communities of Albanians, Bulgarians, Czechs, Italians, Magyars, Romanians, Rusins, Turks and Ukrainians reside outside Yugoslav territory and all except the Rusins have a state outside Yugoslavia, these groups were not classified as nations. Because the groups exhibit some degree of autonomy, however, they are classified as nationalities rather than ethnic groups. Finally, ethnic groups are autochthonous groups that lack sufficient concentration (e.g., Jews), sufficient national differentiation (e.g., Vlachs) or that exhibit "a historical mortgage of nomadism" (e.g., Roms). August Kovačec, "Languages of National Minorities and Ethnic Groups in Yugoslavia", in Ranko Bugarski and Celia Hawkesworth (eds.), *Language Planning in Yugoslavia* (Slavica Publishers, Columbus, 1991), 43-58, at 46; Škiljan, *Jezična politika* …. 67; and Silvo Devetak, *The Equality of Nations and Nationalities in Yugoslavia: Successes and Dilemmas* (Wilhelm Braumüller, Vienna, 1988), 42. An additional feature of ethnic groups, according to August Kovačec, is a lack of self-awareness: "[w]hatever the language they use in private communication, members of an ethnic group as a rule share the national awareness of the community within which they live". Kovačec, "Languages of National Minorities …", 47.
[26] Kovačec, "Languages of National Minorities …", 46.

historical mortgage of nomadism", on the other hand, Roms fell into the category of "ethnic group", the realization of the rights of which was not generally regulated.[27]

"Yugoslavia [was], arguably, the most progressive of states with regard to treatment of Gypsies."[28] Unlike other Communist regimes, Yugoslavia made 'Gypsy' a voluntary (self-) designation, replacing this official category with 'Rom' from 1971 onward. Neither commissioning special studies nor designing special policies for Yugoslavia's Romani population, Yugoslav authorities never attempted to force Roms (or anyone else) to settle permanently.[29] The absence of a sedentarization policy in turn allowed widespread migration of Roms into the more industrialized northern republics of Croatia and Slovenia.[30] Still, the largest concentrations of Roms in Yugoslavia remained in Serbia and Macedonia, where the 1970s and 1980s saw a series of "sporadic attempts" at developing Romani cultural rights.[31]

VII. After Communism

Roms' overall situation in post-Communist Eastern Europe suggests broad continuity with their past. Nonetheless, there is a significant range of variation within the Western Balkans and even among the successor states of the Socialist Federal Republic of Yugoslavia. In Albania, the official inattention characteristic of the Communist period remains the dominant tendency today. In the former Yugoslavia, on the other hand, the treatment of Roms over the last fifteen years has run the gamut from constitutional recognition with political representation to various forms of ethnic cleansing.

A. Albania

Although Albania conducted a population census in 2001, Roms' official status as a cultural minority rather than a national one effectively precluded the gathering of data on the size of the country's Romani population. Estimates of the number of Roms in

[27] Devetak, *The Equality of Nations* …, 42 and 58, footnote 42; *ibid*., 46-47; and Škiljan, *Jezična politika* …, 67.
[28] William G. Lockwood, "East European Gypsies in Western Europe: The Social and Cultural Adaptation of the Xoraxane", (21/22) *Nomadic Peoples* (1986), 63-70, at 63.
[29] Fraser, *The Gypsies* …, 282; and Lockwood, "East European Gypsies …", 63.
[30] Fraser, *The Gypsies* …, 282.
[31] Friedman, "The Romani Language …", 327.

Albania range from 10,000 to 120,000, such that Roms would constitute between 0.3% and 3.4% of Albania's general population.[32] As is true elsewhere, in Albania Roms arguably constitute Albania's most marginalized population and the lack of accurate data on the Romani population poses a significant obstacle to efforts to increase Roms' level of integration. Moreover, there have been very few efforts in this direction, with no sustained action to date toward implementation of the 2003 National Strategy for Improving Roma Living Conditions, even following a ground-breaking needs assessment conducted by the World Bank in 2005.[33]

Romani participation in policy making in Albania has been minimal at all levels. Among the factors contributing to this is a prohibition on ethnically based political parties. Outside of government, the total number of active Romani nongovernmental organizations (NGOs) seems to be around ten, with coordination among them limited. Apparently growing out of the absence of other viable sources of income, involvement in prostitution and various forms of trafficking in human beings seem to be relatively widespread among Roms in Albania.[34]

B. Bosnia and Herzegovina

Whereas the most recent census in Bosnia and Herzegovina reported a Romani population of 8,864, the figure dates from 1991, before the wars of Yugoslav succession.[35] A 2002 estimate from the Office of the Ombudsman of Bosnia and Herzegovina, on the other hand, places the total Romani population of the two entities at

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[32] Alphia Abdikeeva, *Roma Poverty and the Roma National Strategies: The Cases of Albania, Greece and Serbia* (Minority Rights Group International, London, 2005), 3; Jeremy Druker, "Present but Unaccounted for: How Many Roma Live in Central and Eastern Europe? It Depends on Whom You Ask", 4(4) *Transitions* (1997), 22-23, at 23; Der Spiegel, "Alle hassen die Zigeuner", 44(36) *Der Spiegel* (1990), 36.

[33] Government of the Republic of Albania, "National Strategy for Improving Roma Living Conditions", 18 September 2003, at http://www.osce.org/documents/pia/2006/09/21138_en.pdf; De Soto, Beddies and Gedeshi, *Roma and Egyptians in Albania* …See also Glenda Shahinaj, "Implementation of Rom Strategy - Its Review and Fundraising Indispensable", *Albanian Telegraphic Agency*, 5 July 2006.

[34] See, for example, De Soto, Beddies and Gedeshi, *Roma and Egyptians in Albania: From Social Exclusion to Social Inclusion*, Chapter 9.

[35] Nađo Milićević, "State and Problems of National Minorities in Bosnia and Herzegovina", in Goran Bašić (ed.), *Prospects of Multiculturality in Western Balkan States* (Ethnicity Research Center, Friedrich Ebert Stiftung, Belgrade, 2004), 107-146, at 139.

60,000 to 70,000.[36] If this range is correct, then Roms constitute approximately 1.6% of the total population of Bosnia and Herzegovina.

Although the effects of the war in Bosnia and Herzegovina on the size of the Romani population there have not been assessed, it appears that Roms incurred the greatest human and material losses in Republika Srpska. With the reconstitution of Bosnia and Herzegovina in accordance with the Dayton Agreement, Roms were effectively excluded as neither Bosniaks, Croats nor Serbs. Since 2003, however, Roms have been officially recognized as a national minority.[37] That same year, Roms in Bosnia and Herzegovina formed a political party but to date it has not been successful in gaining representation. There are also approximately 40 Romani nongovernmental organizations registered throughout the country.

C. Kosovo

In Kosovo, ethnic cleansing of Roms began following the NATO air campaign of 1999 and the withdrawal of Yugoslav troops from the province.[38] Thus, whereas the Romani population of Kosovo numbered approximately 150,000 before the NATO air campaign, data released by UNMIK in July 2003 indicate the number of Roms, Ashkali and Egyptians left in the province to be 35,608 or 1.41% of the total population of Kosovo. Because this figure dates from before the violence of March 2004, which prompted further flight of Roms from the province, present-day Kosovo may well constitute an exception to the general rule that official estimates on the number of Roms are lower than the actual number of self-identifying Roms on a given territory.

In the Assembly of Kosovo, a total of four seats are reserved for Roms, Ashkali and Egyptians. While conditions for Roms in Kosovo vary significantly by locality, concerns with personal security related to freedoms of movement and assembly generally remain such that a sustainable return of Roms to Kosovo arguably cannot be expected at present.

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[36] Brigitte Mihok, "Länderbericht Bosnien-Hercegowina", in Brigitte Mihok (ed.), *The Roma Population in South Eastern Europe* (Friedrich-Ebert-Stiftung, Reşiţa, 2002), 25-43, at 25, footnote 14.
[37] "Zakon o zaštiti prava pripadnika nacionalnih manjina u BiH" [Law on National Minorities in BiH], *Službeni glasnik BiH* (2003), No. 12.
[38] European Roma Rights Center and UNOHCHR, *Memorandum: The Protection of Roma Rights in Serbia and Montenegro* (European Roma Rights Center and UNOHCHR, Belgrade, 2003), 4.

Moreover, even among the most integrated Roms, the prospects for earning a living in Kosovo are extremely poor.

D. Macedonia

The Macedonian census of 2002 gives a figure of 53,879 Roms, such that Roms officially constitute 2.66% of the general population.[39] Figures from various other sources place the Romani population of Macedonia between 110,000 and 260,000.[40] Informed estimates from local Romani NGOs throughout Macedonia suggest that the actual size of the Romani population is at the lower end of this scale.

Distinguishing Macedonia from all other countries is its explicit placement of Roms on the same level with other minorities in the Constitutions of 1991 and 2001.[41] Also worth noting is that Romani political parties have succeeded in securing one to two parliamentary seats throughout the post-Communist period. In 2004, the Macedonian government approved its first policy measure aimed specifically at the country's Romani population in the form of the Strategy for Roma in the Republic of Macedonia.[42] Although the Strategy is arguably among the most carefully conceived in the region, implementation to date has been minimal. In the nongovernmental sector, on the other hand, some of the Romani organizations founded in the early and mid-1990s have served as models for other nongovernmental organizations, with approximately 30 Romani NGOs currently active in the country.

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[39] State Statistical Office, "Release", in *id., Census of Population, Households and Dwellings in the Republic of Macedonia, 2002* (State Statistical Office, Skopje, 2003), 19.
[40] European Roma Rights Center, *A Pleasant Fiction: The Human Rights Situation of Roma in Macedonia* (European Roma Rights Center, Budapest, 1998), 34; Crowe, *A History of the Gypsies …*, 232; Druker, "Present but Unaccounted for …", 23; and Jean-Pierre Liégeois and Nicolae Gheorghe, *Roma/Gypsies: A European Minority* (Minority Rights Group, London, 1995), 7.
[41] "Ustav na Republika Makedonija" [Constitution of the Republic of Macedonia], *Služben vesnik na Republika Makedonija* (1991), No. 52.
[42] Ministry of Labor and Social Policy, *Strategy for Roma in the Republic of Macedonia* (Ministry of Labor and Social Policy, Skopje, 2004).

E. Montenegro

The Montenegrin census of 2003 gives a figure of 2,601 Roms, which would make Roms account for approximately 0.4% of Montenegro's total population.[43] According to the Montenegrin Red Cross, however, there are nearly 17,000 Roms, Ashkali and Egyptians living on the territory of the Republic of Montenegro. An estimate from the Romani NGO network *Romski krug* ('Romani Circle'), on the other hand, gives the slightly higher estimate of 19,500 Roms, Ashkali and Egyptians.[44] If this higher estimate is correct, then Roms, Ashkali and Egyptians together constitute roughly 3.1% of the general population. A December 1999 census of internally displaced persons conducted by the Montenegrin Bureau for Displaced Persons found 5,840 Roms and 917 Egyptians from Kosovo resident in the Republic of Montenegro.[45] Roms in Montenegro are not represented in parliament and the country's Romani NGO sector is both small and fragmented.

F. Serbia

According to the population census conducted in 2002 in the Republic of Serbia, Roms constitute 1.44% of the total population.[46] Expressed in absolute terms, the Romani population of the Republic of Serbia stands officially at 108,193, with 79,136 Roms residing in Central Serbia and 29,057 in Vojvodina.[47] By way of contrast, a survey of 593 settlements with more than 100 inhabitants or 15 families conducted under the auspices of the Ethnicity Research Centre found a total of 210,353 Romani residents, not including an additional 46,238 displaced from Kosovo.[48] Finally, estimates from Romani NGOs indicate the Romani population of Serbia to be more than 750,000.[49]

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[43] Data provided by the Statistical Office of the Republic of Montenegro.
[44] Institute for Strategic Studies and Prognoses, *Household Survey of Roma, Ashkaelia and Egyptians, Refugees and IDPs in Montenegro* (UNDP, Podgorica, 2003), 85.
[45] Božidar Jakšić, *Roofless People* (Republika, Belgrade, 2002), 299.
[46] Ministarstvo za ljudska i manjinska prava Srbije i Crne Gore, *Etnički mozaik Srbije* …
[47] *Ibid.*
[48] Božidar Jakšić and Goran Bašić, *Romani Settlements, Living Conditions and Possibilities of Integration of the Roma in Serbia* (Ethnicity Research Center, Belgrade, 2002), 14.
[49] Belgrade Centre for Human Rights, *Human Rights in Yugoslavia 2003* (Belgrade Centre for Human Rights, Belgrade, 2004), 365.

Although the overall situation of Roms in Serbia generally stagnated from the dissolution of the Socialist Federal Republic of Yugoslavia until late 2000, the last few years have seen the drafting of various progressive policy measures, including most notably the (Union-level) Law on the Protection of the Rights and Freedoms of National Minorities[50] and (Republic-level) Draft Strategy for the Integration and Empowerment of the Roma[51]. As is the case in Macedonia, however, there has been little action on the Serbian Strategy since its drafting. While several Romani political parties exist in Serbia, none was successful in securing national level representation until the January 2007 parliamentary elections, when two MPs were elected to seats newly reserved for Romani political parties. Arguably more effective to date have been some of Serbia's approximately 70 active Romani nongovernmental organizations.

VIII. Vicious Circles and the Need for Information

While Roms in the Western Balkans have experienced little overt discrimination in comparison with their ethnic brethren who settled further north and west, even in the cases of best practice with regard to Roms in the region, Roms invariably constitute the most disadvantaged ethnic group in countries that remain relatively disadvantaged themselves. In more concrete terms, this means that Roms throughout the region have the lowest rates of school attendance and the highest dropout rates, resulting in extremely low levels of educational attainment. The low levels of educational attainment among Roms in turn form vicious circles with high unemployment, on the one hand, and incomplete enjoyment of civil rights, on the other. Whereas, in the former case, the lack of occupational qualification resulting from a low level of educational attainment makes for unemployment and thus to material conditions not conducive to the completion of education, in the latter case lack of knowledge about civil rights contributes to suspicion of ongoing violations of those rights and the perception that Roms are powerless to do anything about such violations such that becoming informed is futile. Moreover, the absence of comprehensive anti-discrimination policies in the political units of the region

[50] "Zakon o zaštiti prava i sloboda nacionalnih manjina" [Law on the Protection of the Rights and Freedoms of National Minorities], *Službeni list Savezne Republike Jugoslavije* (2002), No. 11 and No. 57.
[51] Ministry of National and Ethnic Communities, "Draft Strategy for the Integration and Empowerment of the Roma", Belgrade, 13 December 2002, at www.humanrights.gov.yu/files/doc/Roma_Nacrt-Strategije_English.doc.

offers no escape from this second vicious circle, with the prospect of eventual accession to the EU thus far not effecting a perceptible change in this domain.

Like their counterparts elsewhere in Europe, governments in the Western Balkans have often been insufficiently informed about the real needs of the Romani populations living under them. International donors interested in improving the situation of Roms have run into similar obstacles, with the absence in many countries of a global view of the Romani population's living conditions making it difficult to channel donor activity in the most appropriate manner. Compounding the effects of the lack of general guidelines, coordination among donors has often been lacking, leading to duplication of efforts in some areas and neglect of others. Moreover, implemented projects have in many cases been designed by NGOs with tenuous connections to their target group and which propose projects only in response to donor interest. Finally, the role of Roms in directing donor support has been minimal, with Romani project officers a rarity.

Addressing the problems faced by Romani populations throughout the region, as well as those faced by governments and international donors alike in focusing their efforts, requires an increase in the quantity and quality of information about Roms. As noted in the European Commission's Joint Report on Social Protection and Social Inclusion[52] and Framework Strategy on Non-discrimination and Equal Opportunities,[53] the lack of relevant data on the most vulnerable groups (including but not limited to Roms) not only hampers comparative analysis of the problems faced by these groups but also precludes effective monitoring and assessment of programmes prepared for them. Accordingly, the Commission has recommended that activity be increased in the area of data collection.

While the gathering of quality information constitutes a necessary prelude to designing programmes to address Roms' concrete needs, however, the 'bare facts' rarely speak for themselves and the gathering of statistical data on Roms is often problematic. For this reason, attaining a global picture of the needs of Romani populations in Central and

[52] European Commission, "Joint Report on Social Protection and Social Inclusion", COM(2005)14 final, 27 January 2005, 9 and 12, at http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0014en01.pdf.
[53] European Commission, "Non-discrimination and Equal Opportunities for All—A Framework Strategy", COM(2005) 224 final, 1 June 2005, 3, at http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0224en01.pdf.

Eastern Europe requires that analyses of available statistical data be supplemented with intensive consultation with local activists and stakeholders.

IX. ECMI's Work toward Greater Inclusion

Taking the foregoing into account, ECMI's activities with Roms in the Western Balkans share the broad—and admittedly ambitious—aim of equipping Roms with the resources needed for playing an effective role in a democratic society based on the rule of law as well as for participating successfully in a competitive labour market. Emphasizing intensive stakeholder consultation to help Roms to break out of the vicious circles that tend to characterize their existence in the present day, ECMI's activities with Roms are designed to address not only the situation of the Romani population as a whole but also the position of Romani women relative both to Romani men and to the non-Romani population.[54]

ECMI conducted the first global assessment of the needs of the Romani population of Macedonia in autumn 2003. Preliminary background research for a similar project in Serbia and Montenegro was completed in winter 2004, with project implementation proceeding in autumn of the same year on the basis of the needs assessment methodology employed in Macedonia. Involving Roms as sources not only of raw data but also of ideas and as integral members of the respective research teams, ECMI's needs assessments have also formed the basis for action-oriented follow-on initiatives, in which Roms play an active role in programme development, as well as for improved coordination among government, domestic NGOs and international donors.

A. Needs Assessment

Combining quantitative and qualitative research methods, ECMI's needs assessment methodology is unusual in the degree to which it actively involves Roms at all stages of project design and implementation. While the assessments begin by procuring the most recent domestic and international statistical data available on the situation of the Romani

[54] Detailed information on ECMI's work with Roms—including downloadable research reports—can be accessed at www.ecmirom.org.

population in the country in question, these data are treated primarily as a starting point for discussions with non-elite as well as elite populations, rather than as painting an accurate picture (or even a fair sketch) of the existing state of affairs.

Categories of information included in ECMI's needs assessments include the following:

1. Size of the Romani population according to available census data and informed estimates (including refugees and internally displaced persons where applicable);
2. Social demographics and statistics for measuring exclusion, including but not necessarily limited to the areas of civil rights, education, employment, health and housing;
3. Legal framework and relevant state policies, with particular emphasis on government strategies for the integration of Roms;
4. Political representation, including elected state-, regional- and local-level elected and appointed bodies;
5. Romani political parties and organizations;
6. Romani civil society organizations and media; and
7. Relevant activities of international organizations.

In addition to the more standard individual interview format, the discussion component of the needs assessments makes extensive use of focus groups for identifying Roms' most pressing needs and exploring ways in which the identified needs can be met. Beyond the rich qualitative data they generate, focus groups offer two significant advantages over other research methodologies for identifying the needs of marginalized populations: intelligibility for participants and peer-group security. Whereas the former stems from the fact that a person need not have a background in research in order to participate in a constructive dialogue, the latter effectively reduces the effects of power differentials between participants and researchers, encouraging participants to express themselves freely. In this manner, focus groups provide a crucial building block for the design of appropriate policy based on Roms' real needs.

B. Following on Needs Assessments

Whereas ECMI's modular approach to needs assessment allows the methodology to be modified and applied in work with Romani populations throughout the region, the same cannot be said of the initiatives designed on the basis of the needs assessments. Because the findings of needs assessments vary by country, follow-on initiatives must duly take into account relevant national variations in the situation of Roms. Even in the absence of a unified approach to addressing identified needs, however, elements common to ECMI's follow-on initiatives include facilitated dialogue, capacity building and peer learning. These can be seen in ECMI's recent work with Roms in Macedonia and Serbia.

X. Macedonia: Romani Expert Groups

While the narrative report from ECMI's needs assessment in Macedonia[55] outlines specific follow-on measures drawn from the proceedings of the focus groups, with an eye to sustainability ECMI established in 2004 all-Romani Expert Groups in the core areas of education, health, employment and civil rights. Conceived to undertake further research in the four core areas as a prelude to the design and implementation of concrete policy measures to remedy Roms' comparative disadvantages, the Expert Groups were expected through their work and participation in training activities to encourage an expertise-based division of labour among Romani NGOs by contributing to the professionalization of Roms active in the four core areas. A further medium-term expectation in designing the initiative was that the Expert Groups would grow into free-standing points of reference for organizations and individuals seeking consultation on the Romani population of Macedonia.

Shortly after their formation in late 2004, the four Expert Groups played a significant role in contributing to the revision of the government's draft strategy on Roms. The Expert Groups' most visible achievements, however, are their two volumes of research reports on topics that have received relatively little consideration from other actors.[56]

[55] ECMI, *Toward Regional Guidelines for the Integration of Roms. Macedonia: Narrative Report* (European Centre for Minority Issues, Flensburg, 2004).

[56] See Romani Expert Groups for Romani Integration, *Roms on Integration: Analyses and Recommendations* (European Centre for Minority Issues, Skopje, 2005); and Romani Expert Groups for

Conducting their research primarily in Romani ghettos in the cities throughout Macedonia with the largest Romani populations, the Expert Groups' research focuses on various manifestations of marginalization in need of urgent attention from domestic and international actors. While it is still early to measure the effect of the Expert Groups' research on the social exclusion of the Romani population, the reports provide material that can be used in implementing the Strategy for Roma in the Republic of Macedonia.

XI. Serbia: Supporting Local Romani Coordinators

Among the recommendations resulting from ECMI's 2004 analysis of the situation of Roms in Serbia and Montenegro was to focus efforts on increasing and improving contacts between Romani communities and local authorities. Increasing the presence of Roms at the level of local government shows considerable promise for improving relations between Romani communities and local authorities, as well as local organs of state agencies. This is so due in large part to the broad-based disadvantage of the Romani population as a whole, as well as to the tendency for disadvantaged Roms to be less ashamed of differences in education and economic status in dealing with other Roms than in their encounters with non-Roms. Additionally, the Law on Local Self-Government of the Republic of Serbia provides for the establishment of a Council for Interethnic Relations in ethnically mixed municipalities.[57] Prior to the establishment of local Romani coordinators in 12 municipalities through a cooperative initiative of the (then) Ministry for Human and Minority Rights, the European Agency for Reconstruction and the OSCE in 2005, however, only one municipality in Serbia had appointed such a coordinator.

While the demand for assistance from the Romani coordinators established prior to the commencement of ECMI's work in the corresponding municipalities demonstrated the potential for the coordinators to serve the corresponding local Romani communities, the continued existence of these positions depends in large part on the coordinators' ability to generate the concrete results necessary to gain support from the municipal budget in

Romani Integration, *Roms on Integration II: Analyses and Recommendations* (European Centre for Minority Issues, Skopje, 2006).

[57] Article 63, "Zakon o lokalnoj samoupravi" [Law on Local Self-Government], *Službeni glasnik Republike Srbije* (2002), No. 9.

future. ECMI's role was accordingly to design and implement activities aimed at increasing the capacity of not only the local Romani coordinators but also the (non-Romani) local government officials in charge of the various sectors within which Roms' complex and multi-faceted marginalization manifests itself. By the end of the project's pilot phase, ten of the thirteen municipalities included in the project had completed at least one local action plan, with five of the included municipalities having completed action plans in all four priority areas of the Decade of Roma Inclusion[58] (i.e., education, employment, health and housing), as compared with the existence of only a single action plan in a single municipality at project launch. Also telling is that, by the end of the project year, the prospects for integrating the position of Romani coordinator into the municipal budget were positive in all but two municipalities included in the initiative. To encourage replication of ECMI's work with local Romani coordinators and their non-Romani counterparts elsewhere in Serbia as well as in other countries in the region, in early 2007 ECMI generated a concise publication entitled *Supporting Local Romani Coordinators: A Practical Guide to Integrating Roms in Municipal Government*.[59]

XII. Equal Opportunities for All in 2007?

Despite Roms' firm embeddedness in the ethnic landscape of the Western Balkans and the more or less successful efforts of some actors both within and outside governments in the region to level the playing field between Romani and non-Romani populations, Roms remain to this day the most marginalized ethnic group in Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro and Serbia. A change in this state of affairs will require not only a period of time perhaps best measured in generations but also the careful design and consistent implementation of comprehensive anti-discrimination policies in all the political units of the region. How quickly this happens is likely to depend largely on how quickly the marginalization of these political units is addressed by improving the possibilities for their closer integration with the EU. In the

[58]The Decade of Roma Inclusion (2005-2015) is an explicit commitment by nine governments in Central and Southeast Europe (Bulgaria, Croatia, the Czech Republic, Hungary, Macedonia, Montenegro, Romania, Serbia and Slovakia) to combat Roms' poverty, exclusion and discrimination. Additional information on the Decade is available at http://www.romadecade.org/itentcms/www/roma/index.php.

[59] ECMI, *Supporting Local Romani Coordinators: A Practical Guide to Integrating Roms in Municipal Government* (European Centre for Minority Issues, Belgrade, Skopje, 2007).

absence of such change, there appears to be little reason to expect this part of Europe to see itself as a part of the European Year of Equal Opportunities for All.

Biographical Note

Eben Friedman holds a Ph.D. in political science from the University of California, San Diego. His dissertation, "Explaining the Political Integration of Minorities: Roms as a Hard Case," drew on two years of field research in Slovakia and Macedonia. Friedman has been employed since 2002 at the European Centre for Minority Issues, where his activities have focused on Macedonia and on Romani populations in Eastern Europe. His most recent publication is "Minority Rights in Europe: Roms in Slovakia and the Czech Republic," in Malte Brosig, ed., *Minority Rights in Europe: A Fragmented Regime?* (Frankfurt am Main: Peter Lang Verlag, 2006).

Real and 'Virtual' Elements of Power Sharing in the Post-Soviet Space: the Case of the Gagauzian Autonomy

Oleh Protsyk and Valentina Rigamonti

Abstract

Various efforts to assess the effects of autonomy arrangements on the prospects of achieving stability and democracy in ethnically heterogeneous societies receive a lot of attention both in academic and policy-making communities.[1] This paper argues that the analysis of the actual implementation practices of autonomy settlement agreements should be an integral part of such efforts. Taking implementation practices seriously means going beyond the analysis of grand formal provisions listed in the autonomy's constitutional law or statute, which is usually adopted at the end of the conflict settlement process. The actual implementation process can produce an autonomy regime whose functioning is far from the model autonomy arrangement envisioned in the autonomy's founding documents. Successes and failures in securing stability and democracy then can be better accounted for by studying the effects of these implementation practices rather than by attributing democracy and stability outcomes to formal autonomy provisions.

I. Introduction

The Gagauzian autonomy illustrates some of the challenges of elaborating and implementing autonomy provisions in the context of fledgling democratic institutions and weak systems of rule of law. The article starts with a brief discussion of power sharing and the effects that power-sharing arrangements allegedly have on efforts to mitigate interethnic tensions and promote democracy in post-conflict states. It then turns to discussing how an agreement on autonomy arrangements, which was hailed at the time of its 1994 adoption as a rare example of the successful regulation of ethno-territorial tensions in the post-Soviet space, was translated into a set of specific norms and practices. These norms and practices effectively and dramatically limited the scope of autonomy that many believe the 1994 settlement envisioned. Finally, the article turns to an analysis of how this process of defining and narrowing the actual scope of autonomy affected the behaviour of autonomy elites and what outcomes in terms of center–autonomy relations and democratization this process helped to generate.

[1] See, for example, Pippa Norris, *Driving Democracy: Do Power-sharing Regimes Work?* (Cambridge University Press, New York, Cambridge, 2007); and Andreas Wimmer *et al.*, *Facing Ethnic Conflicts: Toward a New Realism* (Rowman and Littlefield, Oxford, 2004).

In a volume on autonomy arrangements published by the leading publishing house in the field of international law, the Gagauz autonomy is classified as a "fully-fledged" autonomy arrangement and put in the same category of full European autonomies as those existing in Italy, Spain, Portugal and the Aaland Islands. These "autonomies proper" are then distinguished in that volume from other autonomy-like arrangements in Europe that lack exclusive law-making powers either *de jure* or both *de jure* and *de facto*.[2] In another authoritative document, a recent Venice Commission opinion on amendments to the status of the Gagauz autonomy stated that "the extent of the powers conferred on the Gagauzian autonomous institutions is very striking".[3] Among other things, this article attempts to bridge a gap that exists between the legal evaluation of formal autonomy provisions and empirical social science analysis of center–autonomy relations.

II. The Functioning of Autonomy under the Weak Rule of Law System

The question of whether power-sharing provisions, including territorial autonomy arrangements, can help to alleviate interethnic tensions and contribute to the stable democratic functioning of a state is one of major concern for both the social science and applied conflict management literatures. In analyses of approaches to managing diversity in ethnically heterogeneous societies, two main perspectives are traditionally distinguished. One is rooted in so-called 'consociational' literature, which sees power sharing as an essential element of ensuring stability and democracy in culturally fragmented societies.[4] The other, which is sometimes described as an 'integrative' approach, highlights the risks associated with institutionalizing and politicizing ethnic differences for achieving long-term democratic stability and advocates institutional and policy prescriptions that cross ethnic and cultural boundaries.[5]

The question about the merits and drawbacks of power sharing continues to generate a large amount of academic interest long after the initial debates were launched by

[2] Markku Suksi, *Autonomy: Applications and Implications* (Kluwer Law International, The Hague, London, Boston, 1998).
[3] Venice Commission, "Opinion on the Law on Modification and Addition in the Constitution of the Republic of Moldova in particular Concerning the Status of Gagauzia", Opinion No. 191/2001, CDL-AD (2002) 20, Strasbourg, 21 August 2002.
[4] For one of the definitive statements in the consociational tradition, see Arend Lijphart, *Democracy in Plural Societies: a Comparative Exploration* (Yale University Press, New Haven, London, 1977).
[5] Some of the key ideas attributed to the integrative approach are elaborated in Donald Horowitz, *Ethnic Groups in Conflict* (University of California Press, Berkley, 1985).

scholars like Lijphart and Horowitz. The recent academic literature continues these debates either by directly bringing the proponents of different perspectives together in the same volumes[6] or by comprehensively examining recalibrated arguments and/or new evidence for one or the other perspective in separate volumes.[7] A careful elaboration of scope conditions under which the arguments of one or the other side hold is an important prerequisite for further improvement of our understanding of the effects of power-sharing arrangements.

This article concerns itself with examining the impact of one such scope condition—the weak institutionalization of the rule of law system—on the dynamics of autonomy settlement implementation. The article also deals with the sincerity of commitment on the part of central state actors to implement the autonomy agreement but their willingness to honour the terms of the deal is conceptualized to be partly endogenous to the quality of the institutional environment in which they operate.

The weakness of the rule of law system is here defined primarily in terms of a lack of judicial independence, lack of compliance with formal rules and norms, and a weak commitment on the part of political actors to address disputes through legal channels and procedures.[8] The lack of judicial independence implies that court decisions can be influenced by other than legal considerations. The lack of compliance and weak commitments manifest themselves in deliberate choices to disregard inconvenient legal norms, ignore legal procedures and to seek other than legally-specified means of dispute settlement. As the following discussion indicates, all of the abovementioned characteristics of the weakness of the rule of law system affect the dynamics of implementation of the power-sharing agreement and the overall functioning of the autonomy regime in Gagauzia.

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[6] See the exchange between Donald Horowitz and Arend Lijphart in Andrew Reynolds (ed.), *The Architecture of Democracy. Constitutional Design, Conflict Management and Democracy* (Oxford University Press, New York, 2002).

[7] See, for example, Phillip G. Roeder and Donald Rothchild (eds.), *Sustainable Peace. Power and Democracy after Civil Wars* (Cornell University Press, New York, 2005); and Marc Weller and Stefan Wolff (eds.), *Autonomy, Self-Governance and Conflict Resolution. Innovative Approaches to Institutional Design in Divided Societies* (Routledge, New York, 2005).

[8] For a discussion of the rule of law concept, see, for example, Jose Maria Maravall and Adam Przeworski, *Democracy and the Rule of Law* (Cambridge University Press, Cambridge, 2003); and Adam Czarnota, Martin Krygier and Wojciech Sadurski, *Rethinking the Rule of Law after Communism* (Central European University Press, Budapest, 2005).

The notion of the rule of law is analytically different from the concept of state strength. Some recent accounts of power sharing describe state strength as an important condition for successful implementation of power-sharing agreements.[9] State strength, defined in terms of the effectiveness of the central government and administrative bureaucracy, might grow without substantial improvements in the rule of law system, as some recent trends of growing tax-collection and service-delivery capacities in the post-Soviet states indicate. Thus, it is analytically beneficial to keep these concepts separate.

The weak rule of law system provides fertile ground for the proliferation of informal practices in public life. The sheer volume of the literature on informal institutions, norms and rules testifies to the significance of the problems that post-Soviet states face.[10] Informal rules and norms relevant to this specific discussion on the functioning of the autonomy regime include the subordination of the judiciary to the executive branch of government, the selective use of law enforcement and the arbitrary application of administrative norms and regulations by government bureaucracies.

III. Terms of the Gagauzian Autonomy Deal: Vague Competencies and Crisp Hierarchies

One way to summarize the content of the 1994 autonomy agreement in the Gagauz region of Moldova is to highlight the differences between the vague definition of competencies and the much more detailed description of the hierarchical nature of relations between the centre and autonomy in the autonomy's founding document, the 1994 Law on the Special Legal Status of Gagauzia.[11] Although the Moldovan legal system has continued to rapidly evolve through the two post-communist decades, the law has seen no changes since it was adopted and thus continues to define the status and powers of the autonomy.

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[9] Donald Rothchild and Philip G. Roeder, "Power Sharing as an Impediment to Peace and Democracy", in Roeder and Rothchild, *Sustainable Peace …*, 29–50.

[10] Kelly McMann, *Economic Autonomy and Democracy* (Cambridge University Press, New York, London, 2006); Denis James Galligan and Marina Kurkchiyan, *Law and Informal Practices: the Post-communist Experience* (Oxford University Press, Oxford, 2003); Henry E. Hale, "Explaining Machine Politics in Russia's Regions: Economy, Ethnicity, and Legacy", 19(3) *Post Soviet Affairs* (2003), 228–263; and Keith A. Darden, "Blackmail as a Tool of State Domination: Ukraine under Kuchma", 10(2–3) *East European Constitutional Review* (2001), 33–45.

[11] Law No 344-XIII of 23 December 1994, "On the Special Legal Status of Gagauzia", *Monitorul Oficial*
al Republicii Moldova (14 February 1995).

The agreement on establishing a territorial autonomy for the Gagauz minority in Moldova was a product of intense negotiations that followed the period of ethnopolitical mobilization of the early 1990s. Competing claims for sovereignty, public protests and even small-scale outbursts of violence between civil and paramilitary groups claiming to represent the interests of the titular group and the Gagauz minority characterized the period of Soviet disintegration and the establishment of the independent Moldovan state.[12] The autonomy settlement thus became a response to an acute need to regulate ethnopolitical conflict in order to prevent its further escalation.[13]

The 1994 Law on the Special Legal Status of Gagauzia outlined the key provisions of the autonomy status. The law was passed by the Moldovan parliament after a period of negotiations between the central authorities and Gagauz representatives, which also involved some elements of international mediation.[14] The international community applauded the fact that a compromise was achieved and a number of observers praised the 1994 law as a solid foundation for ethnic tension de-escalation and as a crucial mechanism for meeting the Gagauz minority community's needs under the general framework of the Moldovan state.[15] As one analyst noted, the Gagauz case is the only case in Central-Eastern Europe and the former Soviet Union where *de jure* autonomy status was granted to an ethnic group.[16]

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[12] Charles King, "Minorities Policy in the Post-Soviet Republics: the Case of the Gagauzi", 20(4) *Ethnic and Racial Studies* (1997), 738–756; and William Crowther, "Ethnic Politics and the Post-Communist Transition in Moldova", 26(1) *Nationalities Papers* (1998), 147–164; Claus Neukirch, "Autonomy and Conflict-Transformation: the Gagauz Territorial Autonomy in the Republic of Moldova", in Kinga Gal (ed.), *Minority Governance in Europe* (Open Society Institute, Budapest, 2002), 107–126.

[13] For a widely used taxonomy of the macro-political forms of ethnic conflict regulation, see John McGarry and Brendan O'Leary, *The Politics of Ethnic Conflict Regulation: Case Studies of Protracted Ethnic Conflicts* (Routledge, London, New York, 1993).

[14] Pritt Järve, "Gagauzia and Moldova: Experiences in Power-Sharing", in Marc Weller and Barbara Metzger (eds.), *Settling Self-determination Disputes: Complex Power-sharing in Theory and Practice* (Brill, Leiden, forthcoming); and John A. Webster, "Model for Europe? An Evaluation of Moldova's Autonomy for the Gagauz", April 2005, at http://www.ecmimoldova.org/Publications.187.0.html.

[15] Pål Kolstø. *National Integration and Violent Conflict in Post-Soviet Societies: the Cases of Estonia and Moldova* (Rowman & Littlefield, Lanham, 2002); Steven D. Roper, "Regionalism in Moldova: the Case of Transnistria and Gagauzia", 11(3) *Regional and Federal Studies* (2001), 101–122; Paula Thompson, "The Gagauz in Moldova and their Road to Autonomy", in Magda Opalski (ed.), *Managing Diversity in Plural Societies: Minorities, Migration and Nation-Building in Post-Communist Europe* (Forum Eastern Europe, Ottawa, 1998), 275–322.

[16] Järve, "Gagauzia and Moldova …" This statement should be understood in a narrow sense. The author probably meant that other instances of power sharing in the region have different foundations. According to this logic, the Crimean autonomy in Ukraine is granted to the territory and not a single ethnic group, and the Russian ethnic regions are federal units and not autonomy regions.

The key points of the 1994 law addressed the issues of drawing the boundaries of the administrative territory of the Gagauz autonomy, establishing the autonomy's legislative and executive authorities and defining the scope of their powers, specifying procedures for minority representation at the central level, and granting decision-making rights to the legislative assembly in a wide range of policy areas. Specific choices made with respect to each of these key aspects of the autonomy arrangement have contributed to the distinct profile of the Gagauz autonomy in a formal legal sense.

Article 5 of the law stated that Gagauzia is composed of localities where Gagauzians make up more than 50% of the population and possibly those given an option to hold a referendum on joining the Gagauz autonomy for communities with a composition of less than 50% Gagauz. Some general characteristics of the autonomy established on the basis of this and other provisions of the 1994 law are outlined in Appendix 1.

The law provided general parameters for the single member constituency system of election to the Gagauz legislative assembly and included a provision on the direct popular election of the head of the executive government, the governor (*Bashkan*) of Gagauzia. The law did not envision any special norms for Gagauz representation in the national parliament but provided quite specific guarantees for executive representation. The governor of Gagauzia is a member *ex officio* of the Moldovan cabinet. The heads of departments of the Executive Committee, the autonomy's executive body, can be made members of the collegiums of the respective national ministries on the governor's request. The heads of the Gagauzian departments of justice, internal affairs and security, as well as the head of the procurator's office and the chairman of the appeals court, are members *ex officio* of the respective national ministries and other government institutions.

The law also listed the policy competencies of the Gagauz autonomy in various substantive areas. Article 18 stipulated that the autonomy forms its budget from all types of payments covered by the national and autonomy legislation. Article 12 granted the Gagauazian legislative assembly the power to make decisions in areas as diverse as science, culture and education, on the one hand, and the economy and environment, on the other. Neither Article 12 nor any other article in the autonomy

statute provided any details on what type of decision-making rights in relation to each of the specific policy areas the statute envisioned.

While the structure of the 1994 law is generally similar to the structure of autonomy laws adopted elsewhere, its content is much shorter. Appendix 2 illustrates this by comparing the general characteristics of the 1994 law with the 1972 Autonomy Statute for South Tyrol, a frequently cited example of successful autonomy in Europe. As Appendix 2 demonstrates, the terms of the 1972 South Tyrol status law are more detailed than the terms of the 1994 Gagauzia status law in almost every type of provision. Although the number of words and statute articles, which constitutes the basis for the content analysis presented in Appendix 2, is no substitute for substantive legal analysis of the individual provisions contained in the statutes, the magnitude of the differences in the volume and size of provisions is telling. For example, the articles describing the institutions of legislative and executive government in the South Tyrol statute are four times as large in size as the articles dealing with the same issues in the Gagauzia statute law. Differences in the size of the statute articles dealing with the description and allocation of policy competencies is even more dramatic, with the South Tyrol statute containing approximately nine times more text on issues of policy competencies than the Gagauzian statute.

The issue of competencies proved to be an especially controversial topic in the process of the implementation of the 1994 statute law in Gagauzia. These controversies were, to a significant extent, ‘programmed in’ at the stage of drafting the autonomy statue. The minimalist approach to the content of the drafted provisions, which obviously made negotiations easier at the time of drafting the document, resulted in a lack of any specification in the document regarding what having authority in a given policy area means or how decision-making rights in that particular area are distributed between the central and autonomy governments. The choices made at the stage of drafting the law delayed the conflict and moved it to the post-agreement phase.

The wording of Article 12 and especially paragraph 2 of this Article, which simply lists the names of different policy areas in which the Gagauz autonomy has competencies, has generated some of the most lasting disagreements between the central and autonomy governments. Appendix 3 provides exact wordings of the

competency provisions from Article 18(2) of the 1994 autonomy statute and compares them with the competency provisions for the same policy areas in the 1972 Autonomy Statute for South Tyrol. The differences illustrated by this appendix further underscore the point about how little substantive content on issues of policy competence is provided by the Gagauzian statute law in comparison with the South Tyrol law.

In retrospect, the choice to leave the description and division of competencies in the 1994 autonomy statute document unspecified and blurred has been highly consequential. By granting to the autonomy what appears on paper to be vast policy competencies, the 1994 law raised the minority group's expectations about the scope of actual powers that the autonomy obtained. The central state actors interpreted the vagueness of the autonomy provision as an invitation to define and specify the scope of autonomy competencies through the adoption of national level legislative acts. In the long term, this initial choice in the drafting provisions also contributed to a weakening of the autonomy's powers of self-government in ways that are touched upon in the next section of this article.

IV. 'Salami Tactics' of Reducing the Scope of Autonomy

In game theory, 'salami tactics' refers to devices used to reduce the other player's threat of actions in the way that a salami is cut—one slice at a time.[17] The adoption of numerous individual pieces of national legislation and the development of a legal framework for the functioning of the Moldovan state in the post-1994 period was obviously motivated by numerous factors, many of which had no relation to the autonomy. Yet the proliferation of national laws, cabinet orders and resolutions had the effect of shrinking the policy space for the Gagauz self-government. New normative acts passed by the national parliament and executive bodies in the post-1994 period routinely ignored the special status of Gagauzia. As the Gagauzians routinely point out, the national legal development produced hundreds of legislative acts that regulate various types of societal relations throughout the country without giving any consideration to the special statutes of Gagauzia.[18]

[17] Avinash Dixit and Susan Skeath, *Games of Strategy* (Norton, New York, 1999).
[18] Järve, "Gagauzia and Moldova …"

The salami slicing effect here refers to the inability of the Gagauz side to mount any credible opposition to this gradual encroachment on what the autonomy representatives believe are their self-government rights granted by the 1994 statute. No single legal act passed by the national level authorities was a strong enough cause that would allow ethnic minority entrepreneurs to mobilize public support in the autonomy and threaten the centre with the possibility of a new confrontation. In the view of minority representatives, every new piece of national legislation that ignored the special status of autonomy implied, however, a further encroachment on the autonomy rights and put additional curbs on the power of autonomy.

The autonomy authorities tried several strategies to reverse this trend, including appeals to the Constitutional Court, efforts to introduce amendments into the Moldovan Constitution, attempts to raise the status of the 1994 law and initiatives to conclude a new agreement between the central government and the autonomy concerning the distribution of competencies. None of these strategies have so far proven to be successful in producing the results that the autonomy authorities would have liked to see.

The 1994 law referred legal disputes that arise between the autonomy and central government to Moldova's Constitutional Court. There have been six appeals by the autonomy's legislative assembly to the Court since the Gagauz autonomy was established. One of these appeals was later recalled by the Gagauz authorities. The Constitutional Court rejected five other appeals on various technical grounds. Given the serious shortcomings in how appeals were prepared by the Gagauzian side, it would not be justified to attribute the decision to reject appeals to some negative predisposition on the part of the Constitutional Court.[19] This record, however, has a negative effect on the autonomy representatives' confidence in the ability of the Court to address their grievances.

A strategy to introduce changes to the Moldovan Constitution resulted in modifications of two constitutional articles. Since the 1994 law on special status was passed after the adoption of the Moldovan Constitution, the Gagauzian authorities pushed for the introduction of constitutional amendments in order to entrench the

[19] Veceslav Zaporozhan, "Prava Obrashnia Konstituzioni CYD", ECMI Training, Comrat, 14 March 2007.

autonomy status and to strengthen the powers of the autonomy. While the goal of entrenching the autonomy status was achieved by the adoption of Article 111 on the Autonomous Territorial Unit of Gagauzia in 2003, the content of this article, as well as the mention of the autonomy in Article 110, did little to strengthen the autonomy's claims for greater control over its interests. The only substantive addition to the powers of the autonomy—the right of legislative initiative in the national parliament (Article 72)—had little practical consequences for the functioning of the autonomy, given that such an initiative requires the support of a legislative majority in order to become a national law. To date, none of the autonomy's initiatives have been supported by the national parliament.

Two other initiatives—raising the status of the 1994 law[20] and concluding a new agreement between the central government and autonomy concerning the distribution of competencies—were motivated by the desire to work around the developments in the national legal framework. The autonomy authorities have slowly realized that a gradual encroachment on the autonomy status, which in their view is manifested in the proliferation of national legal acts universally applied to the entire territory of the country, could not be reversed by appealing to the central authorities to make amendments to hundreds of pieces of recently adopted legislation. Raising the status of the autonomy law or concluding a treaty in addition to the existing law was meant to surpass this new reality of a well elaborated and detailed national legislative framework by exempting the autonomy from the requirement to comply with the framework provisions in certain policy areas mentioned in the 1994 autonomy law. As should already be obvious, these initiatives found little support in central government institutions.

The last available option—non-compliance with national legal acts—has been actively practiced, which provides a basis for serious concern for legal practioners across the country.[21] This non-compliance, however, has been of a sporadic nature and does not amount to organized and systematic resistance to the central government for reasons outlined in the next section of this article. Non-compliance is, however,

[20] The Moldovan constitutional system envisions three types of laws: constitutional, organic and ordinary. The 1994 autonomy law has the status of an ordinary law, amendments to which can be introduced by a three-fifths majority of the national parliament.

[21] Authors' interviews with officials of legal departments of the national parliament and the Gagauzian assembly, March 2007.

rationalized by autonomy actors as a response to what is perceived as fundamental reneging by the central government on its previous commitments with regard to the status of the Gagauz autonomy.[22]

The lack of a spirit of the rule of law is also manifested in the actions of the central authorities throughout the period analyzed. There is a very weak sense of obligation or commitment on the part of central state actors to grant substantive policy competencies to the autonomy. The Gagauzian side claims that such obligations result from the central government's decision to agree to the 1994 autonomy statute deal. The very idea of having contractual relations with the autonomy unit seems to be an uneasy concept for the central government. Thus, for example, the Venice Commission recommendation to specify in constitutional amendments that not only the autonomy unit but also the central government has the right to appeal autonomy decisions to the Constitutional Court did not receive support among national lawmakers.[23] The national lawmakers instead chose to specify in a revised version of Article 111 that control over conformity with national legislation on the territory of the Gagauzian autonomy is exercised by the Moldovan cabinet. Overall, the actions of the central government indicate that it interprets its commitments as limited to recognition of the right of the autonomy to form its legislative and executive institutions but not the autonomy's right to legislate independently of the central authorities in the policy areas listed in the 1994 autonomy statute.

V. Explaining Stability and Democracy Records

What effects autonomy has on securing interethnic peace and democracy, as this article's introduction stated, are central concerns for the literature on power sharing. Detailed examination of the Gagauzian case suggests that emergent patterns of stability and democracy could not be attributed exclusively or primarily to the effects of the formal institutional arrangements. These patterns are better explained by examining the interplay of the formal and informal rules and practices that shape

[22] In September 2001, the legislative assembly of Gagauzia, for example, adopted a resolution stating that the political leadership of Moldova "deliberately did not implement" the resolution of the Moldovan parliament of 23 December 1994, "On the Implementation of the Law on the Special Status of Gagauzia". Cited in Järve, "Gagauzia and Moldova …", 39.
[23] Venice Commission, "Consolidated Opinion on the Law …"

relations between the centre and autonomy and have a profound effect on the political dynamics within the autonomy.

The centre and the autonomy have managed to avoid any serious confrontation since the 1994 autonomy settlement was agreed upon. This means that there have been no instances of widespread violence, sustained mass protests or riots. This does not, however, imply that the relations between the centre and autonomy have been cordial and mutually satisfactory. Underlying tensions have surfaced from time to time and manifested themselves in occasional non-compliance with national legislation, sporadic public actions, radical political statements and symbolic gestures. Thus, for example, in August 2001, the Moldovan mass media reported on festivities celebrating the 11th anniversary of the attempt to proclaim Gagauzia's sovereignty. The speaker of the autonomy's legislative assembly reportedly claimed in his speech during the event that if the Moldovan authorities fail to adjust national legislation to accommodate Gagauz laws, the Gagauz authorities would have to reactivate the 1990 declaration of independence and set up their own state structures.[24]

The absence of serious confrontation despite the growing disillusionment on the part of the Gagauz establishment with how the autonomy functions has to be explained. As the literature on intra-group dynamics suggests, accounting for the behaviour of a minority elite can be a starting point for such an explanation.[25] A review of minority elite actions in the Gagauz case suggests that, overall, this elite has avoided mobilizing the autonomy population in its efforts to win concessions from the central government. While the rhetoric has run high at some times, the Gagauz elite has not been willing to risk an open conflict with the centre over the status of the autonomy.[26]

The incumbent Gagauzian governor's story is telling in this respect. The 2006 gubernatorial elections saw a race between then incumbent Governor Gheorghii

[24] Pritt Järve, "Gagauzia and Moldova …"

[25] Elite behaviour is a crucial element in explaining inter-group accommodation in the classical version of power-sharing theory. For a critical evaluation of different accounts of elite motivation in seeking inter-group accommodation, see Ian Lustick, "Stability in Deeply Divided Societies: Consociationalism versus Control", 31(3) *World Politics* (1979), 325–344.

[26] The most pronounced instance of escalations of relations between the central authorities and the governor took place at the beginning of 2002. The conflict, however, was a result of the attempt by the recently elected central government to orchestrate a campaign against the governor of Gagauzia with the goal of dismissing him by means of a popular referendum on confidence in the governor. Thus, the governor's confrontational stand was a reaction against the new central government's attempt to install a more loyal candidate as governor of Gagauzia. See Järve, "Gagauzia and Moldova …"

Tabunshchik, who was supported by the central government, and Mikhail Formuzal, a leading opposition figure who severely criticized Tabunshchik for his conformist stand *vis-à-vis* the central government. After winning the elections, Mikhail Formuzal chose to scale down his rhetoric and to adopt a reconciliatory stand towards central government. The accommodationist approach of the new governor was partly a realization of the counterproductivity of escalating tensions with the centre, whose increasing assertiveness under the Communist Party-led government reflected a growing consolidation of the Moldovan state. While, in many respects, this state remains very weak, its affairs are no longer in complete disarray, as was the case at the beginning of the 1990s when the Gagauz minority leaders faced the weak institutions of a newly emerging state torn by ethnopolitical conflicts.

The governor's unwillingness to escalate is also a product of the informal mechanisms of control used by the central government authorities to secure the compliance of autonomy elites. As was already mentioned at the start of this article, such informal practices as the subordination of the judiciary to the executive branch of government and the selective use of law enforcement are recognized in the literature as important factors in explaining political relations in post-communist states. Two out of the three governors that the Gagauzian autonomy has had since the establishment of the autonomy in 1994 have faced criminal charges raised against them by central government controlled prosecutors for mishandling their duties in one or another capacity as elected officials (primarily corruption charges). One of them, Dmitri Kroiter, who was elected as governor in 1999, chose to resign under the central government's pressure in 2002, well before the end of his term.[27] The other, Mikhail Formuzal, saw many criminal charges that had been raised against him when he was in opposition still outstanding when he became governor. Overall, the autonomy elites face the credible threat of their tenure in various offices of the Gagauz autonomy[28] being disrupted (and criminal charges brought against them through the legal mechanisms of the central state) if their actions depart too far from the preferences of the central authorities. Thus, it is the mechanisms of coercive and cooptive control, rather than the effects of power sharing, that might better explain the observed

[27] For an account of the Gagauz autonomy's political evolution, see Igor Botan, "The Recent Elections in Gagauzia and their Eventual Consequences", report written for ECMI Project 'Enhancing the Gagauzian Autonomy 2006', January 2007.

[28] Similar types of charges were made against the speaker of the Gagauz legislative assembly in 2002. See Järve, "Gagauzia and Moldova …"

patterns of stability in the centre–autonomy relations after the 1990–1992 confrontation period.[29]

VI. Conclusion

The traditional conception of law views legal documents—such as the Gagauz autonomy statute, which was discussed at length in this paper—as structuring relations between the centre and the autonomy on principles of obedience, obligation and compliance with the provisions of the law. In the context of transitional post-communist societies, as well as in much of the developing world, the applicability of these principles to the behaviour of all types of political and societal actors cannot be taken for granted. In other words, the autonomous causal efficacy of the law should not be assumed to follow simply from the fact of the passage of the law.

The Gagauzian experience with autonomy nevertheless provides several lessons for the drafters of autonomy provisions. First, having too general and poorly specified provisions on the distribution of competencies in the autonomy's founding documents may contribute in the long run to the undermining of the position of the autonomy, especially if power differentials between majority and minority are of a high magnitude. Second, territorial autonomy provisions are not likely to become a preferred choice for accommodating minority demands in the post-Soviet space, with the possible exception of a few cases of already frozen conflicts. The adoption of territorial autonomy arrangements was possible in circumstances of extreme weakness on the part of the central state, which was the case in the early years of transition from communism. The recovery of the central state, either in democratic or authoritarian format, makes the central authorities increasingly unwilling to cede control over its territory through the institutionalization of autonomy. This, however, does not preclude addressing minority claims through decentralization and devolution options.

For social scientists, the Gagauz experience highlights the importance of considering informal mechanisms of subordination and control when trying to explain patterns of order and stability in multiethnic societies. The current strand of power-sharing

[29] On control as a means of ethnic conflict regulation, see McGarry and O'Leary, *The Politics of Ethnic Conflict Regulation* …; Lustick, "Stability in Deeply Divided Societies …"; and *id*., "Israeli State-building in the West Bank and Gaza Strip: Theory and Practice", 41(1) *International Organization* (1987), 151–171.

literature seems to pay little attention to the earlier theories on the role of control in governing multiethnic societies. This literature and our understanding of societal stability in culturally diverse societies outside the Western world would benefit if more efforts were invested in understanding the interplay between formal and informal institutions in shaping the dynamics of majority–minority relations and regulating ethnopolitical conflicts.

Biographical Note

Oleh Protsyk completed his PhD in political science at Rutgers University in 2000. Since then, he has held teacher/fellow positions at the School of Slavonic and East European Studies at London University and the University of Ottawa. At present, he is a senior research associate at ECMI and his main focus is on the design of political institutions and constitutional mechanisms for conflict resolution.

Valentina Rigamonti holds an MA in European Studies from the European Research Institute (ERI) at the University of Birmingham with a specialization in CIS countries—Ukraine, Moldova, Belarus and Russia. She is now a project manager at ECMI with responsibility for action-oriented projects on Moldova. She also conducts research on minority political participation and on the applications and implications of autonomy as a mechanism for conflict settlement.

Appendix 1. Profile of Autonomous Territorial Unit of Gagauzia (Gagauz-Yeri)

Status	Autonomus Territorial Unit in Moldova (23 April 1994)
Capital	Comrat
Population	155,646 (4.6% of the total population of Moldova, excluding Transnistria).
Official Languages	Gagauz, Moldovan, Russian
Governor	Formuzal Michael Macar (2006–present)
Chairman of the People's Assembly	Stepan Esir
Area	1,830 km² 707 sq mi
Density	85/km² 220/sq mi
Administration Division	1 municipality (Comrat) and 2 cities (Ceadir-Lunga, Vulcanesti) and 23 communes (29 settlements). Gagauzia is structured into three districts: Comrat, Ceadir-Lunga and Vulcanesti.
Ethnic Composition	Gagauz (85.7%), Moldovans (8.1%), Bulgarians (5%), Russians (2.4%) and Ukrainians (2.3%).
Ethnic Gagauz population, by native language	Gagauz language (92.3%), Russian language (5.84%), Moldovan language (0.86%), Ukrainian language (0.41%), Romanian language (0.22%) and Bulgarian language (0.21%).
Religion	Orthodox (93%), Baptist (1.62%), Romano-Catholic (0.06%), other religions (5.32%).
Economy	Agro-industrial sector (cereals, crops, viticulture and wine making, animal breeding, tobacco). More than 5,000 enterprises are registered (agricultural, processing, textiles, ready-made clothes), 14 wineries, more than 450 small-sized business. A Free Economic Zone, Valcanes, is based in Gagauzia.
GNI per capita Moldova (USD)	930
Currency	Moldovan leu (MDL)

Sources: National Bureau of Statistics, 2004 Census Results, at http://www.statistica.md/recensamint.php; and The World Bank, Moldova Data Profile, http://devdata.worldbank.org/external/CPProfile.asp?PTYPE=CP&CCODE=MDA

Appendix 2. Number and Size of Articles in Autonomy Statutes (by Categories)

	The Law on Special Status of Gagauzia (1994)	Special Autonomy Statute for South Tyrol* (1972)
General Provisions	No. of Words: 301 Total No. of Articles: 5 ▪ Arts. 1–2 ▪ Arts. 4–6	No. of Words: 209 Total No. of Articles: 3 ▪ Arts. 1–3
Use of Languages	No. of Words: 53 Total No. of Articles: 1 ▪ Art. 13	No. of Words: 374 Total No. of Articles: 4 ▪ Arts. 99–102
Distribution of Policy Competencies	No. of Words: 338 Total No. of Articles: 1 ▪ Art.12 (excluding paras. 4, 5 and 6)	No. of Words: 2,992 Total No. of Articles: 12 ▪ Chapter II: Functions of the Region (Arts. 4–7) (No. of Words: 354) ▪ Chapter III: Functions of the Province (Arts. 8–15) (No. of Words: 1,481) ▪ Chapter IV: Provisions Common to the Region and the Provinces (Arts. 16–23) (No. of Words: 1,157)
Description of Main Legislative and Executive Autonomy Bodies	No. of Words: 1,064 Total No. of Articles: 9 ▪ Arts. 7–11 ▪ Arts. 14–17	No. of Words: 4,090 Total No. of Articles: 34 ▪ Chapter I: Organs of the Regions (Arts. 24–46) (No. of Words: 2,009) ▪ Chapter II: Organs of the Province (Arts. 47–54) (No. of Words: 2081)
Approval and Promulgation of Laws	No. of Words: 123 Total No. of Articles: 1 ▪ Art. 13	No. of Words: 518 Total No. of Articles: 6 ▪ Arts. 55–60
Finance	No. of Words: 76 Total No. of Articles: 1 ▪ Art. 18	No. of Words: 1,567 Total No. of Articles: 18 ▪ Arts. 69–86
Jurisdictional Organs	No. of Words: 267 Total No. of Articles: 3 ▪ Arts. 20–22	No. of Words: 618 Total No. of Articles: 7 ▪ Arts. 90–96
Constitutional Court	No. of Words: 100 Total No. of Articles: 2 sub-paragraphs ▪ Art. 12(4–5)	No. of Words: 263 Total No. of Articles: 2 ▪ Arts. 97–98
National Security and Internal Affairs	No. of Words: 267 Total No. of Articles: 2 ▪ Arts. 23–24	No. of Words: 265 Total No. of Articles: 2 ▪ Arts. 87–88
Change and Amendments	No. of Words: 31 Total No. of Articles: 1 ▪ Art. 27	No. of Words: 249 Total No. of Articles: 3 ▪ Arts. 103–105

Sources: Law on the Special Legal Status of Gagauzia, 23 December 1994; and Special Statute for the Region of Trentino Alto Adige, 31 August 1972.
***** The 1972 South Tyrol Statute also contains the following sections, which have no comparable equivalent in the 1994 Gagauzia law: “Local Government Bodies”; “Public Property and Estate of the Region and Provinces”; and “Lists of Personnel Employed in State Offices in the Province of Bolzano”.

Appendix 3. Comparative Table on the Wording of Selected Competences: the Law on the Special Legal Status of Gagauzia (1994) and the Special Autonomy Statute for South Tyrol (1972)	
Law on the Special Legal Status of Gagauzia	**Special Autonomy Statute for South Tyrol**
▪ Gagauzia is an autonomous territorial unit, with a special status as a form of self-determination of the Gagauzes, which constitutes an integral part of the Republic of Moldova.	▪ Trentino Alto Adige, comprising the territory of the Provinces of Trento and Bolzano, constitutes an autonomous region, with legal status, within the political structure of the Italian Republic, one and indivisible, on the basis of the principles of the Constitution and according to the present Statute.
▪ Science, Culture and Education	Province: ▪ Protection and preservation of the historic, artistic and popular heritage. ▪ Local customs and traditions and cultural institutions (libraries, academies, institutes, museums) at provincial level; local artistic, cultural and educational events and activities, and in the Province of Bolzano, also through the media of radio and television, but without the power to set up radio and television stations. ▪ Nursery schools. ▪ School welfare in regard to those educational sectors in which the Provinces have legislative competence. ▪ Vocational training. ▪ Primary and secondary education (middle schools, classical, scientific, teacher-training, technical, further education and artistic secondary schools).
▪ Housing Management and Urban Planning.	Region: ▪ Expropriation for public use, except for works mainly or directly the responsibility of the State and matters of provincial competence. ▪ Establishment and maintenance of land registers. Province: ▪ Housing, totally or partly subsidized by public funds, including facilities for construction of public housing in areas struck by disaster, and activities undertaken in the Province by extra-provincial bodies with public funds. ▪ Lake harbors. ▪ Fairs and markets. ▪ Roads, aqueducts and public works in the Province. ▪ The Province must be consulted in regard to first and second category water works. The State and the Province must agree beforehand an annual plan for coordinating the water works falling within their respective competencies. ▪ The use of public water by the State and the Province, within the framework of their respective competencies, shall be based on a general plan drawn up in agreement between representatives of the State and the Province

	at a special committee. ▪ Communications and transport in the Province, including the technical regulation and management of cable-car systems. ▪ The Province must be consulted in the case of concessions granted in the field of communications and transport when lines cross provincial territory. ▪ Expropriation for public use for all matters of provincial competence. ▪ School buildings. ▪ Local urban and rural policy.
▪ Health Services, Physical Culture and Sports.	Region: ▪ Regulation of health bodies and hospitals. ▪ Regulation of public assistance and welfare institutions. Province: ▪ Hygiene and health, including health care and hospital assistance. ▪ Sport and recreation with relative facilities and equipment. ▪ Public assistance and welfare.
▪ Local Budget, Financial and Taxation Activities.	Region: ▪ Regulation of land and agricultural credit institutions, savings banks and rural banks, as well as regional credit organizations. ▪ The revenue from mortgage taxes collected on property situated in its territory shall be assigned to the Region. Specific quotas of state tax revenue collected in the territory of the Region shall also be assigned to the Region. (See Art. 69) ▪ To the extent that foreign trade is subject to the limitations and approval of the State, the Region shall have the power to authorize such trade within limits to be established by agreement between the Government and the Region. In the case of foreign trade based on quotas that affect the economy of the Region, the latter shall be assigned a part of the import and export quota, to be fixed by agreement between the Government and the Region. Province: ▪ Regulation of small holdings in accordance with Art. 847 of the Civil Code; regulation of "entailed farms" and family holdings governed by ancient statutes or customs. ▪ The Province may authorize the opening and the transfer of branches of local, provincial or regional credit institutions, following consultation with the Ministry of the Treasury. ▪ Unless the general rules on economic planning provide for a different system of financing, the Ministry of Industry, Commerce and Artisan Enterprise shall assign to the Provinces of Trento and Bolzano quotas of the annual allocations contained in the state budget for the implementation of state laws to finance increases in industrial activity. The quotas shall be fixed following consultation with the Province and take into account

	the sums allocated in the state budget and the needs of the population in the Province concerned. The use of the sums allocated shall be agreed between the State and the Province. Should the State intervene with its own funds in the provinces of Trento and Bolzano in order to carry out special national school building plans, these funds shall be used in agreement with the Provinces. ▪ The Province of Bolzano shall use its own funding allocated for welfare, social and cultural purposes in direct proportion to the extent of each linguistic group and with reference to the needs of this group, except in the case of extraordinary events requiring immediate intervention for special requirements. ▪ The Province of Trento shall ensure the allocation of funding to an appropriate extent in order to promote the protection and the cultural, social and economic development of the Ladin, Mocheni and Cimbrian populations resident in its territory, taking into account their size and specific needs. ▪ The income from tax collected on electrical energy consumed in their respective territories shall be assigned to the Provinces. ▪ 9/10 of the annual rent established by law and payable for concessions of large-scale diversions of public water in the Province, granted or to be granted for whatever purpose, shall be assigned by the State to the Province. ▪ The Provinces may impose levies and taxes on tourism. ▪ The Provinces shall be assigned specific quotas of the yield from the tax revenues of the state collected in their respective territories (See Art. 75). <u>Region and Province:</u> ▪ The Region and the Provinces may, by law, levy their own taxes in conformity with the taxation system of the state in matters of their respective competence. ▪ The Region and the Provinces may issue internal loans on their own guarantee for an amount not exceeding their normal income in order to provide for investments in works of a permanent character. ▪ The Region and the Provinces shall collaborate in the assessment of state taxes on the income of bodies with fiscal residence in their respective territories. ▪ The Region, the Provinces and the Communes shall have their own budget for the financial year, which shall coincide with the calendar year (for more details, see Art. 84).
▪ Economy and Ecology.	<u>Province</u>: ▪ Protection of the countryside. ▪ Artisan activities. ▪ Mines, including mineral and thermal waters, quarries and peat bogs. ▪ Hunting and fishing. ▪ Alpine pastures and parks for the protection of flora and fauna. ▪ Tourism and the hotel industry, including guides, alpine bearers, ski instructors and ski schools. ▪ Agriculture, forests and forestry personnel, cattle and fish breeding, plant pathology institutes, agricultural

	consortia and experimental stations, hail protection services, land reclamation. ▪ Third, fourth and fifth category water works. ▪ Commerce. ▪ Commercial businesses, without prejudice to the requirements of State laws for obtaining licenses, the supervisory powers of the State for reasons of public safety and the power of the Ministry of the Interior to annual in accordance with national legislation the provisions adopted in the matter, however definitive. Ordinary appeals procedure against such action shall take place within the framework of the provincial autonomy. ▪ Increase in industrial production. ▪ Use of public waters, except for large-scale diversions for hydro-electric purposes. ▪ With regard to concessions for large-scale diversions for hydro-electric purposes and extension to their term, the territorially competent Provinces shall have the power to present their observations and objections at any time before the publication of the final decision by the Higher Council for Public Works. ▪ The Provinces shall also have the right to appeal to the Higher Courts for Public Waters against decrees granting concessions or extensions.
▪ Labor Relations and Social Security.	Region: ▪ Improvement grants for public works carried out by other public bodies within the Region. ▪ In matters concerning national insurance and social security the Region may issue laws integrating the provisions of state law, and may set up appropriate autonomous institutes or facilitate their establishment. Province: ▪ Apprenticeship, employment cards; categories and qualifications of workers. ▪ Establishment and functioning of municipal and provincial commissions for assistance and advice to workers on employment. ▪ Public entertainment in so far as public safety is concerned. ▪ In order to integrate the provisions of state laws, the Provinces shall have the power to issue laws in regard to employment and work placement with the power to make use of the outlying offices of the Ministry of Labour, until the establishment of their own offices, for the exercising of administrative powers linked to the legislative powers belonging to the provinces in matters of employment.

Sources: Law on the Special Legal Status of Gagauzia, 23 December 1994; and Special Statute for the Region of Trentino Alto Adige, 31 August 1972.
Note: Competencies listed above were not affected by the following legal amendments and changes: Art. 111, Constitution of the Republic of Moldova, "Autonomous Territorial Unit of Gagauzia", adopted 25 July 2003; "Modified Text of the Constitution of the Trentino Alto Adige and the Provinces of Trento and Bolzano", 18 October 2001.

The Aspect of Culture in the Social Inclusion of Ethnic Minorities: Assessing Language Education Policies under the EU's Open Method of Coordination

Ulrike Schmidt

Abstract

The aim of this article is to highlight a change in the European Union's 'Lisbon Strategy' since its launch seven years ago, in terms of putting more emphasis on culture as an important aspect of social inclusion. The article focuses on a research project coordinated in 2006 by the European Centre for Minority Issues (ECMI), which reviewed and assessed cultural policies aimed at the social inclusion of ethnic minorities introduced in the National Action Plans (NAPs) on Social Inclusion of five new member states of the European Union: the Czech Republic, Estonia, Latvia, the Slovak Republic and Slovenia. Sweden was additionally included in the study with the initial idea of serving as a benchmark in terms of best practices for promoting the inclusion into mainstream society of 'persons born outside Sweden' in its educational and cultural policies. The article will focus on language education policies that have been introduced in the six NAPs. Although it is still too early to draw conclusions on the impact of such policies on the social inclusion of ethnic minorities or on the creation of equal opportunities for all, a clear tendency can be made out within the EU to emphasize more the importance of considering culture when creating an environment that encourages the social inclusion of minority groups. Section I of this article will give a short outline of the motivation behind conducting research on the link between cultural aspects and the social inclusion of ethnic minorities within the OMC framework. Section II further elaborates on the importance of education—and language education policies in particular—for the promotion of the social integration of linguistic (ethnic) minorities in multiethnic societies and the creation of the grounds for their equal access to the labour market. Section III provides an overview of how effectively the six EU member states under evaluation have promoted ethnic inclusion through the education and language policies adopted in their NAPs from 2004–2006. At the same time, it will demonstrate the difficulties that the researchers encountered in collecting data and thus establishing reliable results. This problematic will be taken up again in the concluding Section V, where recommendations are presented as to how the countries under evaluation as well as other EU member states and those on the verge of accession can effectively promote sustainable social inclusion of ethnic minorities with cultural policies and how effectively the OMC can potentially contribute to this aim.

I. Why Consider Culture in the Social Inclusion of Ethnic Minorities?

Considering culture as an important aspect of social exclusion of ethnic minorities is relatively new to the member states of the European Union. The 'Lisbon Strategy', launched seven years ago with the aim of making the EU the most competitive economy

in the world and achieving full employment by 2010, rests on environmental, social and economic pillars, designed to modernize the European social model by investing in human resources and combating social exclusion. A list of targets was established in order to achieve the goals set in Lisbon, according to which the member states are expected to invest in education and training, and to conduct an active policy for employment. The Open Method of Coordination (OMC) was introduced as a means of governance that uses soft law mechanisms, such as guidelines, indicators, benchmarking and the sharing of best practices, and which relies on the voluntary cooperation of its member states, entailing the development of National Action Plans.

The 'Laeken Indicators', a set of comparable primary and secondary indicators for social exclusion that were established by the Social Protection Committee and presented to the European Commission in 2001, focused primarily on income inequalities, access to and participation in the labour market, and health, and only marginally on education, not mentioning cultural aspects as indicators for exclusion. Although the new set of common indicators, established in 2006 as a result of the re-launching of the Lisbon Strategy and the streamlining of the OMC process, placed more emphasis on educational attainment, culture again does not play a role as an indicator. Hence, the motivation behind the study on 'The Aspect of Culture in the Social Inclusion of Ethnic Minorities' was the fact that the significance of culture in promoting the social inclusion of ethnic minorities and creating equal economic opportunities has not yet been fully recognized in the National Action Plans on Social Inclusion adopted by the EU member states under the OMC. Some member states have included cultural policies in their NAPs but, however, fail to mention how these will enhance the social inclusion and participation in the labour market of ethnic minorities. For this reason, the European Commission has recently drawn attention to the importance of culture in promoting the inclusion of ethnic minorities and immigrants and has identified culture as a key policy area to be assessed and evaluated,[1] arguing that access to cultural activity is a core part of human existence and is thus crucial for fostering a positive sense of identity. In its report of March 2004, the Commission emphasized cultural policies as a central part of any approach to

[1] European Commission, "Community Action Programme to Combat Social Exclusion, 2002–2006: Evaluation of the Impact of Inclusion Policies under the Open Method of Coordination", Call for Proposals, VP/2005/009.

addressing social exclusion and highlighted the aspect of culture in promoting social inclusion in countries with high immigration.[2] Since then, some research funded by the European Commission has focused on participation in cultural activities, cultural identity, and regeneration of excluded communities,[3] and the next report by the Commission included an evaluation of policies on better access to culture in the NAPs on Social Inclusion 2004–2006.[4] It also discussed for the first time the inclusion of ethnic minorities but, at the same time, revealed that no link had yet been established between the two issues in any of the NAPs. Hence, the report presented four main areas of interest related to culture: access to culture, problems of culture in remote areas, creative activity and cultural activities to promote the social inclusion of ethnic minorities.

To advance the research in establishing an intrinsic link between cultural aspects and the social inclusion of ethnic minorities, ECMI coordinated a study to assess cultural policies in the NAPs of five EU25 member states and one EU15 member state. The selection of Estonia, the Czech Republic, Latvia, the Slovak Republic, Slovenia and Sweden was based on the value that each of these NAPs afforded to culture or the necessity to implement cultural policies. Four of them had highlighted the issue of Roma/Sinti exclusion from the socio-economic sphere. Sweden was included, as its Agenda for Culture 2006 promised synergy with the NAPs on Social Inclusion and was expected to serve as a good practice example. The NAPs evaluated pertain to 2004–2006. While three domains of social exclusion were selected by the research teams for study—education, media and public participation—this article focuses on the language (and) education policies introduced in the NAPs of the six EU member states and their impact on the social inclusion of ethnic minorities in multicultural societies.

[2] European Commission, "Joint Report on Social Inclusion, Summarizing the Results of the Examination of the National Action Plans for Social Inclusion (2003–2005)", COM(2003)773 final of 12 December 2003, at http://www.europa.nl/employment_social/soc-prot/soc-incl/com_2003_773_jir_en.pdf.
[3] Roberta Woods *et al.*, "Report of a Thematic Study Using Transnational Comparisons to Analyse and Identify Cultural Policies and Programmes that Contribute to Preventing and Reducing Poverty and Social Exclusion", Centre for Public Policy, Northumbria University, 2004.
[4] European Commission, Commission Staff Working Document, "Implementation and Update Reports on 2003-2005 NAPs/Inclusion and Update Reports on 2004-2006 NAPs/Inclusion", COM(2006)62 final of 23.03.2006.

II. Language Education, Social Inclusion and Equal Opportunities

If we look at equal opportunities as an approach to providing a social environment in which people are not excluded from the basic activities of society, such as education and employment, the focus on cultural aspects to promote social inclusion and as necessary conditions for the creation of such an environment seems justified.

The choice of education as one main area for research on policies aimed at social inclusion and as a factor that in the long term helps to create equal opportunities was therefore obvious, as education covers different and complementary functions in minority integration: it prepares the individual for life in mainstream society; it has, in general, a positive impact on the self-esteem of members of ethnic minorities; it fosters intercultural understanding between minority and majority populations; and it helps to reinforce that culture and literacy are intrinsically connected. Education is also closely related to other spheres of social life, such as employment and access to the labour market.[5]

Language is an essential part of ethnic identification and serves as a vehicle for transporting and transmitting cultural traditions. Education can thus function as a means of keeping alive minority groups' traditions and languages. In modern nation states, culture is usually passed on through education; in that respect, language education policies that promote dialogue between minority and majority are an essential contribution to the social inclusion of ethnic minorities in ethnically heterogeneous states. Sociological and sociolinguistic studies have in recent years provided evidence and now take it, along with UNESCO, as axiomatic that children learn best in their own language.[6] At the same time, they have revealed problems that arise at school and are language related (e.g., when the teachers' language differs from that of the pupils). UNESCO admits that "it is not always possible to use the mother tongue in school and, even when possible, some factors may impede or condition its use".[7] Language issues are widely seen as one of the major causes of the greater rate of school failures and of the higher number of school dropouts among minority children. School is a major socializing

[5] Tove Malloy and Michele Gazzola, "Final Report on 'The Aspect of Culture in the Social Inclusion of Ethnic Minorities'", Report undertaken for the European Commission by ECMI, 2007, 17, at http://www.ecmi-eu.org/no_cache/home/news/single-news-item/article/35/164/.
[6] UNESCO, *The Use of Vernacular Languages in Education* (UNESCO, Paris, 1953), 11.
[7] *Ibid*.

institution of society and, as such, it exerts some power over its pupils. Children of minority groups who do not have the same cultural and linguistic background as the majority pupils are likely to encounter problems and conflict.[8] Education is thus a key element in the collective combat of social exclusion and is necessary to improve knowledge, which again translates into better job opportunities but also into a better understanding of society's explicit and implicit features and rules. Recent studies in different multiethnic societies in which there is one dominant language and one minority language have shown that those members of society that speak both the dominant language and the minority language have had the best job opportunities, followed by those only speaking the dominant language, while those only speaking the minority language have had problems in accessing the job market.[9]

Education also plays an indispensable role in the construction of individual and community self-esteem and representations. In light of this, it is difficult to clearly identify, specify and isolate the channels through which education fosters social inclusion. However, social scientists have means of interpreting educational phenomena as well as analytical and empirical tools to support theoretical insights and advise policy makers at their disposition, such as cost-effectiveness analysis (CEA). By focusing on partial analyses, useful insights can be provided and used as input for general discussion.[10]

Language and education are both central to the formation and maintenance of the modern nation states, as education and the language(s) legitimated in and through education play a key role in establishing and maintaining the cultural and linguistic shape of the nation state. There are various underlying factors that motivate the introduction of language policies at a national level in regard to the education of national minorities, ranging from state control and the aim of assimilation to respect for human rights.[11] At the same time, European nations with heterogeneous ethnic compositions and/or high immigration flows are increasingly coming to understand the importance of integrating their ethnic minority

[8] See, for example, Suzanne Romaine, *Language in Society. An Introduction to Sociolinguistics* (Oxford University Press, Oxford, 2000), 205–206.

[9] See, for example, Britta Korth, "The Limits of Language Revival", 2001, at http://www.cimera.org/files/biling/en/Korth_Languagerevival.pdf

[10] Malloy and Gazzola, "Final Report on 'The Aspect of Culture ...", 55.

[11] Compare Christina Bratt Paulston and Kai Heidemann, "The Education of Linguistic Minorities", in Thomas Ricento (ed.), *Language Policy. Theory and Method* (Blackwell, Oxford, 2006), 292–310, at 298.

communities into the social life of mainstream society as a factor that guarantees political stability, as the social exclusion of members of ethnic minorities carries the potential danger of escalating ethnic violence. On the other hand, cultural diversity and plurality of ideas should be seen as an important source of social innovation,[12] thus enriching the cultural life of society as a whole. Policies and regulations for promoting cultural diversity are central to the formation and maintenance of modern nation states. Education and the language(s) legitimated in and through education play a key role in establishing and maintaining the cultural and linguistic shape of the nation state. However, policies regarding the language education of minorities, like any language policies, can only be successful in the long run if the whole socio-cultural context of the society concerned is positively inclined towards the promotion of cultural (and linguistic) diversity.

III. Language Education Policies under the OMC in Six EU Member States

The six country reports[13] that resulted from the evaluation study and the report by Tove H. Malloy and Michele Gazzola to the European Commission[14] served as the basis for this comparison of six National Action Plans. The structure used in this chapter allows for the grouping made in the initial phase of the research, when it was decided that the teams on the Czech Republic, the Slovak Republic, Slovenia and Sweden would concentrate on social inclusion policies addressing Roma minorities and, in the case of Sweden and Slovenia, policies on immigrants. The research teams from Estonia and Latvia would form a second group that would study policies of inclusion addressing the Russian-speaking populations of these two member states.

[12] Milada Horáková and Pavel Bareš, "Final Report Czech Republic", ECMI Working Paper No. 29, October 2006, 8.
[13] *Ibid*.; Antoinette Hetzler, Marcus Persson and Elin Lundin, "Final Report Sweden", ECMI Working Paper No. 34, October 2006; Aksel Kirch, Tarmo Tuisk and Mait Talts, "Final Report Estonia", ECMI Working Paper No. 30, October 2006; Michal Vasecka, Magdaléna Sadovská and Barbora Vašečková, "Final Report Slovakia", ECMI Working Paper No. 32, October 2006; Mitja Žagar, Miran Komac, Mojca Medvešek and Romana Bešter, "Final Report Slovenia", ECMI Working Paper No. 33, October 2006; and Brigitta Žepa, Ilze Lāce, Evija Kļave and Inese Šūpule, "Final Report Latvia", ECMI Working Paper No. 31, October 2006. All of the above papers are available for download at http://www.ecmi.de/rubrik/58/working+papers/.
[14] Malloy and Gazzola, "Final Report on 'The Aspect of Culture …"

A. NAP Policies in Regard to the Education of Roma and Immigrants in the Czech Republic, the Slovak Republic, Slovenia and Sweden

1. Slovenia

(a) Promotion of Social Inclusion and Equal Opportunities for Ethnic Minorities in Slovenia's National Action Plan on Social Inclusion (2004–2006)

The Slovene NAP on Social Inclusion 2004–2006 lists, in order of importance, the key challenges that the Slovene government faces in the promotion of social inclusion and creating equal opportunities:

— Further developing an inclusive labour market and promoting employment as a right and possibility for all;

— Ensuring appropriate education;

— Ensuring suitable living conditions for all;

— Reducing regional differences;

— Improving the provision of services; and

— Ensuring income and means for a decent standard of living.[15]

One of the four major aims stated in the NAP is to facilitate participation in employment, primarily through the programmes of the Active Employment Policy (AEP). Under the second main objective—to facilitate access to resources, rights, goods and services—the NAP lists access to education and access to culture. The third main objective is to prevent the risk of exclusion by promoting e-inclusion, preventing exclusion from work, preventing discrimination and preventing other forms of exclusion (ensuring, among other things, access to school) and the last main objective of the NAP is to ensure support for the most vulnerable members of society—among which the Roma population is listed—in gaining employment, in education, with housing needs and with social inclusion.

[15] Government of Slovenia, "National Action Plan on Social Inclusion (NAP/inclusion 2004–2006)", 2004, at http://ec.europa.eu/employment_social/social_inclusion/docs/nap_incl_2004_si_en_version.pdf.

(b) Assessing Language Education Policies for the Inclusion of Roma Children in Slovenia

Although the inclusion of Roma children and children of other ethnic minority groups in the Slovenian educational system is based on the principle of equal opportunities and includes special rights with regards to their mother tongue and culture, the situation of Roma pupils in primary school is worse than that of pupils from the majority population. The dropout rate among Roma children is still much higher than that of their Slovene counterparts and Roma pupils are over-represented in primary schools with adapted programmes. There is no data available at the national level on the exact dropout rate but partial research studies and the latest population censuses show that the share of Roma with incomplete primary school education is much higher that that of ethnic Slovenes. One of the reasons for this is the lack of knowledge among Roma children of the Slovene language; in standard tests of children upon entry into primary school, Roma children's results are usually worse, mostly because they fail to understand the tests or the manner of testing was in discrepancy with their culture. Adequate didactics and methodology for the teaching of the Roma language have still not been developed (exercise notebooks, Roma language textbooks, etc.). Moreover, the number of teachers with an adequate command of the Roma language is still low.[16]

Therefore, the Slovenian NAP 2004–2006 strongly emphasizes the education of the Roma. The goals mentioned for education policies are to improve the educational performance of Roma pupils, respecting their culture and, at the same time, involving the majority in this process. Among the policies envisaged by the NAP, two aim at language education policies: the development of methods for teaching Slovenian to Roma pupils; and the introduction of the Roma language as an optional subject. Furthermore, the inclusion of Roma culture, history and identity in the implementation of the school curriculum is included.

(i) Methods for Teaching the Slovene Language to Roma Pupils

This strategy is currently being developed and no concrete measures have yet been taken. However, the possibility of teaching Slovene as the second language in primary school

[16] Žagar, Komac, Medvešek and Bešter, "Final Report Slovenia …", 66.

systems is expected to bring about better school results of Roma pupils as a direct outcome. In the long term, a better command of the Slovene language is supposed to make inclusion into society easier for Roma children, by enabling them to attain higher education and enter the labour market. Activities aimed at adjusting didactics and methodology accordingly are foreseen for the period 2005–2010.

(ii) Introduction of the Romani Language as an Optional Subject

The National Action Plan for the Implementation of the Strategy on the Education of Roma in the Republic of Slovenia, adopted in August 2005, and the NAP 2004–2006 propose the introduction of the subject of Romani culture and language in primary schools, with three main expected outcomes. Firstly, the preservation of the Romani language is an essential element of Romani culture. An improved command of their mother tongue will also lead to a better command of the Slovene language and will contribute to an overall better school performance. However, to implement this project, the necessary conditions need to be in place, such as the standardization of the Romani language and the preparation of teaching materials, conditions which have not yet been created. Preparations in that direction are ongoing but the introduction of the Romani language into the curricula from the first grade onwards is still some way away. According to the research team from Slovenia, the appeals of experts that mother tongue learning is not only the right of members of ethnic minorities to preserve their ethnic and cultural identity but also a necessary condition for good school performance have not yet been translated into policies.[17]

(iii) Introduction of Roma Teaching Assistants

One of the expected outcomes of introducing Roma teaching assistants in primary school in Slovenia is to build up a positive Roma identity and higher self-esteem among Roma children, through better school performance and decreases in the rate of school dropout among Roma pupils. The Roma assistants work at class, school and community level and their roles vary, as professional standards have not yet been established for this post. The NAP 2004–2006 plans the adoption of professional standards for the Roma assistant position no sooner than 2008, while the assistant has been introduced regionally as a pilot

[17] *Ibid.*, 92.

project. Therefore, it is difficult at this point to make statements on the effectiveness of this measure. However, as it is the only measure in terms of education policy that is already in place, the Slovenian research team ventured to ascertain the impact of the Roma assistant policy.

The objectives of the policy are manifold: the Roma assistant's role is to contribute to the Roma children's improved school performance, raise their self-perception, establish improved communication between them and teachers, and their parents and teachers, and to decrease the school dropout rate among Roma pupils. The effects of introducing Roma assistants can be evaluated by looking at different aspects: improvement in school performance, increased interest of Roma pupils in attending school, increased interest of Roma parents in the school work of their children, improvements in the relations among pupils in class and better inclusion of Roma pupils in after school activities. In 2005, the first generation of Roma assistants was educated in a one year pilot program,[18] which consisted of theoretical (lectures) and practical (work experience at schools or kindergartens) components. In 2006, the Regional Development Agency Mura Ltd carried out a survey to evaluate the work of Roma assistants participating in the project. Their work was evaluated in two ways: through the subjective estimations of the Roma assistants themselves and of the teachers and head teachers who worked with them; and by objective indicators, such as school reports (documentation) on the performance of Roma pupils. The survey discovered that, in general, the Roma assistants positively evaluate their own work and the Roma pupils' progress. The teachers and head teachers who were asked about the effect of Roma assistants on the school performance of Roma children attributed the better learning results of Roma children to the Roma assistants. Most teachers expressed the conviction that the Roma assistants' work contributed to better communication between Roma pupils and other pupils, between teachers and Roma pupils, and between teachers and Roma parents. The majority also believed that Roma assistants had a great impact upon better inclusion and motivation of Roma pupils at school.

[18] The project 'Roma Education and Information Centre' is coordinated by Regional Development Agency Mura Ltd and so is financed by the Community Initiative Equal. The anticipated results of the project are: the establishment of a national professional standard for Roma assistants; education and training of the first generation of Roma assistants; introduction of the Roma assistants' work in schools and evaluation of their work; the establishment of the Roma Education and Information Centre and the legal basis for its operation.

The evaluation of school documents provides more objective indicators, such as improved school performance, greater motivation on the part of Roma children or more active participation in school work. However, it proves difficult to attribute with certainty the positive changes exclusively to the Roma assistants' work. Changes might have been brought about by the gradual reformation of primary school and the transition from an eight year primary school system to a nine year primary school system since 1999/2000. As the objective observations of increased performance of Roma children are actually in accordance with the subjective perceptions regarding the success of the Roma assistants' work, however, it may be anticipated that Roma assistants to a large extent contributed to the positive changes.[19]

2. The Czech Republic

(a) Promotion of Social Inclusion and Equal Opportunities for Ethnic Minorities in the Czech National Action Plan on Social Inclusion (2004–2006)

The Czech NAP does not explicitly establish a connection between cultural policies and social exclusion but its overall orientation emphasizes the economic aspect of social exclusion and therefore promotes policies for employment. The NAP also emphasizes the issues of education, including extracurricular education. Here, the document does not, as one would expect, establish a link to cultural aspects of social inclusion. However, stressing the importance of education at least partially balances the overall concentration of the NAP on economic aspects. The Czech NAP pays attention to the issue of access of disadvantaged groups to education, thus directly concerning ethnic minorities, a point that is repeated in the section dealing with the situation of the Roma. Access to education is, however, dealt with only in close relation to the Roma community; in relation to immigrants, only the creation of foreign language textbooks is mentioned. Extracurricular education and further education is mentioned only in relation to the general population.[20]

(b) Assessing Language Education Policies in the Czech Republic

In the Czech Republic, the educational situation of the Roma is similar to that in Slovenia. It is reported that "around 60% do not complete elementary education, 29%

[19] Žagar, Komac, Medvešek and Bešter, "Final Report Slovenia …", 103.
[20] Horáková and Bareš, "Final Report Czech Republic …", 58–60.

complete only elementary education and 9.3% complete secondary or upper secondary education".[21] The general situation has improved in the last decade but the status of the Roma has not improved in comparison to other ethnic groups. Educational policies aimed at improving the situation of the Roma are similar in regard to design and expected outcomes to the Slovenian ones. The overarching goal of educational policies for the Roma is 'equalizing action', i.e., to help Roma children "to bring about a significant change in the present situation in which a high number of Roma children attain only the lowest possible level of education".[22] Among the main policies, the preparatory classes programme is worth mentioning here, as it is addressed to all children from socio-culturally and linguistically disadvantaged environments and therefore it is not a policy exclusively designed for Roma children. This programme started in 1997/1998 with the goal of preparing the entrance of disadvantaged children into primary school and to limit their risk of failure during the first cycles of primary school, translating into an increase in the school performance of pupils over the years. It is not yet possible to gather reliable data on the specific effects of this policy and, in particular, it was not possible to gather disaggregated data for Roma pupils in particular preparatory classes or data on education assistants and support for Roma higher and university education. Roma assistants were also introduced in the Czech NAP; they work mostly in preparatory classes and in the first grades of primary schools, while projects aim at extending their role to higher classes in primary schools. Some of the most relevant indicators in this case are the level of education attained, the school performance of the Roma (in terms, for example, of marks, etc.) and the discrimination level of the majority. Also in this case, no figures are available to assess the impact of the education assistant policy on Roma children's performance. As each school is individually responsible for hiring assistants and for monitoring and evaluation, no data are collected in a systematic way from the centre. As no data are available to assess the effects of the Roma assistant policy on the achievements of Roma pupils, no comprehensive comparison between Slovenia and the Czech Republic can be conducted. Nevertheless, some figures related to the subjective assessments of head teachers in the schools where Roma assistants work suggest that attitudes are more favourable in Slovenia and that the perceived utility of Roma assistant activities is lower in the Czech Republic. Although observers expressed a generally

[21] *Ibid.*, 88.
[22] *Ibid.*, 87.

favourable attitude towards these policies and their impact, one of the major shortcomings noticed has been the lack of coordination between ministry policies, which has had a negative impact on the effectiveness of the overall management of funds allocated to policies in favour of the Roma. Hence, "to increase the effectiveness of the implementation of the Roma Integration Policy Concept, it is necessary to re-assess the current financial support system and to propose a framework that will permit the implementation of the long-term measures proposed in the Concept at the local level and in cooperation with all the relevant partners".[23]

3. Slovakia

(a) Promotion of Social Inclusion and Equal Opportunities for Ethnic Minorities in the Slovakian National Action Plan on Social Inclusion (2004–2006)

The Slovakian National Action Plan on Social Inclusion focuses in a rather one dimensional manner on economic inclusion. The Slovak research team therefore concluded that the "National Action Plan of the Slovak Republic Regarding the Decade of Roma Inclusion 2005–2015", approved by the government of Slovakia, represents a more usable, though rather limited reference. This document, introduced by the World Bank and the Open Society Institute, approaches issues of social inclusion in a more complex way. It was approved and adopted by the Slovakian cabinet as part of the Decade of Roma Inclusion, launched on 2 February 2005 in Sofia, Bulgaria. One of the NAP's top priorities is education:

> The integration of the Roma to a great extent requires that the negative attitudes of the majority population be changed, perhaps by systematically altering the content of education. In the field of education, human development with special emphasis on marginalized Romany communities is implemented on three basic levels: 1. training teachers and assistant teachers; 2. creating textbooks and manuals for teachers and parents; 3. transforming the curriculum.[24]

[23] *Ibid*., 94.
[24] Government of the Slovak Republic, *Národný akčný plán Slovenskej republiky k Dekáde začleňovania rómskej populácie 2005–2015 [National Action Plan of the Slovak Republic Regarding the Decade of*

The document establishes basic goals and identifies indicators for monitoring the impact of measures to improve the access of Roma children to education and the quality of their education. However, the document is extremely vague in formulating these goals and fails to explain exactly how they will be achieved. Furthermore, meeting these goals will require substantial funding from the state budget but the document foresees the necessary funding only for 2005, not beyond. Nevertheless, the Decade of Roma Inclusion provides a political framework for the governments of the participating countries to declare their willingness to help their Romani citizens integrate and overcome their social exclusion. Given that the programme will span a decade, whether its goals are achieved or not depends largely on future administrations in the different countries and their level of commitment.[25]

(b) Assessing Language Education Policies in Slovakia

In Slovakia, where the Roma represent 1.7% of the population (unofficial estimates that take into account the so-called self-declaration problem regard a figure of around 9% as more realistic), the educational situation of Roma pupils is similarly bleak to that in the other two Central European countries presented above. Among the key factors mentioned as reasons, language and cultural barriers regularly emerge. Insufficient knowledge of the Slovak language and the lack of availability of education in the Romani language are cited as a significant cause of the poor performance of Roma children, especially those from isolated settlements. According to the findings of the State School Inspection, in 99% of schools with pupils from socially disadvantaged backgrounds (mainly Roma) surveyed, the Romani language was not used in the teaching process in the school year 2002/2003. The remaining 1% was composed of a few cases of use of Romani by Roma teaching assistants. While there is no specific information on the share of Roma children who do not speak Slovak, general data show that some 60% of Roma have Romani as their mother tongue. Language barrier issues are frequently cited as the cause for the need for Roma assistants, one of whose key roles is seen as translating to children. A number of available reports argue that cultural barriers also represent a major cause of poor performance of Roma children in the education system. Children from segregated

Roma Inclusion 2005–2015] (Úrad vlády SR, Bratislava, 2005), cited in Vasecka, Sadovská and Vašečková, "Final Report Slovakia …", 53.

[25] Vasecka, Sadovská and Vašečková, "Final Report Slovakia …", 53–55.

settlements often enter the system unadjusted to the cultural habits of the majority. They are often used to a less hierarchic environment and lack a feeling for authority. Traditional education among the Roma has been home education geared towards community survival, with less emphasis on individual performance.[26] Such language and culturally based barriers can be bridged by pedagogical assistants for Roma children. Roma pupils are often automatically assigned to special schools, where even basic education is very limited. The debate among policy makers covered different approaches to resolve this issue, in particular whether or not special schools should be abolished, what (if any) should be the role of Romani in schools and the possible role of multicultural education or intercultural activities. The policies designed and partly implemented in the framework of the Slovakian NAP on Social Inclusion address the primary school level, where the general goal is to increase the educational performance of Roma pupils by improving the training and preparation of pupils and by reducing the percentage of Roma children attending special schools/institutions, mainly by improving the material conditions in which Roma pupils live and study. According to the government, school attendance has increased dramatically and Roma children are performing much better but, at present, no hard data has yet been published to support this claim. Also in Slovakia, Roma assistants are active, with early projects in this direction having been carried out by nongovernmental organizations for more than ten years. The government has only started to implement this policy more systematically since 2005. Again, no data is available as to the effects of this policy or to costs. The second field of intervention in favour of the Roma concerns higher education. The main goals that the government wants to pursue are to increase the percentage of Roma attending high schools and to increase the percentage of Roma attending university education. Finally, efforts should be made to establish a study department of Romani language and literature in universities. The third area of intervention envisaged in the NAP is supporting the lifetime education of Roma with unfinished educations from the perspective of applying for a job on the labour market. The goal would be to reduce by 50% the ratio of Roma with unfinished educations.

[26] *Ibid.*, 93.

4. Sweden

(a) Promotion of Social Inclusion and Equal Opportunities for Ethnic Minorities in the Swedish National Action Plan on Social Inclusion (2004–2006)

Sweden has developed ambitious NAPs, aimed primarily at alleviating poverty through increasing work and lifelong learning. Focuses on culture and the social inclusion of ethnic minorities are touched on in policies on school improvement as well as on integration into the labour market. The Swedish NAPs follow the basic objective of substantially reducing by 2010 the number of people at risk of exclusion because of social and/or economic vulnerability, irrespective of ethnic background. In a 2005 report concerning the progress in meeting the objectives set out in the NAPs, the Swedish government stated that integration goals had to be mainstreamed into all activities. Among these goals were equal rights, obligations and opportunities for all irrespective of ethnic and cultural background.[27]

The measures to achieve these goals primarily focus on promoting employment. In 2004, Sweden adopted an action plan for employment that specified an inclusive labour market with emphasis being placed on those groups whose participation is below normal (immigrants, young people and the elderly). In regard to education, an NAP policy for pre-schools is expected to ensure that all children whose native language is not Swedish are given support to improve their ability to communicate both in Swedish and in their native language. A four year pilot project involving subject teaching in the pupils' mother tongues in grades 7–9 of compulsory school in segregated areas intends to improve the education situation.[28]

(b) Assessing Language Education Policies in Sweden Aimed at the Social Inclusion of Immigrants

In Sweden, as a matter of principle, no statistics are established with reference to ethnicity. Thus, integration goals are measured by monitoring statistics related to 'persons born outside Sweden' or persons 'who were born in another country'. However, even

[27] National Action Plan (NAP), 2005. "Sweden's Report on Measures to Prevent Poverty and Social Exclusion" (Regeringskansliet, Stockholm, 2005), at http://ec.europa.eu/employment_social/social_inclusion/docs/2005/se_en.pdf.
[28] See Hetzler, Persson and Lundin, "Final Report Sweden …", 11–16.

these statistics are not available for all of the indicators set out in the NAPs. Sweden is one of the European countries with the largest proportion of inhabitants born in another country; according to the 2002 census, 11.8% of the Swedish population are born in another country and an additional 9.6% of the population born in Sweden has at least one parent who was foreign born.[29]

Also in Sweden, there are major differences in the educational performance of these two groups. People with a foreign background generally perform worse than people with a Swedish background and significant differences among the two groups exist also in the domain of adult education.

Pursuing better social integration through language training in education has been one of the main policy interventions adopted in Sweden. Improving the communication capabilities of minorities is seen as a cornerstone policy to foster social integration. Two policies in particular are worth noting: the policy to strengthen the competence in the native languages of children in compulsory school together with the teaching of Swedish as a second language; and the policy that aims to increase the Swedish language skills of adult immigrants. All immigrants are labelled as 'non-Swedish born', without further distinguishing their ethnicities, which does not allow for distinction between different needs and backgrounds.

In the case of the first policy—language training both in the native language of 'non-Swedish born' pupils and in Swedish—the impact of language training on the equality in school performance of Swedish born and non-Swedish born was the focus of the study. The policy is based on the idea that both languages have to be strengthened, in a similar manner to the policy of strengthening the Romani language in Slovenia. Here, the utility of teaching Swedish receives no particular explanation. On the other hand, two main reasons are given to justify teaching in the native language: better development of the cognitive capacities of pupils and ideological reasons related to freedom of choice, i.e., the right to maintain links with one's original cultural heritage. A question immediately arises. Which language should be strengthened, the native language or the language spoken in the country of immigration? After careful deliberation, Sweden has answered

[29] *Ibid.*, 22.

this question with 'both', arguing that children need to establish a cultural identity in a native language in order to establish a good basis for the language of the country of immigration. The language theory is based on research designed to show the development of cognitive capacity. Without a firm language as a base language, the cognitive development of a child who immigrated to another country with another language develops cognitive learning problems. Swedish society has accepted this principle of child development and thereby strengthens the native language used actively at home in order to create the best possible conditions for the child's assimilation into a Swedish-speaking society. The study wanted to assess if this language training policy has been effective in reducing the percentage of students born outside Sweden with incomplete final grades from compulsory school.

Another policy to be assessed in terms of its effect is the provision of classes in native languages at pre-school level. According to the Swedish NAP, "pre-schools should strive to meet every child with another native language other than Swedish with support to develop his capacity to communicate just as well in Swedish as in his native language".[30] Traditionally in the Swedish system, children attending pre-schools with a native language other than Swedish (12% in 2001) participated in some form of supporting activity in their native language. In 1990, for example, 60% of children in pre-schools received such support. However, due to the strong decentralization of the Swedish educational system beginning in the early 1990s, in 2005 this percentage felt to 14%, although, according to observations, the number of children in need of special support has increased. The main reason for this is that "although home language activities in pre-schools are a national goal, when costs were transferred to local authorities programmes were substantially cut. This indicates that local authorities do not see this activity as a priority."[31] The same trend is visible in compulsory school, where the decentralization of the responsibility for education from the centre to local authorities likewise brought about a decrease in the supply of classes in native languages. The main reason to explain this trend is that the provision of classes in many languages often is not feasible for small school districts. Finally, the second language training policy adopted in Sweden for adult education (Swedish for immigrants, Sfi) was examined by the researchers. This

[30] *Ibid*., 26.
[31] *Ibid.*

programme solely focuses on teaching the Swedish language as the key to access to the domestic labour market. Although for this programme the per learner cost has increased from 1996 to 2001, the percentage of immigrants who stopped attending the programme before completion does not seem to be negatively related to the resources allocated to Sfi, which does not necessarily indicate a problem but could be related to the fact that immigrants leave the programme because they have found a job or more effective ways of learning the language.

The culture and language indicators show that the programmes introduced to foster a multicultural Swedish society have proven inadequate in helping children with non-Swedish backgrounds to gain equality with their schoolmates with Swedish backgrounds. Programmes of classes in the native languages have not been sufficient to change this discrepancy. The research study concluded that the programme of social inclusion of adults through strengthening their competency in the Swedish language has not produced the positive results once assumed either. The large number of immigrants that drop out of Swedish language courses is indicative that acculturation to a new country by assimilating the language is problematic. Although Sweden has placed emphasis on the importance of multiculturalism and the importance of equality among all of Sweden's residents, the production-line approach to the Swedish system sends a clear assimilation message. It is often argued that a reason for failed integration in Sweden is those with a non-Swedish background do not know the Swedish language well enough to function in the contemporary job market. This is a lively debate that is often disputed. However, the fact remains that immigrants have a much higher rate of unemployment than native born Swedish individuals.[32]

B. Language Education Policies in Estonia and Latvia Promoting the Social Inclusion of Russian-speaking Minorities

Estonia and Latvia have been facing similar challenges after independence, such as the reorganization of the education systems, the legitimate reassertion and promotion of national identity and culture, and the management of large Russian speaking-minorities. Their approach toward social inclusion is very similar: they place strong emphasis on

[32] *Ibid.*

employment and proficiency in national languages is regarded as the necessary condition for having better access to the job market. However, educational reforms have been adopted in both countries in recent years to increase the knowledge and the position of national languages in society, as well as among minority groups. Although the results of these reforms are not available yet, the trend to date seems inclined in a positive direction in both countries.

1. Promotion of Social Inclusion and Equal Opportunities for Ethnic Minorities in the Estonian National Action Plan on Social Inclusion (2004–2006)

In Estonian documents on social inclusion policies, social exclusion is defined primarily with respect to the employment situation of a person. Hence, a good starting point to understand Estonian inclusion policies is to observe the economic and demographic trends in the country. From 2000–2005, the Gross Domestic Product (GDP) of Estonia has steadily increased at a rate between 7.1% and 10.5%. During the same period, the unemployment rate has decreased from 12.8% to 7.9%.[33] However, although the overall economic outlook of the country is promising, employment remains the main focus of the Estonian NAP on Social Inclusion. This is due to persistent differences in unemployment rates and average per capita income among ethnicities. Among the unemployed, non-ethnic Estonians are much more strongly represented than ethnic Estonians. In 2004, 31% of the population in Estonia belonged to an ethnic group different from the Estonian one and 41% of the unemployed belonged to a different ethnic group than Estonian. Differences among ethnic groups exist also with respect to the level of the average income. It has been brought to light that "the average income of Russians and other non-Estonians is slightly lower compared to ethnic Estonians".[34] On the other hand, low demographic growth and migrations in the labour force towards Western Europe represent serious challenges to the economic growth of the country. The inclusion of unemployed people into the labour market would compensate this shortage in the labour force. These resources are concentrated in some particular regions in the northeast and southeast of the country, populated mainly by Russian-speaking non-ethnic Estonians. Poor knowledge of the Estonian language is often cited as the main reason for these

[33] Data from Eurostat.
[34] Kirch, Tuisk and Talts, "Final Report Estonia …", 12.

regional differences. A survey of the situation of unemployed youth in the Tallinn and Jõhvi regions concluded that:

> [T]here is no significant difference in the level of educational potential among majority and minority nationalities but at the same time the indicators of linguistic competence differ, which determine possibilities in labour careers at large, and regional differences are clearly noticeable.[35]

Inclusion policies in Estonia thus focus on the development of linguistic skills in Estonian for persons belonging to national minorities.

2. Promotion of Social Inclusion and Equal Opportunities for Ethnic Minorities in the Latvian National Action Plan on Social Inclusion (2004–2006)

A similar picture can be observed in Latvia. The situation of minority groups and, in particular, of the Russian-speaking minority, is similar to that of Estonia, although ethnic diversity is higher in Latvia. Latvia has experienced a strong economic development from 2000–2005, with an average annual rate of growth of GDP of around 7.9% in real terms and an unemployment rate that has decreased from 16.4% in 2000 to 8.9% in 2005.[36] Employment and participation in the labour market play a crucial role in the definition of social inclusion. Although "there are no substantial differences in poverty and social exclusion indicators between Latvians and non-Latvians, except for a very small minority of Roma",[37] some differences in employment rates still exist among different ethnic groups. In 2002, there were "50.8% of unemployed persons of Latvian ethnicity in the total number of unemployed, 35.4% of Russian origin and 13.8% represented other ethnicities",[38] demonstrating a slight over-representation in unemployment of ethnic groups other than Latvian. Poor knowledge of the Latvian language is seen as the major factor in explaining different patterns in employment rates among ethnic groups.

Ethnic integration related policies in Latvia are mainly defined in the National Programme "Society Integration in Latvia" (2001–2006). The programme covers cultural policies, language policy, education policy, civic integration policy and, partially, social

[35] *Ibid.*, 26.
[36] Data from Eurostat.
[37] Žepa, Lāce, Kļave and Šūpule, "Final Report Latvia …", 19.
[38] *Ibid.*, 18.

integration policy. The goals for the language policy are also set out in the Language Laws of 1989, 1992 and 1999.[39]

3. Assessment of Language Education Policies in Estonia and Latvia

Both in Estonia and in Latvia, educational policies—and language policies in particular—are regarded as the key for the promotion of social inclusion. The "Integration in Estonian Society 2000–2007" programme is the framework educational policy for minorities in Estonia. The programme is articulated in four sub-programmes ('education', 'the education and culture of ethnic minorities', 'the teaching of Estonian to adults' and 'social competence'). However, no specific data has been collected as to the implementation of these sub-programmes, except for expenditures for language courses between 2000 and 2005. These show a fluctuating trend.[40] Particularly interesting is the bilingual education programme (Estonian–Russian) started in four schools in 2000 on the basis of the Canadian experience (134 pupils in total). Today, more than 2,500 pupils attend this programme but initial data on the results achieved will be available only at the end of 2007. The advantage of bilingual programmes is that, together with the development of skills in Estonian, it allows for the maintenance of the linguistic and cultural heritage of Russian-speaking children. Census data shows that the knowledge of Estonian among Russian-speakers is increasing but it is not possible to evaluate to what extent educational policy outcomes explain this improvement, as nothing is said about the role played by other factors, such as the media.

In Latvia, a specific programme called "Society Integration in Latvia" (2001–2006) addresses the social exclusion of ethnic minorities. Language policy, in particular, plays a major role in this programme, with emphasis on the reinforcement of Latvian as an official language in all the most important domains of society. The reform of the Latvian educational system started in the 1999/2000 school year with a preparatory phase until 2003. Four different models of bilingual education have been designed and implemented

[39] Detailed analysis of the language policies in the Baltic countries can be found in: Priit Järve, "Language Battles in Baltic States: From 1989 to 2002", in Farimah Daftary and Francois Grin (eds.), *Nation Building, Ethnicity and Language Politics in Transition Countries* (LGI, Budapest, 2003), 73–106.
[40] Kirch, Tuisk and Talts, "Final Report Estonia …", 43.

by the Ministry of Education, all of which revolve around the strengthening of the Latvian language.[41]

Assignments for additional payments for teachers of Latvian and of subjects in Latvian in minority education establishments have steadily increased from 1999 to 2006 (+167%). In 2006, the total amount of additional resources allocated to payments of teacher was EUR 1,446,456. Moreover, more than EUR 12 million has been spent from 1996 to 2006 for the National Latvian Language Training Programme (since 2004, the National Latvian Language Training Agency), whose main goal has been to "elaborate manuals for minority education programmes, provide professional training courses for teachers in teaching in Latvian and bilingually, as well as Latvian language courses for the teachers and other professional groups".[42] The outcomes of bilingual programmes can at this point hardly be assessed, as preliminary results will be published during 2007. A complete assessment will not be possible before 2009, when the first generation of students will have graduated at the secondary level of education.

IV. Perceptions and Acceptance of Language Education Policies in the Member States

In Slovenia, Slovakia and the Czech Republic, similar policies have been designed and implemented to promote the social inclusion of the Roma population through education policies. All three countries adopted a Roma assistant policy and preliminary preparation for compulsory school. In the Czech Republic and Slovakia, some forms of support for the Roma at a higher education level are envisaged. Qualitative reports, focus group conclusions and data gathered in surveys confirm that policies such as Roma assistants or preparatory classes have had some general positive impacts, even if it is difficult to associate cost figures to them. However, one can discern the general direction of changes and improvements. While in the case of Roma assistants in Slovenia and in the Czech Republic an overall improvement has been reported, in the Swedish case preliminary results suggest that policies adopted to reduce the difference in educational performances between Swedish-born and foreign-born students have not been effective.[43] Also, the

[41] Žepa, Lāce, Kļave and Šūpule, "Final Report Latvia …", 32–34.
[42] *Ibid*., 43.
[43] Malloy and Gazzola, "Final Report on 'The Aspect of Culture …", 69.

language education policies in Estonia and Latvia display very similar streaks and there seems to be some improvement in the language acquisition of the Russian-speaking minorities of the respective official language. However, a positive trend as to the decrease in representation of the Russian-speaking population in unemployment cannot yet be denoted.

Comparing the policies and their effectiveness, it becomes obvious that a policy firstly needs to influence those contextual elements that are acknowledged to be important in the creation of a more favourable framework for integration in order to be successful and have sustainable positive outcomes.[44] That means that, for the creation of a positive environment for the implementation of policies, the ground has to be prepared. First of all, the attitude of the minority needs to be positively influenced in regard to policy interventions. It has been reported that the Roma themselves are sometimes the fiercest opponents of social inclusion programmes. This requires that particular attention has to be paid to the interplay between the self-representations of the minority and the character of the policy proposed. One of the strong points of the Roma assistant policy has been the active involvement of families in the programme, which thus creates positive attitudes in the environment surrounding the implementation of school reform and avoiding possible tensions between the school and family spheres. Another condition is that policies explicitly take into account the attitudes of the majority. The presence of prejudices and stigmatization has been reported in almost all countries under evaluation; hence, it needs to be explicitly included in policy design. In Slovakia:

> A large part of the majority population perceives the presence of the Roma in Slovakia as a burden and this feeling is even more intense when they think of Roma being in their proximity […] A large part of the majority population forms its attitude to the Roma under the influence of prejudices and stereotypes originating in ethnocentrism. The high degree of refusal and widespread prejudices directly influences the behaviour of the Roma, who often just fulfill the idea of the majority population about them.[45]

[44] *Ibid.*, 69.
[45] Vasecka, Sadovská and Vašečková, "Final Report Slovakia …", 107.

Finally, long lasting intervention is a precondition to allow for well structured and integrated programmes and therefore to avoid short-term and small-scale activities, the presence of which is quite often a symptom of lack of long-term political commitment.[46]

Reforms of educational systems in the two member states of Estonia and Latvia have only started recently, between five and ten years ago. Considering that educational systems are structurally slow to respond to changes, it would be premature to expect clear results for evaluation of the effectiveness and cost-effectiveness of bilingual education programmes. However, general attitudes toward language policies can be observed. Reforms can be carried out with general consensus or be dictated by the state, which directly affects the attitudes and behaviours of those concerned. Attitudes, as mentioned before, play a crucial role in creating a favourable framework for inclusion policies to be successful. According to an interview with Estonian-speaking and Russian-speaking students carried out in Estonia in 2006, many Russian-speaking students claim that "ethnic differentiation takes place in Estonia and the main factor of this process is the special status of the Estonian language as the national language".[47] Language policy seems to be perceived by the interviewees as a possible source of exclusion rather than as promoting inclusion in mainstream society. According to the results of the same interview research, "most of the Russian-speaking students who participated in the interviews believe career possibilities are decent and their opinions about gaining higher education in Estonia are pessimistic".[48] This pessimistic view on the part of the Russian-speaking population could possibly have been avoided by positively influencing the attitudes of the minority toward language policies before their introduction.

In Latvia, it has been reported that "students and teachers have a positive attitude toward bilingual education, believing that it represents a compromise in terms of minority education reforms",[49] that "dominant attitudes about the shift toward a system in which most classes are taught in Latvian, however, were negative. During the latter phase of education reform implementation, negative attitudes among target groups, particularly

[46] See, for example, Horáková and Bareš, "Final Report Czech Republic …", 94.
[47] Kirch, Tuisk and Talts, "Final Report Estonia …", 24.
[48] *Ibid*.
[49] Žepa, Lāce, Kļave and Šūpule, "Final Report Latvia …", 39.

students, have been exacerbated."[50] According to some experts, the reform has been set up in a hurry, without clear criteria and mechanisms for evaluation.[51] In conclusion, more attention should be paid in both countries to the political atmosphere in which reforms are carried out and more efforts should be made to promote positive attitudes towards language education reform.

V. Conclusion: Can the OMC Promote Cultural Diversity in the European Union?

Even though, at this stage, no clear conclusions can be drawn on the effectiveness of language education policies on creating equal opportunities for all, the NAPs evaluated have emphasized the importance of such policies in the process of promoting the social inclusion of ethnic minorities. Some NAPs attribute the same importance to those policies that involve both majority and minority groups in mutual cultural understanding processes. However, the study also revealed a major problem related to the policies assessed: not all clearly aim at the promotion of cultural diversity—some appear to follow the goal of assimilation, which is particularly visible in language policies. Cultural hegemony is a phenomenon whose appearance cannot be avoided in multiethnic and multicultural societies and it needs to be seriously addressed by the European Union and its agenda of 'Unity in Diversity'. In its Joint Report on Social Inclusion from March 2006,[52] the European Commission highlighted culture as a precious factor of difference and promoted the celebration of different cultures within a single society, emphasizing access to and participation in cultural activities as a core part of human existence. Hence, increasing access for minorities to the cultural activities of the majority community can foster intercultural understanding in multiethnic societies, under the conditions that the aim is not assimilation. One of the major results of the assessment of language education policies and positive effect on the social inclusion of ethnic minorities in the study presented here is therefore that ethnic minorities should be seen as internal resources enriching society. Understanding this requires dialogue in which the majority is encouraged to more strongly involve the ethnic minority population in the labour market and which also convinces the minority members of their value to the society they live in.

[50] *Ibid.*
[51] See, in particular, *ibid*., 51 and 74.
[52] European Commission, "Joint Report on Social Inclusion …"

This value includes the different cultural and linguistic traditions these minorities contribute to mainstream society.

If the status of social integration of ethnic minorities in the member states under evaluation and their eventual social inclusion are indicated by improved intercultural relations between minorities and majorities, it becomes obvious that the six NAPs evaluated are only an initial step toward the realization of the goals set out in the Lisbon Strategy. It has been argued that the OMC is too small and insignificant to address such an immense task as improving the social inclusion of excluded groups in the EU[53] and that it is merely a dialogue process because the OMC policy has no supported legal foundation in Community law and depends on the goodwill of member states.

A major problem encountered in the evaluation of policies aimed at better inclusion and access to opportunities of ethnic minorities is that it suffers from a lack of clearly defined statistics concerning ethnic minorities in all of the countries of this first group, generally as a matter of principle in these countries. However, in order to develop effective measures to address the social exclusion of ethnic minorities and create conditions conducive to their access to opportunities, data needs to be available on their current situation. The OMC again appears to be too soft a tool to promote the collection of reliable data in EU member states, relying solely on their voluntary cooperation.

[53] See, for example, Mary Daly, "EU Social Policy after Lisbon", 44(3) *Journal of Common Market Studies* (2006), 461–481, at 478.

Biographical Note

Ulrike Schmidt holds a Masters degree in Conflict Resolution from the Department of Peace Studies in Bradford, England, and the degree of MA in Languages and Literature from the University of Trier, Germany. Her research in Bradford revolved around the issues of nationalism and democratization developments in the Balkans region, with particular emphasis on policies towards minorities. She is currently enrolled in a PhD programme at Kiel University, researching the issue of minority languages in state-building processes in Western and Eastern Europe.

Fit for Purpose or Faulty Design? Analysis of the Jurisprudence of the European Court of Human Rights and the European Court of Justice on the Legal Protection of Minorities

Anneleen Van Bossuyt[1]

Abstract

This paper examines whether the European Court of Justice (ECJ), even in the absence of explicit competences, could play a role in the creation of a European Union policy promoting the protection of minorities and thus preventing their social exclusion. Comparison is made with the jurisprudence of the European Court of Human Rights (ECtHR) because of the cross-fertilisation between the two Courts.

The author argues that there is a conspicuous absence in ECJ jurisprudence on the rights of minorities to their culture and identity, whereas the jurisprudence of the ECtHR in this regard is progressive. In contrast, the ECJ takes the fore when it comes to the protection of the linguistic rights of minorities.

In conclusion, the author argues that the ECJ is not fit for purpose, but that to speak of a faulty design is taking a step too far.

I. Introduction

"Europe is the Europe *of* minorities".[2] The EU can indeed be thought of as a patchwork of minorities.

The Rome Treaty paid no attention to minority protection. However, it is my assertion that the EU should develop an efficient policy for minority protection, not only to fulfil its role as defender of human rights on the international scene but also to maintain stability within the EU itself. Neglecting the minority problem could be a destabilizing factor. In spite of this, the member states did not assign any explicit competence to the EU to take action on this sensitive issue in the Nice Treaty.

This paper will examine to what extent the EU has, even in the absence of explicit competences, developed a policy for minority protection. This will be effected through an analysis of the jurisprudence of the European Court of Justice (ECJ). The choice to analyze the case law of the ECJ is not arbitrary. The ECJ has played a pioneering role in the sphere of protection of human rights by qualifying them as "general principles of Community law

[1] The author would like to thank Stanislas Adam, Kirstyn Inglis and Peter Van Elsuwege for their comments on an earlier version of this article. The usual disclaimer applies.

[2] Romano Prodi quoted in *Hungarian News Agency*, 15 April 2001 (emphasis added).

common to the Member States".[3] The question is whether it could do the same for the protection of minority rights.

Account must also be taken of the jurisprudence of the European Court of Human Rights (ECtHR), because of the cross-fertilization between the ECtHR and the ECJ.[4] Moreover, the Council of Europe was the first international organization to develop treaty protection for minorities by creating the Framework Convention for the Protection of National Minorities (FCNM) in 1994 and embraces a larger territory than the European Union with substantial minority populations, for example, in the Balkans. It is interesting to scrutinize whether the ECtHR was able, on the basis of a general human rights instrument (the European Convention on Human Rights and Fundamental Freedoms (ECHR)), to develop a consistent minority protection jurisprudence that could serve as an example for the ECJ.

The length of this study does not permit an examination of all of the judgments of the ECJ and the ECtHR that are linked to minority protection or could have an impact thereon.[5] Therefore, the paper will concentrate on certain milestone judgments of the two courts where minority issues have arisen, in order to gain insight into their respective attitudes towards minority protection. Ultimately, the aim is to determine whether this overall approach to minority protection at EU level is fit for purpose, namely by leaving it to the ECJ to fill the legal gaps in the European treaties.

[3] ECJ, case 29/69, *Erich Stauder*, judgment of 12 November 1969, [1969] *ECR* 419, para. 7; ECJ, case 11/70, *Internationale Handelsgesellschaft*, judgment of 17 December 1970, [1970] *ECR* 1124, para. 4. In this "jurisprudential chart" of fundamental rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) has "special significance". ECJ, case C-299/95, *Kremzow*, judgment of 29 May 1997, [1997] *ECR* I-2629, para. 14.

[4] For an extensive analysis, see, for example, Sionaidh Douglas-Scott, "A Tale of Two Courts: Luxembourg, Strasbourg and the Growing European Human Rights Acquis", 43(3) *Common Market Law Review* (2006), 629–665. Our study examines only the jurisprudence of the ECtHR, since that Court has only a general human rights treaty (ECHR) as a basis. The question is if the ECJ can do the same on the basis of its own human rights doctrine. That explains why acts of non-specific minority instruments, like the opinions of the Advisory Committee of the Framework Convention for the Protection of National Minorities (FCNM), are not taken into consideration.

[5] For an extensive overview of the jurisprudence of the ECtHR on minorities, see the contributions of Roberta Medda-Windischer, "The Jurisprudence of the European Court of Human Rights", 1 *European Yearbook of Minority Issues* (2001/2002), 487–534; 2 *European Yearbook of Minority Issues* (2002/2003), 445–469; 3 *European Yearbook of Minority Issues* (2003/2004), 389–422; and 4 *European Yearbook of Minority Issues* (2004/2005), 557–597.

II. The Rights of Minorities to their Culture and Identity: Conspicuous Absence versus Progressive Presence

One of the core interests for a minority is the preservation of its culture and identity. To sum up the view of the European Parliament, unwanted assimilation is to be denounced.[6] Non-discrimination in itself is regarded as insufficient for the effective integration of minorities. That is why the jurisprudence of the ECJ and the ECtHR in this regard will be discussed briefly, before analysing their jurisprudence on the substantial rights of minorities to their culture and identity.

A. Non-discrimination

The Treaty of Amsterdam (1997) introduced a general non-discrimination article in the legal framework of the European Union (Article 13 EC). It aims to combat discrimination and not to eliminate differences *de facto*. This implies that it cannot be a useful basis for measures aimed at the positive discrimination of minorities. Moreover, the ECJ has been very reluctant in accepting positive discrimination.[7] However, Article 13 EC has served as a basis for the adoption of the so-called 'Race Equality Directive', designed to "combat discrimination based on racial or ethnic origin implementing the principle of equal treatment between persons irrespective of racial or ethnic origin".[8]

In the framework of the Council of Europe, Article 14 ECHR is the general non-discrimination clause, explicitly referring to "association with a national minority" when enumerating the grounds on which discrimination is forbidden. This is not the place to analyze in detail the reach and scope of the prohibition of discrimination under Article 14 ECHR.[9] The article has been of little practical relevance as concerns the protection of the rights of persons belonging to minorities.

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[6] European Parliament Resolution on the Protection of Minorities and Anti-Discrimination Policies in an Enlarged Europe (2006), para. 43.

[7] See, for example, ECJ, case C-450/93, *Kalanke*, judgment of 17 October 1995, [1995] ECR I-3051.

[8] Council Directive 2000/43/EC of 29 June 2000 on Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin, OJ L 180/122 of 19 July 2000. Certain member states, however, did not fulfil their obligations under this Directive. See, for example, ECJ, case C-320/04, *Commission v. Luxemburg*, judgment of 24 February 2005, OJ C 93/2 of 16 April 2005; and ECJ, case C-327/04, *Commission v. Finland*, judgment of 24 February 2005, OJ C 93/3 of 16 April 2005.

[9] For an excellent analysis of the reach and scope of the prohibition of discrimination under Article 14 ECHR, see Kristin Henrard, "The Impact of International Non-Discrimination Norms in Combination with General Human Rights for the Protection of National Minorities: the European Convention on Human Rights", Committee of Experts on Issues Relating to the Protection of National Minorities (DH-MIN), DH-MIN (2006)020.

It was only in July 2005 that the ECtHR found for the first time a violation of the principle against racial discrimination contained in Article 14 ECHR. The Court considered in *Nachova v. Bulgaria* that any evidence of racial verbal abuse used by law enforcement agents when using force against persons from an ethnic or other minority is highly relevant to the question of whether or not hatred-induced violence has taken place.[10]

With the *Nachova* judgment, the Court confirmed its increasing attention to the specific problems of Roma (see below). Moreover, it also confirmed that certain forms of racial discrimination can even amount to "degrading treatment".[11] Since this is prohibited by Article 3 ECHR, the Court examined the actions of states in this regard with heightened scrutiny.[12]

However, the ECtHR remains demanding when it comes to the evidence required to prove discrimination and in scrutinizing the margin of appreciation of states. The Court always examines the case from the perspective of the individual application and not the overall social context. Statistics, for example, are not considered as sufficient in their own right to disclose a practice that might be classified as discriminatory.[13] More substantive evidence is necessary. This became clear in *D.H. and others v. the Czech Republic*, where the Court had to judge on the frequent practice in Eastern Europe of the placement of Roma children in special schools intended for children with learning disabilities who are unable to attend 'ordinary' or specialized primary schools. This case shows the potential tension between the "subjective experience and perception of the applicant as concerns the alleged violations and the (perceived) objective and quantifiable proof requested by the Court".[14]

B. Substantial Rights

To date, the ECJ has not had occasion to use the instruments at its disposal to explicitly help minorities to preserve their identity, except as concerns their linguistic rights. However, they are treated in the next paragraph for the sake of comparison with the jurisprudence of the ECtHR.

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[10] ECtHR, Appl. Nos. 43577/98 and 43579/98, *Nachova and others v. Bulgaria*, judgment of 6 July 2005, para. 164

[11] *Ibid.*, para. 145.

[12] Henrard, "The Impact of International …", 12.

[13] ECtHR, Appl. No. 57325/00, *D.H. and others v. the Czech Republic*, judgment of 7 February 2006, para. 46.

[14] Sia Spiliopoulou Åkermark, "The Limits of Pluralism – Recent Jurisprudence of the European Court of Human Rights with Regard to Minorities: Does the Prohibition of Discrimination Add Anything?", *JEMIE* (2002) No. 3, 21.

The lack of judgments of the ECJ can be explained by the fact that the ECJ has never been confronted with a case concerning minorities' culture and identity because there is no legally binding document in the European Union preserving these rights. In contrast, the ECtHR has a written human rights treaty to interpret (the ECHR). This might change should the Charter of Fundamental Rights of the European Union (hereinafter "Charter") be furnished with legally binding powers,[15] as the ECJ would thus be confronted with the matter of interpretation of its provisions. For example, if confronted with a question on the freedom of expression, as provided by Article 11 of the Charter, the ECJ could refer to the jurisprudence of the ECtHR to interpret this Article in favour of minority protection (see below). However, it should be underlined that, acording to Article 50 of the Charter, the Charter is addressed to the member states "only when they are implementing Union law".

By comparison, the jurisprudence of the ECtHR is carefully progressive. Especially since 2000, the ECtHR has made use of the substantive provisions of the ECHR in support of minority protection. The ECtHR generally deals with minority protection when scrutinizing the margin of appreciation of states.

1. The ECtHR on the Right to Respect for Private and Family Life

One of the first set of judgments of the ECtHR on the right of minorities to preserve their identity was the judgments on the traditional lifestyle of Roma under Article 8 ECHR on the right to respect for private and family life. The first case was *Buckley v. the United Kingdom* but the Court did not develop the minority problem as such in this case.[16] In subsequent judgments on the traditional lifestyle of Roma, the ECtHR reviewed its approach and the minority problem is explicitly dealt with. The case of *Chapman v. the United Kingdom* serves as an example.

[15] Today, the Charter can be qualified as a 'soft law' instrument because the European Commission and the European Parliament decided to scrutinize their proposals for compatibility with the Charter. See Article 34 of the Rules of Procedure of the European Parliament, at http://www.europarl.europa.eu/sides/getLastRules.do?language=EN&reference=TOC; Communication from the Commission, "Compliance with the Charter of Fundamental Rights in Commission Legislative Proposals", COM(2005) 172 final of 27 April 2005. The Court of First Instance (CFI) referred to it for the first time in 2002. CFI, case T-54/99, *max. mobil*, judgment of 30 January 2002, [2002] ECR II-313, para. 48. In the line of its reasoning on human rights, the ECJ concluded for the first time in 2006 that the Charter reflects "the constitutional traditions and international obligations common to the Member States". ECJ, case C-540/03, *Parliament v. Council*, judgment of 26 June 2006, [2006] ECR I-5769, para. 38.

[16] By contrast, the partly dissenting opinions of Judge Repik and Judge Lohmus do make central the fact that it concerns minorities when scrutinizing the "necessary in a democratic society" condition. ECtHR, Appl. No. 20348/92, *Buckley v. the United Kingdom*, judgment of 26 August 1996, partly dissenting opinion of Judge Repik and partly dissenting opinion of Judge Lohmus.

The Court explicitly referred to the importance for a minority to maintain its identity, including the possibility to maintain a travelling lifestyle.[17] To that end, state parties have a "positive obligation to facilitate the Gypsy way of life".[18] However, this obligation only implies that special consideration should be given to their needs and different lifestyles. It does not imply that states are obliged to make an adequate number of suitably equipped sites available to the Roma. This would be too "far-reaching [a] positive obligation of general social policy".[19] The Court left a wide margin of appreciation to states to fill in this positive obligation.

The Court derived the obligation of state parties to take into account the special way of life of the Roma from the "emerging international consensus amongst Contracting States of the Council of Europe recognizing the special needs of minorities and an obligation to protect their security, identity and lifestyle".[20] The moderation of the obligation, on the other hand, derives from the fact that "the consensus is not sufficiently concrete for it to derive any guidance as to the conduct or standards which Contracting States consider desirable in any particular situation".[21] Nevertheless, the ECtHR made a clear statement in favour of measures to preserve the identity of minorities and thus attributed a cultural diversity of value to the whole community.

The case law of the ECtHR on the basis of Article 8 ECHR is not limited to the protection of the traditional lifestyle of Roma. In *Slivenko v. Latvia*, the Court dealt with the family life of Russian-speaking minorities living in Latvia. According to the Court, to carry out removal orders without providing any possibility for taking individual circumstances into account is incompatible with the requirements of Article 8 ECHR.[22]

2. The ECtHR on Freedom of Religion

The ECtHR considers that state parties that do not recognize minority churches or refuse them legal personality, when the church is often central to the minority's culture, are in breach of

[17] ECtHR, Appl. No. 27238/95, *Chapman v. the United Kingdom*, judgment of 18 January 2001, para. 73.
[18] *Ibid.*, para. 96.
[19] *Ibid.*, paras. 96–98.
[20] The Court refers to the FCNM in ECtHR, *Chapman v. the United Kingdom*, para. 93. It is interesting to note that reference is also made to the Resolution of the European Parliament on the situation of Gypsies in the Community and the fact that protection of minorities has become one of the preconditions for accession to the European Union (paras. 60–61).
[21] *Ibid.*, para. 94.
[22] ECtHR, Appl. No. 48321/99, *Slivenko v. Latvia*, judgment of 9 October 2003, para. 122.

the freedom of religion (Article 9 ECHR). From the cases *Canea Catholic Church v. Greece*[23] and *Metropolitan Church of Bessarabia and others v. Moldova*,[24] we can learn that the ECtHR recognizes the plurality of religions in a democratic society but also the possible necessity to place restrictions on that freedom in order to reconcile the interests of the various groups and to ensure that everyone's beliefs are respected. However, when the state exercises its regulatory power, it must remain neutral and impartial because the maintenance of true religious pluralism is at stake. It is in this regard that the Court assesses the margin of appreciation of the state and the proportionality of the measures taken by the state.[25]

In *Serif v. Greece*, the ECtHR also emphasized that a government, when confronted with tensions created by a divided religious or any other community, should not remove the cause of the tension by eliminating pluralism but rather should ensure that the competing groups tolerate each other.[26]

These judgments make clear that it is not enough that people may believe what they want. States must allow the establishment of the necessary institutions and give them the necessary recognition in order that they may have effective freedom of religion. The Court supports the existence of different religions alongside each other and thus it fosters the preservation of the (religious) identity of minorities. It places the conservation of pluralism at the heart of a democratic society but avoids explicitly treating the minority problem as such. At the same time, the Court has given clear indications of the necessity to protect minorities or at least not to hinder them from preserving their identity.

3. The ECtHR on Freedom of Expression

The emphasis of the ECtHR on pluralism can also be seen in its reasoning on the right of freedom of expression, as laid down in Article 10 ECHR. This right concerns, for example, the right to publish books that reflect a minority's ideas.

In *Association Ekin v. France*, the ECtHR condemned the ban of the circulation, distribution and sale of a book as a breach of Article 10 ECHR because pluralism demands that freedom of expression is not only applicable to information or ideas that are favourably received or

[23] ECtHR, Appl. No. 143/1996/762/963, *Case of the Canea Catholic Church v. Greece*, judgment of 16 December 1997.
[24] ECtHR, Appl. No. 45701/99, *Metropolitan Church of Bessarabia and others v. Moldova*, judgment of 13 December 2001.
[25] *Ibid.*, paras. 115–119.
[26] ECtHR, Appl. No. 38178/97, *Serif v. Greece*, judgment of 14 December 1999, para. 53.

regarded as inoffensive but also to those that offend, shock or disturb. Also here, exceptions to this right must be "proportionate to the legitimate aim pursued" and "relevant and sufficient".[27] That is why a complete ban on the publication of a book, the screening of books before their distribution[28] or a conviction for having published a book[29] are regarded by the Court as disproportionate to the aim pursued and thus in breach of the right of freedom of expression.

In *Özgür Gündem*, the Court found that freedom of expression even implies a positive obligation on parties to allow minority views and opinions to be expressed, albeit without imposing an impossible or disproportionate burden on the authorities.[30]

In general, according to the Court, it can be concluded that minority groups enjoy a broad degree of freedom of expression that might challenge state structures.[31] It should be noted, however, that the emphasis that the Court has placed on the obligation of parties to regulate in a pluralistic way is not necessarily interpreted by the parties as a general obligation to take positive measures.

III. The Linguistic Rights of Minorities: the ECJ to the Fore

Language is one of the core elements of a minority's identity and goes to the very heart of the notion of 'United in Diversity' of the European Union. Despite the lack of explicit competences, the European Union has committed itself to the preservation of linguistic diversity.[32]

The situation is clearly different within the Council of Europe, the international organization that created the ECHR, regarding which the ECtHR ensures enforcement. The Council of Europe not only created the FCNM, the first ever legally binding multilateral instrument devoted to the protection of minorities, as noted earlier; in 1992, it also created an instrument specifically aimed at protecting minority languages, namely the European Charter for Regional or Minority Languages (EChRML). The ECtHR has no power to ensure the

[27] ECtHR, Appl. No. 39288/98, *Association Ekin v. France*, judgment of 17 July 2001, para. 56.
[28] ECtHR, Appl. No. 25781/94, *Cyprus v. Turkey*, judgment of 10 May 2001, para. 44.
[29] ECtHR, Appl. No. 27528/95, *Kizilyaprak v. Turkey*, judgment of 2 October 2003, para. 40.
[30] ECtHR, Appl. No. 23144/93, *Özgür Gündem v. Turkey*, judgment of 16 March 2000, para. 43.
[31] Geoff Gilbert, "The Burgeoning Minority Rights Jurisprudence of the European Court of Human Rights", 24(3) *Human Rights Quarterly* (2002), 736–780, at 761.
[32] See, for example, Article 22 of the Charter; European Commission Communication, "A New Framework Strategy for Multilingualism", COM(2005) 596 final, 3; and European Parliament Resolution on Regional and Lesser-Used European Languages (2001), para. B. The importance of the preservation of minority languages is always highlighted.

enforcement of these last two instruments, for reasons we will not elaborate on further.[33] However, it uses the articles of the ECHR to preserve the linguistic rights of minorities.

In contrast to the aforementioned rights of minorities to their culture and identity, the ECJ has left its marks on the language rights of minorities within the European Union. It should, however, be noted that these judgments have been pronounced in the framework of the free movement of persons and the freedom to provide services. Concerning the former, this implies that these judgments cannot serve as an example for third-country nationals (since free movement of persons is linked to citizenship of the European Union) or nationals of the member states that entered in 2004 and 2007, since transitional provisions apply to them, restricting their free movement. On the other hand, these judgments could serve for so-called 'new minorities' that have the nationality of one of the 'old' member states while exercising their rights of free movement.

In *Mutsch*, the ECJ had to rule for the first time on the use of languages before national courts. A Belgian court referred to the ECJ for preliminary ruling in order to ascertain whether the national legislation stipulating that nationals residing in a certain region of the country may ask to have proceedings before a court in that region conducted in a specific language had to be extended without discrimination based on nationality to nationals of other member states.

The ECJ did not address the issue of minority protection but focused instead on the importance of the protection of linguistic rights in the context of the free movement of workers. For the Court, the right of a worker to use his/her own language in proceedings before the courts of the host member state (under the same conditions as national workers) plays an important role in the integration of the worker. The Court qualified this possibility as a "social advantage" and concluded that national provisions adopted for the benefit of a minority may not only concern persons who are members of that minority and reside in the area where that minority is established.[34]

The ECJ was confronted with a similar judicial problem in *Bickel & Franz*. However, in contrast to *Mutsch*, *Bickel & Franz* did not reside in the country where they were being

[33] For comments on the FCNM, see Marc Weller (ed.), *The Rights of Minorities. A Commentary on the European Framework Convention on the Protection of National Minorities* (Oxford University Press, Oxford, 2005); for comments on the EChRML, see Francois Grin, *Language Policy Evaluation and the European Charter for Regional or Minority Languages* (Palgrave Macmillan, London, 2003).
[34] ECJ, case 137/84, *Mutsch*, judgment of 11 July 1985, [1985] *ECR* 2681, paras. 11–17.

prosecuted. The ECJ perceived a form of indirect discrimination because nationals of the host member state are favoured indirectly by comparison with nationals of other member states exercising their right to freedom to provide services. In line with the general case law of the Court, such a rule can only be justified if it is based on objective considerations independent of the nationality of the persons concerned and is proportionate to the legitimate aim pursued.[35] Although the Court explicitly recognized that "the protection of such a minority [ethno-cultural minority] may constitute a legitimate aim",[36] it found ultimately that the rule was disproportionate.[37] Regional language arrangements were thus overridden by the ECJ in the interests of Community law.

The main implication of these two judgments is that special language rights (the right to use a minority language in criminal proceedings) provided by national provisions to residents of certain regions have to be extended to all EU citizens who find themselves in the same circumstances, i.e., whose language is the particular language of that region. However, both cases concerned communication with and before judicial authorities, being "non-scarce goods".[38] The question is whether this line of reasoning would also be followed in a case concerning language requirements regulating the access to resources such as workplaces.

No possible solution can be found in the judgments of the ECJ on the requirement to have proficient knowledge of a (minority) language as a condition for access to employment.[39] After all, these cases concern the *requirement* of proficient language knowledge, whereas the *Mutsch* and *Bickel & Franz* cases concern the *right* to use a language. However, the *Groener*, *Angonese* and *Haim* judgements are interesting because they indicate how far member states

[35] ECJ, case C-274/96, *Bickel & Franz*, judgment of 24 November 1998, [1998] *ECR* I-7637, para. 27.
[36] *Ibid.*, para. 29.
[37] *Ibid.*, para. 31.
[38] Briefly put, being goods that are readily available. See also Gabriel von Toggenburg, "The EU's 'Linguistic Diversity': Fuel of Brake to the Mobility of Workers", in Andrew P. Morris and Samuel Estreicher (eds.), *Cross-Border Human Resources, Labor and Employment Issues: Proceedings of the New York University 54th Annual Conference on Labor* (Kluwer Law International, The Hague, 2004), 677–723.
[39] The European Union, as an employer, is also confronted with these problems. One of the conditions of becoming part of the reserve pool from which administrators are recruited is having a thorough knowledge of the language of the country of which you have citizenship. This can cause problems for minorities having the nationality of a certain member state but speaking another language as mother tongue. This was the case in, for example, *Dálnoky v. Commission*. Dálnoky, a Romanian national belonging to the Hungarian-speaking minority in Romania, submitted her application in the competition organized to constitute a reserve pool from which to recruit administrators with Romanian citizenship. One of the requirements was to have a thorough knowledge of Romanian. She contended that that notice was discriminatory against Romanian nationals of the Hungarian mother tongue and requested that, instead, "a thorough knowledge of one Community language" should be required. However, the president of the European Union Civil Service Tribunal dismissed the case, among others, for lack of urgency. See Order of the President of the European Union Civil Service Tribunal, 14 December 2006, F-120/06 R, not yet published. The case is now pending before the Civil Service Tribunal.

may go when requiring proficient knowledge of a (minority) language as a condition for access to employment.

In *Groener*, the Court again found a way to avoid issuing a Community viewpoint on minority languages. Emphasizing that the Irish language is recognized in the Irish Constitution as the national language, the minority aspect does not arise and the case concerns a national language that is the first official language.[40] The Court examined whether the linguistic requirements (knowledge of the Irish language) were justified "by reason of the nature of the post to be filled".[41] In principle, member states can adopt a policy for the protection and promotion of a language that is both the national language and the first official language. However, the implementation of this policy may not lead to an encroachment upon fundamental freedoms. This implies that the linguistic requirement must be applied in a proportionate and non-discriminatory manner.[42]

Two questions remained unanswered after *Groener*: would the Court exclude support of non-national minority languages? Second, when is a linguistic requirement proportionate and non-discriminatory? The *Angonese* case provided the answers. The Court does not preclude a policy promoting and protecting a language, even if this language is not recognized as a national language.[43] However, the principles of proportionality and non-discrimination preclude the imposition of any requirement that the linguistic knowledge in question must have been acquired within the national territory.[44]

The *Haim* case, which bears no relation to minorities at first sight, contains a line of reasoning of the Court that could have importance for them. The Court argued that even persons whose mother tongue is not the national language must be able to speak in their own language with dental practitioners.[45] This could be understood as a recognition by the Court of the fact that linguistic diversity is a means of an advanced level of social integration of a minority and especially—in light of the case—so-called 'new minorities'.[46] Implicitly, this could even be

[40] Advocate General Darmon recognizes that Irish is a minority language. See ECJ, case C-379/87, *Groener*, judgment of 16 May 1989, [1989] *ECR* 3967, Opinion of Advocate General Darmon, para. 18.
[41] *Ibid.*, para. 16.
[42] *Ibid.*, para. 19.
[43] ECJ, case C-281/98, *Angonese*, judgment of 6 June 2000, [2000] *ECR* I-4139, para. 44.
[44] ECJ, *Groener*, para. 23.
[45] ECJ, case C-424/97, *Haim*, judgment of 4 July 2000, [2000] *ECR* I-5123, para. 60.
[46] Von Toggenburg, "The EU's 'Linguistic Diversity' …", 712. It can be supposed that the Court referred to the large amount of Turkish immigrants living in Germany (Haim himself studied dentistry in Istanbul). The Turkish immigrants can be seen as 'new minorities'.

understood as an encouragement to member states to create an effective minority language policy.

The above examined judgments indicate clearly the position of the ECJ towards the language policies of member states fostering minority languages.[47] However, they also reveal the lack of any coherent Union policy on minority languages.

The ECHR contains few language rights. The few that exist concern procedural and police related matters and are interpreted in a "minimalistic" way.[48]

The most interesting developments with regard to the language rights of minorities are made on the bases of Articles 2 (right to education) and 3 (right to free elections) of Protocol 1 to the ECHR. With respect to the former—and, more specifically, the protection of mother tongue education or education in the minority language—the first case to address the matter dates from 1968. In the *Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium*,[49] the ECtHR made clear that this provision implies no right to education in a particular language. What is important is that no unjustified distinctions exist; that is to say, discriminations that affect the exercise of the right enshrined in Article 2 of Protocol 1, read in conjunction with Article 14 ECHR.[50]

In *Cyprus v. Turkey*, the Court seemed to move away from its rigid stance, although the context in this case is particularly relevant. Even if the Court did not recognize a right to mother tongue education, it argued that if authorities assume responsibility for mother tongue education in primary schooling, they have the same obligation for the secondary school level.[51] This is already a step forward in the protection of mother tongue education for minorities and might even be transposed to other situations in which minority groups are denied education in their mother tongue in circumstances where they had formerly enjoyed it.[52]

In regard to the protection of the rights of (linguistic) minorities on the basis of Article 3 of Protocol 1, the ECtHR ruled in *Mathieu-Mohin and Clerafayt v. Belgium* that this provision

[47] Even though the 'minority problem' is only explicitly treated as such by the Court in *Bickel & Franz.*
[48] Henrard, "The Impact of International …", 24.
[49] ECtHR, Appl. Nos. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63 and 2126/64, *Case Relating to Certain Aspects of theLaws on the Use of Languages in Education in Belgium*, judgment of 23 July 1968.
[50] *Ibid.*, para. I.12.
[51] ECtHR, Appl. No. 25781/94, *Cyprus v. Turkey*, judgment of 10 May 2001, para. 278.
[52] Medda-Windischer, "The Jurisprudence of the European Court …" (2002/2003), 469.

does not create any obligation to introduce a specific system such as proportional representation or majority voting with one or two ballots.[53] The conservative attitude of the Court can be ascribed to the falling back on the wide margin of appreciation it attributes to parties. The Court does not take into account the effect of this reasoning on the effective respect for the right to free elections.

Like the ECJ, the ECtHR has also had to consider the legitimacy of linguistic requirements, not in the context of access to work this time but rather in terms of the right to stand for national elections. It is interesting to see how the reasoning of the ECtHR and the ECJ follows the same line. After having referred to the wide margin of appreciation of parties, the ECtHR concluded in *Podkolzina v. Latvia* that a party may require a candidate for election to the national parliament to have sufficient knowledge of the official language. However, the requirement must pursue a legitimate aim and be proportionate to the aim pursued,[54] whereas for the ECJ, the measures must be non-discriminatory and proportionate.

This overview shows that the jurisprudence of the ECtHR on the linguistic rights of minorities is less substantive than the jurisprudence of the ECJ. The ECJ has come to the fore in the matter of the linguistic rights of minorities and plays an active role in the promotion of the protection of minority languages within the European Union. This should, however, be nuanced against the background of the cases brought before the ECJ. Since this Court has only been confronted with language problems, it is only logical that its jurisprudence is more substantive in this regard.

IV. The Participatory Rights of Minorities: Opening to Explicit Recognition

The right to participate in all aspects of the life of the larger national society is essential for minorities, both to promote their interests and values as well as to create an integrated but pluralist society based on tolerance and dialogue.[55]

Since there exist no provisions in EC/EU law providing for the participation of minorities in public, social and economic life in the member states,[56] there exist no judgments of the ECJ

[53] ECtHR, Appl. No. 9267/81, *Mathieu-Mohin and Clerfayt v. Belgium*, judgment of 2 March 1987, para. 54. It is remarkable that the Court, when applying the principles in the case, explicitly treats the problem as one of linguistic minorities (para. 57).
[54] ECtHR, Appl. No. 46726/99, *Podkolzina v. Latvia*, judgment of 9 April 2002, para. 37.
[55] Working Group on Minorities to the United Nations, "Commentary to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities", E/CN.4/Sub.2/AC.5/2005/2.35.

on the participatory rights of minorities. However, a recent judgment could be the first step in the recognition of participatory rights for minorities. The ECJ had to ascertain in *Spain v. United Kingdom* whether there is a clear link between citizenship of the Union and the right to vote and stand for elections, requiring that that right always be limited to citizens of the Union.[57] The Court held that Community law does not preclude member states from granting the right to vote and to stand as a candidate to persons who have close links to them, other than their own nationals or citizens of the Union resident in their territory.[58] It is up to the member states to decide whether they make use of this possibility.

Even if this judgment does not explicitly refer to minorities, it is important for minorities. After all, so-called 'new minorities' rarely hold the citizenship of their state of residence and, as a consequence, are excluded from participating in elections.[59]

The ECHR contains two provisions that could favour the participation of minorities. On the basis of Article 11 ECHR, which provides for freedom of assembly and association, since 1998, the ECtHR has consistently confirmed its protective stance towards (political) associations with a minority focus by sanctioning refusals of parties to recognize or register such considerations. It did so for the first time in *Sidiropoulos and others v. Greece*. The Court refers to the limited margin of appreciation of states[60] and makes clear that parties may not forbid the application of registration of an association because it aims to promote the culture of a minority.[61] After all, pluralism is built on the genuine recognition of and respect for diversity and the dynamics of traditions and of ethnic and cultural identities.[62] The Court held the same line of reasoning in subsequent judgments.[63] However, it clarified in *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* that if there had been a call for

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[56] Olivier De Schutter, "European Union Legislation and the Norms of the Framework Convention for the Protection of National Minorities", Committee of Experts on Issues Relating to the Protection of National Minorities (DH-MIN), DH-MIN (2006)019, 20.
[57] ECJ, case C-145/04, *Spain v. United Kingdom*, judgment of 12 September 2006, [2006] *ECR* I-7917.
[58] *Ibid.*, para. 78.
[59] An example in this regard are the so-called 'non-citizens', often members of the Russian-speaking community, living in Latvia.
[60] ECtHR, Appl. No. 26695/95, *Sidiropoulos v. Greece*, judgment of 10 July 1998, para. 40.
[61] *Ibid.*, para. 44.
[62] ECtHR, Appl. No. 74989/01, *Ourano Toxo and others v. Greece*, judgment of 20 October 2005, para. 35.
[63] See, for example, ECtHR, Appl. Nos. 29221/95 and 29225/95, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, judgment of 2 October 2001, para. 89; and ECtHR, Appl. No. 74989/01, *Ourano Toxo and others v. Greece*, judgment of 20 October 2005, para. 40.

the use of violence or an uprising or any other form of rejection of democratic principles by the association, parties enjoy a wider margin of appreciation.[64]

The ECtHR used the margin of appreciation, which it exceptionally interpreted in a broad sense in *Gorzelik v. Poland*, to deny a violation of Article 11 ECHR, although the party in question forbade the registration of an association that aimed, among other things, to promote a minority.[65] Two conclusions can be gleaned from this judgment.

First, the Court is more inclined to interpret the margin of appreciation in a broad sense when it comes to electoral matters because of their relevance to the institutional order of the parties.[66] This goes especially for judgments on Article 3 of Protocol 1 on the right to free elections.[67] After all, the Court argued in *Ždanoka v. Latvia* that this Article is seen as *lex specialis*.[68] The Court recognizes that the standards to be applied for establishing compliance with this Article must be considered to be less stringent than those applied under Article 11 ECHR[69] in order to respect the internal institutional order of parties and because it has been cast in very different terms compared to that Article.[70] That is why the Court, for example, judged that a residence requirement as a condition to vote does not violate Article 3 of Protocol 1.[71]

Second, it was essentially the factual assessment that led the Court to its decision in *Gorzelik v. Poland*. That the particular circumstances of the country play an important role in the decision of the Court had been proved earlier in *Refah Partisi and others v. Turkey.*[72] The long line of cases against Turkey in relation to the dissolution of political parties shows that the Court does not allow parties to take disproportionate measures such as dissolving political parties because of their anxiety about minorities and their quest to participate in public life in

[64] ECtHR, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, para. 90.
[65] ECtHR, Appl. No. 44158/98, *Gorzelik and others v. Poland*, judgment of 17 February 2004, para. 106.
[66] Henrard, "The Impact of International …", 23.
[67] Also, the ECJ refers to the wide margin of appreciation of states in imposing conditions on the right to vote on the basis of Article 3 of Protocol 1. See ECJ, *Spain v. United Kingdom*, para. 94.
[68] ECtHR, Appl. No. 58278/00, *Ždanoka v. Latvia*, judgment of 16 March 2006, para. 141.
[69] The two criteria to examine compliance with Article (8-)11 ECHR are "necessity" or "pressing social need". The criteria for compliance with Article 3 of Protocol 1 are "arbitrariness or a lack of proportionality" or "interference with the free expression of the opinion of the people". See ECtHR, *Ždanoka v. Latvia*, para. 115(c).
[70] *Ibid.*, para. 115.
[71] ECtHR, Appl. No. 66289/01, *Py v. France*, judgment of 11 January 2005, para. 56.
[72] ECtHR, Appl. Nos. 41340/98, 41342/98, 41343/98 and 41344/98, *Refah Partisi (the Welfare Party) and others v. Turkey*, judgment of 13 February 2003.

order to protect their own identity.[73] However, in *Refah Partisi*, the ECtHR did not find that Turkey violated Article 11 ECHR by dissolving the Islamic-oriented Refah, which called for the elimination of secularism and for its replacement with Sharia law. Because secularism constitutes a key constitutional and democratic principle in Turkey, the Court considered that the dissolution of Refah could be regarded as necessary in a democratic society.[74]

V. Conclusion

The examination of the jurisprudence of the ECJ on minority rights compared with that of the ECtHR shows that the ECJ's hands are tied when it comes to augmenting minority protection in the EU and is therefore not fit for effective minority protection. Because of this limited room for manoeuvre, speaking of a faulty design goes a bridge too far.

The ECJ is not fit for the purpose because it has refrained from taking clear stances on minority protection—for example, by defining a minority language as the 'national language' in *Groener*. Accordingly, the Court has avoided articulating the viewpoint of the Union on minorities.

The restraint of the ECJ can be explained by diverse factors, such as the impact of its judgments, the diverse minority concepts and minority protection in the member states and the sensitivity of the issue. However, it is foremost explained by the lack of competences of the ECJ and, more generally, the different framework in which the ECJ and the ECtHR find themselves. First, the basic aim of European integration is economic cooperation and the development of the internal market, whereas the 'core business' of the Council of Europe is the protection of human rights. Second, the European Union has only attributed competences and a partly supranational character, implying that it can take decisions without the assent of all member states, for example, in areas where it has exclusive competences or where decisions can be taken with a (qualified) majority. That explains why the member states are reluctant to relinquish their powers in the field of human rights, especially minority rights, to the European Union. Moreover, some member states are not eager to give up the regulation of minority matters to a supranational government because they see this as a threat to state

[73] See, for example, ECtHR, Appl. No. 19392/92, *United Communist Party of Turkey and others v. Turkey*, judgment of 30 January 1998; and ECtHR, Appl. No. 21237/93, *Socialist Party and others v. Turkey*, judgment of 25 May 1998.
[74] ECtHR, *Refah Partisi (the Welfare Party) and others v. Turkey*, paras. 135 and 136.

cohesion. In other words, they fear the possible implications of decisions adopted by the European Union over their heads.

The ECJ has to act within the framework of these limited competences of the European Union and even in the absence of competences in the field of human rights and as a consequence of instruments. The ECJ elaborated its human rights doctrine before any provision in this regard existed in the treaties, which was already seen as an extension of its competences. Providing minority protection would be viewed by the member states as going a step too far and could, in light of the limited competences, even be seen as 'illegal'. The situation is different for the Strasbourg Court. That Court does not have its hands tied to the same extent as the ECJ, as it operates in a 'classical' international, intergovernmental organization, where no decisions can be made without the assent of the parties. Moreover, it has a written human rights treaty, which thus provides a different starting point. This mainly explains why the ECtHR, in contrast to the ECJ, gradually took some clear stances towards minority protection, such as placing positive obligations upon states to protect the rights of minorities to their culture and identity.

The recognition of positive state obligations by the ECtHR is a first step in relation to an effective protection of minorities. Yet it is not all roses in the ECtHR. When a complaint is upheld, it is up to the party to provide adequate remedies—for example, a change in legislation. The ECHR does not, however, provide sanctions in the case of non-execution of its judgments. Moreover, the judgments of the Strasbourg Court in the field of minority protection are sometimes ambiguous and inconsistent.

However, to speak of a faulty design after examining the jurisprudence of the ECJ on minority rights is to go a bridge too far. After all, in spite of it having its hands tied, the ECJ leaves the possibility open to member states to construct their own minority language policies and to attribute voting rights to minorities. Moreover, should the Charter obtain a legally binding character, the ECJ's role in protecting minority rights in matters relating to culture and identity issues would be even stronger.

The above argumentation shows that there are some major legal obstacles to overcome to create efficient legal protection for minorities in the European Union. However, apart from the legal aspect, assuming that the preservation of an 'own' identity is of vital importance for minorities and that they should be able to participate at different levels of society, an effective

minority policy should comprise two elements. First, the right to identity of minorities, be it their ethnic, cultural, linguistic or religious identity. Second, making their integration possible while respecting diversity. The desired standard of protection should at least be that defined by the instruments of the Council of Europe. In that way, there would be no possibility that the Union standard could be regarded as an alternative standard.

Let us hope that putting these elements into practice will make policy makers in the future able to say that “Europe is the Europe *for* minorities”.

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Biographical Note

Anneleen Van Bossuyt is an Academic Assistant at the European Institute within the Law Faculty of Ghent University. She is preparing a PhD on 'The Legal Framework of Minority Protection in the EU's External Relations'. Given the subject of her PhD, she has participated in various international conferences. One of her main publications is the book chapter written with Erwan Lannon and Peter Van Elsuwege, "Minorities in the Euro-Mediterranean Area: the Prerequisites for Launching a Fruitful Intercultural Dialogue", in Léonce Bekemans *et al.* (eds.), *Intercultural Dialogue and Citizenship. Translating Values into Actions. A Common Project for Europeans and their Partners* (Marsilio, Venice, 2007).

Ethnic Minority Protection and Anti-discrimination in Central Europe Before and After EU Accession: the Case of Poland

Peter Vermeersch

Abstract

This article explores key policy developments regarding ethnic minority protection and anti-discrimination in contemporary Poland. More specifically, it examines the relationship between domestic policy formation and the European context. Before 2004, the European Union applied membership conditionality in order to attempt to stimulate candidate member states in post-communist Central Europe to adopt special minority protection measures. As a result, most of these countries turned to the official recognition of the ethnic specificity of minority groups and the acceptance of group-related cultural entitlements, not only as norms in their own right but also as the basis for a policy of stimulating ethnocultural diversity. Since the EU enlargement of 2004, however, European attempts to stimulate ethnocultural diversity in the new member states have been less focused on group-related rights but have emphasized the themes of social inclusion, anti-discrimination and equal opportunities. I explore how, in this new European context, Polish policies on ethnic minority protection have developed. Through a comparison of dominant Polish perceptions of minority protection issues with dominant discourses about the preservation of ethnic diversity promoted by EU institutions, this article shows the linkages between recent developments in Polish minority policy-making and the current European initiatives in this field. It also shows important points of disjuncture between the way in which European institutions have framed issues of ethnocultural diversity and the way in which Polish policy-makers have worked out minority protection.

I. Introduction

Ethnic and nationalist politics in contemporary Poland—regardless of whether it concerns attempts to protect ethnic minority citizens or efforts to invoke the Polish nation as a homogenous ethnic community—takes place against the background of a complex and often traumatic history. The brutal ethnic homogenization campaigns that were carried out during World War II, the border shifts and population movements in the immediate post-war period and the frequent use of nationalist rhetoric in the propaganda of the Polish United Workers' Party (Polska Zjednoczona Partia Robotnicza, PZPR) during the communist period are some of the important legacies from the twentieth century that have profoundly influenced the ways in which issues of ethnic diversity are being interpreted, experienced and politically expressed in Poland today. Also, recent international changes have brought issues of ethnic and national belonging to a more prominent place in domestic Polish politics and policy making. In the 1990s, the EU actively stimulated Polish policy makers to introduce policies in the field of ethnic and national minority protection. Since the 1990s, a growing influx to Poland of seasonal workers or temporary migrants from the east has prompted the Polish media, scholars and politicians to start to think about the impact of such changes in the economy on

issues of ethnic diversity. In this essay, I focus on the question of how recent policies on the protection of ethnic and national minorities in Poland have been influenced by some of these different legacies and political contexts.

The article consists of three sections. In the first, I explain my choice to focus on Poland. Why should policy developments in the field of minority protection and ethnocultural diversity in Poland be a topic of scholarly interest? Poland is often seen as a country where ethnic diversity should not be an issue of much political dispute or societal distress. I will argue, however, that—even though minority groups in Poland have been small in numbers—there are several reasons why issues of ethnic, linguistic and religious diversity in this country have remained both crucial and controversial.

In the second section of the article, I examine how Poland's minority protection policies have developed over the last decade and a half. I describe the country's legislative framework and institutional structures of minority protection and explore some of the debates that have led to the establishment and the functioning of these legal frameworks and institutions.

In the third section of the article, I discuss the influence of Poland's accession to the EU on Polish policy-making narratives regarding minority protection. Before 2004, the EU applied membership conditionality in order to attempt to stimulate candidate member states in Central Europe to adopt special minority protection measures. As a result, there was a trend in these countries to turn to the official recognition of the ethnic specificity of minority groups and the acceptance of group-related cultural entitlements, not only as norms in their own right but also as the basis for a policy of stimulating ethnocultural diversity. Since the enlargement of 2004, however, conditionality policy on minority protection had to be abandoned and, instead, European attempts to stimulate ethnocultural diversity in the new member states have emphasized the themes of social inclusion, anti-discrimination and equal opportunities. I explore elements of conjuncture and disjuncture between this changing European context and the domestic agendas underpinning policy formation on ethnic minority protection in Poland.

II. Ethnopolitics in a Homogenized Country

In 2002, Poland held a census that, for the first time since 1921, allowed its citizens to indicate their ethnic nationality (*narodowość*). In this census, 3.26% of the respondents (1,246,400 people) did not identify themselves as ethnic Poles: 471,500 of them (1.23% of all respondents) indicated the name of the non-Polish ethnic group under which they wanted to

be grouped. On the basis of these results, the census identified the Silesians (172,682), the Germans (147,094), the Belarusians (47,640) and the Ukrainians (27,172) as the four largest non-Polish groups in the country.[1] These and other results from the census have been far from uncontested. Some minority activists have argued that the minority numbers are too low. According to the census results, minorities in Poland make up about 1% of the total population but both official estimates and figures compiled by minority organizations have provided total figures of 2.2% to 5.1%. Other activists have been displeased with the fact that certain categories in the census were not officially recognized as national or ethnic minority groups. The case of the Silesians is interesting: although 172,682 citizens referred to their nationality as 'Silesian' in the census, the Polish authorities did not regard the Silesians as a separate minority group.[2]

Disputes about how to categorize, define, recognize and count minority groups are not unique to Poland, they are a characteristic of census politics in most places where census taking includes the possibility to register ethnic affiliation.[3] Censuses are often important focal points for heightened ethnic minority or nationalist mobilization because, through the official character of the counting, censuses can "nominate" particular ethnic groups "into existence". A lack of administrative recognition and state certification of certain categories, on the other hand, can make other groups "disappear".[4]

The fact that the 2002 census in Poland and its results have been contested is therefore in itself not necessarily evidence of the fact that discussions about ethnic diversity in Poland have more than only marginal impact on current Polish domestic politics and policy-making debates. At first sight, one could easily discard discussions about ethnic politics in Poland as

[1] See, for example, Lucjan Adamczuk and Sławomir Łodziński (eds.), *Mniejszości narodowe w świetle narodowego spisu powszechnego z 2002 roku* (WN Scholar, Warszawa, 2006).
[2] Sławomir Łodziński, "Trauma i władza liczb. Wybrane problemy społecznego odbioru pytania o 'narodowość' w narodowym spisie powszechnym z 2002 roku", in *ibid*., 171–208. The 2003 report of the Polish statistical office called groups such as the Germans, Belarussians and Ukrainians 'nationalities' (*narodowości*). Groups that have no external homeland, such as the Silesians and the Roma, were defined as 'communities' (*społeczności*). Główny Urząd Statistyczny, *Narodowy spis powszechny ludności i mieszkań. Raport z wyników* (GUS, Warszawa, 2003), 39. However, while the official list of minorities published by the Ministry of the Interior included the Roma, it did not mention the Silesians. See http://www.mswia.gov.pl/index.php?dzial=61&id=37. The 2005 Minorities Law (see below) followed this logic: the Roma, the Karaites and the Łemkos were recognized as 'ethnic' minorities (*mniejszości etniczne*) because they have no external homeland. Recognized groups with an external homeland were called 'national' minorities (*mniejszości narodowe*). Despite protest from Silesian mobilizers, the Silesians were recognized neither as a national nor as an ethnic minority.
[3] See, for example, David Kertzer and Dominique Arel (eds.), *Census and Identity: the Politics of Race, Ethnicity, and Language in National Censuses* (Cambridge University Press, Cambridge, 2002).
[4] David Goldberg, *Racial Subjects* (Routledge, New York, 1997), 29.

unimportant. Poland has no large and well-organized minority groups; minority mobilizers are not strongly supported by external homelands; and Poland has not had a history of massive immigration. Poland is rather known as a country that is relatively ethnically homogenous, a fact that results from a recent history of political practices that were deliberately targeted at making the boundaries of the state congruent with those of the nation.

It is, however, precisely this turbulent history of top-down nationalization—the making of the Polish state congruent with the Polish nation—that has left a strong imprint on ethnopolitics in the country today. Although Poland is not often associated with ethnic violence, the country has lived through the turmoil of ethnically-framed conflict at various times during the twentieth century, mainly during and after the First and Second World Wars. During these periods, the diverse populations inhabiting the country's changing territory were subject to a broad range of 'difference-eliminating' strategies employed by different political regimes. Military intervention, (civil) war and diplomatic bargaining moved state borders; deportation and mass killing of ethnically defined groups 'unmixed' the population; and deliberate policies of cultural or linguistic homogenization further nationalized it. These actions were sometimes organized on a massive scale, often brutal and always traumatizing. In about any current discussion between minority activists and Polish state representatives, one hears echoes of mutual recriminations about these episodes of strong nationalization.

Jewish–Polish relations in Poland today, for example, are not solely about the current political and social situation of the small Jewish minority (1,055 people in the 2002 census identified themselves as Jewish; official estimates mention the number of 10,000)[5] but also—and perhaps even more—about issues of responsibility with regard to the role of the Polish authorities and ordinary citizens during the Holocaust and in the post-war period. Unsurprisingly, Jewish minority leaders in Poland today demand protective measures and financial support for their culture, not only because they seek to maintain their position as a minority in the current political and social context but also because they demand official recognition of and compensation for the past injustices inflicted upon them or their families. One could situate the recent work by Jan T. Gross,[6] who studied Polish responsibilities during the Jedwabne and Kielce pogroms and also researched more hidden forms of anti-Semitism in

[5] See Lech M. Nijakowski and Sławomir Łodziński (eds.), *Mniejszości narodowe i etniczne w Polsce. Informator 2003* (Komisja Mniejszości Narodowych i Etnicznych Sejmu RP, Wydawnictwo Sejmowe, Warszawa, 2003), 39–42.

[6] Jan Tomasz Gross, *Neighbors: The Destruction of the Jewish Community in Jedwabne, Poland* (Princeton University Press, Princeton, 2001); and *id*., *Fear: Anti-Semitism in Poland after Auschwitz* (Random House, New York, 2006).

Poland during and after the Second World War, in this current attempt of Jewish activists to point to the burdened past of Polish–Jewish relations and to urge the Polish government to take on the task of initiating a process of reconciliation. Such processes of reconciliation were as good as impossible before the 1990s because during the communist period there had also been instances of state-directed anti-Semitism. In particular, in the latter half of the 1960s, Polish Communist power-holders found out that speaking of a Jewish internal enemy was a very effective discursive tool for linking their own claim to power with what they framed to be the 'true' interests of the Polish nation. As a result of a very blunt and aggressive anti-Semitism campaign in March 1968, thousands of people were dismissed from their jobs—mostly employees from government institutions, university professors and journalists—and thousands saw themselves forced to emigrate. The PZPR mobilized particular groups of intellectuals and workers to protest against 'the Zionists' so as to give the impression that this was a policy move that was spontaneously embraced by large sections of the 'ordinary' Polish population.[7]

For other ethnic minorities, too, the communist period and the Communists' strategies to maintain power had left a strong imprint on their current political action. From the very beginning of one-party rule, the Polish Communists were active in constructing the idea that they had been the architects of the Polish national state. In reality, post-war rulers in Poland merely tried to benefit from a changed international environment and acted upon the way the post-war European map had been redrawn as the result of a geopolitical decision by Churchill, Roosevelt and Stalin. By affirming the Curzon line as Poland's eastern border and the Oder and Neisse rivers as its western one, the borders of Poland were placed in such a way that it made cultural, linguistic and ethnic conceptions of the Polish nation easier to imagine.

This homogeneity could also more easily be proclaimed in a greatly altered demographic context: not only had large parts of the Jewish and Romani populations been murdered during the Holocaust but, after the war, the Soviet Union also introduced a policy of national relocation, forcing about 780,000 Polish-speaking individuals from Soviet Ukraine to move to Poland. The Polish post-war rulers themselves actively helped the process of cultural, linguistic and ethnic homogenization of the new Polish state through large-scale expulsion and forced resettlement operations. Belarusian, Łemko and Ukrainian populations were

[7] See, for example, Alina Cała, "Mniejszość żydowska", in Piotr Madajczyk (ed.), *Mniejszości narodowe w Polsce: Państwo i społeczeństwo polskie a mniejszości narodowe w okresach przełomów politycznych* (Instytut Studiów Politycznych Polskiej Akademii Nauk, Warszawa, 1998), 245–298.

removed from the eastern parts of the new Poland and deported to areas outside the new borders. Up to 500,000 people were relocated from Poland to Ukraine in the period from September 1944 to June 1946. Moreover, in 1947, a large-scale forced resettlement operation replaced approximately 140,000 people identified as Ukrainians from the southeastern border zone to the north and the west of Poland in order to assimilate them into the Polish-speaking population (*Ackja Wisła* or 'Operation Vistula'). Polish Communists saw a chance to garner unprecedented political support by building something that could be called "ethnic communism".[8] Before the Second World War, governing and cultural elites actively imagined the Polish nation as formed by a territorial or historical frame of the state; they did not so much define it by linguistic, cultural or ethnic boundaries. After 1945, the Polish nation was increasingly seen and portrayed as a homogenized ethnic, cultural and linguistic community of which the boundaries were (and needed to be) completely congruent with those of the territory of the state.

In sum, even though minorities in Poland are small in numbers and there has been little danger for violent conflict between minority mobilizers and nationalists in recent times, the debate about the protection of ethnic minorities in Poland is a crucial political debate for two reasons. First of all, it is a discussion about past injustices and about the way in which to effectuate reconciliation. Secondly, it is a discussion about how inclusive or exclusive the Polish nation should be 'imagined'. The view that the Polish nation is mono-ethnic has been quite persuasive to this date and this is obviously a view that can foster discrimination against those who are not considered to be ethnic Poles.

In the current domestic political climate in Poland, this last aspect may be more important than ever. In the autumn of 2005, little more than a year after Poland had become a member of the EU, the parliamentary elections were won by a conservative party called Law and Justice (Prawo i Sprawiedliwość, PiS), which, in its campaign, had depicted its political competitors as enemies of the Polish nation and had pressed for measures to support the patriotic feelings of the Poles and their adherence to Catholicism in order to bring about a full-scale social renewal. Law and Justice, which had been a moderately successful and fairly typical new right-wing party at the parliamentary elections four years earlier, had successfully transformed itself into an offensive and radically nationalist party in the months right before

[8] See, for example, Timothy Snyder, *The Reconstruction of Nations: Poland, Ukraine, Lithuania, Belarus, 1569–1999* (Yale University Press, New Haven, London, 2003), 202–214; and Marcin Zaremba, *Komunizm, legitymizacja, nacjonalizm: Nacjonalistyczna legitymizacja władzy komunistycznej w Polsce* (Wydawnictwo TRIO, Instytut Studiów Politycznych Polskiej Akademii Nauk, Warszawa, 2001).

the elections of 25 September 2005.[9] One month later, the Law and Justice candidate for the Polish presidency, Lech Kaczyński, won the run-off in the presidential elections. In April 2006, Law and Justice formed a government with two other conservative parties, Self-defence of the Republic of Poland (Samoobrona Rzeczypospolitej Polskiej, SRP), a party mainly known for its populism and its opposition to Polish EU membership, and the League of Polish Families (Liga Polskich Rodzin, LPR), a party representing the extreme Catholic right. In July 2006, the president's twin brother and leader of Law and Justice, Jarosław Kaczyński, became the prime minister of this new government, thereby creating what Timothy Garton Ash described as "the unusual spectacle of a major European country effectively run by twin brothers who look so nearly identical that it's easy to mistake one for the other".[10] The accumulation of power in the hands of two brothers is surely an intriguing matter in itself—and quite unique in contemporary democratic Europe—but the more important question undoubtedly is: does the electoral success of nationalist parties pose a threat to the protection of minorities? Or, in other words, have Poland's policies on ethnic minority protection, its legislative framework and its institutional structures, until now been able to foster the acceptance of minority citizens into the Polish nation? Are the institutions and legal frameworks effective enough to secure minority protection even in a political climate in which nationalism has become a prominent feature of the dominant political parties' campaigning and mobilization strategies?

Before we can answer this question, it is important to sketch out briefly the institutional and legal developments in Poland since 1989.

III. Minority Protection in Poland after 1989: a Brief Overview of New Legislation and Institutions

The democratization processes at the end of the 1980s engendered political debate about the rights of minority populations and about what policies and legal frameworks needed to be implemented in order to protect those rights sufficiently. To a great extent, the debate took place in the Parliamentary Commission on National and Ethnic Minorities (Komisja Mniejszości Narodowych i Etnicznych) of the Polish lower house, the Sejm. The first proposals for a comprehensive law on minority protection date back to the early 1990s. They

[9] Radoslaw Markowski, "The Polish Elections of 2005: Pure Chaos or a Restructuring of the Party System?", 29(4) *West European Politics* (2006), 814–832, at 824.
[10] Timothy Garton Ash, "The Twins' New Poland", 53(2) *New York Review of Books* (2006), 9 February, at http://www.nybooks.com/articles/article-preview?article_id=18678.

were at that time formulated by Jacek Kuroń, a famous dissident activist during communist times, later also minister of social affairs and presidential candidate, who was during the last years of his life a crucial public figure in the fight for social equality and against discrimination. The discussion on the draft law did not so much revolve around legal provisions to forbid discrimination (since these would soon become part of the 1997 constitution) but on the forms of affirmative action that it seemed to make possible. In May 2002, the government refused to adopt the draft law on minority rights, even though it admitted that the legal proposal was a legitimate response to a need resulting from Poland's ratification of the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM) (Poland had signed the Convention in 1995 and ratified it in 2000). According to the government, the proposal contained a number of fundamental problems. It was feared, for instance, that minority education would reinforce the isolation of minority pupils. Furthermore, there appeared to be no clarity on the circumstances that mandated a municipality to introduce special protection measures for the public use of minority languages.[11]

This last issue was one of the crucial points of discussion in the parliamentary debates on this law. Initial drafts of the law had proposed to allow the official use of a minority language in municipal institutions if at least 8% of the local population identified themselves as belonging to a national minority. Later, this quota was first raised to 20% and then to 50%, which would have given such language rights to only five municipalities. The 50% threshold was rejected by the senate. In the final Law on National and Ethnic Minorities and Regional Language, adopted in January 2005 (and now also known as the "Minorities Law"), the quota remained at 20%.[12]

Minority rights protection had been the topic of a political discussion that lasted about 15 years but resulted in a law that would affect only a very small proportion of the Polish citizens. The reasons for such a prolonged discussion were not only related to the difficulty that politicians had with seeing the Polish nation as an ethnically diverse nation (as one journalist observed: "[t]he [minorities] bill provoked heated debate during its consideration by lawmakers, who often used xenophobic and nationalist rhetoric that seemed out of proportion

[11] Sławomir Łodziński, "Społeczne problemy polityki wobec mniejszości narodowych w Polsce: Wokół ustawy o mniejszościach narodowych i etnicznych oraz języku regionalnym", in Lech Nijakowski (ed.), *Polityka państwa polskiego wobec mniejszości narodowych i etnicznych* (Wydawnictwo Sejmowe, Warsawa, 2005), 112–134.

[12] Law No. 141, "Ustawa o mniejszościach narodowych i etnicznych oraz o języku regionalnym", *Dziennik Ustaw* (2005), No. 17.

to the actual power held by minorities in this largely mono-ethnic society")[13] but also to the hard technicalities of how a national or an ethnic minority should be defined and how the exact content of the minority entitlements should be delineated. Some of the delay was certainly also related to the lack of political will among certain parties to push this law through; some parliamentarians found that there was no need for an extra law since, so they argued, minorities were already sufficiently protected by other laws.

More surprisingly, perhaps, is that also among minority activists there were very different views on the usefulness of an extra law dealing specifically with cultural entitlements such as language protection. For the Ukrainian minority activists, for example, the discussion on the protection of minority mother languages as official languages of communication was pointless. Whether the threshold was set at 50%, 20% or 8%, for the Ukrainian it did not make much of a difference. As a result of the widespread dispersion and forced assimilation of the people who could potentially register as belonging to the Ukrainian minority, the official share of Ukrainians in the total population was nowhere higher than 20%. What Ukrainian minority activists did in this debate, instead of demanding a change in the law proposal, was to point to other issues, to the specific historical circumstances of their case, in order to show that their problems were different from those of other minorities, had to be treated differently and therefore justified the introduction of additional measures. They argued that even general minority regulations would have a disproportionate affect on the Ukrainians because of the effects of policies in the past, such as Operation Vistula. Thus, instead of focusing only on general minority regulations, Ukrainian activists sought to achieve a discussion on the possibility of tailor-made measures, applicable only to their case. Evidence for the presence of this strategy can easily be found in official documents. The reports of the governmental bodies on minority issues as well as the publications of the Union of Ukrainians in Poland (Związek Ukraińców w Polsce, ZUwP) clearly show that Ukrainian minority activists were chiefly concerned with issues that only affected the Ukrainian minority. These were mainly issues relating to past injustices: claims for the restitution of property that once had belonged to Ukrainian organizations, compensation for the people (and the families of the people) who had been imprisoned in the labour camp site in Jaworzno (a former Nazi concentration camp that from 1947 to 1949 was used by the Polish authorities as a detention camp for Ukrainians suspected of cooperation with the Ukrainian Insurgent Army (Ukrainska

[13] Wojtek Kość, "The 1 Percent Solution", *Transitions Online*, 8 November 2004, at http://www.tol.cz/look/TOLrus/article.tpl?IdLanguage=1&IdPublication=4&NrIssue=89&NrSection=1&NrArticle=13051.

povstanska armiia, UPA)) and symbolic deeds of reconciliation, such as an official pardon for Operation Vistula or the setting up of a monument in Jaworzno. Such demands could not be satisfied by a law on minority protection but required specific policy initiatives. Ukrainian minority activists in Poland demanded such specific actions.[14]

Another group of activists who were ambivalent about the value of the Minorities Law were those representing the Roma. Although the Roma have been officially recognized as an ethnic minority and were therefore considered to be protected by the Minorities Law, Romani activists frequently expressed concern about needs other than those for increased protection of the language and culture of their group; they demanded, among other things, material support for housing, measures on poverty alleviation and anti-discrimination. The Polish government responded with a specific programme for the Roma. In August 2003, the Polish government officially adopted a long-term policy project aimed at 'solving' the problems facing the Romani community in Poland. This policy plan has since then been carried out by the Ministry of the Interior and has focused on a broad range of topics, including poverty, education, housing, health and employment. The idea behind this programme is to work on the development of Romani 'culture' as well as to single the Roma out as a specific target group for financial support in the areas of social policy mentioned above. One of the principles underpinning the programme has been the idea that financial support for Romani cultural expressions and the promotion of the category 'Roma' as a name to label an 'ethnic' community will challenge existing stereotypes and create more realistic and more positive images of who the Roma are. By formulating this idea, Polish policy makers have followed a trend that has become visible in recent years in other Central European countries. Hungary, the Czech Republic and Slovakia, to give three examples, have in the 1990s developed models of minority protection that allow them to subsidize Romani cultural expressions as well as to fund projects that relate to social issues.[15] The Roma in Poland were, thus, first recognized as a minority but policy makers as well as Romani activists clearly found that the case of the Roma was somewhat different from that of other minority groups and found it appropriate to design social policy measures for this specific group outside the regular

[14] For a fuller treatment of this topic, see Peter Vermeersch, "A Minority at the Border: EU Enlargement and the Ukrainian Minority in Poland", 21(3) *Eastern European Politics and Societies* (2007), forthcoming.
[15] *Id*., *The Romani Movement: Minority Politics and Ethnic Mobilization in Contemporary Central Europe* (Berghahn Books, Oxford, New York, 2006).

framework for minority protection. The result now is a policy that links cultural expressions with special social measures.[16]

The examples of the Ukrainian and the Romani minority show that in the formation of the Minorities Law a number of decisions had to be made that were far from self-evident. The choice to focus mainly on the protection of culture and language was not only questioned by certain politicians from mainstream parties but also by some minority activists themselves. The important point is, however, that, despite these difficulties, the work on the general Minorities Law continued, even when demands from some minority activists differed considerably from what such a law could guarantee. Arguably, the fact *that* the work on the law continued is for a large part related to the international context in which this legislative work took place.

EU leverage, in particular, was an important factor, since many activists could use references to Poland's EU membership aspirations in their efforts to persuade politicians to continue the work (although some political parties framed the EU conditionality policy on minority protection as a form of infringement on Polish sovereignty). Through the 1993 Copenhagen Criteria, the EU had a powerful tool to pressure candidate member states into making "the respect for and the protection of national minorities" an issue of political priority.[17] Although the minority protection criterion has been called a vague and paradoxical element in the EU's membership conditionality strategy (among other things because it lacks a foundation in EU law),[18] it did persuade Central European governments to adopt a number of international legal documents pertaining to the protection of minority rights, such as the Council of Europe's FCNM and the European Charter for Regional or Minority Languages (EChRML). Poland signed and ratified both documents. Politicians and activists who sought to push the work on a new Polish law on minorities further could subsequently frame Poland's legislative work on a law for minority protection as a moral obligation springing from being a party to these international documents.

[16] On the problems that might result from such a linkage, see *Id.*, "Marginality, Advocacy, and the Ambiguities of Multiculturalism", 12(4) *Identities: Global Studies in Culture and Power* (2005), 451–478.
[17] European Council, "Conclusions of the Presidency", European Council in Copenhagen, 21–22 June 1993, SN 180/1/93 REV 1 EN, 13, at http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/ec/72921.pdf.
[18] Gwendolyn Sasse, "Gone With the Wind? Minority Rights in Central and Eastern Europe Before and After EU Enlargement", paper presented at the Workshop on Ethnic Mobilization in the New Europe, 21–22 April 2006, Brussels.

While the work on the Minorities Law continued in parliament, an institutional structure on the level of government was put into place. These institutions were meant to implement and monitor government policies relating to the protection of minorities. In 1997, an Interdepartmental Group for National Minority Issues was established within the government administration (Międzyresortowy zespół do spraw mniejszości narodowych). Later, the government founded the Division of National Minorities (Wydział mniejszości narodowych) at the Ministry of Interior and Administration (in 2000). The first body incorporated the representatives of various governmental departments. Although it has not included minority representatives, it has organized dialogues and information sessions with prominent activists and representatives of officially recognized minority organizations. The Division of National Minorities, on the other hand, is a purely ministerial body aimed at raising the government's activities in the field of minority protection without opening the official meetings up to minority activists. As a direct result of the new Minorities Law, the government also set up a Joint Commission of the Government and the National and Ethnic Minorities (Komisja Wspólna Rządu i Mniejszości Narodowych i Etnicznych), which should now function as the main advisory body to the government council and includes minority representatives.[19]

When government publications discuss minority issues, they have also pointed to the importance of two other bodies that devote attention to minority issues in a broader context. These are two monitoring institutions: the government's Commissioner for Civil Rights Protection, also known as the Ombudsman (Rzecznik Praw Obywatelski), and the government's Commissioner for the Equal Status of Women and Men (Pełnomocnik do Spraw Równego Statusu Kobiet i Mezczyzn). The latter institution, however, was abolished in November 2005; further on in this article I will return to the question of why and how this happened and what significance it has.

The focus of most of the debates and policy narratives on minority protection in Poland before 2004 were not focused on the governmental institutions that were put in place to monitor equal chances and civil rights but on the Minorities Law and how it would be able to foster minority identities and the preservation of minority cultures. As I have argued, in the run-up to the 2004 EU enlargement, the EU context seems to have been an important factor for turning the Minorities Law into a domestic political priority in Poland. To what extent was it still a priority in the new political climate after EU accession? And have the provisions in the

[19] Articles 23 and 24, Minorities Law.

Minorities Law and the government institutions for minority protection indeed been able to contribute to a better defence of the equal rights of minority citizens, even in a nationalist political climate?

IV. EU Accession and the Effectiveness of Minority Rights Protection and Anti-discrimination Measures in Poland

Since different minority citizens and minority activists in Poland have had different demands and expectations about how the state should protect their interests, it is difficult to decide objectively whether the different Polish government structures and the adopted legal measures have the actual power to satisfy all these demands. What is clear, however, is that, before 2004, the EU's conditionality policy was important in promoting a specific interpretation of minority protection in domestic debates: the interpretation that minority protection is primarily a matter of protecting cultural expressions and identities.

One indication of growing Polish concern for the support for minority cultures and identities before 2004 were the actions of the Polish government to sign (in 1995) and ratify (in 2001) the FCNM. Although the acceptance of this convention is theoretically merely linked to the Council of Europe and not to the EU, the European Commission referred to the value of the FCNM in 1997 and it can therefore be speculated that candidate member states adopted it at that time to strengthen their standing on minority protection issues *vis-à-vis* the European Commission. The EU's technique of membership conditionality generally increased the EU's power in the countries of Central Europe. Although traditionally not a part of the European integration agenda, minority protection was a central rhetorical element in the EU's strategy for eastward enlargement. In the course of the 1990s, the EU member states gradually committed themselves to the principles of human rights protection and anti-discrimination, most notably through the Maastricht and Amsterdam Treaties, although the EU's concern for minority protection in the neighbouring countries of Central and Eastern Europe was clearly much more pronounced than its internal commitment. Already, at the beginning of the 1990s, the desire to contain or prevent ethnic conflict had become part and parcel of the EU's external relations towards the candidate countries in Central Europe. This was, of course, to a great extent the result of the EU's earlier inability to prevent and respond to the acute outbreak of violence in the Balkans and its subsequent fear for the emergence of similar conflict scenarios in other former communist countries. The EU sharply accentuated the role of minority protection in the Copenhagen Criteria for accession, hoping that by so doing it

would be able to maintain political stability throughout the future territory of the EU, especially in areas were ethnic relations were volatile. Although the EU was sometimes accused of using a double standard, it is reasonable to assume that this strategy did change the situation of minority activists in candidate member states. It is also reasonable to assume that it had its influence in areas where there was no immediate danger for a large-scale international conflict involving minorities, such as in Poland.

Poland's record on minority protection was never strongly criticized in the yearly regular reports of the European Commission evaluating candidate countries in their advance towards membership. Nevertheless, there is some evidence suggesting that Polish policy makers were attentive to minority issues in the years before 2004 exactly because they were aware of the European Commission's general concerns about minority issues in the candidate member states.

One development supporting this hypothesis was the growing willingness of the Polish government to devote attention to the situation of the Roma. As I mentioned, in the period before EU accession, Poland adopted a programme that was directed specifically towards this group. Although there is no clear evidence that this programme was established as a direct result of EU pressure within the confines of the conditionality strategy, it does illustrate a growing domestic concern in Poland for an issue that internationally has received a symbolic importance for European institutions and that for the EU was important to see 'solved' as much as possible before the 2004 enlargement. Clearly, the EU leaders and the European Commission were mainly afraid of the possibility of an influx of poor and discriminated immigrants from new member states with large Romani populations, such as the Czech Republic, Hungary, Slovakia, Bulgaria or Romania.[20] In this sense, they were less motivated to monitor the situation in Poland, where there are only small groups of Polish Romani citizens (in total 12,731 people according to the 2002 census). Nevertheless, in the context of this growing European worry about the Roma, the Polish government first initiated a pilot programme in the Małopolska region (in 2001) and later (in 2003) widened up this programme to the entire country.

[20] Such an aim was signalled in measures introduced by certain EU member states. In July 2001, for example, the British government stationed immigration officers at Prague's airport to screen all passengers travelling to the UK in order to detect people who wanted to claim asylum in the UK and prevent them from travelling. The passengers who were refused permission to enter the UK under this operation were very often Czech citizens of Romani origin.

After 2004, the picture has been different and one may now more clearly discern the fields where the EU has had *less* influence. One of these fields could be described as the field of anti-discrimination, equal opportunity and social inclusion. Poland did introduce basic anti-discrimination clauses partly as a result of its EU accession.[21] The EU directives on Racial and Employment Equality (Directives 2000/43/EC and 2000/78/EC) have been adopted by Poland. In the field of employment and labour relations, the anti-discrimination provisions of the EC Directives were primarily implemented by the Polish labour code, which was twice adapted in order to transpose the directives.[22] One could argue that, after 2004, the EU's focus has not been so clearly directed towards the protection of the cultures and identities of minority citizens (since this was supposed to be taken care of before accession) but towards these anti-discrimination provisions and regulations. In this area, however, the EU does not have the same leverage as it had in the area of minority rights in the pre-2004 period.

The resulting situation is complex. On the one hand, Poland is a country that has performed well in the area of minority rights protection. It has adopted a law on minority protection, which, although fairly limited in its ultimate granting of rights, was well-received by the EU in the context of its conditionality policy. Moreover, Poland installed a support system for minority organizations, an institutional structure that allows minority organizations to speak with policy-makers and fulfil an advisory role. It devised a number of institutions dealing with the actual implementation of support policy. On the other hand, evaluated against another background, the picture is less satisfying. It is one thing to install a system of minority rights protection and another thing to change actual practices of discrimination, create equal opportunities and foster social inclusion.

Since the EU has accepted Poland as a member of the EU, it has also accepted Poland's claim that the demand for minority protection as formulated in the Copenhagen Criteria has been satisfied. This development has made the minority issue largely into a 'non-issue' in current dialogues between the European Commission and new member state Poland. However, as one author argues, that does not mean that minority rights in new EU member states in Central Europe such as Poland are fully implemented:

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[21] Pawel Filipek and Maria Pamula, "Poland Country Report: Executive Summary", European Commission Report, Brussels, January 2005, at http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/plrep05_en.pdf.
[22] *Ibid.*

> The different types of minority rights have remained as strong or weak as they were in the domestic political context prior to EU accession, and they continue to develop along these lines. What's gone is the EU's external leverage—however limited it may have been in some of these countries.[23]

In other words, because of the EU conditionality context before 2004, minority protection in Poland could be pushed by Europe in a certain direction, as the formation of the Minorities Law illustrates. However, this does not mean that minority needs have been fully satisfied since 2004. Moreover, since 2004, the EU does not have the same power to push domestic policy formation on minority protection in new directions.

There is currently a growing awareness among European leaders that the situation of minority–majority relations in Poland (not only with regard to ethnic minorities but also sexual minorities) has not necessarily improved, even if the country now has an institutionalized system of minority rights protection. A broad group of domestic and international politicians increasingly realize that the installment of minority rights legislation should be seen as only one part of the task. The more challenging aim is to create a more integrated society in which people who want to identify themselves with a minority group or are categorized as belonging to a minority are fully accepted by the broader population as equal citizens. The EU has less impact on how this latter task is being dealt with domestically.

There have been signs in Poland that, outside the realm of the institutional protection of minority rights in the fields of language and culture, there might be problems with minority protection, particularly in the field of anti-discrimination. One worrying indication, according to NGOs and observers inside and outside Poland, was the abolishment in November 2005 of the government's Commissioner for the Equal Status of Women and Men. Although Magdalena Środa, who was appointed as government commissioner in this department under the former government, seemed at first to have been forced to hand in her resignation because of a personal ideological disagreement with the new government, the resignation soon appeared to signal a more fundamental governmental move, since not only the person was discharged from her function but also the function of equal status commissioner itself was eliminated.[24] This government decision has been strongly criticized, among others, by the

[23] Sasse, "Gone With the Wind …", 25.

[24] Decree of the Council of Ministers of 3 November 2005 regarding the abolition of the Government Commissioner for Equal Status of Women and Men, Dz.U. 2005/222/1913. See also Magdalena Kula, "Co z biurem ds. Równego statusu kobiet i mężczyzn?", *Gazeta Wyborcza*, 25 October 2005.

European Monitoring Centre on Racism and Xenophobia (now the European Union Agency for Fundamental Rights) in its 2006 annual report. The criticism was twofold. First of all, the report argued that, although the Commissioner for the Equal Status of Women and Men had originally been designated as a specialized monitoring body under Article 13 of the EU's Race Equality Directive (2000/43/EC), it "did in fact not deal with a single case of ethnic discrimination". Secondly, it argued, since its abolishment in 2005, "there is no entity in Poland fulfilling the role of the Specialised Body under Art 13 Race Equality Directive".[25]

The current Polish government has also been criticized internationally for not taking the promotion of diversity and social inclusion to heart politically. Especially the nomination of Roman Giertych (League of Polish Families) in 2006 to the post of education minister in the current government has raised worries inside and outside Poland that a strong moral view of Polish national identity, a view in which those who do not conform to a certain moral image are not accepted as equal citizens and as members of the 'true' Polish nation, might be gaining ground. Journalist Wojciech Kość has noted that Giertych's moves "to introduce classes on religion and patriotism have angered liberals who accuse him of undermining secular education and promoting nationalism. His open hostility toward homosexuals is viewed by many as extreme, even for this devoutly Roman Catholic country."[26]

Within the EU institutions, minority protection in Central and Eastern Europe used to be interpreted as a field of policy on which the EU could have a strong impact through the use of a conditionality strategy. Since 2004, the EU is faced with a policy challenge that is broader than simply the issue of providing legal protection of minorities' cultural expressions but pertains to the acceptance of diversity and the struggle to eradicate discrimination. This is not an area in which the EU has a lot of impact; unfortunately, neither is it an area of policy in which the older EU member states can claim to have an unblemished record.

V. Conclusion

In this article I have briefly explored the relationship between domestic policy formation on minority issues in Poland and the evolving European context. Before 2004, the EU applied

[25] European Monitoring Centre on Racism and Xenophobia, "The Annual Report on the Situation Regarding Racism and Xenophobia in the Member States of the EU", Vienna, 2006, 30, at http://eumc.europa.eu/eumc/material/pub/ar06/AR06-P2-EN.pdf.
[26] Wojtek Kość, "Poland: Class Divisions", *Transitions Online*, 27 September 2006, at http://www.tol.cz/look/TOL/article.tpl?IdLanguage=1&IdPublication=4&NrIssue=186&NrSection=3&NrArticle=17624.

membership conditionality in order to attempt to stimulate Poland to adopt special minority protection measures. As a result, Poland turned to the official recognition of the ethnic specificity of minority groups and the acceptance of group-related cultural entitlements. Since the EU enlargement of 2004, however, European attempts to stimulate ethnocultural diversity in the new member states have focused less on group-related rights but have emphasized the importance of social inclusion, anti-discrimination and equal opportunities. European leaders and EU actors are, however, increasingly worried that the current Polish political climate hinders the development of ethnic diversity, equal opportunities, anti-discrimination and social inclusion, even though Poland has satisfied the Copenhagen Criteria by developing a law on minority rights and an institutional framework for policy dialogue with minority leaders in the fields of language and culture. The disjuncture between the growing EU concern about the promotion of the acceptance of ethnic diversity, equal opportunities, anti-discrimination and social inclusion, and the way in which minority rights are protected in Poland points to the current limits of European involvement in domestic policy making and domestic social relations in the new member states.

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Biographical Note

Peter Vermeersch is an assistant professor at the University of Leuven, Belgium, and a research fellow at the Belgian Fund for Scientific Research (FWO). He is also a visiting scholar at the Minda de Gunzburg Center for European Studies at Harvard University (2007 and 2008). He is the author of the book *The Romani Movement: Minority Politics and Ethnic Mobilization in Contemporary Central Europe* (Berghahn Books, Oxford, New York, 2006). He has published articles in *East European Politics and Societies, Communist and Post-communist Studies, Identities: Global Studies in Culture and Power*, the *Journal of Ethnic and Migration Studies, Ethnic and Racial Studies*, and other journals.

Introduction: Europe and the Integration of Integration

Gabriel von Toggenburg

I. 2007 as a Year of New Opportunities for the EU Itself

This year, in 2007, the process of European integration had its big birthday party. 50 years have passed since six states began, at the end of March 1957 in Rome, to integrate their economies. And the "hope has been fulfilled. European unification has made peace and prosperity possible".[1] However, 2007 stands also for another, newer dimension of the European integration process: this year was designated by the European Parliament and the Council of the EU as being the 'European Year of Equal Opportunities for All'.[2] Moreover, 2007 gave birth to two new EU institutions, which have the potential to make the Union's human dimension much more visible—namely, the European Union's Agency for Fundamental Rights (hereinafter "Fundamental Rights Agency")[3] and the European Institute for Gender Equality.[4] In this sense, the 50th anniversary makes very clear that the process of European integration is no longer concerned exclusively with the integration of states and their economies but also with the integration of individuals and their economic opportunities within their respective societies.

To move "towards a just society" is the rather ambitious aim of the European Year of Equal Opportunities for All.[5] It is supposed to help to achieve "a more socially inclusive society"[6] and to highlight that "all people are entitled to equal treatment, irrespective of their sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The European Year will make groups that are at risk of discrimination more aware of

[1] Taken from the Berlin Declaration (signed on the occasion of the 50th anniversary of the signature of the Treaties of Rome), at http://www.eu2007.de/de/News/download_docs/Maerz/0324-RAA/English.pdf.
[2] European Parliament and European Council Decision No. 771/2006/EC of 17 May 2006 establishing the European Year of Equal Opportunities for All (2007)—Towards a Just Society, OJ L 146, 31 May 2006, 1–7.
[3] See Council Regulation No. 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, OJ L 53, 22 February 2007, 1–14.
[4] See Council Regulation No. 1922/2006 of 20 December 2006 establishing a European Institute for Gender Equality, OJ L 403, 9–17.
[5] European Parliament and European Council Decision No. 771/2006/EC.
[6] See Consideration 7, *ibid*.

their rights and of existing European legislation in the field of non-discrimination."[7] Moreover, this European initiative (which disposes over a rather symbolic budget of EUR 15 million to be spent in 2006 and 2007) aims to stimulate the debate on ways to "increase the participation in society" of disadvantaged groups and to underline the positive contribution that such people can make to society as a whole, in particular by "accentuating the benefits of diversity".[8]

In fact, it seems as if the question of how to deal with Europe's diversity is moving into the more inner circles of European integration. How should the EU integrate Europe's diversity? Eastern enlargement has made the Union a masterpiece of diversity. There is an astonishingly strong diversity not only *between* the member states but also *within* these 25 different states.[9] Nearly 190 minority groups and over 40 million speakers of minority or regional languages stand for the rich European cultural heritage represented within the 25 member states.[10] At the same time, a quarter of the over 190 million people across the world who do not live in their country of origin reside on EU territory: 40 million migrants live in (or, rather, beside) the various European societies (a figure that amounts to over 12% of the overall EU population).[11] Against this background, it is becoming clear that being different (and therefore potentially excluded) has always been and will definitively remain a truly European experience. More and more, the EU is searching for European replies.

The Commission is of the opinion that personal characteristics such as gender, ethnicity, age, sexual orientation or disability continue to prevent some people from realizing their full potential. Moreover, it underlines that this discrimination is also bad for the economy

[7] Article 2, lit. a), Decision 771/2006/EC.
[8] Article 2, lit. b) and c), Decision 771/2006/EC.
[9] This Janus-headed character of the notion of 'diversity' makes any legal assessment of diversity a complex exercise. See in this context Gabriel N. Toggenburg, "Unification via Diversification—What Does it Mean to Be 'United in Diversity'?", *EUMAP Feature 'Enlargement Day'* (2004), at http://www.eumap.org/journal/features/2004/bigday/diversity. Compare also Armin von Bogdandy, "Die Europäische Union und das Völkerrecht kultureller Vielfalt—Aspekte einer wunderbaren Freundschaft", European Diversity and Autonomy Papers (2007) No. 5, at http://www.eurac.edu/documents/edap/2006_edap05.pdf.
[10] For detailed numbers, see Christoph Pan and Beate Sybille Pfeil, *National Minorities in Europe* (Braumüller, Vienna, 2003).
[11] See Stefano Bertozzi, "Integration: an Ever-closer Challenge", CEPS Working Document No. 258/2007, 9 February 2007, at http://shop.ceps.be/BookDetail.php?item_id=1459.

and for society as a whole. Therefore, there is "a need to go beyond anti-discrimination policies designed to prevent unequal treatment of individuals. The EU should reinforce its efforts to promote equal opportunities for all, in order to tackle the structural barriers faced by migrants, ethnic minorities, the disabled, older and younger workers and other vulnerable groups".[12] In fact, the Commission comes to the conclusion that one of the "key challenges facing the enlarged European Union is the need to develop a coherent and effective approach to the social and labour market integration of ethnic minorities".[13] In fact, this years' agenda makes it clear that the EU is on the move in this area. A new integration fund marks the beginning of 2007. It offers additional resources (amounting to EUR 825 million for the period 2007–2013) for the integration of third country nationals. During 2007, the brand new Fundamental Rights Agency will be busy designing its mission and main interests. Voices in politics as well as academia advocate that this new institution should deal with the integration of disadvantaged groups[14] and the management of diversity in Europe.[15] Finally, at the end of 2007, the 'EU High Level Group of Experts on the Social and Labour Market Inclusion of Ethnic Minorities' is to deliver its report, containing recommendations on how Europe can enhance the inclusion of minorities in the labour market.[16]

II. A JEMIE Focus Offering a Set of Case Studies in the Area of Equal Opportunities

Against this backdrop, it seems timely that this issue of the Journal on Ethnopolitics and Minority Issues in Europe (JEMIE) is confronting the reader with an (admittedly rather

[12] European Commission, "Non-discrimination and Equal Opportunities for All—A Framework Strategy", COM(2005) 224 final, 1 June 2005, 2 and 10, at http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0224en01.pdf.
[13] *Ibid.*
[14] See European Parliament, "Report on Strategies and Means for the Integration of Immigrants in the European Union", A6-0190/2006 final, 17 May 2006, at http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2006-0190+0+DOC+PDF+V0//EN, which calls in its para. 21 for the inclusion of the integration of third-country nationals in the multiannual programme of the Fundamental Rights Agency.
[15] See Gabriel N. Toggenburg, "The EU Fundamental Rights Agency: Satellite or Guiding Star? Raison d'être, Tasks and Challenges of the EU's New Agency", *Stiftung Wissenschaft und Politik SWP Comments* (2007) No. 5, at http://www.swp-berlin.org/en/common/get_document.php?asset_id=3820.
[16] See Commission Decision No. 2006/33/EC of 20 January 2006 establishing a High-level Advisory Group on Social Integration of Ethnic Minorities and their Full Participation in the Labour Market, OJ L 21, 25 January 2006, 1.

diverse) set of topics, all of which in one way or the other deal with the inclusion of minorities. Jonathan Wheatley presents a highly interesting comparison of four cases: South Tyrol, Northern Ireland, northeastern Estonia and Transylvania.[17] In these four European regions, minorities are compactly settled but their relative economic status differs. Russian speakers in Estonia and Catholics in Northern Ireland show signs of being disadvantaged economically, whereas German speakers in South Tyrol and Hungarians in Transylvania do not. Interestingly, each pair of examples contains one region that has recently undergone radical economic restructuring. Alongside nine factors, Wheatley tries to discover the explanations for these differences. However, one of his major conclusions is that both the impact of external influences (such as rapid economic change) as well as the impact of policy measures to redress regional disparities (such as the EU's regional policy) depend on the local and national context. In this sense, it is hard to think of any sort of (European) 'catch-all' package of policies that can be used in all cases when it comes to the economic inclusion of minorities.

A very frequent case of economic isolation is taken up by Eben Friedman in his presentation on the development of the situation of Roms in the Western Balkans and comments on the respective policy responses offered. He comes to the conclusion that Roms in the Western Balkans have experienced less overt discrimination in comparison with their ethnic brethren who settled further north and west but that Roms invariably constitute the most disadvantaged ethnic group in a regional context that remains itself disadvantaged.[18] Political strategies to do away with this situation do exist but implementation remains very modest. One way to address this problem is the provision of relevant data on these most vulnerable groups. In fact, the lack and importance of reliable data is another red line running through this collection of articles.[19] Also, Ulrike Schmidt

[17] Jonathan Wheatley, "The Economic Status of National Minorities in Europe: A Four-Case Study", 6(1) *Journal on Ethnopolitics and Minority Issues in Europe* (2007).
[18] Eben Friedman, "A Dual Challenge for the Year of Equal Opportunities for All: Roms in the Western Balkans", 6(1) *Journal on Ethnopolitics and Minority Issues in Europe* (2007).
[19] Again, there is also a clear EU dimension to this issue. Recently, the European Parliament underlined that the collection of data on the situation of minorities and disadvantaged groups is crucial for any policy combating discrimination or providing special benefits. Moreover, it pointed to the fact that it would be "counter-productive to prevent statistics relating to certain characteristics from being gathered under the cover of legislation on the protection of personal data". See European Parliament, "Report on Non-

underlines in her contribution the need for data and comparable analysis of the situation and policy effects on the ground. She reports on six National Action Plans in the area of social inclusion delivered by six member states of the European Union in the framework of the EU-managed soft law process on social inclusion. Schmidt's contribution focuses on language education policies addressing the Russian-speaking minorities in Latvia and Estonia; the Roma communities in the Slovak Republic, the Czech Republic and Slovenia; and 'persons born in another country' in Sweden.[20] Her conclusion is that the policies taken at the member state level have had some general positive impact, even if it is difficult to associate cost figures to them. Moreover, she doubts that the Open Method of Coordination as a mere dialogue process can efficiently address such an immense task as improving the social inclusion of excluded groups in the EU. Lastly, she points to the danger that language policies can easily lead to assimilation if ethnic minorities are not seen as an internal resource enriching the entire society.

A strong belief in the advantages of a multiethnic society can be traced in the discussion surrounding the future of Kosovo. Adrian Zeqiri presents in his contribution an overall view on the minority-related provisions of the "Comprehensive Proposal for the Kosovo Status Settlement" submitted by UN Special Envoy Martti Ahtisaari at the end of March 2007. Being 'a multiethnic society' is identified by Zeqiri as a sort of meta-constitutional value underlying the overall Ahtisaari proposal. Not only must Kosovo's national symbols—a flag, seal and anthem—reflect the multiethnic character of society but the key institutions in the legislative and executive branch must also contain mechanisms of constitutional engineering that will guarantee a representation not only of the Serb community but also of other ethnic communities. This complex and rigid system even foresees next to a 'Committee on the Rights and Interests of Communities' a

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discrimination and Equal Opportunities for All—A Framework Strategy", A-6-0189/2006, 18 May 2006, para. 13–21, at http://www.europarl.europa.eu/registre/recherche/NoticeDetaillee.cfm?docid=185928&doclang=EN. A concrete example of a potential conflict between supranational data protection and (sub-)national minority protection is the case of South Tyrol. After the European Commission had expressed clear concerns in 2005 about the compatibility of the norms on the census and the declaration of linguistic affiliation, Rome and Bolzano/Bozen had to revise the system in order to guarantee a higher degree of individual data protection than the previous legal status had offered.

[20] Ulrike Schmidt, "The Aspect of Culture in the Social Inclusion of Ethnic Minorities", 6(1) *Journal on Ethnopolitics and Minority Issues in Europe* (2007).

'Community Consultative Council' under the auspices of the president of Kosovo, which would have the task of commenting upon legislative and policy initiatives at an early stage. The complex institutional structure provides a plethora of ethnic safeguard clauses, which are complemented by a language regime providing for two official languages (Albanian and Serbian) and other languages with official status at the municipal level (Turkish, Bosnian and Romani). Zeqiri admits that the complex system could appear as encouraging segregated societies but his conclusion is rather that the 'Comprehensive Proposal' promotes the segregation of Roma "for the very purpose of privileging equal opportunities and non-discrimination for all communities".[21]

All of the four contributions at hand treat national if not regional realities. They are not about Europe or the European Union. Nevertheless, the European level of governance pops up in countless corners of the writings here at hand. The contribution of Jonathan Wheatley serves as an illustrative example in this context. Wheatley presents nine factors that he deems responsible for the inclusion/exclusion of minorities. One of them, the EU's regional policy, derives directly from the EU level. At least three of them—namely, the transition to a market economy, the phenomenon of cross-border cooperation and the integration of peripheral regions into the national and global economy—can clearly be ascribed to participation in the EU system. Admittedly, the other three factors—the institutional set up of a region/state, the educational system of a region/state and the decision to introduce proportionality and ethnic quotas in employment—do exclusively originate in the national political and legal context. However, even in this *domain reservé*, the EU leaves its traces—both in the area of law as well as in the area of politics (without any guarantee that the respective interventions are of the same intensity or would always pull in the same direction).

The issue already raised by Zeqiri, namely Kosovo, serves as an example. There, the EU might become engaged in questions of constitutional diversity engineering.[22] The European Commission has emphasized that the future Kosovo can only be "conceived in

[21] Adrian Zequiri, "Kosovo's Post-Status Status: Equal Opportunities for All?", 6(1) *Journal on Ethnopolitics and Minority Issues in Europe* (2007).
[22] See on this, the forthcoming deliverables in the framework of the FP6 research project, 'Human and Minority Rights in the Life-Cycle of Ethnic Conflicts', at www.eurac.edu/mirico.

the form of a multi-ethnic and democratic Kosovo, which ensures effective protection for minorities [and] preserves the cultural and religious heritage of all its communities".[23] With regard to the "monitoring, guaranteeing and facilitating [of] the implementation of the status settlement", the European Parliament advocates a "central" role for the EU.[24] Of course, Kosovo is not (yet) a state (let alone an EU member state) but, even with regard to its own member states, the Union may have certain impacts on the core mechanisms of minority protection. Zeqiri and Wheatley induce me to mention an example from South Tyrol, since both authors point in their respective contributions to the importance of ethnic quotas in the civil service. In South Tyrol, there is a long-standing academic discussion regarding to what degree such a system is compatible with the central norms of EC law.[25] Whereas in EU politics there are signals calling for positive action favouring minorities, it is at the same time obvious that "a clear definition of positive action"[26] is lacking and that EC law (as interpreted by the European Court of Justice) applies a rather formal view to equality. Preferential treatment is rather considered as an exception to the principle of equality instead of the very expression of it (as a substantive reading of equality would suggest). Against this background, it becomes obvious that the EU is concerned with equality of opportunities and not equality of results.

III. Europe: How to Integrate Integration?

This does not, of course, imply that the EU has no role to play when it comes to the protection of minorities. However, it is not easy to grasp when, where and how the EU level of government (and governance) intervenes in minority issues. The EU level is, in

[23] See European Commission, "A European Future for Kosovo", COM(2005)156 final, 20 April 2005, 2, at http://www.euinkosovo.org/upload/Commission%20Communication%20-%20European%20Future%20for%20Kosovo.pdf.

[24] The European Parliament calls for a "central role in monitoring, guaranteeing and facilitating the implementation of the status settlement". See European Parliament, "Report on the Future of Kosovo and the Role of the EU", A-6-0067/2007, 15 March 2007, Consideration L, at http://www.europarl.europa.eu/registre/recherche/NoticeDetaillee.cfm?docid=224775&doclang=EN.

[25] For the questions raised under EU law, see Gabriel N. Toggenburg, "Regional Autonomies Providing Minority Rights and the Law of European Integration: Experiences from South Tyrol", in Joseph Marko *et al.* (eds.), *Tolerance established by Law. The Autonomy of South Tyrol: Self-governance and Minority Rights* (Martinus Nijhoff, Leiden, forthcoming 2007), 143–164.

[26] European Parliament, "Report on Strategies …", para. 2.

the area of minority protection, (still) characterized by a "politics versus law" situation.[27] For instance, the European Parliament complains that "while protection of minorities is a part of the Copenhagen criteria, there is no standard for minority rights in Community policy nor is there a Community understanding of who can be considered a member of a minority".[28] At the same time, this fact does not hinder the Commission from criticizing Turkey for applying a too restrictive notion of minorities and underlining that "there are other communities in Turkey" that it could qualify as minorities.[29] These and other facets of the "politics versus law" situation are often criticized as being the fruit of a 'double standard' approach if not a discriminatory attitude. However, one should not ignore the simple fact that the Union has to respect strict limits in the area of law, whereas in the area of politics it has a plethora of means available in order to fulfill its declared mission of ensuring respect for and protection of minorities.[30]

In the context of the complex European 'condominium' built by the member states and the Union, it makes less and less sense to think of minority protection as a hermetic and concise legal competence matter. It is more realistic to look at it as an overall policy aim that is best fulfilled by a variety of political as well as legal instruments, based on a variety of legal bases situated at various levels of government. As such, the protection of minorities is characterized by three dimensions of the notion of 'integration'. Firstly, the objective of minority protection can be defined as the integration of persons belonging to a minority group into the state (*integratio*) while these persons' group identities remain to a guaranteed (but negotiable) degree untouched (i.e., *integer*). Secondly, minority protection is characterized by a notion of integration underlining its horizontal character: minority protection does not (only) consist of one single set of instruments but has to be integrated as a policy aim in all public policies by means of legislative impact assessment and mainstreaming. Thirdly, European minority protection is characterized by its specific

[27] Compare Bruno de Witte, "Politics versus Law in the EU's Approach to Ethnic Minorities", EUI Working Paper RSC (2000) No. 4.
[28] European Parliament Resolution on the Protection of Minorities and Anti-discrimination Policies in an Enlarged Europe, adopted on 8 June 2005, OJ C 124 E, 25 May 2006, 405–415, at 407, para. 7.
[29] At the same, the Commission falls short of saying who these minorities are. European Commission, "Turkey Progress Report 2006", SEC(2006) 1390, 8 November 2006, 20.
[30] For an overall view on the means available, see Bruno de Witte, "The Constitutional Resources for an EU Minority Policy", in Gabriel N. Toggenburg, (ed.), *Minority Protection and the Enlarged European Union: The Way Forward* (LGI, Budapest, 2004), 107–124.

vertical functioning within a system of multilevel governance: local, regional and national means of protection have to be integrated into the means offered at the supranational level, be they legal (such as, for example, the Race Directive), political (such as, for example, the process of social inclusion) or financial (such as, for example, the new PROGRESS programme) in nature.

As regards this last European dimension of integration, I have elsewhere tried to expose a picture of the complex situation by breaking the European phenomenon of "integration of integration" down into three stages of integration.[31] Firstly, there is a moment of entry—namely, the question of who is allowed to enter European territory. This stage of integration is of relevance for new minorities (i.e., migrants) and is still dominated by the member states. However, there are clear signs that this dimension could increasingly be handed over to the supranational level. Second comes a stage of integration in the stricter sense, comprising all measures preventing discrimination and helping to establish equal opportunities for persons belonging to minorities. This level is characterized by a dense net of cooperation between the member state and the European level and is of obvious relevance for new and old minorities alike. This year's 'European Year of Equal Opportunities for All' is just one example of cooperation in this sector. Thirdly, one can identify the level of preservation, through instruments aimed at the preservation of group identities. The decision to provide clear-cut group rights and to protect collective identities remains reserved to the member states.

In order to sum up, one can conclude that an integrated system of integration within the EU has the legal potential (especially if the Constitutional Treaty should enter into force) to entrust the Union increasingly with the question of entry—namely, issues of immigration, border control and asylum. In the broad field of integrating individuals and groups into the respective societies, the member states are closely interacting with the EU-level by transposing norms of hard EU law (e.g., in the area of anti-discrimination) or by establishing soft but institutionalized exchanges of knowledge and best practices in the

[31] See the model of two 'Inverted Diversity Pyramids' in Gabriel N. Toggenburg, "Who is Managing Ethnic and Cultural Diversity within the European Condominium? The Moments of Entry, Integration and Preservation", 43(4) *Journal of Common Market Studies* (2005), 717–737.

areas of employment, migration, social inclusion, language policies, etc.[32] In this context, the Open Method of Coordination can offer an attractive tool to reconcile the ambition of the European Union to coordinate and inspire diverging national policies with the preoccupation of the individual member states to preserve their national autonomy and to prevent the Union from encroaching on policy areas that are considered, politically speaking, 'sensible'. The Europeanization of integration seems to run out of steam where questions of collective identity preservation are stake. Neither is there a consensus amongst the member states as to what degree group identities should be protected; nor is there at the EU level any tendency in sight to establish a supranational reading of the notion of multiculturalism. This, however, does not at all preclude that the EU should become more deeply engaged with questions of diversity management. In fact, neither the Council of Europe nor the OSCE offer concentrated know-how in this increasingly important area. The newly established Fundamental Rights Agency might offer new opportunities for the EU to get adequately engaged in this camp.

[32] See for more detail, Gabriel N. Toggenburg, "A Remaining Share or a New Part? The Union's Role vis-à-vis Minorities after the Enlargement Decade", EUI Working Papers Law (2006) No. 15, at http://cadmus.iue.it/dspace/bitstream/1814/4428/1/LAW+2006.15.pdf.

Biographical Note

Gabriel von Toggenburg is a Senior Researcher at the Institute for Minority Rights at the European Academy Bolzano/Bozen. Toggenburg mainly deals with issues of EU law. He has published widely on issues dealing with minority rights, language rights, general EU constitutional law and human rights. He is the editor of the book *Minority Protection and the Enlarged European Union: the Way Forward* (LGI, Budapest, 2004), full texts online at http://lgi.osi.hu/publications_datasheet.php?id=261; and initiator of the "Bolzano/Bozen Declaration on the Protection of Minorities in the Enlarged European Union" presented to the Heads of State and Government of the European Union in May 2004.

The Economic Status of National Minorities in Europe: a Four-Case Study

Jonathan Wheatley

Abstract

The aim of this study is to investigate the causes and effects of economic exclusion of historical national and ethnic minorities and to identify the policies, both at the national and supranational levels, that are most effective in combating this problem. The study analyzes economic participation in four regions of Europe in which historical minorities are concentrated: the Autonomous Province of South Tyrol/Bolzano (where German-speakers form a majority), Northern Ireland (where Catholics form a large minority), Estonia (where Russians and other Russian-speakers form a majority in the northeastern county of Ida-Viru) and Transylvania in Romania (where Hungarians form a majority in two counties). The main focus is on compactly settled minorities, rather than widely dispersed minorities such as Roma. The paper (Section II) shows how a variety of factors, including constitutional arrangements and other fundamental laws, policies from different fields of policy making, general economic processes, such as privatization or integration into the global marketplace, as well as the strategies adopted by the minorities themselves, affect the relative economic position of members of minorities in the four regions under analysis. This allows us to derive examples of best practice in terms of policy initiatives that can best combat the problem of economic exclusion. The paper concludes by summarizing the policies that are most effective in promoting economic inclusion in our case studies and the ways that these may be employed at a wider EU level.

I. Introduction

Before embarking on an analysis of the causes and effects of the economic exclusion of minorities, we must first ask ourselves why we should prioritize the issue of economic exclusion of minorities at all. To begin with, we should ask whether historical minorities do, in fact, suffer from economic marginalization. If we find that they do not, then there is little reason to make this a major issue. We must then ask why, if the economic marginalization of minorities does indeed occur, it should be a major policy issue that governments and international organizations should take seriously. It is these questions that this introduction sets out to address.

As the abstract (above) makes clear, this paper is not primarily concerned with Europe's Roma population, although in the conclusion some of the special problems faced by

Roms are addressed, namely the high vulnerability of Roms to rapid economic change and the low economic and educational expectations within Romani communities. While Roms are a clear example of an ethnic group that suffers from systematic discrimination in terms of economic opportunities, they are in many ways a special case with very distinct problems of their own. Most importantly, Roms are a non-territorial nationality, to the extent that they are found in virtually all European countries. Moreover, most Romani communities in Europe have been highly mobile over the past two centuries and have tended not to integrate with the rest of society. For these reasons, they have played little or no role in the nation-state-building processes of the nineteenth and twentieth centuries. Their relative marginalization in society therefore has especially deep roots in a way that is not the case with most other national minorities. The policies and factors that may influence the degree of economic participation of Roms may therefore not be relevant for other minorities. Finally, there is a wealth of literature on the problem of Roms' marginalization and it would not do the subject justice to deal with it in a perfunctory manner in this paper.[1]

A. Are Members of Europe's Historical Minorities Excluded Economically?

The first question we need to address is whether or not national minorities (or, at least, certain national minorities) in Europe are, in fact, disadvantaged economically. Although the lack of data that are disaggregated according to ethnicity makes it difficult to ascertain the extent to which minorities are economically excluded, it is still possible to obtain economic data from *regions* in which minorities are concentrated and this should serve as a guide to the economic circumstances faced by the minorities themselves. Table 1 (below) therefore provides figures for GDP and unemployment in those NUTS regions[2]

[1] See, for example, publications by the European Roma Rights Centre at http://www.errc.org/Publications_index.php, specifically European Roma Rights Centre**,** *The Glass Box: Exclusion of Roma from Employment* at http://www.errc.org/cikk.php?cikk=2727, as well as contributions from the UNDP such as UNDP, 'The Roma in Central and Eastern Europe: Avoiding the Dependency Trap', (Regional Human Development Report, UNDP Bratislava 2002). See also documentation relating to the Decade of Roma Inclusion 2005-2015, such as that found on the World Bank website, http://go.worldbank.org/ELVUPU6V80.

[2] The Nomenclature of Territorial Units for Statistics (NUTS) is a three-tier hierarchical classification developed by the Statistical Office of the European Communities (Eurostat) for referencing the administrative division of EU countries for statistical purposes. For the candidate countries awaiting

Table 1: Economic Status of Minorities in NUTS Regions with a Minority Population of over 35%

NUTS Region	Minority %	GDP per capita (% of national average) 2004	Unemployment 2004
United Kingdom	**n/a**		**4.7%**
Northern Ireland	46% Catholic		5.0%
North	57% Catholic	63% (78% of N. Ireland average)	n/a
West and South	65% Catholic	68% (84% of N. Ireland average)	n/a
Scotland	Scots	96% (103% of average outside the capital)	4.5%
Wales	Welsh	78% (84% of average outside the capital)	5.7%
Spain	**n/a**		**11.0%**
Galicia	Galicians	80% (85% of average outside the capital)	13.6%
Pais Vasco/Euskadi	Basques	125% (131% of average outside the capital)	9.7%
Catalunya	Catalans	120% (126% of average outside the capital)	9.7%
Finland	**n/a**		**8.8%**
Aaland Islands	92% Swedish speakers	127% (145% of average outside Uusimaa)	n/a
Romania	**7% Hungarian**		**8.1%**
Covasna	74% Hungarian	96% (106% of average outside capital)	9.4%*
Harghita	85% Hungarian	84% (93% of average outside capital)	6.1%*
Mures	39% Hungarian	104% (115% of average outside capital)	10.5%
Estonia	**26% Russian**		**9.7%**
Ida-Virumaa	70% Russian	60% (93% of average outside Pohja-Eesti)	17.9%
Italy	**n/a**		**8.0%**
Bolzano	69% German speakers	130% (134% of average outside capital)	2.7%
Greece	**1% Muslim**		**10.5%**
Xanthi	41% Muslim	68% (83% of average outside capital)	10.1%
Rodopi	52% Muslim	59% (73% of average outside capital)	7.8%*
Bulgaria	**9% Turk**		**12.0%**
Razgrad	47% Turk	72% (87% of average outside capital)	19.0%
Latvia	**30% Russian**		**10.4%**
Latgale	43% Russian	46% (76% of average outside capital)	12.7%

accession to the EU, for the other European Economic Area (EEA) countries and for Switzerland, a coding of statistical regions that corresponds to the NUTS classification has been defined by Eurostat in agreement with the countries concerned. NUTS is a acronym for the French name for the scheme, *nomenclature des unités territoriales statistiques*.

Sources: For economic and population data, see http://epp.eurostat.ec.europa.eu. For breakdown according to ethnicity/language, see http://en.wikipedia.org/wiki/%C3%85land for the Aaland Islands; http://en.wikipedia.org/wiki/Muslim_minority_of_Greece for Muslims in Greece (1991); http://pub.stat.ee for Estonia (2000); www.insse.ro/rpl2002rezgen/rg2002.htm for Romania; www.provincia.bz.it/ASTAT/downloads/Siz_2006-eng.pdf for Provincia Autonoma Bolzano (2001); www.nsi.bg/Census_e/Ethnos.htm for Bulgaria (2001); and http://data.csb.lv/EN/Database/popcensus/popcensus.asp for Latvia (2000).

* indicates provisional data.

of the EU in which minority populations exceed 35%.[3] This shows that some minorities in Europe clearly do not benefit from the same economic opportunities as their majority counterparts, while others enjoy the same living standards or even better. In particular, there seems to be little evidence that the so-called 'regional minorities' perform badly economically: in three cases (the Aaland islands, Catalunya and the Basque country), regions associated with a (sub-)national identity perform better than the rest of the country, in two cases (Galicia and Wales) they perform worse and, in one case (Scotland), economic development is similar to that in the rest of the country. Ethnically mixed regions in which ethnic minorities are compactly settled tend to perform rather worse; however, South Tyrol (where German-speakers are concentrated) still over-performs, while the counties of Transylvania (Romania) in which Hungarians are settled (Harghita, Covasna and Mures) perform at least as well as other rural areas. The answer to our question of whether or not national minorities in Europe are economically disadvantaged is therefore: it depends on a number of factors.

This paper focuses on four regions in which minorities are compactly settled, including two (Catholics in Northern Ireland and Russian-speakers in Estonia) in which the minorities in question show signs of being disadvantaged economically and another two (Hungarians in Transylvania and German-speakers in South Tyrol) in which they do not. These four cases should be particularly illustrative because each pair contains one region that has recently undergone radical economic restructuring (from a state-run to a market-

[3] Except for the capital city of Latvia, Riga, where the Russian population was 44% in 2000. It was felt that the special circumstances in which capital cities find themselves make it impossible to compare them with other regions.

based economy) and one that has not. The task of this paper is to investigate why economic marginalization has occurred in two regions but not in the other two. The main indicator for economic marginalization used in this paper is unemployment; this is because unemployment, by its very nature, implies estrangement from the economic processes of the country; also, data on income per capita—another indicator of economic status—is less widely available at the regional level and is rarely, if ever, disaggregated in terms of ethnicity (see below).

B. Why Does the Economic Exclusion of Minorities Matter?

The economic marginalization of minorities matters for the following reasons. First of all, minorities are a frequently untapped resource in terms of economic prosperity for entire communities, not only for members of the minority in question. By making use of the intellectual capital that members of minorities have to offer, regions and states regions can develop in ways that would not be possible if their skills were left to go to waste. Conversely, if minorities remain undereducated, underpaid and underemployed, the economy of the entire country or region will suffer, with adverse consequences for members of the majority as well. Successful models of multiethnic societies show us that ethnic heterogeneity can be associated with prosperity and high living standards across the board, provided that the economic potential of all citizens is tapped (see the case of the Autonomous Province of Bolzano/South Tyrol below).

Second, economic prosperity and the reduction of economic inequalities leads to greater participation of minorities in public life and, in turn, to a further consolidation of democracy. Scholars of democratization often argue that economic development is a prerequisite for a consolidated democracy and that this argument is particularly relevant in multiethnic societies.[4] This is because greater economic opportunities for members of national and ethnic minorities can help to break down divisions in society and foster the establishment of multiethnic networks (as is the case in Bolzano/South Tyrol). Minority

[4] On the relationship between economic development and democracy, see Seymour Martin Lipset, *Political Man: the Social Bases of Politics*, expanded edition (Doubleday, New York, 1960); and Larry Diamond, "Economic Development of Democracy Reconsidered", *American Behavioral Scientist* (1992) No.4/5, 450–499.

communities mired in poverty, on the other hand, are unlikely to accumulate the level of social capital necessary to make their voices heard in the political sphere.[5]

Third**,** economic underdevelopment and, especially, the economic marginalization of a particular identity group increases the likelihood of interethnic conflict. Various development studies have shown that low rates of economic growth and low per capita income provide opportunities for potential 'spoilers' to engage in intercommunal violence.[6] In economically underdeveloped regions in which national minorities are concentrated, inequalities in living standards and in access to vital yet scarce resources can often lead to the exploitation of ethnic networks by political, economic and criminal elites for the purposes of racketeering or (in extreme cases) armed actions. Moreover, members of minorities that are economically marginalized may come to feel that their low economic status is the result of deliberate discrimination on the part of the majority or the government, even when it is not.[7] This can breed resentment and potentially lead to conflict.

Assuming, then, that the inclusion of minorities into regional, national and global economies is important for stability and democracy, let us now look at the factors that make this possible. In the following section, I focus on nine such factors insofar as they impact upon our four mini case studies: institutional design, education, informal networks, cross-border trade, privatization, integration into the national and global economies, EU integration, ethnic quotas/monitoring in employment and—last but not least—the availability of accurate data on the economic circumstances of minority

[5] According to Robert Putnam, social capital "refers to the collective value of all 'social networks' and the inclinations that arise from these networks to do things for each other". Robert Putnam, *Bowling Alone: the Collapse and Revival of American Community* (Simon & Schuster, New York, 2000).

[6] Paul Collier and Anke Hoeffler, "Greed and Grievance in Civil War", World Bank Working Paper (2001) at http://www.worldbank.org/research/conflict/papers/greedgrievance_23oct.pdf; and Susan E. Rice, Corinne Graff and Janet Lewis, "Poverty and Civil War: What Policymakers Need to Know", Brookings Institute Working Paper No.2, at www.brookings.edu.

[7] Such is the case in the Georgian region of Javakheti. Many Armenians (who make up a majority in Javakheti) believe that the dilapidated infrastructure that exists in Javakheti (and in many other more rural districts of Georgia as well) is the result of a deliberate policy by the Georgian authorities to force them to leave, a process they refer to as 'white genocide'. See Jonathan Wheatley, "Obstacles Impeding the Regional Integration of the Javakheti Region of Georgia", ECMI Working Paper No. 22, September 2004, at www.ecmi.de/download/working_paper_22.pdf.

communities. I do not consider the impact of all these factors in all four cases; instead, I highlight the factors that are most relevant for each case.

II. Some Factors Responsible for Inclusion/Exclusion of Minorities

A. Institutional Design

Institutional design refers to the rules according to which power is distributed and citizenship rights are bestowed. It is normally determined by fundamental laws, in particular by constitutions. Of particular relevance to minorities and their economic rights are citizenship laws, language laws, territorial administrative arrangement and election laws. All four factors may, in a number of different ways, have a profound impact on the economic opportunities of members of national minorities. Out of our four cases, the first two factors (citizenship laws and language laws) have had a profound impact on minority economic participation in Latvia; the third factor (territorial autonomy) is important in South Tyrol/Bolzano; while the fourth factor (election legislation) has played a role in the economic marginalization of Catholics in Northern Ireland.

Estonia (like its neighbour Latvia) has adopted restrictive citizenship laws. Estonian laws on citizenship only grant automatic citizenship to persons who were citizens prior to the Soviet occupation of 1940 and their descendants. However, many of those living in Estonia do not fit into this category as they entered the republic as migrant workers from other parts of the USSR during the post-war years. These individuals (mainly ethnic Russians) can only become citizens if they fulfill certain requirements, principally by passing a naturalization test in which knowledge of the Estonian language is the main criterion for success.[8] Although a slow process of naturalization has taken place since Estonia attained independence, according to a report by the European Commission against Racism and Intolerance published in 2005, at the time of writing there were still

[8] There were certain exemptions from the language test, namely for those who did not qualify for Estonian citizenship but all the same demonstrated loyalty to the new state—for example, by having applied for Estonian citizenship prior to February 1990. Also, from 1998, children born in Estonia after February 1992 were given the right of citizenship providing their parents had been legally resident in Estonia for five years.

around 139,000 stateless persons in Estonia, making up 11% of the population.[9] While this is very significantly down from the figure of 520,000 (nearly 40% of the population) when the Law on Citizenship was enacted in 1992,[10] it still makes up a significant share of the population.

Despite the fact that they are able to obtain residence permits, can vote in local elections and are entitled to a wide range of social benefits, non-citizens in Estonia are clearly disadvantaged in the labour market in comparison with citizens. According to a report by the Estonian government, far fewer non-citizens than citizens hold posts as managers or skilled specialists, although amongst citizens the difference between Estonians and non-Estonians was much smaller. In 2000, just over 40% of Estonians held posts as managers or specialists, compared with about 38% of non-Estonian citizens, 27% of stateless persons and less than 20% of Russian citizens resident in Estonia.[11] Particularly few Russian-speakers work in the more elitist professions within the public sector; in 2001, Russian-speakers constituted just 9% of judges and 6% of officers in the Ministry of Internal Affairs. In addition, there were no Russian-speakers working as officials in the Ministries of Justice or Education.[12] Moreover, in the city of Narva in Ida-Virumaa, where the proportion of (mainly Russian-speaking) non-citizens is estimated at 33%, unemployment is particularly high; although unemployment figures for Narva city itself are not available, the unemployment rate in Ida-Virumaa has remained nearly twice the

[9] European Commission against Racism and Intolerance, "Third Report on Estonia", adopted on 24 June 2005, at http://www.coe.int/t/e/human_rights/ecri/1-ecri/2-country-by-country_approach/estonia/Estonia%20third%20report%20-%20cri06-1.pdf.

[10] Margit Sarv, "Integration by Reframing Legislation: Implementation of the Recommendations of the OSCE High Commissioner on National Minorities to Estonia, 1993–2001", Centre for OSCE Research, Institute for Peace Research and Security Policy at the University of Hamburg, Working Paper No. 7, at http://www.core-hamburg.de/documents/35_CORE_Working_Paper_7.pdf.

[11] Government of Estonia, "Implementation of State Programme 'Integration in Estonian Society 2000–2007' in 2000: Report of the Government of Estonia", May 2001, at http://www.riik.ee/saks/ikomisjon/word/report.doc.

[12] Open Society Institute, "Minority Protection in Estonia: An Assessment of the Programme Integration in Estonian Society 2000–2007", Open Society Institute Report (2002), at http://www.eumap.org/reports/2002/minority/international/sections/estonia/2002_m_estonia.pdf.

Estonian average since 1999 despite a gradual fall in unemployment throughout Estonia and a corresponding increase in economic prosperity.[13]

An issue that is related to citizenship is that of language laws; Estonian is the only official language in Estonia and, according to an amendment to the Law on Languages passed in 1999, knowledge of Estonian is required not only for government officials and municipal employees but also for the employees of commercial and non-profit organizations and institutions, including private businesses. A Language Inspectorate with the capacity to impose financial penalties was also set up to monitor compliance with the Law on Languages in both the state and private sectors.[14] Although this law was further amended in June 2000, limiting these requirements in the non-state sector to cases in which the public interest is at stake (meaning primarily health and safety), it clearly disqualified many Russians-speakers with a weak command of Estonian from a relatively wide range of positions.[15] Generally speaking, it is likely that language regulations are at least partly responsible for the higher levels of unemployment in areas in which Russian-speakers are concentrated and for the fact that disproportionately more managers and specialists are Estonian-speakers (see above).

Another crucial factor in terms of institutional design is the relationship between the centre and the regions. Here the range of choices extends from a highly centralized unitary state with weak local self-government, through various forms of regionalization to a fully federal state. Clearly, the greater the level of political and economic decentralization the greater the control of local self-governments over the local economy. In states in which national minorities are geographically concentrated, such an arrangement will give minorities far greater power over economic decision making and, all else being equal, will lead to their economic empowerment. The mainly German-

[13] According to EUROSTAT figures, unemployment in Estonia fell from 13.6% to 7.9% between 2000 and 2005. During the same period, unemployment in Ida-Viru County fell from 25.7% to 14.6%. See http://epp.eurostat.ec.europa.eu.

[14] European Commission against Racism and Intolerance, "Third Report on Estonia …"

[15] According to Article 2^1.2 of the Language Act, "[t]he use of Estonian by companies, non-profit associations and foundations, by employees thereof and by sole proprietors is regulated if it is in the public interest, which, for the purposes of this Act, means public safety, public order, general government, public health, health protection, consumer protection and occupational safety. The establishment of requirements concerning proficiency in and use of Estonian shall be justified and in proportion to the objective being sought and shall not distort the nature of the rights which are restricted."

speaking Autonomous Province of South Tyrol/Bolzano is a case in point; according to the 1972 Autonomy Statute, the province has a very high degree of financial autonomy from Rome and enjoys primary competence in decision making over sectors such as agriculture, tourism, the environment, public health and mining. Most of the funds for the province (85%) come from a fixed quota of direct and indirect taxes collected on the territory of the province, while just 15% of funds (the so-called 'variable quota') are disbursed after negotiations with Rome.[16] As we shall see below, this high degree of autonomy has allowed Bolzano to negotiate the disbursement of EU Common Agricultural Policy funds and structural funds virtually independently of Rome. The effective use of these of these funds is probably the primary reason for the province's current economic prosperity.

Here we must clearly make the proviso that autonomy only works in economic terms if there are sufficient funds to back it up in terms of providing investment in the region's infrastructure. Autonomy arrangements in which the autonomous region is unable to raise sufficient funds through taxation, through transfers from the national centre or through EU funding in order to exploit the opportunities for regional development often means that the autonomy arrangement will fail to provide economic opportunities either for the region as a whole or for the minority or minorities in question.

Finally, the design of the electoral system, in particular whether a fully proportional electoral system is adopted or whether a more majoritarian system prevails, can also have a major impact on the economic opportunities for minorities. Probably the most vivid example of how the electoral system can impact upon minorities is that of Northern Ireland, from the establishment of the Stormont parliament in 1921 until its dissolution in 1972. The decision to change the electoral system from a single transferable vote system to the British-style first past the post system in 1929, the gerrymandering of the local government electoral areas in order to ensure a unionist majority in councils in most of the main cities, as well as a lack of any other power-sharing mechanisms, meant that the Protestant (unionist) majority had total control of all levers of power throughout the

[16] Antony Alcock, "The South Tyrol Autonomy: a Short Introduction", Booklet of the Autonomous Province of Bozen/Bolzano, Bozen/Bolzano, County Londonderry, May 2001, at http://www.provinz.bz.it/lpa/autonomy/South-Tyrol%20Autonomy.pdf.

period in question. Over time, this led to the progressive economic marginalization of the Catholic minority, as Catholics were routinely excluded from professional and managerial posts in both the public and private sectors and levels of unemployment remained about twice as high amongst Catholics as amongst Protestants. Top posts in the senior civil service, the police and the judiciary have been virtually the exclusive preserve of the unionist majority (see below).[17]

B. Education

Education policy can have a major impact on the economic status of national and ethnic minorities through its impact on employment. If members of minorities leave school or university with lower qualifications than their majority counterparts, their earning capacity in the long term is likely to be lower. Measures adopted within the sphere of education policy need to ensure that all citizens, irrespective of their ethnic origin, are operating on a level playing field. This can be a major issue if there is an official state language (or languages) and if, at the same time, circumstances dictate that a proportion of the population (i.e., members of national or ethnic minorities) are unable to speak this language. Under such conditions, members of minorities are likely to be disadvantaged economically unless there is an effective education policy that can ensure that all school leavers, irrespective of their ethnicity, know the state language. The other alternative is to promote bilingualism and to ensure that most or all citizens speak both the majority and the minority language. In both cases, an effective and well-funded education system is required.

Out of our four cases, the only case in which a significant part of the population does not know the state language is that of Estonia. The aim of the Estonian authorities is to ensure that all Estonian citizens become fluent in Estonian. The 1993 Law on Basic and Upper Secondary Schools stipulated that, from 2000, the language of instruction in all upper secondary schools (in other words from the tenth year to the twelfth year of

[17] John Whyte, "How Much Discrimination was there under the Unionist Regime, 1921–1968?", in Tom Gallagher and James O'Connell (eds.), *Contemporary Irish Studies* (Manchester University Press, Manchester, 1983), also available at http://cain.ulst.ac.uk/issues/discrimination/whyte.htm; and the CAIN Web Service page, "Discrimination and Employment", from *Perspectives on Discrimination and Social Work in Northern Ireland*, at http://cain.ulst.ac.uk/issues/discrimination/gibson2.htm#top.

education) would be Estonian. In practice, this would mean that at least 60% of instruction would be carried out in Estonian, even in those schools in which the language of instruction had hitherto been Russian. In 1997, the deadline was extended from 2000 to 2007.

From the mid-1990s, a concerted effort was made to teach Estonian in schools in which the language of instruction was Russian. In 1995, Estonian began to be taught to five and six year olds as a second language in pre-schools in which the main language was Russian. In 1996, Estonian began to be taught in all Russian-language primary schools from the first year. However, given that all upper secondary schools were to switch to Estonian by 2007, the pace did not appear to be fast enough and, in March 2000, the government of Estonia approved the State Integration Policy. The educational component of this policy aimed to ensure that all pupils graduating from elementary schools would have an intermediate level of Estonian, while those leaving secondary education would have acquired a degree of proficiency sufficient for everyday and occupational communication and for continuing to further studies in Estonian. Schools in mixed communities (more especially in Tallinn) adopted a method of total immersion in which Russian-speaking and Estonian-speaking students would study together in the same class, while in mono-ethnic Russian-speaking regions such as Ida-Virumaa, a more gradual approach was taken that was aimed at building up students' vocabulary and grammar from the first year of primary school.[18]

At the time of writing, it remains too early to judge the effectiveness of these measures. According to the 2000 census, 39% of those belonging to national minorities speak Estonian fluently. Amongst ethnic Russians, the figure is 38%, compared with just 15% in 1989.[19] A part—but by no means all—of this improvement is due to the out-migration of some Russian-speakers in the early 1990s. Unfortunately, there is no more recent data that would help us to judge the effectiveness of the State Integration Policy. However,

[18] Kara Brown, "Integration through Education? The Russian-Speaking Minority and Estonian Society", 6(2) *ISRE Newsletter* (1997), at http://www.indiana.edu/~isre/NEWSLETTER/vol6no2/brown.htm.
[19] See the 2000 Population Census of Estonia, at http://pub.stat.ee/px-web.2001/I_Databas/Population_Census/Population_Census.asp; and Mart Rannut, "Language Planning in Estonia: Past and Present", Mercator Working Paper No. 16 (2004), at http://www.ciemen.org/mercator/index-gb.htm.

some critics have accused the government of being ill-prepared for the 2007 transition in upper secondary schools and of not releasing sufficient funds for the creation of new Estonian texts and for teacher training.[20] Despite improvements, even young Russian-speakers still often struggle with the Estonian language and this can only have a negative impact on their employment prospects.

In contrast, since the adoption of the 1972 Autonomy Statute, a bilingual policy has been in place in South Tyrol/Bolzano, whereby all public servants must be proficient in both Italian and German. This may even have benefited German-speakers disproportionately, as most could already speak Italian, while few Italian-speakers were able to speak German (thus, in the early 1980s, only 15% of Italian-speaking policemen were able to speak German).[21] Nevertheless, the timeframe in which this was achieved was gradual, with bilingualism becoming the norm in most public bodies only in the 1990s.

C. The Role of Informal Networks

Even when members of national and ethnic minorities enjoy equal rights from a legal point of view in terms of employment, social benefits and other economic goods, it may well be that, despite all the best efforts, they remain in a more marginal position economically and suffer from higher levels of unemployment and lower than average income. Very often, this is not the result of official regulations or state policy; rather, it is a consequence of a tendency amongst employers to 'employ their own people'. Murray and Darby have identified such informal networks as a serious impediment to equal employment opportunities for Catholics in Northern Ireland, as often school-leavers find their first jobs with the help of (co-religionist) family members and friends. In the words of the chairman of the Fair Employment Agency:

> The informal networks which are still so powerful in Northern Ireland and through which so much employment is found, operate to maintain and reinforce employment patterns already established. Once these patterns have been established such a method of filling jobs means that, even if

[20] Brown, "Integration through Education …"
[21] Alcock, *The South Tyrol Autonomy* …

> there were never in Northern Ireland a single instance of individual discrimination in the future, the patterns laid down will remain much the same.[22]

Informal networks play a particularly important role in weak or contested states. In such states (for example, in certain successor countries of the USSR and Yugoslavia), state power can become 'privatized'—at least for a certain period of time—and the organizations that once constituted the state become the private realm of corrupt former state officials, black market businessmen and paramilitary groupings. Under such circumstances, the rules the state has hitherto sought to impose are replaced by the informal codes of local clans and networks. State regulation of the economy turns to black market regulation, as government departments and ministries are taken over by clans or criminal fraternities. Whatever is left of the state becomes a proliferation of semi-independent yet intertwined informal networks that deliver network goods to the few, rather than public goods to the many. As these networks are typically mono-ethnic, minorities can lose access to public goods that are traditionally provided by the state and can become excluded from all but the most basic economic activities.

Even if state collapse is not total, an erosion of state authority leads to a corresponding erosion in the norms of public service and corruption becomes a normal way of life. Under such circumstances, members of national minorities, having fewer 'protectors' or 'patrons' in high places in comparison with members of the majority nationality, are often disproportionately targeted by state officials, once again undermining their position in economic life.

However, the use of informal networks to obtain economic benefits is also a survival strategy that is used by minorities as well as majorities. Smith and Wilson discuss the growth of a Russian business elite in Estonia in the 1990s, noting that "because it is also constrained by citizenship legislation from being a property owning class, it tends to operate on the margins of the legal market economy, which … makes it vulnerable in a

[22] Dominic Murray and John Darby, "The Vocational Aspirations and Expectations of School Leavers in Londonderry and Strabane", Fair Employment Agency Research Paper No. 6, Belfast (1980), 5.

polity concerned about the growth of the black economy".[23] Similarly, as we shall see below, business networks that link the Hungarian community of Transylvania with Hungary itself have provided a valuable source of income for members of this minority. However, the problem of informal networks is that, while they often provide economic benefits to minority communities, they do little to foster social and economic integration between majorities and minorities.

D. Cross-Border Cooperation

Cross-border trade is often a source of economic prosperity for minorities with a neighbouring kin-state. It is particularly beneficial to Hungarian communities in Transylvania, whose businesses regularly engage in trade with Hungary. Burgeoning trade ties between Hungary and Romania went hand in hand with Romania's emergence from the deep recession of the early 1990s. Between 1993 and 2003, Romanian exports to Hungary rose from USD 86 million to USD 617 million, while imports rose from USD 185 million to USD 869 million. Similarly, the number of Hungarian-owned ventures operating in Romania rose from 1,450 to 4,019 between 1995 and 2002 and the total capital stock belonging to these ventures rose from USD 20 million to USD 320 million over the same period.[24] This clearly bolstered the economic opportunities of Hungarian communities within Romania, most notably within the stratum of Hungarian entrepreneurs in Transylvania. As we shall see below, Hungarian investments are particularly concentrated in counties of Transylvania with a high proportion of ethnic Hungarians.

The increase in cross-border trade between Romania and Hungary was facilitated by gradually improving relations between the two countries as they prepared for eventual EU accession. During the early 1990s, the Romanian government harboured suspicions that the Hungarian side was supporting irredentism amongst Hungarian communities, although over time the two sides developed a normal working relationship. The

[23] Graham Smith and Andrew Wilson, "Rethinking Russia's Post-Soviet Diaspora: The Potential for Political Mobilisation in Eastern Ukraine and North-East Estonia", 49(5) *Europe-Asia Studies* (1997), 845–864.

[24] Data from the Government Office for Hungarian Minorities Abroad, "Reports on the Situation of Hungarians", at http://www.htmh.hu/en/?menuid=0404.

relationship between the two countries was regulated by a bilateral treaty signed between Romania and Hungary in 1996, which guaranteed the individual rights of the Hungarian minority in Romania. Later the same year the main Hungarian party in Romania, the Democratic Alliance of Hungarians in Romania (DAHR), joined a coalition government led by Emil Constantinescu's Romanian Democratic Convention, further facilitating bilateral relations between the two countries.

The proximity of a kin-state for minorities does not, however, always mean that the minority will benefit economically from cross-border ties. In particular, any benefits are likely to be much less important if the kin-state is less developed economically than the host state or if trade relations between the two states decline. Here, the Estonian case is illustrative. Russians in Estonia have been largely unable to exploit their relationship with their ethnic kin in Russia by establishing trade relations with Russian businesses. First, in terms of GDP per capita, Russia is poorer than Estonia and therefore the potential of Russia as an investor and as a potential market for exports is less. Second, while Russia was the main trading partner of the Baltic republics within the internal market of the USSR and in 1991 still accounted for 45.9% of Estonian imports and 56.5% of exports,[25] by 2003 trade with Russia made up only 8.6% of imports and 3.9% of exports.[26] Moreover, cross-border trade with Russia did not necessarily bring economic prosperity, even to the border region; indeed, cheap Russian imports of food and alcohol undermine the local job market in the mainly Russian city of Narva.[27] Finally, as the Baltic republics joined the EU in 2004, their trade tariffs with non-EU states (including Russia) had to conform with common EU tariffs. This was unlikely to improve trade ties with Russia or to foster opportunities for ethnic Russians in Estonia to forge economic ties with Russian partners.

[25] Smith and Wilson, "Rethinking Russia's Post-Soviet Diaspora …"
[26] Alari Purju, "Foreign Trade Between the Baltic States and Russia: Trends, Institutional Settings and Impact of the EU Enlargement", 14 *Electronic Publications of Pan-European Institute* (2004), at http://www.tukkk.fi/pei/verkkojulkaisut/Purju_142004.pdf.
[27] Eiki Berg, Julia Boman and Vladimir Kolossov, "Estonian-Russian Borderland", Case Study Report for the EXLINEA Project by the University of Tartu (2003), at http://www.exlinea.org/pub/regional_profile_complete(05.12.03).pdf.

An underlying reason why economic ties between Russians in Estonia and the Russian Federation have not been as strong as those between the Hungarian minority in Transylvania and Hungary has been that the Estonian government's policy agenda and foreign policy orientation have opposed closer ties with Russia. Estonians believe that they were illegally incorporated into the Soviet Union in 1940 and that their mission is to strive for closer integration with Europe, rather than to maintain strong economic relations with the former 'occupier'.

E. Privatization

In countries emerging from a system in which most or all economic life was controlled by the state, the transition to a market-led economy can be a traumatic one. In particular, the downsizing of the state sector and the closure of many industries that are no longer competitive in the global marketplace often leads to a deep economic recession and a rapid rise in unemployment rates. Members of national minorities can be affected by these changes disproportionately. A case in point is that of Russian speakers in Estonia. The Russian-speaking community in Estonia is mainly composed of those who arrived during the Soviet period to work in heavy industry, as well as their descendents. Ida-Virumaa was Estonia's industrial base during the Soviet period and Russians arrived to work in the power plants and textiles factories of Narva, the oil shale and chemicals industries in Kohtla-Jarve and the metallurgical chemical plant in Sillamae. A smaller number of Russian-speakers also came to work in the military sector and other government bodies. From 1959 to 1970, the population of Narva and Kohtla-Jarve more than doubled and the increase was mainly due to the arrival of Russians and other Soviet Slavs to work.[28] In Kohtla-Jarve, the population of ethnic Estonians fell from 91.8% in 1934 to 26.4% in 1979.[29] The Russian-speaking population mixed little with Estonians in areas in which these new arrivals were concentrated and tended to live in separate areas in the suburbs of mixed cities. By the end of the Soviet period, Estonians and Russian speakers (mainly Russians, Ukrainians and Belarussians) basically constituted two parallel societies.

[28] *Eesti Rahvastik Rahvaloenduste Andmetel* [Population of Estonia by Population Censuses], at http://www.stat.ee/133763.
[29] Sarv, *Integration by Reframing Legislation …*

Following Estonian independence, it was those very same heavy industries in which the recent migrants worked that were unable to survive in the global market place. As the principles of the market economy took hold they faced closure, leading to widespread redundancies in industrial areas such as Ida-Virumaa, where the Russian minority was concentrated. Living standards amongst the Russian population, particularly in the northeast, fell even more steeply than they did amongst Estonians. Unemployment rose disproportionately amongst the mainly Russian population of the northeast and today remains at nearly double the level in the rest of the country.

However, privatization does not necessarily affect members of national minorities negatively. In Transylvania, the number of small and medium-sized enterprises (SMEs) is high in comparison with the rest of the country and is particularly high in settlements in which ethnic Hungarians live. According to reports from Romania's National Centre for Sustainable Development, which is responsible for assisting the Romanian government and local authorities in developing the UNDP's environmental project Local Agenda 21, out of 21 cities and municipalities across Romania for which data was available, the Hungarian city of Miercurea-Ciuc (Harghita county) and the mixed city of Targu-Mures (Mures county) took second and first place, respectively, in terms of the number of registered economic agents per capita in 2001.[30] In Miercurea-Ciuc, there were 99 economic agents per 1,000 population; in Targu-Mures, the figure was 135. Furthermore, in Miercurea-Ciuc, 270 out of 408 foreign investors were Hungarian, investing a total of USD 4.74 million (just over a third of all foreign capital invested).[31] The vast majority of businesses were small businesses or family enterprises; 94.3% of economic agents in Miercurea-Ciuc had less than 9 employees. This attests to the entrepreneurial dynamism of many members of the Hungarian community, who took advantage of the free market after the collapse of communism by exploiting their relationship with co-ethnic friends, relatives and colleagues from across the border. The proximity of a kin-state for ethnic Hungarians in Transylvania has therefore given this community a relative advantage in adapting to free-market reforms by engaging in private business.

[30] See details of Local Agenda 21 final documents at the website of the National Centre for Sustainable Development, at http://www.sdnp.ro.

[31] Miercurea Ciuc, "Local Agenda 21: Local Plan for Sustainable Development of Miercurea Ciuc Municipality", at http://www.sdnp.ro/ncdpublications/pdf/AgLoc21_Miercurea_Ciuc_eng.pdf.

F. Integration of Peripheral Regions into the National and Global Economy

In some cases, minorities are economically disadvantaged because they are concentrated in the more peripheral regions of the country. Peripheral regions that are economically isolated from the capital and other main economic centres tend to be underdeveloped, irrespective of the ethnicity of their populations. High disparities in living standards between the capital city and peripheral communities are particularly prevalent in parts of Southern and Eastern Europe. Here, Romania and Estonia are clear examples of this phenomenon, as GDP per capita in the poorest regions of these countries amounts to around a third of that in the capital city. The process of economic integration of peripheral communities first into the national economy and later into the global economy can lead to economic hardship and poverty. In such a process, minority communities may find it doubly hard to integrate—firstly, as inhabitants of a peripheral region and, secondly, as minorities. Geographical remoteness from the hub of economic life together with difficulties in integrating linguistically and/or culturally may combine to produce a greater degree of marginalization than would be the case if only one of these factors applied.

Peripheral regions are those that cannot easily be integrated into the national and global economies. Often, this is because they are rural regions with low levels of industrialization and an underdeveloped infrastructure. However, as the case of Ida-Virumaa in Estonia shows, peripheral regions are not always rural regions. Northeast Estonia is a peripheral region, not because it is rural but because its industries are no longer competitive in the global marketplace and because many of its inhabitants are unable to speak Estonian, are less mobile in terms of seeking work in monolingual (Estonian) regions of the country and therefore find it difficult to become fully integrated into the national economy. Generally speaking, peripheral communities are adversely affected by rapid economic change, such as that brought about by privatization and free market reforms and by globalization more generally.

Globalization, too, is a process that affects minority communities in different ways in different contexts. The different niches that national minorities occupy in the labour

market and the various cross-border networks they may be able to exploit mean that they can be affected in a number of different ways by the process of globalization. This leads to differing and uncertain outcomes. While the heavy industries in which many of Estonia's Russians worked became non-competitive and obsolete, so Transylvania's textile factories—which employed many ethnic Hungarians—were able to find a niche in a wider European market. After entering a period of profound crisis in the early 1990s, the industry began to attract interest from investors in Hungary and Western Europe and began to recover. By 1999, Romania had overtaken Poland as the leading garment production partner for the European Union.[32]

G. EU-ization and EU Regional Policy

The main aspects of EU policy that are relevant to geographically concentrated and trans-border minorities are, firstly, the disbursement of structural funds for regional development and, secondly, the creation of the single European market and the dismantling of border restrictions in terms of free movement and trade. As to the first aspect, in 1988 far-reaching reforms were carried out in regard to the way in which EU (then EEC) structural funds were allocated and, henceforth, *regions* were to play a greater role in absorbing certain structural funds. Specifically, funds were to be allocated to the following objectives: development of least prosperous regions (objective 1); restructuring industry in regions subject to industrial decline (objective 2); combating long-term unemployment and opening up employment pathways for young people (objective 3); facilitating the adaptation of workers to industrial change (objective 4); adaptation of agricultural structures (objective 5a); and development of rural areas (objective 5b). Funds under objectives 1, 2 and 5b were to be allocated to the regions and allocation of objective 1 funds was mainly limited to regions with a GDP of 75% or less of the Community average. The regional aspect of EEC funding had already been introduced in a rather ad hoc fashion in 1977, when four regions—Greenland, the French Overseas Departments, Northern Ireland and the Italian Mezzogiorno—together with Ireland were given a special grant and were subsequently designated absolute priority regions. In 1985,

[32] Gabor Kolumban, "Human Resource Policy Implications of the Regional Workforce Migration Pattern", at www.cenpo.ro/files/06%20Migration.pdf.

the list of absolute priority regions was extended to include Portugal and some Spanish regions. It was only in 1988, however, that EEC funding to the regions became institutionalized.

The 1988 reforms also for the first time incorporated the Nomenclature of Territorial Units for Statistics (NUTS) into Community legislation. Council Regulation (EEC) No. 2052/88 of 24 June 1988 made the three-tier NUTS classification system the basis for allocating funds at the regional level; specifically, objective 1 funding was allocated to the NUTS II level and objective 2 funding was mainly directed towards the NUTS III level. NUTS had already been established in 1981 as a tool for collecting regional statistics but this was the first time it was used as an instrument of EEC policy.

The regionalization of the EEC/EU and the allocation of structural funds according to regional criteria meant that member states had to submit plans for structural funds at the regional level and this gave room for local actors to have a greater say in the allocation of these funds. Actors in regions that already enjoyed some kind of regional autonomy were in an ideal position to take advantage of these changes. This applied above all to South Tyrol, where the government of the Autonomous Province was able to take action to adapt Community law in areas in which it had primary competence, such as agriculture, tourism and the environment (see above), without interference from Rome. This meant that it had considerable control over the disbursement of structural funds allocated according to objective 5b (and, later, objective 2, after objective 5b was redefined in 2000), which was South Tyrol's main source of structural funds. The result was increased dialogue between the local authorities and Brussels, leading to South Tyrol's decision to establish a joint regional office in Brussels with the neighbouring Italian province of Trentino and the land of North Tyrol in 1995, the first regional government in the EU to do so.

The increased relevance of the regions in terms of EU policy was instrumental in the establishment and subsequent strengthening of the EU's Committee of the Regions (CoR), made up of over two hundred representatives from Europe's regions. Established in 1994 after the adoption of the Maastricht Treaty, the CoR had its competences

extended further by the 1999 Amsterdam Treaty. The president of South Tyrol participates directly in the CoR, further cementing the ties between Bolzano and Brussels.

In South Tyrol, direct cooperation with EU structures against the backdrop of a high degree of autonomy in deciding how structural funds are to be disbursed has allowed this predominantly German-speaking region to prioritize and set its own development agenda. This has clearly improved the region's efficiency in terms of utilizing structural funds. EEC/EU funds have made a major contribution to the economic development of the region, first through the EEC's Common Agricultural Policy in the 1970s and 1980s (based on the fact that South Tyrol was a mountainous region with particular agricultural needs) and, later, through objectives 5a, 2 and INTERREG.[33] Cooperation between the South Tyrol region and Brussels in this respect serves as an example of good practice.

However, EU structural funds and the EU's policy of regionalization only provide opportunities for autonomous development if the state gives the necessary degree of autonomy for the region to prioritize how it uses EU structural funds. This was not the case in Romania. As it looked towards future EU membership, in 1998 the Romanian government passed a law establishing eight 'Development Regions', which would become NUTS II regions of the EU, for the purposes of receiving EU structural funds. With the help of the EU's PHARE programme, Romania also established a Regional Development Council (RDC) and a Regional Development Agency (RDA) in each Development Region, as well as a National Council for Regional Development and a National Fund for Regional Development to coordinate its regional policy. Prior to Romania's joining the EU, PHARE pre-accession funds were administered jointly by the Romanian Ministry of Development and Prognosis and by the RDAs. The overall aim of the regional development strategy was to reduce disparities in economic development between the Development Regions.

[33] The region can participate in cross-border cooperation projects with Austria and Switzerland, through the EU's INTERREG III initiative. The INTERREG III A programme for Italy/Austria was allocated over EUR 33 million for 2000–2006 and the Italy/Switzerland programme received over EUR 25 million. See European Commission, "European Structural Funds in Italy 2000–2006", at http://ec.europa.eu/regional_policy/atlas/italy/factsheets/pdf/fact_itd2_en.pdf.

The Development Regions were, however, created by the centre and did not take into account historical and cultural factors. Moreover, no body at the level of the Development Region was elected: the RDCs consist of representatives appointed from the lower (county) level while the RDAs are professional executive bodies. The Hungarian community in Transylvania, in particular, viewed the Development Regions as artificial and called for the establishment of a region that corresponded more closely to their pattern of habitation. In December 2006, Hungarian mayors from local councils in the counties of Covasna, Harghita and Mures announced the formation of a 'Szekeler's region', which they hoped would unite representatives of the three counties and would better promote their economic development.[34]

Several commentators have pointed out that the over-centralization of Romania's regional development programme has undermined its effectiveness. Mungiu Pippidi points to four main failings of Romanian regional development institutions: a lack of fiscal autonomy at RDA level; the interference of political actors in the allocation of EU pre-accession funds; a deficit in human and material resources; and problems of communication between regional institutions.[35] Indeed, the policy has failed to fulfil its declared goal of reducing economic discrepancies between regions. On the contrary, between 1999 and 2004, regional divergencies widened still further; in particular, according to EUROSTAT, GDP per capita in the northeast region fell from the national average in 1999 to just 69% of the national average in 2004. Similarly, GDP per capita in the richest region, Bucharest, rose from 165% of the national average in 1999 to 190% in 2004.[36] Generally speaking, however, it was less developed mono-ethnic (Romanian) regions (such as the northeast) that suffered the most, while the Hungarian regions maintained an average or above average level of development.

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[34] Divers, "Does Association 'Pro Tinutul Secuiesc' Target Territorial Autonomy?", 46(242) *Divers Bulletin* (2006), at http://www.divers.ro/actualitate_en?wid=37647&func=viewSubmission&sid=7139.

[35] Alina Mungiu Pippidi, "Regions, Minorities and European Policies: a Policy Report on Hungarians from Transylvania", in EUROREG, *Regions, Minorities and European Policies: an Overview of the State of the Art in Western, Central Eastern and Southeast Europe*, EUROREG Project State of the Art Report, December 2005, EUR No. 21916, at http://www.eliamep.gr/eliamep/files/EUROREG_collective_stateofart%20report_25_Oct05.pdf.

[36] See http://epp.eurostat.ec.europa.eu.

The other major impact of evolving EU policy on regionally concentrated national minorities relates to the increased free movement of commodities and individuals across the internal borders of the EU. In particular, the Single European Act, which came into force in 1987, and the subsequent creation of a single market with the 1992 Maastricht Treaty allowed mobility of the workforce across the EEC/EU. Moreover, the signing of the Schengen Agreement between Belgium, France, West Germany, the Netherlands and Luxemburg in 1985 and the subsequent implementation of the Agreement in 13 member states (1995–2001) led to the abolition of border controls and the free movement of people. South Tyrol/Bolzano was able to take advantage of these changes quite rapidly in the mid-1990s; Austria's accession to the EU in 1995 (and hence to the single market) and its implementation of the Schengen Agreement in 1997 boosted bilateral economic ties between South Tyrol and the Austrian Land of North Tyrol in terms of increased trade and tourism. Finally, the introduction of the Euro as a common currency in both Italy and Austria in 2002 further facilitated cross-border trade and free movement of goods and capital between these two regions.

H. Proportionality and Ethnic Quotas in Employment

Although amending language laws and education laws, as well as introducing more laws that prevent discrimination in the workplace, may go some way towards providing members of minorities with equal employment opportunities, this may in itself not be sufficient, given the prevalence of ingrained informal practices (see above). In certain contexts, it has been deemed necessary to introduce a policy of affirmative action in sectors in which inequalities in job opportunities are particularly severe. This applies above all to the civil service, where the government has direct leverage over recruitment practices and where majority dominance can result in minorities being economically disadvantaged, not only within the context of the civil service but also within other spheres that are affected by the decisions made in public bodies. One approach that can be employed is to introduce quotas for certain groups; such an approach was adopted for civil service recruitment in SouthTyrol/Bolzano within the terms of the Second Autonomy Statute of 1972, based on the so-called 'Package' of autonomy measures for South Tyrol, signed by the Italian and Austrian governments in 1969.

Prior to the Autonomy Statute, the Italian-speaking population of the Province of South Tyrol/Bolzano held disproportionately more state posts than the other linguistic communities and this had become one of the central elements of the dispute that sporadically led to low-level violence in the 1950s and 1960s. When the Autonomy Statute came into effect in 1972, less than 10% of civil servants in the state administration were German- or Ladin-speakers.[37] In the words of Alcock, "all the levers of job mobility were in the hands of the state or Italian-dominated region [i.e., Trentino-Alto Adige]".[38] However, the Autonomy Statute introduced ethnic proportions to ensure the proportional representation of Italian, German and Ladin-speakers in all state bodies in the province, with the exception of the Ministry of Defence and certain police forces, and a later law extended this principle to all provincial offices.[39] These posts amounted to nearly 90% of all public employment, although a time period of 30 years was set for the measure to be fully implemented. Gradually, ethnic paricipation in these bodies became more proportional and, by the end of the 30-year period, 69.2% of posts in the civil service were held by German-speakers, 27.3% by Italian speakers and 3.5% by Ladin-speakers—almost exactly the same as their proportions amongst the population at large.[40] Indeed, by the late 1990s, as tourism took off in the mainly German and Ladin-speaking rural areas of the province, it was the Italian community that was complaining about discrimination in employment.[41] For the German and Ladin-speaking communities, however, it can be said that the introduction of quotas was an effective means of reducing economic inequalities.

Similar, if more tentative, efforts were made to ensure proportionality of employment between Protestants and Catholics in Northern Ireland. In Northern Ireland, unemployment has traditionally been higher than in the rest of the United Kingdom and is

[37] See Emma Lantschner and Giovanni Poggeschi, "Quota System, Census and Declaration of Affiliation to a Linguistic Group", in Jens Woelk, Francesco Palermo and Josef Marko (eds.), *Tolerance Established by Law – Self-Government and Group Rights: The Autonomy of South Tyrol* (Martinus Nijhoff, Leiden, 2007), forthcoming.
[38] Antony Alcock, "Provincial and Nation-Level Government in South Tyrol", in Anthony C. Hepburn (ed.), *Employment in Divided Societies* (University of Ulster, Coleraine, 1981), also available at http://cain.ulst.ac.uk/csc/reports/employ.htm#tyrol.
[39] Provincial Law No. 40 of 1988.
[40] Lantschner and Poggeschi, "Quota System, Census and Declaration …"
[41] Thomas Kager, "South Tyrol: Mitigated but not Resolved", 1(3) *Online Journal of Peace and Conflict Resolution*, at http://www.trinstitute.org/ojpcr/1_3kag.htm.

concentrated in working-class enclaves of Belfast and other major cities. Although there are such Protestant enclaves as well as Catholic enclaves, there are more of the latter than the former and, at least until the 1990s, unemployment rates among Catholics were consistently more than twice that of Protestants; in the mid-1980s, the male unemployment rate for Catholics reached around 35%, compared to around 15% for Protestants.[42] Additionally, certain key positions, such as top posts in the civil service and managerial posts were traditionally dominated by Protestants.[43]

The first serious attempt to address these disparities was made in 1976 with the Fair Employment Act (NI). The Fair Employment Act made it "unlawful in relation to employment or occupations, to discriminate on grounds of religion or political belief; to engage in any victimization of persons, publication of discriminatory advertisements; and to incite anyone to commit an act of unlawful discrimination". The Act also brought into existence the Fair Employment Agency (FEA), which was tasked with fighting discrimination and encouraging affirmative action. In particular, the FEA provided employers with a Code of Practice and asked them to sign a declaration committing themselves to the principle of equal opportunities. Although the FEA had the power to investigate complaints of discrimination and even bring offenders to court, few checks were made on employers to make sure they were abiding by the principles of the declaration even if they had signed it. Moreover, the onus rested on employees to prove discrimination at the work place and very few cases were submitted to a tribunal.[44] Given the fact that differences in the rate of unemployment between Protestants and Catholics throughout the 1980s remained more or less unchanged, it appears that the Fair Employment Act (NI) of 1976 had little substantive effect.

[42] CAIN Web Service, "Discrimination and Employment …"
[43] Whyte gives details of the number of senior posts in the civil service held by Catholics in the late 1960s. Thus, despite making up 40% of the population of the province, in 1969 Catholics held just six out of sixty-eight senior judicial appointments; out of 332 members of public boards, just 49 (15%) were Catholics. Also, out of 8,122 people employed in the gas, electricity and water industries in 1971, just 1,952 were Catholics. Finally, in 1957, just 9 out of 139 hospital consultants were Catholics. John Whyte, "How Much Discrimination …"
[44] According to the report, "Discrimination and Unemployment", of 408 complaints (which, in itself, is probably rather low) that reached the courts over the period 1977–1985, only 29 resulted in a finding of unlawful discrimination. CAIN Web Service, "Discrimination and Employment …"

Somewhat more effective was the Fair Employment Act (NI) of 1989, which went much further by introducing compulsory monitoring of the religious composition of the workforce for all firms, public and private, that employed more than ten employees at any one time (as of 1992). The Fair Employment Act was implemented through the Fair Employment Commission (FEC), which was far more proactive than the FEA and had the power to monitor and examine work practices. From 1999, the work of the FEC was taken over by the Equality Commission (EC) for Northern Ireland.[45] Failure on the part of firms to submit data to the FEC/EC on the composition of their workforce would result in conviction and a fine. The new Act also made indirect discrimination illegal.[46] The requirement for firms to provide data on their workforce was extended to part-time workers in 1998 with the Fair Employment and Treatment (Northern Ireland) Order, providing they worked at least 16 hours per week. Finally, Section 75 of the Northern Ireland Act of 1998 imposes a statutory duty on public authorities to "have due regard to the need to promote equality of opportunity … between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation."

It would appear that the implementation of the Fair Employment Act (NI) of 1989 did indeed have an impact on reducing differentials in the workplace between Protestants and Catholics. After employment differentials remained more or less static during the 1970s and 1980s, the pattern began to change in the 1990s. While, in 1990, 34.6% of those employed in firms in the private sector with a workforce of more than 25 were Catholics, by 2005 the figure had risen to 41.5%. Similarly, during the same period, the proportion of civil servants who were Catholics rose from 37.2% to 47.9%.[47] Despite this positive change, however, differentials in the unemployment rate remained; in 2003, unemployment amongst Catholics stood at 8.3%, compared to 4.3% among Protestants.[48] In part, therefore, the higher employment rate amongst Catholics was the result of the

[45] *Ibid*.
[46] Martin Melaugh, "Majority-Minority Differentials: Unemployment, Housing and Health", in Seamus Dunn (ed.), *Facets of the Conflict in Northern Ireland* (Macmillan, Basingstoke, 1995).
[47] Equality Commission for Northern Ireland, "A Profile of the Northern Ireland Workforce: Summary of Monitoring Returns 2005", Monitoring Report No. 16, at http://www.equalityni.org/archive/pdf/MonitoringReportNo16.pdf.
[48] The Committee on the Administration of Justice, "Response of the Committee on the Administration of Justice to the Government Consultation Paper entitled 'A Shared Future'", June 2003, at http://www.caj.org.uk/Shared%20Future%20CAJ%20no.%20S143.pdf.

general economic upturn, brought about by the paramilitary ceasefires of the mid-1990s, often known as the 'peace dividend', and by rapid economic growth in the Republic of Ireland. However, it is likely that the implementation of the 1989 Fair Employment Act also played a major role. Both the case of South Tyrol and the case of Northern Ireland therefore show that policies to ensure proportional representation in the workplace, provided they are implemented energetically, can be effective in promoting equal economic opportunities.

I. The Need for Data

The cases of Northern Ireland and South Tyrol that were the subject of discussion in the previous section highlight how important it is to have reliable data on the extent to which members of minorities are excluded from public life, especially in terms of employment. In the case of Northern Ireland, in particular, the authorities were only really able to get a grip on the problem of inadvertent discrimination against Catholics (probably as a result of employing 'one's own people' or using informal networks as a means of employment) by monitoring employment practices right down to the level of the smallest firms. Only on the basis of such information can effective policies be developed to redress imbalances in employment or income.

The need for accurate data is also relevant with respect to EU policy, especially as regards the EU's current efforts to combat social exclusion. Following the Lisbon summit in 2000, which marked the start of the so-called 'Lisbon strategy' to make the EU economy more competitive and dynamic, the need to combat social exclusion within the EU was given greater priority. Within the framework of the Lisbon Strategy, in 2001, the European Parliament and the Council of the European Union launched a programme of Community action to encourage member states to combat social exclusion. Through this programme, all EU member states (including Bulgaria and Romania from 2006) agreed to draft National Action Plans (NAPs) with strategies on how to overcome this problem. This new emphasis could potentially be used as a tool to fight the economic

marginalization of minorities; however, the problem of exclusion of national minorities (especially autochthonous minorities) has yet to feature highly as part of this initiative.[49]

Part of this problem is that the EU has no information as to the extent to which minorities do, in fact, suffer from social or economic exclusion. Although the NAPs that each country is expected to submit within the framework of the EU's social inclusion policy are meant to include a set of indicators of social exclusion (the so-called 'Laeken indicators'), including poverty rates and thresholds, income distribution, unemployment, rates of early school leaving and low literacy, as well as life expectancy and health data, there is no requirement to disaggregate this data according to ethnic affiliation. As many commentators have pointed out, including representatives of the EU itself, the lack of disaggregated data makes it difficult for the EU and EU member states to identify the socio-economic problems that are specific to minority communities and still harder for them to devise a policy framework to deal with them.[50]

III. Conclusion

The four case studies presented here demonstrate clearly how economic development in regions in which minorities are concentrated sets the framework for peaceful coexistence, cooperation and democratic development in multi-ethnic societies. In South Tyrol/Bolzano, despite a history of sporadic violence in the 1950s and 1960s, the possibility of such incidents being repeated today is almost inconceivable and this is due, in part at least, to increased economic prosperity in general and to greater economic equality between the communities in particular. Similarly, the reduction of interethnic tensions between Romanians and Hungarians in Transylvania after the fall of communism, which had culminated in a violent incident in the town of Targu-Mures in

[49] See Tove Malloy, "The Lisbon Strategy and Ethnic Minorities: Rights and Economic Growth", ECMI Issue Brief No. 13 (2005), at http://www.ecmi.de/download/brief_13.pdf.

[50] Thus, a report by the European Monitoring Centre on Racism and Xenophobia (itself an EU body) laments that "it is difficult to form representative and comparable statistical groups out of the immigrant and minority populations in the EU member states" and that "relevant data on migrants and minorities, that are sufficiently detailed to yield a representative picture of inequalities on the labour market, do not exist". The report recommends that "[t]he European Union and the Member states should … take the necessary steps for the improvement of the availability, scope, and quality of the data on migrants and minorities." See European Monitoring Centre on Racism and Xenophobia, "Migrants, Minorities and Employment: Exclusion, Discrimination and Anti-Discrimination in 15 Member States of the European Union", October 2003, at http://eumc.europa.eu/eumc/material/pub/comparativestudy/CS-Employment-en.pdf.

1990, has gone hand in hand with a gradual increase in economic prosperity, which Hungarians have shared in just as much as Romanians. Even in Estonia, where some Russian-speakers remain economically disadvantaged in comparison with their Estonian counterparts, the fact that they have enjoyed higher living standards than their co-ethnic brethren in the Russian Federation has proved a formidable counterweight to Russian irredentism. Finally, in Northern Ireland, increased economic prosperity has gone hand in hand with a reduction of tensions and an end to violence, although it remains unclear in which direction the arrow of causality points.

Of course, economic factors are not the only factors that have helped promote inter-ethnic harmony, stability and democracy. Political factors have also played a role. Thus, in Northern Ireland the close political relationship that developed between the British and Irish governments during the late 1990s and early 2000s facilitated the peace process and paved the way towards the power-sharing arrangement that eventually took hold in 2007. Similarly, in Romania the prospects for political dialogue improved markedly in 1996 with the entry of the DAHR into the governing coalition (see above). However, in most of our cases the prospects for political dialogue have been enhanced by more favourable economic circumstances for the region in general and for the relevant minority in particular.

In Section II, a number of factors were identified that, in part at least, determine the extent to which members of ethnic and national minorities enjoy the same economic opportunities as their majority counterparts in four sub-national regions of Europe. From this analysis, we can draw the following (tentative) conclusions. First of all, the context in which minorities live is especially important. The effects of rapid economic change in the context of privatization illustrate this best. Due to their geographical proximity to Hungary and the establishment of cross-border networks with the neighbouring state, Hungarians in Transylvania fared relatively well as a result of privatization in comparison with their Romanian counterparts. However, the same could not be said for Russians in Estonia's Ida Virumaa, due to the fact that most Russians were working in the very same heavy industries that were worst hit by privatization and market reforms. These industries

were decimated when the highly centralized internal market of the USSR collapsed, as they were not competitive in the global marketplace.

Rapid economic change is therefore likely to affect all minorities differently. One group that is likely to be affected particularly negatively is the Roma. Given the fact that Roms tend to be marginalized anyway, all economic restructuring that leads to higher unemployment often affects Roms first as often they are first to lose their jobs. Here, a comment by Alan Philips, the current President of the Advisory Committee on the Framework Convention for the Protection of National Minorities, on the effects on the Roma community of downsizing the state sector is illustrative. According to Phillips, members of this group who previously carried out menial functions within state bodies "were made redundant and changed from being impoverished to being destitute".[51]

One more example of how contextual factors can determine how minorities are affected by different institutional arrangements is the way the territorial-administrative structure of the state affects the economic opportunities of minorities. Thus, in South Tyrol/Bolzano, the establishment of an autonomous province seemed like an ideal mechanism to help secure the economic rights of the German-speaking community. However, this is because German-speakers are compactly settled in this region in a way that is quite unlike the rest of Italy and an autonomy solution is therefore feasible. Such a solution would not, however, be feasible for minorities that are geographically dispersed, such as the Roma.

Another key factor is the presence or absence of a kin-state and the relationship between the host state in which the minority lives and that kin-state. As has already been mentioned, Hungarians in Transylvania drew great benefit economically from economic relations with their kin-state, Hungary. Similarly, the close political and economic ties forged between the United Kingdom and the Republic of Ireland during the Blair and Ahern administrations, combined with the rapid economic growth in the Republic, had

[51] Alan Phillips, "Commentary Focusing on the Economic Participation of National Minorities", paper presented at the Conference 'Filling the Frame', 5th Anniversary of the Entry into Force of the Framework Convention, Strasbourg, 30–31 October 2003, at http://www.coe.int/t/e/human_rights/minorities/5._5_anniversary/PDF_Final%20commentary%20_Phillips_workshop1_participation.pdf.

significant (positive) ramifications for economic prosperity in Northern Ireland, both in general and for Catholic communities in particular. The same can be said for the German-speaking population of South Tyrol/Bolzano, who developed ever greater ties with their neighbours from the Land of North Tyrol in Austria as both Italy and Austria integrated more into the European Union, removing border controls and adopting a single currency. The relationship with the kin-state did not, however, work well for the Russians in Estonia, given the sometimes difficult relationship between Russia and Estonia, declining trade relations between the two countries as Estonia prepared to join the EU and Russia's relative poverty in comparison with Estonia. At the same time, Estonia's relative wealth had a positive impact on the integration of the Russian minority in that it discouraged Estonia's Russians from seeking irredentist solutions and encouraged them to participate in Estonian public life, rather than join Russia.

The fact that the impact of different institutional designs and different economic models are context-dependent means that policies to combat the economic exclusion of minorities need to be very carefully tailored to suit the particular circumstances in which the given minority lives. This means that there can be no 'catch all' package of policies that can be used for all cases. At best, we can come up with a series of general principles that will need to be adapted according to historical, geographical and political circumstances.

The second conclusion that we can draw is that EU regionalization through the disbursement of structural funds to regions only has an impact when the regions demarcated (i.e., NUTS regions) in some way correspond to the historical identities of those who live there and are backed up by extensive regional self-government. Through its far-reaching level of autonomy, the region of South Tyrol/Bolzano was able to exploit the structural funds it received from the EU in the most productive manner possible by exercising wide discretion over how they were allocated and even negotiating directly with Brussels. In Romania's Development Regions, however, EU structural funds had little impact, firstly, because these regions had little or no correspondence with any pre-existing regional identities and, secondly, because the highly centralized unitary state of Romania gave the regions little real power over how these funds were to be disbursed.

Thirdly, we saw how the introduction of ethnic quotas in the civil service and/or active monitoring of the proportion of minorities employed in public and private firms, coupled with the likelihood of intervention in the case of active or passive discrimination, had a real impact on the number of members of minorities employed in different sectors in both South Tyrol/Bolzano and Northern Ireland. It must be stressed, however, that in order to be effective, this policy must be applied robustly and not be limited to a simple prohibition of discrimination, as was the case with the 1976 Fair Employment Act (NI). Employment differentials between communities are maintained far more by informal practices, such as drawing from one's own informal network of 'like-minded people', than from active discrimination. Only rather intrusive intervention that even goes as far as affirmative action can overcome this 'inadvertent discrimination'.

Finally, the abovementioned need for close monitoring underscores the need to obtain accurate data about the economic circumstances of members of national and ethnic minorities. This is particularly relevant in the context of the EU's ever-growing interest in issues of social inclusion. Well-informed policies to tackle the problem of social and economic exclusion and marginalization of minorities are only possible if we have accurate socio-economic indicators across Europe that are disaggregated according to ethnicity. This was highlighted by the Advisory Committee on the Framework Convention for the Protection of National Minorities in their Opinion on Germany (1 March 2002). According to the Opinion "[t]he lack of good statistical data makes it difficult for the German authorities to ensure that the full and effective equality of national minorities is promoted effectively". In particular, the absence of such data makes it impossible for the authorities to evaluate the unemployment rate for each national minority.[52]

The list of factors outlined in this paper that impact upon the relative economic status of minorities is far from exhaustive. The factors discussed in Part II were those that emerged from the particular cases that were under the spotlight. However, there are many other factors in other contexts that may affect the participation of minorities in the national and

[52] Advisory Committee on the Framework Convention for the Protection of National Minorities, "Opinion on Germany", adopted on 1 March 2002. Available at https://www.coe.int.

global economies. In particular, it is not only external phenomena such as sudden economic change or the institutional and legal framework of a country or region that matter, factors that are intrinsic to certain communities matter as well. These relate to a given community's perception of itself within its social environment, which are formed over generations. In the past, this perception was typically framed by what is sometimes known as the ethnic specialization of labour, according to which certain nationalities filled different economic niches. This meant that many ethnic communities came to hold particular expectations about their role in society. While the ethnic specialization of labour *strictu sensu* mainly broke down in the twentieth century, many members of Romani communities in much of Europe are still consigned to menial forms of employment, remain unemployed or eke out a living on the black market. Low social and professional expectations amongst Roms impact negatively upon their educational qualifications and achievements and undermine the economic prospects of this group. This is partly due to expectations of social status that are passed down from generation to generation within the community and partly due to the attitudes held by non-Roma within the education system, who often stereotype Roms as underachievers. Whatever the case, the example of Roms shows that social expectations—both those of minorities and those of majorities—can have a crucial impact on the economic prosperity of the former.

Biographical Note

Jonathan Wheatley completed his PhD in Social and Political Sciences at the European University Institute in Florence. At present, he is a research associate at the European Centre for Minority Issues, Germany. His research interests include state building and democratisation in the former Soviet Union, and the economic dimension of minority participation in Europe. He is the author of the book *Georgia from National Awakening to Rose Revolution: Delayed Transition in the Former Soviet Union* (Ashgate Publishing, Aldershot, 2005).

Equal Opportunities Provisions for Communities in the Comprehensive Proposal for the Kosovo Status Settlement

Adrian Zeqiri

Abstract

In light of 2007 being named the 'European Year of Equal Opportunities for All' and the aspiration that Kosovo may eventually integrate into the EU, this article shows how the current proposal for the new state of Kosovo represents, on the one hand, a legal framework that establishes equal opportunities for all in Kosovo but, on the other hand, risks segregating opportunities further and harming minority communities. Although this study is tentative and speculative in nature, it is vital to initiate debate at this crucial time on the question of equal opportunities in a territory/state that has been so deeply marred by ethnic conflict.

I. Introduction

Following UN-led status talks in Vienna throughout 2006–2007, UN Special Envoy Martti Ahtisaari presented the UN Secretary-General Ban Ki-moon with a report entitled "Report of the Special Envoy of the Secretary-General on Kosovo's Future Status"[1] (hereinafter "the Report") and a "Comprehensive Proposal for the Kosovo Status Settlement"[2] (hereinafter "the Comprehensive Proposal") on the 26 March 2007. The Report recommends independence for Kosovo to initially be supervised by the international community in accordance with the provisions laid out in the Comprehensive Proposal. Whilst the Settlement envisages the international supervision of its implementation by including, for example, an International Military Presence (IMP)[3] and an International Civilian Representative (ICR) that will retain broad final and corrective powers after transition, it also includes specific provisions to be transferred into the Kosovo Constitution and outlines general principles that aim to guide and constrain future legislation and policy developments.

Within the Settlement are provisions for the protection of human rights that are consistent with international standards and that offer specific protection for the

[1] United Nations, "Report of the Special Envoy of the Secretary-General on Kosovo's Future Status", S/2007/168, 26 March 2007, at http://www.unosek.org/docref/report-english.pdf.
[2] United Nations, "Comprehensive Proposal for the Kosovo Status Settlement", S/2007/168/Add.1, 26 March 2007, at http://www.unosek.org/docref/Comprehensive_proposal-english.pdf. Together, the Report and the Comprehensive Proposal shall be referred to as the "Settlement".
[3] United Nations, "Comprehensive Proposal …", Annex IX, Article 2.

members of Communities. As Mr Ahtisaari's Report suggests, the protection of minority community rights and the participation of Communities—and, in particular, the participation of Kosovo Serbs—are crucial areas for the future of Kosovo's stability, security and development.[4] As such, the report specifically notes that the international civilian and military presence in the transitional period should have strong and focused corrective powers in relation to key issues such as community rights, decentralization, the protection of Serbian Orthodox Churches and the rule of law.[5] The Settlement can thus be seen as an attempt to engineer a new multiethnic state in which all Kosovo Communities—including non-dominant Communities—are equitably represented in state institutions and able to participate meaningfully in political processes at all levels, be they local or national.

While the fate of the Settlement is still unclear, as the diplomatic efforts at the UN Security Council for its adaptation are still ongoing, this article will assess the equal opportunity provisions contained in the Comprehensive Proposal and will examine these provisions under five principal points:[6]

1) The overall multiethnic construction of the state;

2) The representation of non-dominant Communities in the executive institutions and in the security sector;

3) The political empowerment of non-dominant Communities;

4) The full and effective participation of non-dominant Communities in the economic opportunities of the state; and

5) The positive measures to ensure full access and effective participation of non-dominant Communities, including language and education provisions.

To guarantee non-discrimination and equal opportunities for non-dominant Communities will be a key challenge for the new Kosovo. The success and viability

[4] United Nations, "Report of the Special Envoy …", 3.
[5] *Ibid*., 3.
[6] Interview with Dr Marc Weller, ECMI Director. These criteria were suggested as five categories from which to assess any settlement dealing with areas marked by past ethnopolitical conflicts.

of an independent Kosovo will depend on the peaceful coexistence and cooperation of all Communities.

The Comprehensive Proposal defines Communities as: "[i]nhabitants belonging to the same national or ethnic, linguistic, or religious group traditionally present on the territory of Kosovo".[7] This definition is a neutral one. It does not—*prima facie*—base itself on numerical dominance or 'minority' but rather uses explicit language, such as "Communities that are *not* in the majority"[8] and "*non-majority* Community".[9] Nor are specific Communities identified and named within this definition. Accordingly, it is arguable that the notion of Community includes the majority Community and theoretically could encourage them to also exercise the rights contained in Annex II. However, the Comprehensive Proposal clearly considers Communities to be a special group and different to that of the general population. Such special rights, however, do not amount to privileging one group against another. Who exactly the "[i]nhabitants … traditionally present on the territory of Kosovo"[10] are is not specified, as all Communities are included within such a definition. Rather, these rights ensure that previously marginalized members of society are guaranteed the same opportunities to compete and participate within society equally whilst ensuring against future conflict between such groups. The Comprehensive Proposal also states that Communities are to be entitled to additional protections—a second layer of rights and protections above the general human rights and fundamental freedoms that are specified in the Settlement and in any future Constitution.[11] In light of Kosovo's history and the context of the status negotiations, it can be argued that the intention of the Settlement is primarily to protect the special vulnerabilities of the *non-dominant* Communities and their members. For the purposes of this article, therefore, it is assumed that the protections provided in Annex II of the Comprehensive Proposal are primarily applied to the *minority* Communities of Kosovo.

It is interesting to note that the Comprehensive Proposal does not directly use the language of 'equal opportunity'. Instead, it chooses to employ the language of 'non-

[7] United Nations, "Comprehensive Proposal …", Article 3.1 and Annex II, Article 1.1.
[8] *Ibid*., Article 6.2; Annex I, Articles 3.2, 6.1.2, 7.2 and 10; Annex II, Article 4.5; Annex IV, Articles 1.1–1.3; and Annex IV, Article 4.3, emphasis added.
[9] *Ibid*., Annex I, Articles 5.1–5.2; and Annex II, Article 1.2, emphasis added.
[10] *Ibid*., Article 3.1.
[11] *Ibid*., Article 2; Article 3.1; Annex I, Article 2; and Annex II, Article 1.1.

discrimination'. These non-discrimination provisions are reinforced by specific threshold and quota systems eventually aimed at ensuring equal opportunity for minority Communities.

Also provided for by the Settlement is a plurality of human rights protections and fundamental freedoms, as well as rights to be enjoyed by members of Communities either individually or as a collective.[12] Furthermore, it incorporates an extensive list of international instruments deemed to have constitutional status and that are directly applicable to Kosovo. These include:

— The Universal Declaration of Human Rights;

— The European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;

— The International Covenant on Civil and Political Rights and its Protocols;

— The Council of Europe Framework Convention for the Protection of National Minorities;

— The Convention on the Elimination of All Forms of Racial Discrimination;

— The Convention on the Elimination of All Forms of Discrimination Against Women;

— The Convention on the Rights of the Child; and

— The Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment.[13]

These international instruments, together with the explicit protection of human rights and fundamental freedoms offered in the Settlement, create a rights-based approach to the nation-building project in Kosovo. While the individual rights and protections afforded by such instruments are paramount, this article will only consider the

[12] *Ibid*., Article 2; and Annex II, Article 3.
[13] *Ibid*., Annex I, Article 2.1.

provisions of the Settlement, rather than the incorporation of international instruments. Rather than focusing on the human rights of individuals *per se*, the article will assess the level of protection afforded to Communities and their members and will analyze the opportunities available to minority Communities in the future state of Kosovo.

II. Overall Multiethnic Construction of the State

The Comprehensive Proposal sets out the procedure by which functions and powers currently vested in UNMIK and the Kosovo Provisional Institutions of Self-Government (PISG) will transfer to the new Kosovo government. The Report does not specify a date for the assumption of full statehood by Kosovo and avoids the use of the word 'state'. Under the Settlement Package, the ICR will retain final and corrective powers for an undefined period of time after the transition and the IMP will remain in Kosovo to supervise and supplement the Kosovo security forces.

The first provision of the Comprehensive Proposal states that:

> Kosovo shall be a multi-ethnic society, which shall govern itself democratically, and with full respect for the rule of law, through its legislative, executive, and judicial institutions.[14]

As a general principle of the Settlement Package, this provision prevails over any contradictory Constitutional provisions.[15] This Article is thus worded as a broad statement of principle and should guide all future nation-building initiatives in Kosovo, including all legislative and policy decisions. From this provision, it is also clear that the priority for Kosovo should be to ensure democratic governance through power-sharing mechanisms between the Communities. All branches of the government—the legislature, executive and judiciary—should work to achieve the goal of creating a multiethnic society. As stated, this first principle should be broadly applied to all aspects of governance. In addition, the Settlement is alert to the sensitivity of symbolic aspects of national identity and stipulates that Kosovo's

[14] *Ibid.*, Article 1.1.
[15] *Ibid.*, Annex 1, Article 1.1.

national symbols—a flag, seal and anthem—must reflect the multiethnic character of the society.[16]

The remainder of the Comprehensive Proposal can be seen as a way in which this vision of a democratically governed multiethnic society subject to the rule of law is to be achieved. Among the proposed Constitutional and legislative protections, mechanisms and policy guidelines, the Comprehensive Proposal specifies several key institutions that must reflect the ethnic diversity of the society itself. These include, for example, the composition of the civil service,[17] the justice system (including the judiciary and the prosecution service),[18] the police force (particularly the units deployed to protect religious and cultural sites, which should have an appropriate representation of Serb police officers),[19] the security force[20] and the domestic intelligence agency.[21] It is important that the civil service, as a point of interface and contact between citizens and the state, maintain ethnic diversity. As institutions that may use coercive measures, the police and the security force should ensure that minority Communities are adequately represented. The law and order institutions, including the police and the justice system, both of which have the ability to impose coercive measures and possess powers of detention, should also fairly represent the ethnic diversity of the society. An equitable representation of all Communities in these institutions will both help to promote their legitimacy and also help to prevent abuse of institutional power by any one Community.

In order to ensure the equitable representation of all ethnicities, the Settlement sets out a system of reserve seats and quotas for representatives of minority Communities in key governmental bodies and institutions. These are: the Constitutional Commission (responsible for the drafting of the Kosovo Constitution),[22] the Kosovo Assembly,[23] the Presidency of the Assembly,[24] the Assembly Committee,[25] the

[16] *Ibid*., Article 1.7.
[17] *Ibid*., Article 5.4.
[18] *Ibid*., Article 6.5; and Annex IV, Article 2.1.
[19] *Ibid*., Annex VIII, Article 2.3; and Annex V, Article 3.1.1.
[20] *Ibid*., Annex VIII, Articles 5.1 and 5.5.
[21] *Ibid*., Annex VIII, Article 4.
[22] *Ibid*., Article 10.2.
[23] *Ibid*., Annex I, Articles 3.2 and 3.3.
[24] *Ibid*., Annex I, Article 3.4.
[25] *Ibid*., Annex I, Article 3.5.

Committee on the Rights and Interests of the Communities,[26] the Cabinet—composed of the Ministers and Deputy Ministers[27]—the Central Election Commission,[28] the Constitutional Court,[29] the Supreme Court,[30] the District Court,[31] appointments of prosecutors and other judges,[32] and the Kosovo Judicial Council.[33] In addition to this, changes to the Constitution require a majority of at least two thirds of Assembly members holding seats reserved for minority Communities.[34] Legislative activities in relation to specified areas must also gain a double majority: the majority approval of the Assembly members and also the majority approval of Assembly members that represent minority Communities.[35]

By numerically defining seats and statistical thresholds, the Settlement attempts to ensure an adequate level of minority Community representation in the Kosovo institutions. The system of reserve seats and quotas provides measurable protection to minority Communities in addition to more general non-discrimination and equal opportunity provisions. The quotas and reserved seats are aimed at ensuring substantive equality for minority Communities in crucial institutions and do not amount to prohibited discrimination in themselves.[36] Similarly, the requirement for minority Community approval to alter laws related to areas pertinent to Communities' interests acts as a check against any derogation of protection.

Power-sharing mechanisms established by the Comprehensive Proposal between Communities ensure that a democratically governed multiethnic society subject to the rule of law can be created. By including Communities within the state apparatus, not only is a multiethnic state guaranteed but so is one in which true equal opportunities for all are indeed possible.

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[26] *Ibid*., Annex I, Article 3.6.
[27] *Ibid*., Annex I, Articles 5.1–5.3.
[28] *Ibid*., Annex I, Article 7.2.
[29] *Ibid*., Annex I, Article 6.1.2: minority Communities must approve the appointment of at least two judges to the Supreme Court. However, the approved judges themselves do not have to be from a minority Community.
[30] *Ibid*., Annex IV, Article 1.1.
[31] *Ibid*., Annex IV, Article 1.2.
[32] *Ibid*., Annex IV, Article 2.2.
[33] *Ibid*., Annex IV, Article 4.2.2.
[34] *Ibid*., Annex I, Article 10.
[35] *Ibid*., Annex I, Article 3.7.
[36] *Ibid*., Article 3.2.

III. Political Empowerment of Non-dominant Communities

The Settlement is alert to potential problems related to the marginalization of minority Communities in Kosovo. As such, the Comprehensive Proposal contains some strong guarantees and protections to minority Communities and also anticipates institutional mechanisms that will implement and reinforce the legislative protections. Clear power-sharing arrangements in the legislature are stipulated and special mechanisms and institutions for minority Communities to intervene in the legislative process are also required. At the municipal level, special provisions for a Vice President of the Municipal Assembly for Communities are made to ensure protection of the interests of Communities where the specified population threshold is reached[37] and additional competencies are given to certain dominantly Serb municipalities.[38]

From 120 seats at the central level in the Kosovo Assembly, the Comprehensive Proposal provides for 20 reserved seats for the representation of minority Communities at the first two electoral mandates.

The reserved seats are to be allocated as follows: ten for the Kosovo Serb Community, three seats for the Bosniak Community, two seats for the Turkish Community, one for the Gorani Community and one seat each for the Roma, Ashkali and Egyptian Communities (RAE Communities), with an additional seat for the RAE Communities with the highest overall votes.[39] After the first two electoral mandates, the number of reserved seats for Kosovo Serbs and other minority Communities will remain as a minimum threshold but the number of seats won may increase.[40] The Kosovo Serb Community and the other minority Communities will each have at least one representative, chosen from Assembly members representing them, in the Presidency of the Assembly.[41] For each Assembly Committee, at least one Vice-Chair should be from a different Community than the Chair.[42]

In addition to these provisions to ensure equitable representation of minority Communities in the legislature, the Assembly also has restricted powers in relation to

[37] *Ibid*., Annex II, Article 4.5.
[38] *Ibid*., Annex III, Article 4.
[39] *Ibid*., Annex I, Article 3.2.
[40] *Ibid*., Annex I, Article 3.3.
[41] *Ibid*., Annex I, Article 3.4.
[42] *Ibid*., Annex I, Article 3.5.

certain laws. According to the Comprehensive Proposal, the Assembly cannot adopt, amend or repeal laws considered particularly pertinent to the interests of Communities unless the majority of Assembly members holding reserved seats for minority Communities approve, in addition to majority approval of the Assembly members present and voting.[43]

The Settlement also envisages specific institutions that aim to ensure the effective participation of Communities during the legislative process. The Committee on Rights and Interests of Communities (CRIC) will be retained and up to one third of its members may be from the Kosovo Serb Community. Representatives from other minority Communities may constitute a further one third of its members.[44] Furthermore, the Settlement envisages a Community Consultative Council (CCC) under the auspices of the president, which will be mandated to provide opportunities for Communities to comment on legislative and policy initiatives at an early stage.[45] These two institutions are intended to enhance participation of minority Communities in the political process and to empower Communities in legislative and policy initiatives. In particular, the Settlement has left open the CCC's mandate, allowing for legislative activity to define the role of the CCC.[46] As such, it is possible for the CCC to take on a much wider role and to develop into a significant mechanism to empower the Communities in political processes.

The system of reserved seats in the Kosovo Assembly ensures that minority Communities have adequate representation at the central political level. Similarly, the stipulations as to the personnel of Assembly Committees ensure that minority Communities are engaged in all decision-making processes. Furthermore, mechanisms such as the CRIC and the CCC provide special opportunities for minority Communities to intervene and participate in the legislative process. Much of the responsibility will lie with the Assembly members who hold reserved seats for minority Communities to ensure that their constituents' voices are heard at the highest political level. In situations where minority Communities will only have one

[43] *Ibid*., Annex I, Article 3.7. Note the initial adoption of laws falls within the exception from this provision. Furthermore, Annex I, Article 3.9 prevents circumvention of minority approval by prohibiting referendums on laws specified under Article 3.7.
[44] *Ibid*., Annex I, Article 3.6.
[45] *Ibid*., Annex II, Article 4.3.
[46] *Ibid*., Annex II, Article 4.3.

representative among them (rather than have their own Community-specific representative) in the legislative process, it will be important for the Communities to come to a consensus on the representative and to agree on a position that best represents their common interests.

IV. Representation of Minority Communities in Executive Institutions and in the Security Sector

The Settlement provides for the representation of minority Communities in executive institutions at both the central and local levels. At the central level, the Comprehensive Proposal specifies quotas for a multiethnic cabinet: at least one minister will be from the Kosovo Serb Community, a second minister from the other minority Communities and, if the total number of ministers exceeds 12, a third minister will be appointed from the minority Communities (including from the Kosovo Serb Community).[47] Among deputy ministers, at least two should be from the Kosovo Serb Community and another two from the other minority Communities. If more than 12 deputy ministers are appointed, then the Kosovo Serb Community and the other minority Communities shall each have an additional deputy minister appointed from their ranks.[48] Moreover, the Settlement requires that the appointment of ministers and deputy ministers from minority Communities be determined after consultation with groups representing minority Communities.[49] The Comprehensive Proposal leaves open the possibility of appointing a minister or deputy minister from a minority Community who is not a member of the Kosovo Assembly. In such cases, however, the minister or deputy minister appointed must have the endorsement of the majority of Kosovo Assembly members who represent minority Communities.[50] In addition to these measures, the president of Kosovo has additional—though limited—powers to protect the interests of Communities. The Settlement provides that the president may return, once, any bill considered to be detrimental to the legitimate interests of any Communities to the Assembly for reconsideration.[51]

[47] *Ibid*., Annex I, Article 5.1.
[48] *Ibid*., Annex I, Article 5.2.
[49] *Ibid*., Annex I, Article 5.3.
[50] *Ibid*., Annex I, Article 5.3.
[51] *Ibid*., Annex I, Article 4.2.

In the central executive, minority Communities are protected by explicit quota systems to ensure that a sufficient number of ministers and deputy ministers are selected from their ranks. The Settlement does not specify which ministries should have a minister or deputy minister from a minority Community. However, in practice, it is likely that ministers and their deputies for portfolios that are particularly pertinent to the interests of minority Communities should be appointed from the ranks of minority Communities; for example, portfolios such as Communities and returns, cultural heritage, municipal government and education.[52] In addition, the president of Kosovo, as the head of the executive, has specific powers to deter any laws that may be detrimental to the interests of minority Communities. According to the Comprehensive Proposal, the initiative of the president to return laws for reconsideration to the Assembly does not need to be founded in a request from a third party. However, in practice, it is likely that a group representing the aggrieved Communities will lobby the president for intervention—for example, the CCC or the CRIC, or members of the Kosovo Assembly holding reserved seats for minority Communities.

At the municipal level, the post of Vice President of the Municipal Assembly for Communities is reserved for a member of minority Communities where at least 10% of the residents in that municipality belong to the minority Community. The vice president shall promote inter-Community dialogue and serve as the focal point for addressing the concerns of the minority Communities. The Vice President of the Municipal Assembly for Communities can also review claims of rights violations by members of Communities and may refer such matters to the Municipal Assembly. If no redress is obtained, the Vice President of the Municipal Assembly for Communities may submit the matter directly to the Constitutional Court.[53]

At the local level, the participation of minority Communities in the executive branch is assured by the post of the Vice President of the Municipal Assembly. The vice president is tasked specifically with addressing minority Community concerns and encouraging cooperation between Communities. In parallel with the president at the

[52] Other areas that are deemed to be of special interest to minority Communities are contained in Annex 1, Article 3.7(a)–(h).
[53] *Ibid.*, Annex II, Article 4.5.

central level, the vice president has referral and intervention powers in order to deter any erosion of protections for minority Communities.

Moreover, the Comprehensive Proposal requires that, in all policy and practice, Kosovo authorities—both central and local—must be guided by the need to promote a spirit of peace, tolerance, and intercultural and inter-religious dialogue among all Communities.[54] This softly worded but widely applicable principle of policy and practice is designed to deter any activity that may not be explicitly prohibited by any law but that may be contrary to the spirit of the Settlement. Moreover, local government is bound by a specific directive to have particular regard for the specific needs and concerns of minority Communities.[55]

The security sector in Kosovo includes law enforcement, security, justice, public safety, intelligence, civil emergency response and border control.[56] Kosovo's security institutions must operate in accordance with internationally recognized democratic standards and human rights and ensure equitable representation of all Communities throughout their ranks.[57] These institutions must also abide by democratic standards and respect the rights of Communities and their members, including rights specifically vested with members of minority Communities.[58]

The Settlement does not have a percentage quota for the minimum level of representation of minority Communities in the police force as a whole. Instead, the Comprehensive Proposal requires that, at the municipal level, to the extent possible, the ethnic composition of the police should reflect the ethnic composition of the population in the municipality.[59] In municipalities where there is a Kosovo Serb majority, the Station Commander is to be selected by the Ministry of Internal Affairs from the nominations made by the Municipal Assembly.[60] The Settlement specifies that the Kosovo Security Force (KSF) should be a multiethnic force and requires Kosovo and the International Military Presence to develop selection procedures in

[54] *Ibid*., Article 3.3.
[55] *Ibid*., Article 6.2.
[56] *Ibid*., Article 9.1.
[57] *Ibid*., Article 9.2.
[58] *Ibid*., Annex VIII, Article 1.2.
[59] *Ibid*., Annex VIII, Article 2.2.
[60] *Ibid*., Annex VIII, Article 2.6.

order to recruit members of KSF from across society.[61] Again, no specific quota is imposed and therefore there is no clearly measurable standard in relation to the composition of the police or the KSF. However, the recruitment, promotion and other personnel practices of the police and KSF would be subject to non-discrimination rules and are obliged to operate in the spirit of tolerance and mutual cooperation.[62]

V. Full and Effective Participation in the Economic Opportunities of the State

The Comprehensive Proposal only contains a few provisions that deal expressly with an individual's economic opportunities in Kosovo. The Settlement requires that Kosovo be an open market economy with free competition[63] and offers general recognition and protection to an individual's rights to private movable and immovable property, these being enforced to established international norms and standards.[64] Moreover, as detailed earlier in Section II, key public institutions are subject to requirements on the equitable representation of the multiethnic society of Kosovo. These provisions, though not explicitly concerned with economic opportunities, have an indirect effect in allowing members of minority Communities to access employment opportunities in state institutions, including the justice system, security force and civil service. Additionally, the Comprehensive Proposal states that:

> Communities and their members shall be entitled to equitable representation in employment in public bodies and publicly owned enterprises at all levels, including in particular the police service in areas inhabited by the respective Community, where respecting the rules concerning competence and integrity that govern public administration.[65]

This provision is aimed at ensuring, at least in public bodies and publicly owned enterprises, that members of minority Communities should be equitably represented. Although phrased as equitable representation, this clause also has the collateral effect of requiring equal opportunities for members of Communities to be employed in

[61] *Ibid*., Annex VIII, Articles 5.1 and 5.5.
[62] *Ibid*., Article 3.3.
[63] *Ibid*., Article 1.4.
[64] *Ibid*., Article 8.6.
[65] *Ibid*., Annex II, Article 4.4.

public bodies and publicly owned enterprises. In particular, the Settlement specifies that principles of non-discrimination and equal protection should be applied in areas of employment in public administration and public enterprises, as well as access to public funds.[66]

With the exception of the above provisions, the Settlement does not specify other requirements in relation to employment or other economic opportunities. It is notable that the International Covenant on Social, Economic and Cultural Rights is conspicuously absent from the extensive list of international instruments that are deemed directly applicable to Kosovo.[67] However, the provisions contained in the applicable international instruments, together with the anti-discrimination provisions in the Settlement itself, prohibit any discriminatory practices in access to economic opportunities in public and private sectors.

VI. Positive Measures to Ensure Full Access and Effective Participation of Non-dominant Communities in Language and Education

The Settlement, as discussed above, prescribes several legal and institutional mechanisms designed to promote the political participation of minority Communities. In addition, the Settlement contains provisions aimed at lowering barriers to political participation for members of minority Communities, including language and education provisions aimed at creating a level playing field in terms of access in all areas of public and civil life for minority Communities.

The Comprehensive Proposal prescribes two official languages—Albanian and Serbian—for Kosovo; in addition, the Turkish, Bosnian and Romani languages will have the status of official languages at the municipal level or be designated as languages in official use.[68] The two-tiered approach to languages—designating additional official languages at the local level—attempts to recognize the fact that different Communities have concentrations of populations in different municipalities. The Comprehensive Proposal does not prescribe any particular population threshold for designating official status for languages in municipalities. Instead, the

[66] *Ibid.*, Article 2.3.
[67] *Ibid.*, Annex I, Article 2.
[68] *Ibid.*, Article 1.6.

Comprehensive Proposal defers such designation to the law.[69] The legislative initiatives in relation to language laws are subject to constraints contained in the Settlement.[70]

These designations of official language status are different in character to language rights for members of minority Communities. The right to speak the language of a minority Community is directed towards the preservation of the essential elements of a Community's identity and culture.[71] Ascribing official status to Community languages, however, obliges the Kosovo government to provide information, services, goods and perform other governmental functions (at the central and local levels) in designated Community languages. An indirect result of this provision would also be to encourage the employment of Community members in public offices and organizations to ensure that minority Communities may access public goods and services in their own language. Furthermore, the Comprehensive Proposal stipulates explicitly that, if a population threshold is reached in a municipality, members of Communities may use their language and alphabet in relations with the municipal authorities or local offices of central authorities; moreover, the authorities shall bear the costs of providing an interpreter or translator.[72]

The Settlement states that members of Communities have the right to choose to receive public education in Albanian or Serbian at all levels.[73] In addition, members of Communities have the right to receive pre-school, primary and secondary public education in their own language, if the population of minority Communities reaches prescribed thresholds.[74] Alternatively, the Communities may establish their own private educational and training institutions; public financial assistance may be given for such purposes.[75] The effect of these provisions is to ensure that a range of education opportunities (private or public) are available to Communities in their own language but that they also have the option of public education at all levels in one of the two official languages.

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[69] *Ibid*., Article 1.6.
[70] *Ibid*., Annex II, Article 3.7.
[71] *Ibid*., Annex II, Article 3.1(a).
[72] *Ibid*., Annex II, Article 3.1(f).
[73] *Ibid*., Annex II, Article 3.1(b).
[74] *Ibid*., Annex II, Article 3.1(c).
[75] *Ibid*., Annex II, Article 3.1(d).

Special education provisions are prescribed for the Kosovo Serb Community. Moreover, schools that teach in the Serbian language may—upon notification to the Ministry of Education, Science and Technology (MEST)—use curricula or textbooks from Serbia.[76] If MEST objects to the curriculum or textbook, the matter will be reviewed by an independent commission comprising three Kosovo Assembly members holding reserved seats for Kosovo Serbs, three representatives selected by MEST and one international member representing the ICR.[77] Moreover, under provisions for enhanced municipal competences, Mitrovice/Mitrovica North will have competence for higher education and may establish their own Serbian language university.[78]

The provisions contained in the Settlement thus operate on two levels: provisions for Serb Communities and provisions for other minority Communities. This, in part, reflects the historical process of the Settlement itself and of the peculiar position occupied by Kosovo Serbs. One criticism might be that the additional rights granted to the Kosovo Serb Community may be perceived to be unfairly advantageous. However, the Settlement contains no prohibition against any other Community establishing their own private higher education institution. Similarly, there is no express prohibition against any other Community using curricula from another state and freedom of association with persons in any other state is protected.[79] As such, although additional provisions are made for Kosovo Serbs, the Settlement does not, in fact, limit the opportunities of other Communities.

VII. Conclusion

The Comprehensive Proposal attempts to establish a rights-based approach to equal opportunities for the citizens of a post-status Kosovo through functionalist and institutional means, building legal and political guarantees for the protection of Community rights and safeguarding their fair representation within and throughout state institutions. If equal opportunities are about allowing people to compete equally, they need to be given the tools with which to do so and, in many instances, the Comprehensive Proposal promotes the segregation of Communities for the very

[76] *Ibid*., Annex III, Article 7.2.
[77] *Ibid*., Annex III, Articles 7.1.2–7.1.4.
[78] *Ibid*., Annex III, Articles 4.1. and 7.2.
[79] *Ibid*., Annex II, Article 3.1(l).

purpose of privileging equal opportunities and non-discrimination for all Communities.

However, there may eventually emerge a considerable discrepancy between the rights provided for by the Comprehensive Proposal and the experience of these rights in daily life, highlighting the potential dangers for the true universal success of implementing equal opportunities for all Kosovo Communities. While a rights-based approach embedded in the rule of law is important, the failure to include both formal institutional and functional equality *as well as* substantive or material equality could weaken the potential success of the equal opportunities suggested in the Comprehensive Proposal. The continued system of parallelism and *de facto* segregation in some areas may hinder the aims for a multiethnic society and the scarcity of resources may also work against sustaining regional and ethnic equity. There is also a danger that minority rights are seen as a concession rather than as recognition of the rights that guarantee social stability. However, improved representation may not translate into substantial integration or integration on the ground but the provisions *do* exist within the Comprehensive proposal and there remains a strong disposition towards the protection of minority rights and the offer of equal opportunity.

It becomes obvious that the provisions contained in the Settlement will therefore need to be implemented in *good faith* in order to avoid a return to the old policies of ethnic hatred and discrimination. It is therefore the duty of Kosovo's institutions *and* of its civil society, comprised of *both* the majority and minority, to implement the structures and equal opportunities offered by the Comprehensive Proposal.

This article has argued that the status proposal creates the *potential* for equal opportunities not only through provisions of equal rights and non-discrimination but also by offering ethnic Community groups rights as Communities rather than just individual rights and through all levels of state institutions. The state apparatus that is offered by the Comprehensive Proposal exemplifies and supports the notion of equal opportunities for Kosovo Communities. Although some may argue that what has been proposed may encourage segregated opportunities, the governance of diversity offered sets up a model of social harmony based on equal and horizontal rights for all. Diversity is guaranteed within the Comprehensive Proposal, where a democratic state

recognizes the pluralism of its citizens and no distinction is made between ‘majority’ or ‘minority’. Nor is a distinction made between the people of Kosovo, who can enjoy full equality and participation in all aspects of life. As such, the Comprehensive Proposal guarantees a multiethnic state and one that can be maintained. The Comprehensive Proposal has thus helped establish a secure and strong structure in a post-conflict society that maintains a process of marked political divisions based on an equal footing at all levels. In building upon Ahtisaari’s proposal, therefore, the opportunity for a fair, pluralistic and equal Kosovo is indeed possible.

Biographical Note

Adrian Zeqiri completed his degree at the University of Pristina, where he read Language and Literature. Following the successful completion of a two year academic training programme with the OSCE, he continued to work for a further two years at the OSCE, where he held a number of positions, including that of Political Officer in the Department of Democratization. Adrian Zeqiri is now ECMI Country Director in Pristina and has been responsible for the design, management and implementation of various projects in Pristina in the field of the political participation of minorities.