

# Minorities and the Central European Initiative

*On the occasion of the 10th Anniversary of the  
CEI Instrument for the Protection of Minority Rights  
(1994-2004)*



## Minorities and the Central European Initiative

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## PREFACE

The idea to elaborate a special publication on the occasion of the 10<sup>th</sup> anniversary of the CEI Instrument for the Protection of Minority Rights (it was opened for signature in 1994) was tabled and endorsed at the meeting of the CEI Working Group on Minorities, held on 7 May 2003 in Trieste. The CEI Executive Secretariat was authorised to set up the concept, select - with the assistance of the working group - the authors, who could enrich and provide appropriate expert level of its content and to take over the editorial work.

The intention was not only to pay tribute to one of the most important documents drafted within the CEI framework but also to go beyond that objective and prepare a more ambitious collection of data, commentaries and views as well as translations of the Instrument in various languages which could be useful to experts and interesting for the broader public. Indeed, as one of the main aims of the Instrument is to preserve and protect the linguistic diversity in Central, South-eastern and Eastern Europe, in recent months member countries responded very positively to the Secretariat's request to provide translations of the document in their languages and thus importantly increased the number of translations. This Publication includes 10 translations in all.

The CEI-ES wishes to thank distinguished international experts who have contributed their knowledge and experience in highlighting the various aspects of minority protection issues as defined and foreseen in the 27 provisions of the Instrument. In some cases, the form of an interview has been used in order to make the publication more "lively". Their willingness to participate in the project can be considered as their recognition for the Instrument and for the overall endeavours of the CEI in this field. In this regard, the Minority Institute in Bolzen/Bolzano deserves particular credit for its efforts in preparing the basic overviews of the minority legislation in CEI Member countries. However, this complex and sensitive task would not have been accomplished without the assistance of the members of the CEI Working Group as well as that of the respective authorities in the Member States.

Finally, the generous offer of the government of Slovenia to cover the printing costs of the publication – as a contribution to their CEI Presidency 2004 – and the open-handed overall financial support of the Italian government to CEI projects and activities deserves merit. Therefore, the book set afore you is a product of genuine joint endeavour between the CEI and their partners and friends throughout Europe.

*Trieste, October 2004*



# INTRODUCTION

# THE CEI HAS UNDERSTOOD THE NEED FOR ADJUSTMENT

*By Harald Kreid, Director General of the CEI Executive Secretariat*

The CEI Instrument for the Protection of Minority Rights, elaborated ten years ago, is quite unique, not only because of its relevance in the area of minority protection, but as a rare venture of our Organisation into the realm of international law. Ours is an Initiative which, in the course of the years – and the CEI has been around for the past 15 years – has involved itself in a wide range of activities, has promoted the political dialogue and has become more and more committed to operational activities co-financed from its own resources. But a standard setting legal document to be submitted to and adopted by the Governments of our Member States has remained an exceptional endeavour.

This is why we assign special significance to the document beyond its recognized value in standard setting and this is why I particularly welcome this publication. There is no need to stress the relevance of the issue within the CEI region. There is no CEI Member State to whom minority rights are not a major concern and for whom the CEI Instrument could not make a difference. Of course, I do not mean to suggest that we want the Minority Instrument to be seen as an isolated phenomenon. Rather it needs to be viewed in the context of the CEI's general commitment to the cause, reflected in the continued efforts of its Working Group on Minorities. This Working Group, in response to the current trend at increasing horizontal links, is strengthening its co-operation with working bodies active in similar or contiguous areas and is reaching out to other regional actors in order to achieve synergies.

The CEI is more and more attentive to mobilize the benefits of concerted action that means in essence establishing working relationships with existing bodies and institutions under a specific angle of cooperation. The basic philosophy is to avail ourselves of what is there already and proceed to build networks around a concept, which allows us to proceed in a focused manner – concentrating our efforts in the priority fields defined in our Plan of Action. This applies both to the CEI University Network and to the CEI Science and Technology Network. It also applies to our Know-how Exchange Programme and to the awards granted within our Research to Enterprise project.

The CEI is, therefore, moving energetically in a direction of technical assistance, which will ascertain the continued relevance of the Organization in a rapidly changing European environment. Thus the CEI is not only the oldest and largest regional actor in Central and Eastern Europe, it is also among those which have understood the need for adjustment to the newly emerging requirements of our Member States, seven of which have now become EU members while ten remain, for the time being, outside.



Under these circumstances it is obvious that our centre of attention is shifting towards the countries outside of the EU and that we are mobilizing the support of our EU members for a better transfer of know-how and technology.

It is important to stress that the CEI is a member driven organization. Our intergovernmental bodies, in particular the National Coordinators' Meeting, held on an almost monthly basis, assure a consistency of the CEI's activities with the perceived needs and interests of our Member Countries. It should, however, be stressed that the CEI also disposes of a professionally staffed Executive Secretariat, responsible for the preparation and follow-up of activities, which guarantees continuity and cohesion and helps to create the specific form of identity which is indispensable for the public image and awareness associated with the CEI.

# RESPECT FOR THE SMALL IS A *SINE QUA* NON FOR THE FUTURE

*By **Jadranka Šturm Kocjan**, Director of the Office of the Republic of Slovenia for  
Slovenes Abroad*

Being aware of the importance of minority protection for the future of European security and cooperation, the Ministry of Foreign Affairs of the Republic of Slovenia and the Office of the Republic of Slovenia for Slovenes Abroad decided to provide support in the framework of the Slovenian CEI Presidency for the publication which marks the tenth anniversary of the CEI Instrument for the Protection of Minority Rights.

The Republic of Slovenia is one of the youngest European countries. This year, it celebrates its thirteenth anniversary of independence, which is something the Slovene nation had dreamt about for over a thousand years. It was the terrible experience of the Second World War, which so dramatically affected people's lives and has made the formerly hostile European nations aware of the importance of cooperation among States and peoples.

This has also been the foundation of the European Union. Slovenia, a member of the joined the EU on 1 May 2004, with the experience of a nation that had suffered much evil, wars and confrontations in the past century, and with the knowledge and wisdom that suffering can only result in greater suffering, while mutual respect leads to friendship, to the development and prosperity of society. Our fight and determination to survive, along with our belief in the power of friendship and mutual assistance, have enriched and ennobled us. The constant shifting of borders, biting deeply into the body of the nation has strengthened our awareness of the importance of respect for minorities, and for human rights and fundamental freedoms in general.

The study of ethnic minorities is therefore a sphere in which the Slovene environment has contributed highly important findings to the European treasury of knowledge. The Minority Institute was set up in Ljubljana as long ago as 1925, and is therefore most probably the world's oldest research organisation of this kind. The Congress of European Nationalities was established that same year in Geneva, marked by a strong Slovene element as well (its chairman being a Slovene, Dr Josip Vilfan). With Slovenia joining the European Union and linking its destiny with the fate of other European nations, the time has come for Slovenes to come to peace with history and look towards the future. We are facing a great challenge. We must gain recognition in Europe and prove that we can work together with others and those who are different.

Our compatriots abroad have successfully proven this on innumerable occasions. Europe is still being shaped. The new European Constitutional Treaty will provide a foundation for the future. Slovenia has already gained an international status that our

predecessors never had. Therefore, respecting the small and minorities is a sine qua non condition for the future. As the President of the Republic of Slovenia, Dr. Janez Drnovšek said in his speech delivered on the National Day this year: "In the new Europe, the small are equal partners to the big. It is not force that prevails, but a democratic agreement. If we wish to be respected by the big, we must respect those that are smaller than we are, we must respect minorities, individuals and ourselves. We must respect human life and nature. Then the future will be."

Respect for human rights is one of the basic foundations of any democratic state governed by the rule of law. Encouraging tolerance and respect for those who are different must be the central task of any mature society and its members. Human rights and fundamental freedoms are clearly defined in the Constitution of the Republic of Slovenia. We are aware of our duty to do all we can to enable everybody to exercise these rights in such a way that nobody in Slovenia will feel affected or even deprived of this basic value, confirming a human as a human being. Responsible policy is based on the language of dialogue and tolerance and not on division and disrespect for others and for those who are different.

Slovenia is well aware of the fact that it can become well recognised in the world only if the national identity of Slovenes living abroad is preserved. EU and NATO membership has undoubtedly added value to Slovenia's reputation, thus making the Slovene identity, language and perhaps even citizenship more attractive on the global scale. It has been assessed that as many as one quarter of ethnic Slovenes live outside Slovenia. Taking into consideration the time of their immigration, an assessment can be made that only a few of them still live in ethnically homogenous Slovene families, thus primarily preserving the Slovene identity. The Slovene identity is thus gaining attractiveness at the right time, when descendants of Slovene immigrants may be deciding what route to take in the future. Slovenia must take advantage of this.

As to national minorities, Slovenia has always considered national minorities to play a positive role, as can also be seen from its policy towards the Italian and Hungarian minorities. Slovenia expects the same from its neighbouring countries as well. The situation of the Slovene minority in a certain country must remain a constant topic of bilateral talks. Considerations by representatives of the national minority must, of course, always be taken into account during such talks. With regard to other Slovenes abroad, i.e. immigrants and expatriates, more emphasis should be placed on cultural ties with them, on an increase in the use of the Slovene language, and on cooperation in various fields.

More attention will also have to be paid to economic cooperation and joint scientific projects in the coming years. Together with the Government Office for Structural Policies and Regional Development we have therefore invested much energy into the establishment of the Business Development Council of Slovenes Abroad. The aim of the Council is to strengthen ties between Slovenia and Slovene scientists, artists and businessmen living abroad and to make better use of the presence of Slovenes in

those countries to which Slovenia's business interests have been increasingly directed in recent years. We have also provided more support to Slovene national communities in the neighbouring countries in acquiring funds from the EU cohesive and structural funds; we believe that accelerated crossborder cooperation will make a decisive contribution towards overcoming economic, social and cultural differences and consequently to a more harmonised development and coexistence in security and cooperation.

# THE INSTRUMENT HELPED US TO USE THE EXPERIENCE OF OTHERS

*By **Miklós Boros** co-chairperson of the CEI Working Group on Minorities*

Please allow me to greet the Reader, the Colleague or the Visitor when he/she may consult the publication dealing with the protection of minority rights, issued on the 10<sup>th</sup> anniversary of the Central European Initiative's document. He/she will perhaps feel the same surprise the members of the working group of government experts felt when they realised that their work has been going on for 10 years already. During this period these experts also pursued, on the basis of the CEI Instrument, an intensive exchange of views and experience on the governmental policies applied for the protection of national minorities living in the CEI region.

The document itself was created in a favourable atmosphere at the beginning of the 90s when the awareness of the importance of minority issues and the dangers that may arise from inadequate treatment of minorities, was strengthened. This was and has remained a promising initiative as - besides the pan-European endeavours in the context of the OSCE and the Council of Europe – it has set out to promote the issue of minorities in an extremely heterogeneous region. The document fits closely into the process which has led from the political commitments made in the OSCE, to the establishment of legally binding agreements in the context of the Council of Europe (CoE).

It goes without saying that the problem of national minorities cannot be solved once and for all, but it requires constant attention. We can be pleased that both the European Union and the Council of Europe continue considering the issue of minorities important, and are thus ready to promote it, either by including it in the Constitutional Treaty, or through new initiatives taken at the Parliamentary Assembly of the Council of Europe.

In ten years, the document has helped us to use the experience of others in elaborating the best and most easily implemented solutions in our own country. As a governmental body, we also had the opportunity to interact with other international organisations dealing with this problem. The tenth anniversary not only gives us an occasion to evaluate the work accomplished until now, but, because of its special character, it also implies new tasks. In 2004, several signatories of the document have become members of the European Union. Therefore, under these new conditions the Central European Initiative should avail itself of the possibility to further intensify the exchange of views and experience concerning neighbourhood relations and minority policies. Not only would it strengthen the development in the domain of minority rights but also the economic progress in the region.

# PARALLEL ENDEAVOURS: FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES AND THE CEI INSTRUMENT

*By Milan Predan, CEI-ES Deputy Director General*

## **Why the CEI Instrument was drafted**

The fall of the Berlin wall and the striking political changes that Europe witnessed in the beginning of the 1990s raised hopes that the divisions, created by the cold war, came to an end, and concerns that the collapse of the “old order”, symbolised by the dissolution of the former Soviet empire, might open the Pandora’s box of nationalism and ethnic intolerance, particularly in those countries that have for decades lived in authoritarian regimes. The beginning of the Yugoslav drama was an ultimate proof that the box was actually opened.

It is too pretentious to claim that this tragic Balkan experience was one of the main incentives for the big international players such as the Organisation for Security and Co-operation in Europe (OSCE) and the Council of Europe, as well as for the emerging regional player such as the Central European Initiative (in that time still carrying the name of Quadrangular, Pentagonal and Hexagonal cooperation) that they started to work intensively towards creating a set of provisions that could prevent from future interethnic conflicts, including the effective protection of minority rights. After all, because of the numerous minorities living throughout the Continent, minority issues have always received great attention in Europe and have constantly been treated as an important political and legalistic problem.

However, the problems that emerged after the disintegration of multinational States (although the bloody split-up of Yugoslavia cannot be compared with the less dramatic disintegration of the Soviet Union and the un-dramatic separation of Czechoslovakia), such as the ethnic tensions and conflicts and the status of the so-called new minorities which were previously part of a dominant nation (i.e. Russians in the Baltic States), called for minority rights’ standards to be created both on international and on regional level.

The result was the adoption of several important political, non legally binding or binding documents, prepared within the OSCE, the Council of Europe, the European Union and the Central European Initiative.

The drafting of the CEI Instrument for the Protection of Minority Rights was one of the first attempts to create a systematic legal framework for this sensitive area at

multilateral level. The work within the CEI was advancing almost parallel to the Council of Europe preparatory work for the Framework Convention for the Protection of National Minorities. The final result was in many respects complementary and in some provisions – comparing the two documents – unique. The CEI Instrument undoubtedly brought about some novelties in the protection of minority rights, which were beneficial for the development of standards in this field. Nevertheless, despite its qualities and innovations, it remained in the shadow of other international documents.

There are many reasons why the CEI document has never received the publicity of the Framework Convention and other major OSCE and UN documents. It was elaborated at sub-regional level, within a sub-regional co-operation forum, which obviously could not produce the same international impact as the Council of Europe had. The second main reason is the fact that the CEI instrument was not created as a legally binding instrument but primarily as a political one. Therefore, its practical implementation was unlikely right from the very beginning. Unlike the Framework Convention disposing of an institutionalised monitoring system, the CEI Instrument merely relies on country reports, presented within the Working Group also limiting the effectiveness of this monitoring procedure.

Nevertheless, the CEI Instruments definitely deserves more credit than in the past decade. The fact is that it presented innovative approaches to the issue. It is the first international instrument in this field providing for a definition of minorities. Moreover, the Instrument pays special attention to a particular problem of Roma (Gypsies), calling for the implementation of special measures in order to preserve and develop their identity and facilitate their social integration. It is the only minority instrument including their explicit right to establish political parties.

Despite the lack of implementation mechanisms, the Instrument has provided the Central European Initiative with a political basis for regular overviews of the state of protection of minority rights in its member countries. It has served and still serves as a useful instrument for the political evaluation of how the various provisions of the document are implemented in the everyday practice of the seventeen Member States, thus helping urge governments and other governmental institutions to constantly enhance the level of minority protection in their countries and within their competencies.

### **Brief history of CEI involvement in the minority issues**

From the very outset of their co-operation CEI Member States have devoted particular attention to issues related to national minorities as a positive solution to minority issues at regional level. This could constitute a model to be applied within a greater European framework. Therefore, it is not surprising that the Working Group on Minorities, established in 1990, was among the first working groups that were set-up within the CEI (today, there are 16 WGs in all).

Led by the desire to respect and promote minority rights and develop their guarantees as an essential contribution to peace and stability in Central and Eastern Europe, the idea to convene a CEI Conference on minority issues was launched at the meeting of the CEI Foreign Ministers in Budapest (22-23 March, 1993). The task to prepare this Conference was entrusted to the WG on Minorities, which was also called upon to draw up common positions on certain key issues in the field of minority protection. As agreed, they were presented by the delegations of CEI Member States to the Summit of the Council of Europe in Vienna in October, 1993.

At the Working Group meeting in Vienna (21 June 1993), the Italian delegation presented the text of a draft Convention on the Protection of Minorities. The document was created on the basis of the documents adopted by the OSCE meetings in Copenhagen in Geneva in 1990 and 1991, by the Pentagonal and Hexagonal (CEI predecessors) proposals at these meetings and by the innovative proposal for a European Convention for the Protection of Minorities to be elaborated by the Council of Europe. However, the first draft failed to be adopted by the Working Group.

Although it was not simple to reach consensus on the provisions dealing with legally demanding and politically sensitive issues, at their annual meeting in Budapest (16-17 July 1993) the Heads of Government of the CEI countries encouraged the Working Group to continue drafting the instrument for the protection of minority rights which would be based on international accepted principles acceptable to all CEI Member States (10 at the time). It was also decided that the CEI Instrument should be a political document and should be complementary to the instrument simultaneously prepared by the Council of Europe.

The Working Group on Minorities held eleven meetings in Budapest, Bratislava, Vienna and London between June 1993 and September 1994. Subsequently a co-operation agreement between the CEI and the Council of Europe was reached. The text of the Instrument was finalised at the meeting in Budapest on 30 September 1994 and was harmonised with the draft **Framework Convention for the Protection of National Minorities** of the Council of Europe. At their meeting in Turin, 18-19 November 1994, the Foreign Ministers of CEI Member States welcomed the drawing up of the **CEI Instrument for the Protection of Minority Rights** and its adoption by the Working Group on Minorities. Therefore, both documents were issued that same year (1994): the CEI Instrument by the CEI Foreign Ministers, the Framework Convention by the Committee of Ministers of the Council of Europe.

The CEI Instrument was opened for signature to CEI Member States as well as to associated and other interested countries. **So far, it has been signed by 12 CEI Member States: Albania, Austria, Bosnia and Herzegovina, Croatia, Hungary, Italy, Macedonia, Moldova, Poland, Romania, Serbia and Montenegro and Slovenia.**

Without a formal control mechanism, the CEI Working Group on Minorities was given the task to follow up the realisation of the Instrument's objectives as well as encourage



Member States to share their experience in this field. Therefore, the WG meetings focus on various articles by presenting and discussing country reports on their implementation and thus – at least indirectly - contributing to the constant improvements of the protection of minority rights in the CEI region. The reports, presented at the WG meetings in October 2002 and in May 2003, demonstrated these improvements in most CEI member countries.

### **Framework Convention and the CEI Instrument: similarities and diversities**

Neglecting the differences in the legal status and the political impact of both documents, the 32 articles of the FCPNM and the 27 articles of the CEI instrument slightly differ. Both documents are based on the fact that minorities represent an integral part of the State and society in which they live in and are based on the rights of persons, belonging to national minorities, to exercise these rights individually or with others. Most articles might use different stylistic and linguistic approaches but are based on the common concept of minority rights making them not only complementary but in many aspects “twins”. This is understandable in view of the fact that they have grown out of common theoretical roots, similar practical experience and in the same historical framework (Balkan wars).

But there are differences between the two documents, which are to be borne in mind: especially in terms of the beneficiaries of both instruments. The Framework Convention envisages the protection of minority groups by determining obligations that State parties have to fulfil whereas the CEI Instrument lays down the obligations of the signatory States and – in addition - stipulates the rights of persons belonging to minorities. In this regard, the CEI Instrument follows the pattern of the UN Declaration on the Rights of Minorities (1992) also combining the minority rights of individuals with the obligations laid down for CEI Member States.

Moreover, while both instruments cover a wide area of specific minority rights (cultural, linguistic, political, right to identity), the CEI Instrument contains provisions that are not reflected in the Framework Convention, i. e. the obligation of the signatory State to promote the knowledge of minority languages among the local administrative officers. Moreover, the Instrument does not include provisions, contained in the Framework Convention, such as the obligation of the States not to interfere with the right of minorities to participate in activities of NGOs and the call upon the signatory States to reach bilateral and multilateral agreements in order to assure the protection of minorities.

The fact that the CEI Instrument is a political document, not legally binding for the signatories needs mentioning. Therefore, the authors were allowed to have more “freedom” in finding more tangible formulations for certain articles - which might not receive support from the Member States and would – perhaps - not “pass” the drafting process if they had legal consequences.

A perfect example is Article 1 which includes a comprehensive definition of a national minority: *“The term ‘national minority’ shall mean a group that is smaller in number than the rest of the population of a State, whose members being nationals of that State, have ethnical, religious or linguistic features different from those of the rest of the population, and are guided by the will to safeguard their culture, traditions, religion or language”*.

This definition makes the CEI Instrument a unique document for the protection of minorities, as other similar documents, including the Framework Convention (FC), do not include explicit definitions of this kind. In this respect, the CEI Instrument follows the principle of “self-identification”, endorsed by the OSCE Copenhagen Act (1990). According to this principle, *“to belong to a national minority is a matter of a persons’ individual choice and no disadvantage may arise from the exercise of such choice”*. The CEI Instrument uses the same formulation (Art. 2) and thus embraces the “individualistic” approach as apposed to the “state-centric” approach, advocated by the Framework Convention. The latter implies that the subjective choice has to be combined with objective criteria, set-up by the State, whether an individual belongs to a minority.

Furthermore, unlike other draft definitions of minorities, proposed within the United Nations, the CEI definition envisages the protection of minorities only for individuals who are nationals of the signatory State. (The representatives of some of the signatories sometimes argue that their countries probably would not have signed the CEI Instrument if such broad understanding of a national minority would have had legal consequences for their countries by giving large groups of population the legal basis to identify themselves as a minority, demanding state protection and financial support).

Another specific trait of the CEI document, distinguishing it from the FC, is Article 21: *“States shall allow persons belonging to national minority to establish political parties.”* This clearly goes beyond the Framework Convention in defining the political rights of the individuals belonging to national minorities as it is added to the less explicit formulations which are almost identical to the articles in the FC, such as: *“The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion”* (FC, Art.7). And: *“The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.”* (FC, Art. 15).

Some argue that the explicit right of a national minority to establish its own political parties can lead to *ghettoization* of minorities in a political setting whereas other reaffirm that it might encourage political processes that have, after all, led to bloodshed in former Yugoslavia by creating national parties and enabling the rise of nationalistic politicians. In a concrete historical context, that might be partially true. Nevertheless, Article 21 only derives from a logical consequence i.e. that the basic political right of every individual of which a person belonging to a national minority cannot be deprived

of. The national legislation in most CEI countries allows the establishment of minority political parties; therefore, this provision simply reflects the existing, widespread practice.

### **Signatories and translations**

Not all CEI Member States have signed the Instrument yet. Some Member States expressed their opinion that since they have signed the FC, they have sufficiently confirmed the readiness to respect and protect minority rights on their territory. Therefore, they do not find it necessary to accede to another similar document. Nevertheless, the CEI intends to make an attempt to increase the number of signatories in view of the symbolic importance that such an act could have for the protection of minorities in the CEI region. In this respect, the situation in the region has improved a great deal lately, even though it is still far from being non-problematic.

In previous years, another question has often been raised at CEI WG meetings: for whom has the Instrument been produced - for national governments or for minorities (as well)? If so, the document should have been translated and published in their languages. In this regard, important progress has been made particularly over the recent months when the member countries were encouraged to prepare translations for this publication. The Instrument, originally drafted in English, has so far been translated into Albanian, Croatian, German, Hungarian, Italian, Macedonian, Polish, Romanian, Slovak and Slovenian; all these translations are available in the concluding chapter of this publication.

The translations can be considered as a proof that the value of the document in CEI Member States is recognised. In addition, it should be seen as a practical and symbolic exercise which shows respect and pays tribute to a document which during all these years has been providing the CEI with the formal basis for monitoring the level of protection of minorities in the region, thus complementing the endeavours of the Council of Europe, the OSCE and other international players in this field.



## **CEI INSTRUMENT FOR THE PROTECTION OF MINORITY RIGHTS**



# CEI INSTRUMENT FOR THE PROTECTION OF MINORITY RIGHTS

The Member States of the Central European Initiative signatories here-to,

- ? recognising that the question relating to national minorities can only be resolved satisfactorily in a truly democratic political framework which is based on the rule of law and guarantees full respect for human rights and fundamental freedoms, equal rights and status for all citizens,
- ? reaffirming that the protection of national minorities only concerns citizens of the respective State, who will enjoy the same rights and have the same duties & citizenship as the rest of the population,
- ? convinced that national minorities form an integral part of the society of the States in which they live and that they are a factor of enrichment of each respective State and society,
- ? bearing in mind that a very effective remedy to achieve stability in the region are good relations between neighbours, and being conscious of the need to avoid any encouragement of separatist tendencies of national minorities in the region,
- ? confirming that issues concerning the rights of persons belonging to national minorities are matters of legitimate international concern and consequently do not exclusively constitute an internal affair of the respective State,
- ? considering that respect for the rights of persons belonging to national minorities, as part of universally recognised human rights, is an essential factor for peace, justice, stability and democracy in the States, convinced that the international protection of the rights of persons belonging to national minorities, as enshrined in the present Instrument, does not permit any activity, which is contrary to the fundamental principles of international law and in particular of sovereignty, territorial integrity and political independence of States,
- ? recognising the particular importance of increasing constructive co-operation among themselves on questions relating to national minorities, and that such co-operation seeks to promote mutual understanding and confidence, friendly and good-neighbourly relations, international peace, security and justice,
- ? expressing their condemnation of aggressive nationalism, racial and ethnic hatred, anti-Semitism, xenophobia and discrimination against any person or group and of persecution on religious an ideological grounds

have agreed as follows:

**Art. 1**

States recognise the existence of national minorities as such, considering them integral parts of the society in which they live and guarantee the appropriate conditions for the promotion of their identity.

For the purpose of this Instrument the term “national minority” shall mean a group that is smaller in number than the rest of the population of a State, whose members being nationals of that State, have ethnical, religious or linguistic features different from those of the rest of the population, and are guided by the will to safeguard their culture, traditions, religion or language.

**Art. 2**

Belonging to a national minority is a matter of free individual choice and no disadvantage shall arise from the exercise or non-exercise of such a choice.

**Art. 3**

States recognise that persons belonging to national minorities have the right to exercise fully and effectively their human rights and fundamental freedoms, individually or in common with others, without any discrimination and in full equality before the law. Those persons shall be able to enjoy the rights foreseen by the present Instrument individually or in common with others and to benefit from the measures ensuring those rights.

**Art. 4**

States guarantee the right of persons belonging to national minorities to express, preserve and develop their ethnic, cultural, linguistic or religious identity and maintain and develop their culture in all its aspects.

**Art. 5**

The adoption of special measures in favour of persons belonging to national minorities aimed at promoting equality between them and the rest of the population or at taking due account of their specific conditions shall not be considered as an act of discrimination.

**Art. 6**

States shall take effective measures to provide protection against any acts that constitute incitement to violence against persons or groups based on national, racial, ethnic or religious discrimination, hostility or hatred, including anti-Semitism.

**Art. 7**

States recognise the particular problems of Roma (gypsies). They undertake to adopt all the legal administrative or educational measures as foreseen in the present Instrument in order to preserve and to develop the identity of Roma, to facilitate by specific measures the social integration of persons belonging to Roma (gypsies) and to eliminate all forms of intolerance against such persons.



**Art. 8**

Without prejudice to democratic principles, States, taking measures in pursuance of their general integration policy, shall refrain from pursuing or encouraging policies aimed at the assimilation of persons belonging to national minorities against their will and shall protect these persons against any action aimed at such assimilation.

**Art. 9**

In case of modification of administrative, judicial or electoral subdivisions States should take into account that such modifications, among other criteria, will respect the existing rights of the persons belonging to national minorities and the exercise of those rights. In any case, they should consult, according to national legislation, with the populations directly affected before adopting any modification in the matter.

**Art. 10**

Any person belonging to a national minority shall have the right to use his or her language freely, in public as well as in private, orally and in writing.

**Art. 11**

Any person belonging to a national minority shall have the right to use his or her surname and first names in his or her language and the right to official acceptance and registration of such surname and names.

**Art. 12**

Whenever in an area the number of persons belonging to a national minority reaches, according to the latest census or other methods of ascertaining its consistency, a significant level, those persons shall have the right, wherever possible, to use, in conformity with applicable national legislation, their own language in oral and in written form, in their contacts with the public authorities of the said area. These authorities may reply as far as possible, in the same language.

**Art. 13**

In conformity with their national legislation States may allow, where necessary through bilateral agreements with other interested States, in particular with neighbouring States, the display of bilingual or plurilingual local names, street names and other topographical indications in areas where the number of persons belonging to a national minority reaches, according to the latest census or other methods of ascertaining its consistency, a significant level. The display of signs, inscriptions or other similar information of private nature also in the minority language should not be subject to specific restrictions, other than those generally applied in this field.

**Art. 14**

Any person belonging to a national minority, exercising religious freedom, shall have the right to use his or her own language in worship, teaching, religious practice or observance.

**Art. 15**

Whenever in an area the number of persons belonging to a national minority reaches, according to the latest census or other methods of ascertaining its consistency, the majority of the population in an area, States will promote the knowledge of the minority language among officers of the local and decentralised state administrative offices. Endeavours should be made to recruit, if possible, officers, who, in addition to the knowledge of the official language, have sufficient knowledge of the minority language.

**Art. 16**

States recognise the right of persons belonging to national minorities to establish and maintain their own cultural and religious institutions, organisations or associations, which are entitled to seek voluntary financial and other contributions as well as public assistance, in conformity with national legislation.

**Art. 17**

States recognise the right of persons belonging to national minorities to establish and maintain their own private preschools, schools and educational establishments and possibly obtain their recognition in conformity with the relevant national legislation. Such establishments may seek public financing or other contributions.

**Art. 18**

Notwithstanding the need to learn the official language of the State concerned, every person belonging to a national minority shall have the right to learn his or her own language and receive an education in his or her own language. The States shall endeavour to ensure the appropriate types and levels of public education in conformity with national legislation, whenever in an area the number of persons belonging to national minority, according to the latest census or other methods of ascertaining its consistency, is at significant level. In the context of the teaching of history and culture in such public educational establishments, adequate teaching of history and culture of the national minorities should be ensured.

**Art. 19**

States guarantee the right of persons belonging to a national minority to avail themselves of the media in their own language, in conformity with relevant State regulations and with possible financial assistance. In case of TV and radio in public ownership, the States will assure, whenever appropriate and possible, that persons belonging to national minorities have the right of free access to such media including the production of such programmes in their own language.

**Art. 20**

States shall guarantee the right of persons belonging to national minorities to participate without discrimination in the political, economic, social and cultural life of the society of the State of which they are citizens and shall promote the conditions for exercising those rights.

**Art. 21**

States shall allow persons belonging to a national minority to establish political parties.

**Art. 22**

In accordance with the policies of the States concerned, States will respect the right of persons belonging to national minorities to effective participation in public affairs, in particular in the decision-making process on matters affecting them. Therefore, States note the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by adopting appropriate measures corresponding to the specific circumstances of such minorities as foreseen in the CSCE documents.

**Art. 23**

Every person belonging to a national minority, while duly respecting the territorial integrity of the State, shall have the right to have free and unimpeded contacts with the citizens of another country with whom this minority shares ethnic, religious or linguistic features or a cultural identity. States shall not unduly restrict the free exercise of those rights. Furthermore, States will encourage transfrontier arrangements at national, regional and local levels.

**Art. 24**

Every person belonging to a national minority shall have an effective remedy before a national judicial authority against any violation of rights set forth in the present Instrument, provided that those rights are enacted in national legislation.

**Art. 25**

In any area where those who belong to a national minority represent the majority of the population, States shall take the necessary measures to ensure that those who do not belong to this minority shall not suffer from any disadvantage, including such that may result from the implementation of the measures of protection foreseen by the present Instrument.

**Art. 26**

None of these commitments shall be interpreted as implying any right to engage in any activity in contravention of the fundamental principles of international law and, in particular, of the sovereign equality, territorial integrity and political independence of State. Nothing in the present Instrument shall affect the duties related to persons belonging to national minorities as citizens of the States concerned.

Persons belonging to national minorities will also respect, in the exercise of their rights, the rights of others, including those of persons belonging to the majority population of the respective State or to other national minorities.

**Art. 27**

This Instrument shall not prejudice the provisions of domestic law or any international agreement which provide greater protection for national minorities or persons belonging to them.

*Done in English in Turin on 19 November 1994.*

## **CEI INSTRUMENT: VIEWS, COMMENTARIES**



# A GENERALLY VALID, UNIVERSALLY ACCEPTABLE AND LEGALLY BINDING DEFINITION OF A MINORITY IS NOT POSSIBLE

Interview with **Gáspár Bíró**, Council of Europe, Vice-President of the Advisory Committee on the Framework Convention for the Protection of National Minorities

\* \* \*

## **Art. 1**

*States recognise the existence of national minorities as such, considering them integral parts of the society in which they live and guarantee the appropriate conditions for the promotion of their identity. For the purpose of this Instrument the term “national minority” shall mean a group that is smaller in number than the rest of the population of a State, whose members being nationals of that State, have ethnical, religious or linguistic features different from those of the rest of the population, and are guided by the will to safeguard their culture, traditions, religion or language.*

## **Art. 2**

*Belonging to a national minority is a matter of free individual choice and no disadvantage shall arise from the exercise or non-exercise of such a choice.*

## **Art. 3**

*States recognise that persons belonging to national minorities have the right to exercise fully and effectively their human rights and fundamental freedoms, individually or in common with others, without any discrimination and in full equality before the law. Those persons shall be able to enjoy the rights foreseen by the present Instrument individually or in common with others and to benefit from the measures ensuring those rights.*

## **Art. 4**

*States guarantee the right of persons belonging to national minorities to express, preserve and develop their ethnic, cultural, linguistic or religious identity and maintain and develop their culture in all its aspects.*

\* \* \*

**- The CEI Instrument is the only relevant international minority rights document that “dares” to provide a broad definition of a national minority. Why are other instruments, including the Framework Convention, avoiding explicit definitions of this kind?**

**Biro:** There are several answers to this question. After all, when drafting international documents related to minority rights and protection, States were not able to agree on a common formula. The United Nations competent bodies, such as the Commission on Human Rights and its Sub-Commission, have spent decades trying to find a universally valid and legally binding definition on what the term “minority” means in this context. Things are even more complicated when it comes to regional instruments. For example, European institutions, such as the Council of Europe or the OSCE (and its predecessor, the CSCE) constantly use the terms “national minorities” and “persons belonging to national minorities”, while in the UN system the common terminology is “national, ethnic, religious and linguistic minorities”, and persons belonging to these minorities. It is a less visible, but existing difference on whether the entities concerned are to be defined groups, populations, communities, peoples etc. (in this regard it is interesting to see how the language of international instruments on indigenous “groups” have evolved over the years from indigenous and tribal populations to indigenous peoples. A 1994 UN draft declaration on discrimination against indigenous peoples has even recognised the right to self-determination to them. However, discussions on this subject are not over yet.)

In addition, the internal legislation of various States - if such legislation exists at all - is also utilising different terms. Some States recognise both national and ethnic minorities, others only linguistic minorities, and in some cases the term “nationalities” is still preferred, including on the basis that being called a “minority” would imply a certain second-class status. The situation is even worse when it comes to these entities themselves, and the civic or political organisations representing them. If one accepts the principle of free choice and self-definition, it is difficult to claim that a group does not have the right to call itself a nationality or a “Volksgruppe” (group of people), or even a people. Much has been said about “new minorities” over the past years, meaning refugees, asylum seekers, or migrant workers, to also be covered by existing international instruments on minority protection. Some feel the need for new international regulations.

Given this diversity in terminology, it is understandable that any attempt to find a definition inevitably begins with a clarification on the denomination: whom are we talking about? Nationalities, minorities, peoples etc.? The features defining these groups are almost the same in all cases: common ethnic origin, specific linguistic and cultural elements, and a common wish to preserve and develop a common identity based on these characteristics. The CEI instrument follows the general European practice, aimed at protecting national minorities and persons belonging to these



minorities, even though in CEI Members States practice and legislation on identification and terminology differ.

**- What is the main problem in defining a national minority?**

**Biro:** Some of the difficulties are already mentioned in the answer to the previous question. There is a difference between a descriptive and a legally binding definition. A descriptive definition serves as a guiding point, allowing for broad exceptions to be covered. A legal definition is not that flexible. Both definitions cover more or less the same range of criteria: “numerically smaller”, “specific ethnic, religious, linguistic” features and elements, “the wish” of a group to be recognised as such, and to preserve, develop and pass to the off-spring a common identity etc. Some of these criteria are objective, others subjective, pending on the will of individuals belonging to the group. In a world where assimilation and dissimilation processes parallel each other and social mobility is increasing, it is impossible to legally prescribe without a strict registration of membership the limits within which a group can be assigned rights, which are justifiable, general (or universal), and based on ethnic, linguistic etc. elements. Registration, for a number of reasons, in some well-founded cases, is opposed by the majority of the groups and individuals concerned.

However, assigning rights and allocating the necessary funds for the implementation of those rights is successful if the competent state organs possess reliable data on the number of those concerned, their distribution on the territory, their specific demands, age and gender composition, information on their social status (employment data for example), etc. Even though those concerned would agree to be registered, such data need constant updating. In addition, intra-group changes are difficult to monitor, let us take only migration, or mixed marriages. Also, changes are relatively frequently occurring in the political status of the group itself: I am referring to when a minority does have political organisations and manages to participate in the decision-making process at national or local level. Notwithstanding the fact that a national minority - politically speaking - is a structural minority. It can sometimes participate through its democratically elected representatives in governing coalitions, sometimes cannot. Consequently, such a group can have the right to participate in the decision making process through other means than those provided by the rules of political pluralism, based on the multi-party system. Various countries have specific arrangements in order to cope with these problems, but this does not mean that a generally applicable rule can be established. Each and every country-situation is unique in this regard, as it is the situation of a particular minority group.

Therefore, if one takes these facts into account, it necessarily comes to the conclusion that a generally valid (not to mention universally acceptable) and legally binding definition is not possible. On the contrary, such a definition - because of the intrinsic limitations it would require - can become easily counter-productive, or even discriminatory versus certain groups or individuals.

**- Some argue that only a legally not-binding document can provide a broad understanding of a national minority as contained in the Article 1 of the CEI Instrument; that is, if such definition does not have legal consequences for the signatories by giving large groups of population the legal basis to identify themselves as a minority, demanding state protection and financial support. What is your opinion?**

**Biro:** Let us not forget that CEI Member States are also signatory parties to the Council of Europe's Framework Convention for the Protection of National Minorities (FC), a legally binding document (ratified by national parliaments), without a definition. Over the past six years, the monitoring of the implementation of the FC was successful. Member States of the Council of Europe (CE) have reached the following agreement: governments have a margin of appreciation regarding the personal scope of the convention, i.e. the subjects of the protection offered by the FC, but they should exercise this possibility by taking into account the general principles of international law regarding anti-discrimination provisions, and avoiding the occurrence of arbitrary or unjustified distinctions. This kind of approach is also possible in the interpretation and implementation of the CEI Instrument, so I do not see specific problems raised by your question.

**- In article 2, the CEI Instrument uses the same formulation as the OSCE Copenhagen Act (1990), stating that "to belong to a national minority is a matter of a persons' individual choice and no disadvantage may arise from the exercise of such choice". This means that it follows the principle of "self-identification" and thus embraces the "individualist" approach, opposite from the "state-centric" approach, advocated by the Framework Convention, implying that the subjective choice has to be combined with objective criteria, set-up by the State, whether an individual belongs to a minority or not. How would you briefly summarise the advantages and disadvantages of both approaches?**

**Biro:** The Framework Convention is "state-centric" only because it mainly contains principles to be observed by Governments when designing their policies in the field of minority protection, including legal and other guarantees for minority rights. As I mentioned, there is a need for detailed information for a successful policy in this area. Some of this data may refer to the so-called objective criteria, e.g. it is not difficult to establish the number of individuals making up a minority or regional languages spoken in a particular country. If collected and processed in a proper way, these data (and the activities through which they are obtained) will not interfere with the principle of free choice.

State pressure or interference by non-state actors to coerce individuals to make a choice regarding their identity or status is unacceptable. Finally, a good minority policy requires a complex institutional framework with the effective participation of persons belonging to national minorities or their representatives. These persons are supposed to be real representatives of minorities, although as the case of Hungary shows, if the principle of free choice is understood and applied with no limitations, abuses can

occur. In order to remedy situations of this kind, being both a political and legal matter it can be solved through dialogue among the parties concerned, which at the end of the day is also a matter of effective participation.

**- The State guarantees every national minority the right to express, preserve and develop its ethnic, cultural, linguistic or religious identity, contained in Article 4 of the CEI Instrument, is a basic part of all minority rights' documents. Nevertheless, the effective monitoring of how States exercise those rights remains an open question. What is your perception of its effective monitoring? And to what extent have CEI Member States' EU aspirations contributed to the enhanced level of minority protection in those countries?**

**Biro:** As the Council of Europe Framework Convention has demonstrated, if there is common understanding on a number of basic principles - and in the past six years the main elements of consensus have been settled - the implementation becomes a very practical issue. In discussions with Governments during the first cycle of the monitoring of the FC the Council of Europe and signatory parties managed to agree on several standards, currently part of the daily activities regarding minority protection. For example, an increasing number of States have organised the so-called follow-up seminars in order to discuss with all parties concerned the experience of the first five-year cycle, and to identify the domains needing further efforts. Of course, the integration process of number of countries in the region into the EU had a beneficial effect on minority protection. Nevertheless, States realised that the implementation of the principles set out in the FC will not be over after 1st May 2004, as it is the case for those EU members becoming parties to the same convention since it was open for signature in 1995.

**- What would your brief general comment on the CEI Instrument as a whole be? Where does the document, in your opinion, stand regarding other relevant international minority rights documents?**

**Biro:** It is obvious, that there is some overlapping between the provisions of the CEI Instrument and other international instruments on minority protection. It is also obvious in my view, that in many of its provisions the CEI Instrument is more specific than other instruments. I think this is due to its regional character and to the fact that the parties have much in common with regard to the protection of national minorities and their rights. I would emphasise in the meantime the complementary character of European documents, whether elaborated in the framework of the Council of Europe, the OSCE or the CEI. We are all interested in a good coexistence between/among majorities and minorities, and although the situation in every country is unique in its way, should the basic principles of democratic dialogue and effective participation be applied in practice, the progress is possible.

*Questions prepared by Milan Predan*

# NON-DISCRIMINATION FOR ALL: MINORITIES AND MAJORITIES

*By Ivan Toševski, distinguished Macedonian diplomat, for many years active in the field of human rights, particularly within the UN Commission on Human Rights*

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## **Art. 5**

*The adoption of special measures in favour of persons belonging to national minorities aimed at promoting equality between them and the rest of the population or at taking due account of their specific conditions shall not be considered as an act of discrimination.*

\* \* \*

The subject of this comment is Article 5 of the CEI Instrument which contains an important element for the issue of national minorities. Namely, it very clearly points out that non-discriminatory legal and political treatment of persons belonging to national minorities should not be interpreted by the rest of the population as discriminatory. It might be added that this Instrument's approach, compared with most international declarations and conventions dealing with discrimination, including the one against national minorities, is virtually a new contribution in this field. Of course, its practical acceptance and implementation mainly depend on the political circumstances in various countries.

But let us return to the above-mentioned Article. It reads: "The adoption of special measures in favour of persons belonging to national minorities aimed at promoting equality between them and the rest of the population or at taking due account of their specific conditions shall not be considered as an act of discrimination". As well known, the problem of national minorities has for centuries been presented in many countries as well as in international relations, in Europe in particular. Regardless of numerous attempts to find solutions to specific issues, generally speaking international organisations and dominant powers have been rather abstemious. The reason has been the concern not to undermine the integrity of the States.

The League of Nations is an example. When in 1934 Poland submitted a proposal that a universal convention for the protection of minorities be adopted, the League rejected it. There is a similar situation within the United Nations. While the absence of the term "minority" in the Charter might be explained, even vindicated, it is really almost impossible to comprehend its exclusion from the UN Universal Declaration of Human Rights. In the European Convention for the Protection of Human Rights and Fundamental Freedoms the

"national minorities" are only mentioned in the non-discrimination clause provided for in Article 14.

But this rather limited approach and sluggish activities of international bodies to deal with and resolve one of the most serious factors for peace and stability, was drastically changed after the fall of the Berlin Wall. In a brief period of only a couple of years important international organisations adopted several political and legal documents concerning the rights of national minorities:

- In June 1990, during the Conference on the Human Dimension, held in Copenhagen, the European Organisation for Security and Co-operation accepted a Declaration dedicated to national minorities;
- In October 1992 the Council of Europe adopted the European Charter for Regional or Minority Languages;
- In December 1992 the general Assembly of the United Nations adopted a Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;
- In November 1994 the Central European Initiative adopted the Instrument for the Protection of Minority Rights;
- In February 1995 the Council of Europe adopted the Framework Convention for the Protection of National Minorities.

Moreover the enormous contribution these documents have had for the international community in the area of minority rights, some of them, such as the Copenhagen Declaration, have additionally embraced the equality relationship between minorities and majorities, contained in Article 5 of the Instrument.

For example, Article 31 of the Copenhagen Declaration emphasises that "the participating States will adopt, where necessary, special measures for the purpose of ensuring to persons belonging to national minorities full equality with other citizens in the exercise and enjoyment of human rights and fundamental freedoms". And further, the last sentence of Article 33 sets out that "any such measures will be in conformity with the principles of equality and non-discrimination with respect to the other citizens of the participating State concerned".

It can be concluded that the Copenhagen Declaration has become the first international document, regardless of its political nature, clarifying that the measures in favour of minorities should not be viewed as discrimination against the majority.

This principle is not explicitly included in the UN Declaration. But its Article 8.3 contains certain elements that should not be ignored. It reads: "Measures taken by States to ensure the effective enjoyment of the rights set forth in the present Declaration shall not *prima facie* be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights."

The most comprehensive way of strengthening this norm has been defined in the Framework Convention and in its Explanatory report. There is a clear indication that

the measures in favour of persons belonging to national minorities are not against the principle of equality and non-discrimination. Their essential purpose is to ensure effective equality of the persons belonging to national minorities with the persons belonging to the majority of the population.

Paragraphs 2 and 3 of Article 4 of the Convention, the first multilateral legal instrument, reads; "The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities. The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination."

According to the comments in the Explanatory report of the Convention" paragraph 2 stresses that the promotion of full and effective equality between persons belonging to a national minority and those belonging to the majority may require the Parties to adopt special measures that take into account the specific conditions of the persons concerned. Such measures need to be "adequate", that is in conformity with the proportionality principle, in order to avoid violation of the rights of others as well as discrimination against others. This principle requires, among other things, that such measures do not extend, in time or in scope, beyond what is necessary in order to achieve the aim of full and effective equality."

As to the purpose of paragraph 3 the Explanatory report says "that the measures referred to in paragraph 2 are not to be regarded as contravening the principles of equality and non-discrimination. Its aim is to ensure to persons belonging to national minorities effective equality with persons belonging to the majority".

The quoted positions of some both political and legal documents very clearly indicate that Article 5 of the CEI Instrument for the protection of minority rights can be interpreted as an additional contribution of this principal which is deeply rooted in the relations between the persons belonging to both minorities and majorities.

# ALL THE MEMBERS OF MINORITIES REALLY WANT IS FULL INTEGRATION

*Interview with **Budislav Vukas**, Professor of Public International Law, Faculty of Law  
University of Zagreb*

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## **Art. 6**

*States shall take effective measures to provide protection against any acts that constitute incitement to violence against persons or groups based on national, racial, ethnic or religious discrimination, hostility or hatred, including anti-Semitism.*

## **Art. 8**

*Without prejudice to democratic principles, States, taking measures in pursuance of their general integration policy, shall refrain from pursuing or encouraging policies aimed at the assimilation of persons belonging to national minorities against their will and shall protect these persons against any action aimed at such assimilation.*

## **Art. 9**

*In case of modification of administrative, judicial or electoral subdivisions States should take into account that such modifications, among other criteria, will respect the existing rights of the persons belonging to national minorities and the exercise of those rights. In any case, they should consult, according to national legislation, with the populations directly affected before adopting any modification in the matter.*

\* \* \*

**- Generally, can you recognise any substantial distinctions between Articles 6 and 8 of the CEI Instrument and similar (non-discrimination and antiassimilation) provisions in other relevant international documents, i.e. the Framework Convention?**

**Vukas:** It is natural and logical that States belonging to a sub-regional European grouping – the Central European Initiative – in their Instrument for the Protection of Minority Rights, closely follow an exceptional pan-European instrument on the same subject: the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe (CSCE). Therefore, Article 6 of the CEI Instrument has the same non-discrimination contents, and almost the same wording, as the corresponding sub-paragraph (40.1) of the

Copenhagen Document. Yet, other sub-paragraphs of paragraph (40) further elaborate the commitments of participating States regarding serious threats to minorities. The anti-assimilation provisions in the CSCE and CEI documents differ only in their drafting. The CSCE States have adopted a general provision stating that “persons belonging to national minorities” will be “free of any attempts at assimilation against their will” (para. 32). On the other hand, the CEI States made it clear that they themselves “shall refrain from pursuing or encouraging policies aimed at the assimilation or persons belonging to national minorities against their will”, but also that they “shall protect these persons against any action at such assimilation” (Article 8). Many of the rights which are necessary to preserve and develop the minorities’ identity are listed in the CSCE Document as related to the prohibition of assimilation (paras. 32.1-32.6), while in the CEI Instrument the same rights of minorities are mentioned throughout the whole text (Articles 10, 14, 16, 23, etc).

In fact, in the context of non-discrimination, both instruments go far beyond mere discrimination. Thus, according to Article 6 of the CEI Instrument, States have the duty to “take effective measures to provide protection against any acts that constitute incitement to violence against persons or groups based on national, racial, ethnic or religious discrimination, hostility or hatred, including anti-Semitism”. The quoted text makes it clear that States are obliged to protect minorities from any use of force against them, including ethnic cleansing or acts of extermination. In this regard the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted in 1992 by the UN General Assembly, is more direct than the two European instruments. According to Article 1, paragraph 1, of the UN Declaration, in addition to the protection of their identity, States are obliged to “protect the existence...of minorities within their respective territories”.

Finally, a difference between the two European instruments, and the Framework Convention for the Protection of Minorities, regarding the subjects protected from discrimination deserve mentioning. The two afore-mentioned instruments oblige the States to “take effective measures” to protect “persons or groups”, while Article 6 of the Framework Convention speaks of “persons” only. This difference is probably intentional, as in the Explanatory Report on the Framework Convention it has often been repeated that “no collective rights of national minorities are envisaged” in the Convention (e.g. in para. 31 of the Explanatory Report).

**- Unlike the very similar provisions in the Framework Convention (as well as article 6), article 6 in the CEI Instrument particularly mentions “anti-Semitism” as a basis for hostility and discrimination. Is there any special reason for including anti-Semitism in the document?**

**Vukas:** As I am to compare the similar provisions of the CEI instrument and the Framework Convention, I feel obliged to express my general opinion on this Convention. Its title, its contents, and its reception by the European States (listing of minorities to which it is applied in each particular State), are a confirmation of the weakness of this



treaty. In this respect, it should not be forgotten that the Council of Europe adopted the Framework Convention instead of the European Convention for the Protection of Minorities, proposed in 1991 to its Committee of Ministers by the European Commission for Democracy through Law, a consultative body of the Council. Obviously, some of the most influential members of the Council preferred the soft, framework Convention, to a self-executing and efficient treaty, which also provided for the possibility of submitting petitions concerning violations of the Convention. As we are commenting on the CEI Instrument, it should not be forgotten that the definition of the term “national minority” in this document (Article 1, para. 2) has been taken from the above-mentioned Proposal of the Commission for Democracy through Law (Article 2, para. 1).

As to the mentioning of “anti-Semitism”, it must be recalled that the CEI Instrument is neither the only one, nor the first international instrument explicitly forbidding anti-Semitism. Namely, the States participating in the 1990 Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, in the Document adopted at the Meeting condemned “totalitarianism, racial and ethnic hatred, anti-Semitism, xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds” (para. 40). In order to combat these phenomena, the participating States promised to take various measures (paras. 40.1-40.7).

In my opinion, there are valid reasons for mentioning “anti-Semitism” in European documents dealing with minority rights. Although, generally speaking, “anti-Semitism” is only the concretisation of hostility and hatred towards an ethnic/religious community, the cruellest consequences of hatred towards Jewish people in the recent European past deserves mentioning. It is therefore appropriate to mention it in a document applicable to Europe as a whole (the CSCE Copenhagen Document), but also in the CEI Instrument. The outrageous consequences of anti-Semitism in the 20th century also took place in Central Europe. Many of the States/peoples from the CEI area should never forget their régimes which participated in the extermination of Jewish people.

It should be recalled that there are other examples where violations of human rights towards a specific ethnic group or a particular region, have been mentioned in an international instrument. Thus, although the International Convention on the Elimination of All Forms of Racial Discrimination was concluded in 1965, another treaty was subsequently adopted in order to suppress and punish the type of racial discrimination practiced at that time in a particular region. The International Convention on the Suppression and Punishment of the Apartheid Crime was concluded in 1973 in order to eliminate “similar policies and practices of racial segregation and discrimination as practiced in southern Africa...” (Article II).

**The CEI Instrument calls upon States to refrain from assimilation of national minorities against their will. But the assimilation does not always happen**

**against the will of minorities, particularly not among younger generations.  
Would you agree?**

**Vukas:** According to Article 1, paragraph 2, of the CEI Instrument, an important element of the definition of national minorities is their “will to safeguard their culture, traditions, religion or language”. This subjective requirement, in addition to the objective one, i.e. their ethnical, religious or linguistic features different from those of the rest of the population, is relevant if a minority wants to realize its rights according to this document. The State they belong to as nationals, is obliged to carry out its duties according to the CEI Instrument only with regard to minorities “guided by the will to safeguard” these specific features.

However, a person will always belong to a minority even though he or she does not care about his/her specific features, or would even prefer not to have them at all. For example, for various reasons, Croats in northern Italy were not too eager to show their Croatian origin nor to speak Croatian for decades. Only after the establishment of the independent Croatian State, and the conclusion of the Treaty between the Republic of Croatia and the Italian Republic concerning Minority Rights, have they established their cultural associations. On the other hand, there are ethnic (racial) features which cannot be abolished. Generally speaking, I do not think that there is a large number of members of minorities whose will is to be *assimilated*. What all members of minority groups really want is full *integration*: equal rights of all citizens of their State, regardless of their ethnic, religious or linguistic features.

**- What would you consider the most effective policies for protecting national minorities from unwilling assimilation?**

**Vukas:** Democracy, general protection of human rights, rule of law, economic development, are the basic conditions for a general protection of minorities, including their protection from assimilation against their will. However, it has to be recalled that the existence of national minorities, different from the rest of the population, is based on the existence of States, and the separation of their respective populations by State frontiers. Therefore, the cessation of strict isolation of a population within the borders of each particular State enables closer contacts of individuals and groups of persons belonging to the same religious, ethnic or linguistic communities, and thus protects minorities from assimilation against their will.

Any development equal/similar to the one within the European Union contributes to the preservation of national minorities. The freedom of movement, the introduction of Union citizenship for the citizens of all the States belonging to the Union, eliminates many obstacles previously existing between/among minorities and the majority of their people living in another State. Hungarians living in Slovakia and Romania, or Slovenes living in Italy, will now be in a much better position to prevent their assimilation.

However, it is strange that the Charter of Fundamental Rights of the Union, contained in the Draft Treaty establishing a Constitution for Europe, drafted by the European Convention and submitted to the President of the European Council on 18<sup>th</sup> July 2003, does not contain provisions on the rights of minorities and their members. Article II – 22 only provides that “the Union shall respect cultural, religious and linguistic diversity.”

**- In your opinion, to what extent are the assimilation processes in the minority communities today influenced by globalisation?**

**Vukas:** In my opinion, ‘globalization’ is nothing more than a trendy term, having some meaning mainly in the sphere of economics. Minority communities, as all other national/ethnic communities, will probably be affected by “globalization” through the necessity of using English in professional/business life more often. Nobody’s substantive cultural life will really be affected/transformed by the necessity of using more English (or German, or French). Whatever the future pace of “globalization” may be, one cannot imagine how it could influence Italians, Czechs, Croats, etc. from a cultural point of view. Furthermore, I do not see any reason to fear the assimilation of minority communities either by the majority of the population of the State where they live, or in a pandemic American/English culture. It is sufficient to recall the surviving multi-ethnicity of the population of Bosnia and Herzegovina, notwithstanding the four centuries of “globalization” in the framework of the Turkish Empire, and the 75 years of the Yugoslav State.

**- By calling upon the signatory States “to consult, according to national legislation, with the populations directly affected before adopting any modification in administrative, judicial or electoral subdivision”, Article 9 refers, *inter alia*, to institutions and mechanisms for effective participation of minorities in public matters. To avoid the listing of specific solutions in this respect adopted in various CEI countries, what would you, according to your experience, consider as the most practical and efficient mechanisms for consulting minorities on public matters that are of particular importance to them?**

**Vukas:** Populations directly affected by changes in administrative, judicial or electoral subdivisions, could be consulted through various channels: minority institutions, organizations or associations, their political parties, or their representatives in various State/government bodies. Some legislations (Hungary, Croatia) also offer another possibility: the minority self-government. This mechanism should express the general interest of each particular minority. However, like in all other bodies representing minority interests, it is not always easy to eliminate particular individual interests, and reach a proposal/solution really reflecting the interests of the entire minority group.

# SELF-DETERMINATION OF ROMA AS A NEW PHENOMENON

*By Vera Klopčič, Institute for Ethnic Studies, Ljubljana, Slovenia*

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## **Art. 7**

*States recognise the particular problems of Roma (gypsies). They undertake to adopt all the legal administrative or educational measures as foreseen in the present Instrument in order to preserve and to develop the identity of Roma, to facilitate by specific measures the social integration of persons belonging to Roma (gypsies) and to eliminate all forms of intolerance against such persons.*

\* \* \*

Official data on the number of Roma in Europe, obtained on the basis of the censuses conducted in various States, in many cases differ from figures provided by social services, Roma associations and non-governmental organisations. It is estimated that between 10 and 15 million Roma live in Europe. In the process of EU enlargement, the situation of Roma in Central and Eastern European countries has become an important issue for the international community. The acceding countries had to prepare special programmes for the integration of Roma communities as well as regular implementation reports for international institutions. Monitoring focused on the following questions: How are the overall living conditions of Roma in the States they live in going to be improved? What is the implementation level of international human rights and non-discrimination standards, programmes on combating racism, intolerance and xenophobia, poverty and social exclusion?

To which extent the Roma themselves were included in the preparation and implementation of those programmes and projects remains an open issue. Another important issue is how intensive international monitoring will be in the new enlarged Europe. Various studies and reports show that the status of Roma communities in many countries remains problematic.

## **Legal protection**

The most important legal documents regulating the status of minorities are: the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; the OSCE Copenhagen Concluding Document on the Human Dimension of the CSCE and other CSCE documents; the European Charter on

## Minority and Regional Languages and the Framework Convention for the Protection of National Minorities adopted within the Council of Europe.

Particularly important for the improvement and development of the legal protection of Roma was the adoption of the Document of the Copenhagen Conference on the Human Dimension of the CSCE in 1990. The Copenhagen Document was a real substantive shift in the approach towards protection of minorities and expressed the political consensus and commitment of European States to establish a basis of European standards for minority protection. In article 40 the Copenhagen Document, *inter alia*, stresses: "The participating States clearly and unequivocally condemn totalitarianism, racial and ethnic hatred, anti-Semitism, xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds. In this context they also recognize the particular problem of Roma (gypsies)".

The Framework Convention for the Protection of National Minorities (1995), which is the first legally binding international instrument on minority protection, is based upon the political commitments of the Copenhagen Document. It resumes the principles of the international community in relation to the protection of national minorities as a part of the international legal protection of human rights. The most important part of the Framework Convention for the Protection of National minorities contains programme-type provisions laying down specific principles, which the State Parties undertake to pursue through national legislation and governmental policies. This part covers various issues, including principles of non-discrimination, freedom of assembly, association, expression, religion and thought, and promotion of effective equality.

The Framework Convention does not contain the definition of "national minority"<sup>1</sup>. The interpretative declarations adopted by several States while ratifying the Framework Convention did not exclude Roma from this denomination. Nevertheless, it is obvious that the international community already recognized the specific needs of the Roma community and accepted representatives of Roma organisations as partners in the process of preparation and adoption of normative instruments and declarations at international level, either in the field of minority protection, non-discriminative policies or in human rights monitoring systems.

The Central European Initiative Instrument (CEI instrument) for the Protection of Minority Rights (1994) has devoted a special article (Article 7) to the stance of Roma in the region. Although the CEI Instrument is not legally binding, it recognizes the specific situation of Roma in the region.

The Parliamentary Assembly of the Council of Europe adopted the Recommendation 1557 (2002) on the legal situation of Roma in Europe, where specific features regarding Roma are underlined<sup>2</sup>. The Recommendation *inter alia* calls upon States to

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<sup>1</sup> See: Explanatory Report to the Framework Convention, para 12

<sup>2</sup> "Today Roma are still subject to discrimination, marginalisation and segregation. Discrimination is widespread in every field of public and personal life, including access to public places,

regulate the legal status of Roma; to elaborate and implement specific programmes to improve the integration of Roma as individuals and Romany communities as minority groups into society and to ensure their participation in decision-making processes at local, regional, national and European levels; to strengthen the systematic and regular monitoring process of the implementation of recommendations and specific programmes aimed to improve the legal situation and the living conditions of Romany individuals and communities.

At the High Level Meeting in June 2003 in Budapest, the international “Decade for the Inclusion of Roma” was proclaimed and additional funds were allocated for programmes and projects, particularly in the field of education and for the elimination of prejudice and discrimination.

The number of Roma in Central Europe is estimated to about 7-9 million, representing the majority of the European Roma population. The figures and proportion of the Roma population within the territories of individual States represent an estimation based on official statistics and other sources only. A lack of adequate data on Roma is a common European problem.

The legal regulation of the Central European States specifically highlights the Roma issue, either on whether they are recognized as national or ethnic minority groups or simply as a Roma community. General Laws on minority protection, which were adopted in some States, are also applicable to Roma.

In the last decade, the issue of self-determination of Roma as Europeans/a nation without territory/ has emerged as a completely new phenomena. For the first time in the political history of Europe, the request for adequate political representation of Roma was extensively discussed as a priority at institutional level and at numerous international conferences and meetings. A proposal to establish the “European Roma Forum” as a permanent consultative body forum within the Council of Europe was submitted by the Finish President Tarja Hallonen in 2001.

### **Regional projects in favour of Roma**

In the last decade, many international networks aimed at exchanging experience and results of various programmes in favour of Roma were created and many projects were developed and co-financed in order to improve the overall situation of the Roma people in Central and Eastern Europe. In this respect, some projects developed in the framework of the Stability Pact for Southeast Europe, focusing on the areas of

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education, employment, health services and housing, as well as crossing borders and access to asylum procedures. Marginalisation and the economic and social segregation of Roma are turning into ethnic discrimination, which usually affects the weakest social groups”.

employment, education and the fight against (double) discrimination of Roma women deserve mentioning.

In 2003, the project called "Roma Women can do it" addressed all Roma women in the region in order to prepare them for a more active participation in public life. Another important regional project, aimed at improving employment possibilities for Roma in Central and Eastern European countries, was developed in co-operation with the Council of Europe and the Austrian government. A series of workshops was organised in areas where Roma live, gathering experts and representatives from local authorities and Roma communities and endorsing practical initiatives: to create special funds for supporting self-employment of Roma, include Roma as consultants in local and regional employment offices, give certain employment priority to Roma who have successfully concluded their professional training or have obtained higher levels of education etc.

The project called "Roma in the Process of European Integration", developed in the SP framework among the Slovenian Institute for Ethnic studies, the Austrian Institute for South-eastern and Eastern Europe and the Croatian Institute for migration and nationalities, collects experience of the neighbouring countries and information on international standards in shaping appropriate models for vocational training and employment of Roma. In this respect, the example of Roma who live near Novo Mesto, Slovenia could be mentioned. They were included in a public works programme which offered them the possibility to build their own houses.

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# TIMES WHEN MINORITY NAMES WERE TRANSLATED INTO MAJORITY-LIKES ARE FAR GONE

*Interview with **Alberto Gasparini**, Institute of International Sociology Gorizia*

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## **Art. 10**

*Any person belonging to a national minority shall have the right to use his or her language freely, in public as well as in private, orally and in writing.*

## **Art. 11**

*Any person belonging to a national minority shall have the right to use his or her surname and first names in his or her language and the right to official acceptance and registration of such surname and names.*

## **Art. 12**

*Whenever in an area the number of persons belonging to a national minority reaches, according to the latest census or other methods of ascertaining its consistency, a significant level, those persons shall have the right, wherever possible, to use, in conformity with applicable national legislation, their own language in oral and in written form, in their contacts with the public authorities of the said area. These authorities may reply as far as possible, in the same language.*

## **Art. 13**

*In conformity with their national legislation States may allow, where necessary through bilateral agreements with other interested States, in particular with neighbouring States, the display of bilingual or plurilingual local names, street names and other topographical indications in areas where the number of persons belonging to a national minority reaches, according to the latest census or other methods of ascertaining its consistency, a significant level. The display of signs, inscriptions or other similar information of private nature also in the minority language should not be subject to specific restrictions, other than those generally applied in this field.*



**Art. 14**

*Any person belonging to a national minority, exercising religious freedom, shall have the right to use his or her own language in worship, teaching, religious practice or observance.*

**Art. 15**

*Whenever in an area the number of persons belonging to a national minority reaches, according to the latest census or other methods of ascertaining its consistency, the majority of the population in an area, States will promote the knowledge of the minority language among officers of the local and decentralised state administrative offices. Endeavours should be made to recruit, if possible, officers, who, in addition to the knowledge of the official language, have sufficient knowledge of the minority language.*

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**- In a democratic society, the right of a minority to use its language freely, “in public as well as in private, orally and in writing” (Article 10), seems self-understood (self-evident). Is it? Why is it necessary to emphasise this basic right?**

**Gasparini:** The right to one’s own language in the 21<sup>st</sup> century Europe is certainly self-evident. It is especially so in the light of the growing attention of European culture in acknowledging the right to national, local and minority languages. In fact, this growing attention is paralleled not only by the upsetting of nationalistic ideologies denying this right, but also by the acknowledgement to the individual’s right to be integrally him - or herself, leaving aside his or her belonging to a community. However, it is necessary to stress the importance of the right to one’s own language since, outside - but also within – Europe, one can be tempted to find refuge in the majority language in order to feel safe and totally understood by the people around him/her.

**- Article 11 defines the right of every person belonging to a national minority to have his/her name and surname, written in his/her own language, officially accepted by the authorities. With regard to the general practice, would you consider this provision successfully implemented by the majority of European (and CEI) countries?**

**Gasparini:** All countries accept names and surnames as written in one’s own language. However, there may be some problems in the transliteration of the alphabet from one language to another. Finally, the times when minority names were translated into majority-alikes are far gone.

**- The right to use a minority language with public authorities (Articles 12 and 15) was always among the most sensitive issues of minority protection. What would you consider as the main problems in implementing this right?**

**Gasparini:** Needless to say that a minority language should be used with public authorities. However, the implementation of this principal in practice has revealed itself to be - and still is - rather problematic due to three reasons in particular. Firstly, on a cultural level there is a lack of tradition in national policies calling for appropriate legislation in this regard; secondly, we must consider the costs of the institutional adoption of the minority language, a process that for this reason cannot happen in the short term. The third reason is linked to the question on how large the minority group should be in order to “justify” the institutionalisation of its language.

**- As both articles (12, 13) contain formulations giving the signatory States much space for manoeuvring (“wherever possible”, “as far as possible”, in conformity with the State legislation”), some might argue that the provisions should be more obligatory. Do you agree?**

**Gasparini:** These two points should be answered separately. In fact, the ability to answer someone in the minority language by formulating questions in that language is determined by the possibility to form or provide, civil servants with a proper knowledge of the minority language. This process should be driven by the will to reach this goal in a reasonable time span whereas the task of providing citizens with bilingual, or multi-lingual toponymy should be met immediately.

**- With reference to the right to use the minority language for religious practices (Article 14), one might ask whether it is necessary to have a provision of this kind in a document, signed by the governments, as it is –with the secularity of the State authority – not a state but a church matter.**

**Gasparini:** A secular state is not to assert, in any of its documents, in which language (whether that of the majority or the minority group) religious ceremonies should be held. This statement wishes to stress the fact that religion and religious practices are a matter of civil society’s choice and that the state cannot legislate on it.

**- The rights defined in Articles 12 (the public use of minority language), 13 (bilingual topography) and 15 (knowledge of minority languages among local officers) should be implemented if “the number of persons belonging to a national minority reaches, according to the latest census or other methods of ascertaining its consistency, a significant level”. Are the criteria on how to establish this level clear, transparent and generally accepted?**

**Gasparini:** It all depends on how the linguistic minority is defined when it is acknowledged as such. The size varies from case to case depending on several variables as the demographic composition, the density of the minority group in given regions, the indigenous characteristics etc.

*Questions prepared by Milan Predan*

# FULL AND EFFECTIVE PARTICIPATION OF MINORITIES: A COMPARATIVE VIEW

*Interview with **Marc Weller**, M.A., M.A.L.D., Director, European Centre for Minority Issues and Lecturer in International Law, University of Cambridge.*

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## **Art. 16**

*States recognise the right of persons belonging to national minorities to establish and maintain their own cultural and religious institutions, organisations or associations, which are entitled to seek voluntary financial and other contributions as well as public assistance, in conformity with national legislation.*

## **Art. 20**

*States shall guarantee the right of persons belonging to national minorities to participate without discrimination in the political, economic, social and cultural life of the society of the State of which they are citizens and shall promote the conditions for exercising those rights.*

## **Art. 21**

*States shall allow persons belonging to a national minority to establish political parties.*

## **Art. 22**

*In accordance with the policies of the States concerned, States will respect the right of persons belonging to national minorities to effective participation in public affairs, in particular in the decision-making process on matters affecting them. Therefore, States note the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by adopting appropriate measures corresponding to the specific circumstances of such minorities as foreseen in the CSCE documents.*

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**- What would your brief general comment on the CEI Instrument be? Where does it stand with regard to other relevant international minority rights' documents?**

**Weller:** The Central European Initiative *Instrument for the Protection of Minority Rights* is one of the most advanced international texts addressing minority rights issues. In some ways, the *Instrument* even exceeds the European Framework Convention for the

Protection of National Minorities in terms of detail of provisions. The Instrument's recognition of the enrichment brought by national minorities to each respective society is important. The document also adds interest due to its definition of the term 'national minority' and it helpfully reminds us of the fact that minority rights are an integral part of human rights in general. On the other hand, in line with international practice, the Instrument speaks of 'persons belonging to national minorities', appearing to reduce the emphasis on collective entitlements of minority groups.

The Instrument has a particular value due to the specifics of the region in which it operates. After all, it counts among its parties many of the States exhibiting a strong interest in so-called 'kin' minorities in neighbouring States. This interest has, in the past, at times given rise to suspicion and tension. Of course, throughout the 1990s, a fairly dense network of bilateral (so-called Stability Pact) treaties was established within the region. However, it has to be admitted that these are often extraordinarily short and general in content. The joint Committees attached to many of them with a view to ensuring an implementation have also had mixed success only. Hence, the Instrument remains valuable in view of its insistence that cross-border minority issues are matters of 'increasing constructive cooperation'.

The value of a commitment to constructive cooperation lies of course, ultimately, in the results of such cooperation in practice. Here, again, the Instrument makes a useful addition to the set of international institutional mechanisms and practices that are available to address minority issues in the wider Europe, providing a focus for the activities of the CEI Working Group on Minorities. The invocation of the Roma dimension in the Instrument is particularly noteworthy, and one may wonder whether the CEI might use this mechanism to enhance further cross-regional and national programming in favour of this often disenfranchised group.

Of course, the Instrument is not beyond criticism. While it was quite advanced in many respects at its time of drafting, some developments have taken place. Some, for instance, are questioning the preambular limitation of its application to citizens. Others complain of a lack of more recognition of the collective nature of minority rights. And finally, the limited membership and the character of the Instrument as a 'political' document has been noted, leading to some doubts about its impact within the societies of the state parties. This is where the challenge for the CEI lies—to ensure that this generally well-drafted and important document is given life and meaning by making it relevant and perhaps even enforceable in domestic jurisdictions.

**- Excluding the particularity of Article 21, could you generally identify any other specific issues in Articles 16, 20 and 22 in comparison with other international documents, i.e. the Framework Convention?**

Full and effective participation in public life, and also in the economic, cultural and social spheres, is not normally extensively covered in international instruments addressing minorities. If at all, there will be a single general paragraph. For instance,

the *International Covenant on Civil and Political Rights* does not address this issue. The non-binding 1982 UN General Assembly *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* merely introduces the principle of effective participation, also in public life. Even the Framework Convention only offers one single and short paragraph, requiring the parties to 'create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them'. It is left to the non-binding Lund Recommendations of the OSCE High Commissioner on National Minorities to explain in detail the nature and content of the principle of effective participation in public life.

While of course it is unable to match the depth of the Lund recommendations, the CEI Instrument offers more details on political participation than other international texts. It does, however, fall short of both the Lund text and the UN Declaration where the territorial dimension is concerned. The UN Declaration confirms that persons belonging to national minorities have a special right to effectively participate in decisions concerning the minority group to which they belong to 'or the regions in which they live' (Article 2(3)). The CEI Instrument recognizes a special, enhanced right of participation 'in particular in the decision-making process on matters affecting them'—there is no reference to a regional dimension. This absence is also noteworthy in the Framework Convention, where a regional reference was deleted in the negotiating process.

A reluctance to spell out particular entitlements of enhanced participation for minorities with respect to 'regions where they live' may be related to the concern about territorial autonomy. Territorial autonomy is at times still seen to be a dangerous doctrine, paving the way towards eventual secession or other forms of territorial change. Hence, few of the rather extensive provisions on autonomy as a means of facilitating participation provided for in the Lund recommendations have been transposed into other international standards.

Of course, in more modern practice, autonomy is often seen in the context of enhanced local self-governance and subsidiarity. Locating public decisions as closely as possible with populations concerned should no longer be seen as a controversial practice, even though this implies local self-governance, including minority self-governance.

The CEI Instrument does, at least indirectly, address regional issues in two ways. Firstly, Article 9 provides for modifications of administrative, judicial or electoral religious institutions, organizations or associations that have to be subject to consultation with persons belonging to national minorities. Hence, even though there is no positive exhortation to establish territorial autonomy, there is a negative impediment that would make the removal of local structures of minority self-government more difficult. Secondly, Article 25 provides for the protection of those who do not belong to a national minority in areas where the national minority represents a majority of the

population. This would imply that minority self-governance is likely to exist in such areas.

With respect to cultural autonomy, the Instrument confirms that persons belonging to national minorities have the right to establish and maintain their own cultural and religious institutions, organizations or associations. More will be said about this provision later.

The CEI Instrument is unusually restrictive in limiting the application of Article 20—the provision establishing effective participation in the political, economic, social and cultural life of the society in general terms—to citizens only. It is by now almost standard practice that certain opportunities of participation, including political participation, are made available to non-citizens who have resided in a given state for some time. Participation in local elections is a good example.

The Instrument does not even address the problem of equitable representation of members of minorities in public life, both at national and local level. Article 22 does refer to the right of persons belonging to national minorities to effective participation, but it seems to restrict this to access to the decision-making process. There is no provision for actual personal representation at the point of decision through the occupancy of public offices, whether elected or appointed. The fact that this absence may not have been felt at the time of the drafting of the Instrument indicates how rapidly expectations have increased over a short ten-year period.

**- Article 16 does not only recognize the right of minorities to establish their own cultural and religious institutions but, in addition, entitles them to seek, inter alia, public (financial) assistance for the functioning of these institutions. According to your knowledge and experience, has this kind of support become a widespread practice, accepted by most European countries?**

**Weller:** The right to establish social, educational, cultural and religious institutions is, of course, already guaranteed as part of general human rights law. However, given the particular need of minorities to preserve and develop their cultural, linguistic and religious identity, it is entirely appropriate that this general right is refined and strengthened further where minority rights are concerned.

In fact, when considering the implementation practice under the Framework Convention, States devote a great deal of space in their periodic reports to this issue. Quite a few will go as far as listing the specific support—mostly financial—given to institutions dedicated towards the advancement of the minority identity.

It is not possible to find a mathematical formula through this practice indicating the level of support that may be reasonably expected by minority organizations or institutions. A number of factors are important in this respect. These do not only relate to the level of economic development of the state concerned and the overall state of its public finances. Other factors include funding made available through contributions

from members of the minority itself, perhaps from donations from abroad and from international agencies. However, it is clear that it is the home state of the respective minority's responsibility, first and foremost, to support the cultural, linguistic and religious life of minorities. This commitment is accepted by all States in the wider Europe as an asset that needs to be cherished and developed. It derives from a more specific obligation to take measures to support the enhancement of minority identity. One might also note that there is a need to ensure equal treatment of all minority communities, unless there are objective grounds of distinction. Discriminatory treatment would be prohibited.

**- Has the creation of conditions mentioned in Article 20 for the exercise of the right of minorities to 'participate without discrimination in the political, economic, social and cultural life of the State' generally improved?**

**Weller:** In general I believe that the situation is improving— also due to Article 15 of the FCNM and its twin provision, Article 20, in the CEI Instrument. Governments are paying more attention to the issue of effective participation and they are increasingly realizing the foundational nature of this entitlement. Full and effective participation does not only generate a sense of control over ones own cultural identity on the part of minorities. It also ensures that minority communities feel that they have more opportunities in the state as a whole. Hence, full and effective participation is about ensuring that minority populations feel enfranchised and empowered as a part of the state—a state that is mindful of their separate cultural identity, but also of their entitlement to make a contribution to the overall state.

Admittedly, progress has been neither uniform, nor universal. Starting with political participation, we have already noted the reluctance of some governments to offer genuine arrangements for local self-governance where such might appear well warranted.

It is noteworthy that we are now seeing the establishment of minority consultative councils in many States. These bodies support the drafting of legislation of relevance to minorities, advise government on programming in favour of minorities, and help coordinate the affairs of diverse minority constituencies. At times, however, these bodies are still dominated by governments. In other occasions, they lack the opportunity to exercise real influence in relation to legislation or policy. Sometimes these institutions are also hampered by a lack of quality representation by minority groups. The minority representative organizations themselves need to be more accountable to their own constituents.

In some States electoral representation for members of minorities remains a problem. Demographics may be such as to preclude representation in local or national parliaments and special measures would be required to facilitate this. And then, there are still entire segments of the state population who feel excluded, and have in turn

disengaged from the state. Roma communities are particularly affected by this phenomenon, but not exclusively.

The situation in relation to cultural life has generally improved. I already mentioned the funding issue above. As I noted then, many governments are recognizing the need to help fund cultural activities, but if one is entirely honest, one has to admit that this support is still too limited in practice. There is also a lack of consistency in governmental programming for activities of this kind. At times, there is also a lack of clarity of minority representation when it comes to bids for scarce resources. Competition among minority representative organizations, instead of cooperation and coordination, does not help in this respect. Where progress has been made, it is due to the increasing expertise of the NGO/civil society sector in relation to cultural and also social activities. Capacity enhancement on the part of minority representative organizations and NGOs therefore remains crucial in this respect.

Social exclusion is also a great problem. It is astonishing how little impact the well-funded Roma programmes supported by the EU and other major actors have had in Eastern and Central Europe. This state of affairs now needs urgent addressing. In relation to other minority communities, there is a lack of reliable statistical data, but it appears that social exclusion remains an issue there too. Of course, this problem is closely connected with the issue of economic opportunities—a problem I shall turn to a bit later.

**- What are the various ways in which the States today promote the exercise of those rights?**

**Weller:** Once again, quite a bit has changed over the past ten years, since the CEI Instrument was opened for signature. Governments are far more conscious of the need to engage minority issues at three levels: these are legislative provision and remedies, inclusion in decision-making, and effectiveness of programming.

In terms of legislative provision, the EU expansion process has brought about a greater confluence of legal instruments, in particular where non-discrimination is concerned. However, there is also more and more minority legislation, or a second wave of minority laws, that advances upon the state of the art of the early 1990s, when the first wave occurred. States that have not yet done so may wish to reconsider the state of their legislation as it affects minorities, including provisions on equal access to economic and social opportunities. In addition, governments are increasing turning to the process of making minority entitlements enforceable. For instance, good practice now requires the existence of an Ombudsmen institution with special competence on minority issues. In addition, more steps can be taken to ensure that the civil and administrative courts can enforce the entitlement of minorities where they are not yet fully complied with in a given society.



At the second level, each state should consider conducting an audit of its own structures for the participation of minority communities in public life. Some States appear to be satisfied with having generated one single mechanism, say a minority consultative council, or a good record of local self-government that is reflective of minority population. However, effective participation requires quite a comprehensive set of standards, institutions and practices, ranging from the participation of Roma representatives of the local school board of a given municipality, to the issue of minimum representation in a national parliament. The full panoply of participation strategies needs assessing. Perhaps one might encourage the CEI Working Group on minorities to take the lead in organizing such a process.

Finally, there is the programming issue. Minority communities themselves must have more influence in relation to programming decisions that are meant to benefit them. This requires that their representatives (and of course also governmental representatives) acquire more competence when it comes to needs of assessment, programming and evaluation tools. Much remains to be done in this respect and it is noteworthy that international NGOs are now starting to focus on this kind of capacity building.

**- With regard to Article 21, some experts argue that this explicit right (to establish their own political parties) can lead to ghettoization of minorities in political life. What is your opinion?**

**Weller:** I agree with the drafters of the CEI Instrument on this issue. I think the inclusion of Article 21 was a very far-sighted act that elevates this instrument above most others where political participation is concerned.

One should note that Article 21 permits the establishment of minority political parties, but it does not require it. And this is a crucial issue. The members of minorities are to determine how they wish to achieve influence in the political process. Often, in fact, members of minorities will be members of non-ethnically based parties and achieve influence through the party structure, and at times through parliamentary or governmental representation on behalf of these parties. In other instances, minority parties have been able to achieve appropriate influence by offering themselves as coalition partners with parties that do not tend to draw on a minority vote. Minority parties may also be particularly relevant where regional or local democracy is concerned.

Of course, the question of the 'recognition' of minorities is also connected with this issue. Wherever governments refuse to bestow the label of 'minority' to a particular minority population, that group will not be able to benefit from Article 21 (and indeed any other provision). There are a number of examples where this problem has been rather pronounced—parties have been prohibited and individuals seeking to establish them have been persecuted. In many of these instances, it would not be possible to assert that the party in question would have pursued terrorist or other aims that are

incompatible with the peace and good order of the state. This practice, which has caught the attention of the European and other human rights bodies, remains unacceptable and must be overcome if a genuinely democratic culture is to be achieved throughout Europe.

**- Could you identify any major obstacles, which might today prevent minorities from effective participation in public affairs, 'in particular in the decision-making process on matters affecting them' (Article 22)?**

**Weller:** I may have already hinted at this—there are two sides of the coin. On the one hand, there is the provision of opportunities for participation in decision-making processes on the part of the state. On the other hand, there is also the question of the competence and capacity of minority representative organizations to make use of these opportunities.

With respect to the state, I already mentioned the need to not only provide either one or the other type of mechanisms of participation. The full range of mechanisms must be available instead, both vertically (from the local to the national) and horizontally (covering all aspects of public policy of relevance to minorities, including education, culture, social affairs, etc.). Where these mechanisms exist, we still often find that they are nominal. They are either not given real competence and are therefore lacking in impact, or are not sufficiently resourced and therefore unable to turn their initiatives into reality.

The minority representative organizations can also do more to enhance their influence in public decision-making. Firstly, it is a matter of recognizing where such opportunities already exist. For instance, in relation to local governance, or in relation to grass-root-level decision making attached to specific institutions, such as schools, participatory structures often exist, but they are not recognized as such. When they are recognized, there may be a lack of minority mobilization. Members of minorities may not have organized themselves sufficiently to make their voice count. Public information and capacity building is therefore necessary. There may also be a need to engage in a gradual, confidence-building process of asserting the minority vote in local institutions in order to prevent a sense of sudden take-over on the part of other constituencies. And where minority representation has succeeded, steps can be taken to expand this example of good practice both horizontally and vertically.

**- As suggested by Article 22, a State should adopt 'appropriate measures' in order to promote the ethnic, cultural, linguistic and religious identity of certain national minorities. What could the most appropriate measures be?**

**Weller:** We have already noted that the State does need to provide financial means in order to ensure that minority groups actually exercise the cultural rights they are entitled to. This remains a key concern. Thus far, state provision has not been sufficiently consistent in order to allow minority communities to establish a sustainable

programme to enhance and develop their identity. Beyond this obvious point, there are a number of additional steps that can be taken.

Firstly, the legislative environment. The right of minority communities to arrange for their cultural, linguistic and religious affairs should be formally established in law. This must go beyond the merely programmatic declarations to this effect that can already be found in most parts of minority legislation. Instead, specific issues that arise in practice need addressing. For instance, this concerns questions of legal establishment of minority cultural organizations, questions related to the use of public facilities, the issue of property held by cultural and also especially religious institutions, etc. Unless such certainty exists in the legislative framework, and also in the administrative practices meant to implement it, it will be difficult to organize significant cultural activities in the long term.

A next step relates to minority cultural mobilization. Again, even where the state has provided for cultural autonomy to be administered through minority representative organizations or institutions, the minority communities themselves need to ensure that their affairs are run in a genuinely transparent and democratic way. This requires a larger body of members of minorities that are actually interested in exercising opportunities of participation, and that are willing to help organize their own affairs according to standards of good practice. Given that funding cannot exclusively come from the state, additional fund-raising opportunities need to be generated.

**- Like many other international documents, the CEI Instrument only barely mentions (in article 20) the economic rights of minorities. What are the main reasons that the economic dimension of everyday life of the minorities appears to receive less attention by minority rights experts than some other areas?**

**Weller:** One of the reasons may lie in the roots of minority rights in human rights discourse. Minority rights are generally seen as 'protective' rights grounded in civil and political rights. That is to say, they are meant to preserve for persons belonging to minorities a certain space that is free from state intervention and that allows them to develop their minority identity. Hence, classically minority rights were seen as a demand made against the state—a negative demand requiring an abstention of action (of interference with the minority, or of discrimination against it).

Over the past years, however, it has become clear that disenfranchisement and social exclusion are also serious risks that specifically affect minorities, and that may also lie at the root of social tensions and instability that at times ignite around minority communities. Minority rights are no longer seen as focused on protecting minorities against mistreatment or discrimination by the state. Instead, there is currently emphasis on ensuring full and effective equality within the state. Given that minorities may be in a non-dominant position within society they may suffer from structural disenfranchisement, also and especially in the economic and social field. Hence, the state is called upon to take positive measures to correct that inequality.

While previously, a possible remedy to disenfranchisement and economic deprivation would have been an increase in social state provision, there is also recognition of the fact that such action alone is not sufficient. Indeed, social provision on its own is unlikely to make a significant dent in relation to structural economic and social exclusion. Instead, educational and economic opportunities can offer a way towards a genuine integration of minority communities.

While this logic appears fairly obvious, it is taking some time to generate activity in the minority rights community. As Alan Philips has remarked, most of those involved in international and national institutions addressing minority issues tend to have a legal background and they will therefore tend to analyze problems affecting minorities according to their tools of trade. For instance, when governments report on their performance under the Framework Convention, there will be very little reliable statistical information they can offer in relation to the economic position of minorities within the States. Instead, there will be lengthy discussions of the legislative framework.

In addition to the lack of intellectual tools to engage this issue, there is also considerable concern on behalf of governments. This concern relates to the magnitude of the problem. If one really were to engage the socio-economic exclusion of certain groups, it would be very expensive indeed. This is already clear in relation to Roma exclusion in Eastern and Central Europe. For most governments and international institutions, only now are the economic dimensions of this issue becoming clear.

Economic empowerment of minorities will become increasingly important, even beyond the Roma dimension. The OSCE has recently started working on this issue, highlighting a certain sense of urgency on the part of States in Eastern and Central Europe that foresee a transfer of resources from West to East to help address this issue. The Council of Europe will also need to consider economic and social exclusion as an aspect of human and minority rights. The EU will also have to shift its programmes accordingly. This is going to be a gradual development. The CEI can play an important role in advancing this agenda of the next decade.

*Questions prepared by Milan Predan*

# MINORITY LANGUAGES DO NOT ONLY BELONG TO THOSE SPEAKING THEM ON A DAILY BASIS

Interview with **Bojan Brezigar**, President of the European Bureau for the Lesser Used Languages (EBUL) and Editor-in-Chief of *Primorski Dnevnik*, daily newspaper of the Slovenian minority in Italy

\* \* \*

## **Art. 19**

*States guarantee the right of persons belonging to a national minority to avail themselves of the media in their own language, in conformity with relevant State regulations and with possible financial assistance. In case of TV and radio in public ownership, the States will assure, whenever appropriate and possible, that persons belonging to national minorities have the right of free access to such media including the production of such programmes in their own language.*

\* \* \*

**- How would you evaluate Art.19 of the CEI Instrument with regard to similar provisions outlined in other relevant international minority rights' documents, i.e. Article 9 of the Framework Convention?**

**Brezigar:** The CEI Instrument itself is an important expression of political will; insofar all the articles are short and contain basic principles that the Member States intend to implement. On the other hand the Framework Convention for the protection of National Minorities (FCNM) is a legally binding document with a control mechanism, which has to be detailed. With reference to its "principles" or "rights" there is no substantial difference. In both documents the basic principle that States should guarantee minorities the right to avail themselves of media in their own language and should assure minorities access to state-owned radio and television broadcasting systems. So far Art. 19 of the CEI Instrument seems to be in line with the basic Council of Europe documents. For the States that have ratified the FCNM the principle set out in the CEI instrument can be an excellent guideline on how to implement the FCNM as well.

**- Doesn't the formulation "possible assistance" give the signatories (too) much freedom in applying the provision? After all, an assistance can easily become "not possible" if the State budget is empty.**

**Brezigar:** It is an extremely delicate issue. Besides the problem of the State budget (but we are in most cases speaking about amounts, which do not really affect the whole State budget), the freedom of expression issue needs considering. People often ask, whether governments influence the media through financial assistance. The answer is “no”, if the legislation is clear and impartial and the grant has been assured to all media published in a certain language and fulfilling certain conditions (e.g. periodicity, circulation, transparency of ownership and budgets etc.). Certainly, the formulation “possible assistance” does not guarantee anything but it still has to be borne in mind that the CEI instrument is a document of political will and it is up to the State to make assistance possible. The information contained in the CEI Instrument, that the State would make any possible effort to assure assistance to the media in minority languages has to be understood; from this point of view it is quite a strong commitment.

**- What is your personal experience as chief editor of a minority daily newspaper with reference to State support for the media?**

**Brezigar:** Italy has an excellent legislation on State support to the printed media. It is based on the principle of pluralism and assures certain financial assistance to all newspapers of political parties, to small newspapers published by cooperatives and to newspapers in minority languages. The provisions only depend on circulation, on the amount of advertising and on absolute transparency of budgets and ownership. There are no statements related to the content of the newspaper and total editorial freedom has been assured so far. On the other hand, radio and television broadcasting in minority language through the State-owned company RAI has been subjected to the control mechanism of specific political bodies elected by national and regional parliaments.

**- Some might say: Why should the minority addressing only a small part of the State’s population deserve the support of all tax-payers?**

**Brezigar:** Some should answer: First, minority speakers are taxpayers as well and they have the right to receive information in their own language. Therefore, minority speakers pay for the minority media themselves. Nevertheless, the politically correct answer is certainly wider: minority languages do not belong to those who speak them on a daily basis only. They are a common cultural heritage of the citizens of the States, and this is basically the reason why these languages ought to be preserved. In the Draft EU Constitutional Treaty, cultural and linguistic diversities have been included among the aims of the Union, and the whole cultural and linguistic policy of the Council of Europe has been based on the principle of diversity. We are clearly speaking about a European issue which deserves support from all European taxpayers.

**- How should the minority media “draw the line” between promoting the political, economic and cultural identity of a national minority in relation to the majority**

**population of the country, and at the same time act as a factor of cohesion among the minority and majority community?**

**Brezigar:** The balance between these aspects relates to the private life of the minority, and those related to the integration of the whole population of a given territory has always been a very sensitive issue. It is sensitive in most activities of the minority groups – education, culture, linguistic rights, politics – and it is even more sensitive in media. One of the main tasks of minority media should be building a diversified-friendly environment, while stressing the opportunities of co-operation and common interest of cultural and social cohesion among people having different languages and cultures, while sharing common territory. Sometimes this seems difficult to minority media themselves, and tensions in certain areas are not the best environment for this kind of development. Nevertheless, it should always be considered a challenging task to be implemented on a step-by-step basis. Co-operation in linguistically mixed areas is a difficult task, but it should be implemented carefully, step by step.

**- According to your journalistic and editorial experience, what is the most demanding role of a minority media: to promote and defend the interests of the minority, to function as a link to the “mother country” or to act as a bridge to the majority community? Could all those roles be placed on equal footing?**

**Brezigar:** I do think that the three roles should be put on almost equal footing, but I would like to stress that there is one main role. Unlike the media in the majority language, the minority media's main characteristic lies in the fact that they are currently published in a minority language. In other words, together with the news, they bring the living language in families on a daily basis; they contribute in maintaining the language, which is even more important than the news its. This role seldom appears in public debate: people are more interested in political affairs, clashes and tensions, rather than in efforts to be made in order to keep linguistic diversity a common wealth. As for the question I think that it is wrong if anybody tries to consider the above-mentioned tasks as a competition. It is not and it should not be. Promotion of the language, link to the kin state and bridge towards the majority should be combined into a comprehensive policy of integration and mutual understanding.

**- The CEI Instrument gives high responsibility to the state-owned broadcasting companies. Nevertheless, it does not have the ambition to provide with some common standards in this field. As the situation of the minorities differs from state to state, is it possible to set-up such common standards?**

**Brezigar:** No, it is not possible. Apart from the fact that the situation of minorities differs from one group to another, it has to be stressed that legislation differs from State to State and that state-owned broadcasting companies have not been organised on the same legal basis. In such conditions it would be extremely difficult to speak about common standards; we would run the risk that some of them would not be applicable in many cases and the whole effort made would vanish. By the way, the principles have already been defined in

the FCNM and guidelines have been drafted in the Vienna Recommendations, recently published by the Office of the High Commissioner of the OSCE for National Minorities. Everything already exists and could be properly implemented.

**As president of EBLUL, you have a good insight in the minority media situation throughout Europe. Is the implementation of the minority media rights improving?**

Well, it is very difficult to give a generic answer, considering minorities are a large archipelago scattered all over Europe. But in general I would say that the situation has substantially improved over the last ten years. New daily newspapers have been established and new television programmes set up. But the most exciting part is the radio stations in minority languages in Western, Eastern and Southern areas, where the legislation allows the establishment of private radio stations. There are broadcasters in many languages, keeping their languages and their culture alive on a daily basis, allowing simple people do intervene, to discuss their daily problems.

**- Without the media every language (especially a minority language) is “sentenced to death”. It cannot be the responsibility of the minority media to keep the language alive alone as they cannot by themselves provide for the contents that would prevent (particularly) the youth from turning to the majority media and fulfil their needs for information and entertainment in the majority language. How to avoid the negative effects of this kind of development for the preservation of a minority language?**

**Brezigar:** The basic principle of the European institution, related to languages, is that all Europeans should speak at least three languages. Insofar there should be enough space for the official language of the State, for the minority language or mother tongue and for a large international language. For minority language speakers it is wrong and dangerous to put their language into competition with the official language of a given State: the weaker part would likely lose. So the question should be the other way around: what is to be done in order to convince young people to watch programmes in the minority language? And the answer is quite simple: by producing and broadcasting more programmes and of better quality in the minority language. Young people like living “normal” lives, being part of the modern world, enjoying everything they can get in other areas. Comparison is normal. So, the answer is: if we offer young people interesting programmes they will not turn to majority media anymore and will learn and use their language.

*Questions prepared by Milan Predan*



## THE INSTRUMENT APPEARS TO GO FURTHER THAN THE OTHERS

By **Duncan Wilson**, Economic, Social and Cultural Rights Co-ordinator of the Amnesty International, Associate Expert (Human Rights) of the UNESCO International Bureau of Education.

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### **Art. 17**

*States recognise the right of persons belonging to national minorities to establish and maintain their own private pre-schools, schools and educational establishments and possibly obtain recognition in conformity with the relevant national legislation. Such establishments may seek public financing or other contributions.*

### **Art. 18**

*Notwithstanding the need to learn the official language of the State concerned, every person belonging to a national minority shall have the right to learn his or her own language and receive an education in his or her own language. The States shall endeavour to ensure the appropriate types and levels of public education in conformity with national legislation, whenever in an area the number of persons belonging to a national minority, according to the latest census or other methods of ascertaining its consistency, is at a significant level. In the context of the teaching of history and culture in such public educational establishments, adequate teaching of history and culture of the national minorities should be ensured.”*

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Lawyers do not tend to like political, and therefore non-binding, instruments, as the debates around the utility of so-called “soft law” illustrate. Such wariness is understandable when it comes to human rights instruments, as an essential element of the protection of human rights is the ability of individuals to enforce their rights and of human rights protectors to denounce violations. Courts, and quasi-judicial bodies, such as national human rights commissions and ombudsmen, present logical fora for this, and instruments which are not legally binding can only have persuasive, rather than probative value on the existence of *opinion juris*, that is the belief of the State that it is legally bound to a certain course of action.<sup>3</sup>

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<sup>3</sup> The two key elements of customary international law are (1) a practice, which is (2) considered to be legally binding (known as *opinion juris*).

What this position ignores is the potential for political documents to mobilise action towards the realisation of human rights obligations, what it understands is the possibility that they justify human rights violations. Those who work in human rights and education realise the potential of political commitments in the global context of Education for All.<sup>4</sup> Ensuring that such commitments are interpreted in the context of human rights obligations (that they respect and seek to fulfil human rights commitments) is all the more important with minority rights, which must compliment and not reduce general human rights principles.

As we approach the tenth anniversary of the adoption of the Central European Initiative Instrument for the Protection of Minority Rights (the CEI Instrument), it is appropriate to consider the educational rights provisions therein in the context of human rights instruments. Those provisions of the CEI Instrument most directly concerning educational rights are articles 17 and 18.

All States, which have signed the CEI Instrument, are parties to the International Covenants on Economic, Social and Cultural Rights and Civil and Political Rights of 1966 and the European Convention on Human Rights and Fundamental Freedoms of 1950. These treaties all guarantee the right (to parents) to establish private educational institutions according to their religious or philosophical convictions (ICESCR, Article 13(3), ICCPR Article 18, ECHR, Protocol 1, Article 2<sup>5</sup>). This is extended by necessary analogy in the ICCPR, through Article 27 on minority rights, and Article 26 on equality, to the right to establish private schools for persons belonging to minorities in order to preserve and develop their culture.<sup>6</sup> The parental right to establish private schools has been upheld by the European Commission on Human Rights, as it was then, subject to state regulation to ensure that education is in conformity with prescribed quality standards.<sup>7</sup>

The European Court of Human Rights found that the freedom of education guarantee, "aims... at safeguarding the possibility of pluralism in education... essential for the preservation of the 'democratic society' as conceived by the Convention".<sup>8</sup> Given the importance of pluralism for achieving a balanced education in line with the aims of education in international human rights law (Convention on the Rights of the Child, Article 29, and General Comment 1 of the Committee on the Rights of the Child), the scope of legitimate interference by the State with freedom of education guarantees is

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<sup>4</sup> See the human rights focus taken in the recent Global Monitoring Reports on Education for All from 2002, 2003/4, and the forthcoming edition for 2005. [www.efareport.unesco.org](http://www.efareport.unesco.org)

<sup>5</sup> See , *Kjeldsen, Busk Madsen and Pedersen v Denmark* where the European Commission on Human Rights recognised the right to "the establishment of and access to private schools or other means of education outside the public school system", HUDOC REF00000094, (1976) 1 EHRR 711.

<sup>6</sup> Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRIGEN1/Rev.1 at 26 (1994).

<sup>7</sup> *Ingrid Jordebo Foundation of Christian Schools and Ingrid Jordebo v Sweden*, European Commission on Human Rights, Application No. 11533, Decision of 6 March 1987, DR vol. 51, p 125.

<sup>8</sup> Series A, No. 23, 1976.

limited to regulating the quality of the education provided. In order for freedom to have meaning, the words “possibly obtain recognition in conformity with relevant national legislation” in the CEI Instrument should therefore be interpreted narrowly. This view is supported by the position of the Committee on Economic, Social and Cultural Rights: “violations of [the right to education] include...the prohibition of private educational institutions”.<sup>9</sup>

The final sentence in Article 17 considers the question of state funding of minority educational institutions. During the League of Nations era, the Permanent Court of International Justice recognised an obligation on the state to ensure substantive equality: in fact “there must be equality as well as ostensible legal equality in the sense of the absence of discrimination in the words of the law.”<sup>10</sup> Explaining the need for special measures to eliminate discrimination the Court stated: “far from creating a privilege in favour of the minority...[special measures]...ensure ...that the majority shall not be given a privileged situation as compares with the minority.”<sup>11</sup> Such a requirement is extremely relevant to the Roma, who do not have supporting States (unlike many other national minorities), and whose education rights remain seriously undermined in countries across Europe.<sup>12</sup>

The state does not have to fund private schools on the basis of equality with public schools,<sup>13</sup> especially in a case where, “parents ... freely choose not to avail themselves of benefits which are generally open to all.”<sup>14</sup> Where the state does choose to fund private schools of one community, however, it must do so on the basis of reasonable and objective criteria, and the preferential treatment must end once the objective (i.e. substantive equality with the majority) has been reached.<sup>15</sup>

The limitation in both articles 17 and 18, which reads, “in conformity with national laws”, is unusual and potentially confusing. In any event domestic legislation cannot be used to justify failure to realise an international obligation.<sup>16</sup>

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<sup>9</sup> Twenty-first session, (1999)\* General Comment No. 13, The right to education (art. 13), E/C.12/1999/10.

<sup>10</sup> PCIJ in the Advisory Opinion of 10th September 1923, concerning the case of German settlers in Poland (Opinion no.6).

<sup>11</sup> PCIJ in the Advisory Opinion of 1935 concerning Minority Schools in Albania, PCIJ Series A/B No. 64. The appropriateness of special measures to equalise opportunity is now internationally codified, notably in the International Convention on the Elimination of all forms of Racial Discrimination, in Articles 1(4) and 2(2).

<sup>12</sup> See Wilson, D, *Minority Rights in Education: lessons for the European Union from Estonia, Latvia, the former Yugoslav Republic of Macedonia and Romania*, The Right to Education Project, Stockholm, 2002 at [www.right-to-education.org](http://www.right-to-education.org).

<sup>13</sup> *Blom v Sweden*, Human Rights Committee, (191/1985), ICCPR, UN Doc. A/43/40 (4 April 1988) 211.

<sup>14</sup> *Lundgren and Lunqvist v. Sweden*, Human Rights Committee, (298/1988 and 299/1988), ICCPR, UN Doc. A/46/40 (9 November 1990) 253 (CCPR/C/40/D/298-299/1988).

<sup>15</sup> *Waldman v. Canada*, Human Rights Committee, (1996), ICCPR, UN Doc. A/55/40 vol. II (3 November 1999) 86 (CCPR/C/67/D/694/1996)

<sup>16</sup> Vienna Convention on the Law of Treaties, Article 27.

The state has an unquestionable right in international law to set the official language, and may legitimately require a certain degree of education in that language. Indeed, this is essential as the alternative may lead to ghetto style communities unable to integrate, being unable to communicate.<sup>17</sup> The ICCPR,<sup>18</sup> affirms the right of persons belonging to minorities to use their language in community with others, and to protect and promote their cultural, and linguistic identity. A key means for this is clearly in education.

Article 18 of the Instrument appears to go further than other international standards in recognising a right to education of *and* in minority languages. The equivalent provision in the Council of Europe framework Convention for the Protection of National Minorities (FCNM, Article 14(2)) a hugely qualified provision permits a level of choice between education of *or* in the minority language.<sup>19</sup>

UNESCO recognises the value of mother language education,<sup>20</sup> as the cultural right to speak, promote and protect one's language is an essential aspect of belonging to a minority. UNESCO also recommends multilingualism, which is indisputably in the best interests of the child, a fundamental principle of the Convention on the Rights of the Child.<sup>21</sup>

The activation of Article 18 depends on whether the minority population reaches a certain threshold. Five years of monitoring the equivalent FCNM provision has led the Advisory Committee to conclude that low numerical thresholds are encouraged, while historical significance, traditional occupation, and demand are all factors which may compensate for low numbers.<sup>22</sup>

Finally, the need to teach the history and culture of national minorities ought to be interpreted as teleological, as a requirement of intercultural education, and sufficient education of these subjects should be a priority in all public schools in regions where the numerical threshold is reached. Ideally the standard could draw on the aims of education in the Convention on the Rights of the Child which include that education: promote understanding, tolerance and friendship among all peoples, ... develop respect for the child's own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may

<sup>17</sup> See for example the UNESCO Convention Against Discrimination in Education, Article 5 (1) (c) (i), educational institutions in minority languages must not prevent, "members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities..."

<sup>18</sup> Article 27.

<sup>19</sup> See Wilson, D, *Educational Rights of Persons Belonging to Minorities: background paper to the Fifth Anniversary Conference for the Advisory Committee for the Council of Europe Framework Convention on the Protection of Persons Belonging to Minorities*, Strasbourg 2003 at [www.coe.int](http://www.coe.int).

<sup>20</sup> See for example the recent position paper, *Education in a Multilingual World*, UNESCO, Paris, 2003.

<sup>21</sup> Resolution 12 of UNESCO's 30<sup>th</sup> General Conference 1999, [http://www.unesco.org/education/imld\\_2002/resolution\\_en.shtml](http://www.unesco.org/education/imld_2002/resolution_en.shtml)

<sup>22</sup> See for example, Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Germany, Council of Europe, Strasbourg, paras 59-60 [www.coe.int](http://www.coe.int).

originate, and for civilizations different from his or her own... Part of the importance of this provision lies precisely in its recognition of *the need for a balanced approach to education* and one which succeeds in reconciling diverse values through dialogue and respect for diversity.<sup>23</sup>

The underlying principle here is the recognition that "children are capable of playing a unique role in bridging many of the differences that have historically separated groups of people from one another."<sup>24</sup>

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<sup>23</sup> The Aims of Education : . 17/04/2001. CRC/GC/2001/1, CRC General comment 1, para 4. (General Comments), emphasis added.

<sup>24</sup> *ibid*

## HAS THE LESSON BEEN LEARNED?

*Interview with **John Packer**, Fletcher School of Law and Diplomacy, Harvard University, former Director of the Office of the OSCE High Commission of National Minorities (HCNM)*

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### **Art. 23**

*Every person belonging to a national minority, while duly respecting the territorial integrity of the State, shall have the right to have free and unimpeded contacts with the citizens of another country with whom this minority shares ethnic, religious or linguistic features or a cultural identity. States shall not unduly restrict the free exercise of those rights. Furthermore, States will encourage transfrontier arrangements at national, regional and local levels.*

### **Art. 24**

*Every person belonging to a national minority shall have an effective remedy before a national judicial authority against any violation of rights set forth in the present Instrument, provided that those rights are enacted in national legislation.*

### **Art. 25**

*In any area where those who belong to a national minority represent the majority of the population, states shall take the necessary measures to ensure that those who do not belong to this minority shall not suffer from any disadvantage, including such that may result from the implementation of the measures of protection foreseen by the present Instrument.*

### **Art. 26**

*None of these commitments shall be interpreted as implying any right to engage in any activity in contravention of the fundamental principles of international law and, in particular, of the sovereign equality, territorial integrity and political independence of State. Nothing in the present Instrument shall affect the duties related to persons belonging to national minorities as citizens of the States concerned.*

*Persons belonging to national minorities will also respect, in the exercise of their rights, the rights of others, including those of persons belonging to the majority population of the respective State or to other national minorities.*

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As John Packer points out in the outset of this interview, “to some degree, the questions posed to me strike at the political core of the contemporary minority rights regime – the political deal, if one may, on which basis additional rights for persons belonging to minorities are extended by States in exchange for loyalty and stability”. On the basis of nineteenth century and early twentieth century political convictions in Europe about essentially primordial (and universal) nationalist aspirations, one might argue that such a deal would be folly, unlikely to work and therefore a great risk. But seen with the light of two bloody centuries of largely nationalist wars, the risk is easily justified.

Perhaps more significantly, the late twentieth century minority rights regime - which emphasizes rights as part of a broader and universally applicable human rights regime - is less about taking a chance against primordial forces of nationalism and more about embracing a new and progressive conception of internationalism and liberal development featuring open societies and essentially free and multi-faceted human beings. This is a decidedly more confident view of the human being and the power of cooperation. Of course, like most things, to the extent one works at realizing its various elements and securing its foundations, so the “risks” associated with it diminish.

Importantly, the contemporary regime of minority rights does not exist in a vacuum. Rather, it is situated within and forms part of a wider context of developments in international relations and law, especially in Europe where highly integrative social, economic and political processes have been picking up speed with each passing decade.

The wider context is also one of the outlawing of use of force to pursue political aims, the requirement to settle disputes peacefully, to respect the human rights and fundamental freedoms of everyone, and to cooperate with a view to achieving not only international peace and security but also economic and social development (i.e. a commitment to work to achieve “positive peace”). Globally, this is the essence of the United Nations regime which is sometimes characterized as having a revolutionary and constitutional nature. As political and legal structures have developed along these lines, especially in Europe, this regime has gained strength which bears upon everyone and both creates opportunities (including some risks) and constrains threats. Minority rights should be seen as situated in this context - as creating new opportunities for greater life in freedom and dignity for everyone (i.e. in this case essentially to maintain and develop one’s cultural identity) while constraining threats of conflict and disintegration arising from legitimate grievance or romantic ideas from a past time.

The CEI Instrument for the Protection of Minority Rights, underlines Packer, reflects and captures this new thinking and approach in both expressed provisions and implied ideas. It certainly reflects the rapidly developing discussions of the immediate post Cold War period and remains perhaps the most complete and precise instrument on the protection of minorities in all of international relations... which is not to say it is without any problem or the most progressive in every sense. Importantly, it added to the web of obligations and commitments which Central European States were and are

prepared to respect and pursue with a view to ensuring the security, stability and prosperity of this region which runs through the heart of the continent and holds tremendous significance for neighbouring States and the world beyond.

**- With the EU enlargement, the right of “unimpeded contacts with the citizens of another country with whom this minority shares ethnic, religious or linguistic features or a cultural identity” (Article 23) is gaining importance. More national minorities will be divided by the Schengen border. The mentioned Article calls upon States not to “unduly restrict the free exercise of those rights” which means that the right of transfrontier contacts cannot be unlimited. In this regard, what would you consider as justified limitations to those contacts imposed by the States?**

**Packer:** It is perhaps an irony of European Union enlargement that what is a fundamentally integrating process which aims to create open and united spaces among members seems increasingly to have the effect of dividing those within the Union from those outside. Sometimes called “fortress Europe”, there can be no denying it has particular effects for ethno-cultural and similar communities who straddle frontiers, some within and some outside the new EU walls. In some cases the new controls on physical movement may be more stringent than those before. This may well be justified given the virtually unrestrained movement within the Union (and thus the social and economic risks and implications for other States having no relation to the ethno-cultural communities in question or their legitimate interests), but it is nevertheless a new factor. Of course, the new controls are only controls, not prohibitions. Thus, persons with legitimate bases to cross the borders should be able to do so under the new procedures.

It would be wrong to confuse the control of inter-State borders with minority rights, including Article 23 of the CEI Instrument. No norm or standard of international law entitles a person to admission to any State, other than the right of return to one’s own country (generally understood to mean State of citizenship or, at least, habitual lawful residence). Certainly, the reference within Article 23 of the CEI Instrument (like Article 17 of the Council of Europe’s Framework Convention or para 32.4 of the OSCE’s Copenhagen Document) to “unimpeded contacts” does not mean, and was not intended to mean, an unrestricted right of physical entry into the territory of other States. Indeed, Article 23 expressly premises such contacts on due respect for the territorial integrity of the State which importantly includes admission policy and border controls.

Rather, the essence of Article 23 is to bind CEI Member States to be positively disposed towards and actively to facilitate the range of contacts which persons belonging to minorities may wish to establish, maintain and develop across inter-State frontiers as may arise from the geographic distribution of the ethno-cultural community in question (i.e., as the provision states, those “with whom this minority shares ethnic, religious or linguistic features or a cultural identity”). The provision is clearly pro-active in its intent and content as it requires States to “not unduly restrict” free contacts (i.e. to



impose no unjustified and unnecessary obstacles), but also to “encourage transfrontier arrangements at national, regional and local levels”.

It is important to read Article 23 in the wider context of other human rights and fundamental freedoms. While, as indicated above, “contacts” may not be unlimited (neither in form, e.g. physical contacts, nor content, e.g. purpose or effect), contacts through telecommunications, exchanges of cultural works and so forth would already largely be guaranteed by the freedom of expression and the right to enjoy one’s own culture which, while not unlimited, are certainly not restricted by State borders. Indeed, the right to receive and impart information, which may have a cultural content, frequently, has a transfrontier dimension. In this and other regards, reasonable limits to the scope and content of Article 23 may be deduced through reference to Article 1 of the CEI Instrument which stipulates the essential object of the whole document as being, for persons belonging to national minorities, to “guarantee the appropriate conditions for the promotion of their identity”: reasonable and largely normal controls to the side, CEI States should permit and even facilitate contacts of this nature.

**-Generally, can you recognize any substantial distinctions between Article 24 of the CEI Instrument and similar provisions in the OSCE and Council of Europe’s major minority rights documents? To what extent, with regard to your knowledge about the situation in OSCE (and CEI) Member States, is the objective to set-up “effective (judicial) remedies” in case of the violation of the minority rights achieved?**

**Packer:** The comparable instruments of the Council of Europe and the OSCE do not include such an express provision stipulating the right to an effective remedy before a judicial authority. This does not mean such remedies are not supported by the Council of Europe or the OSCE. Indeed, both the Framework Convention for the Protection of National Minorities and the Copenhagen Document make implicit references to this end. Specifically, Article 1 of the Framework Convention expressly states that the protection of minorities “forms an integral part of the international protection of human rights” for which the right to an effective remedy is a basic and necessary entitlement, which in part explains the expressed reference in the Preamble of the Framework Convention to the European Convention on Human Rights. Similarly, para. 30 of the OSCE’s Copenhagen Document, which serves as a kind of preamble to its substantive provisions regarding minorities, refers expressly to the need to resolve questions relating to minorities “in a democratic framework based on the rule of law, with a functioning independent judiciary”.

While the basic idea of providing effective remedies before judicial (and other) instances is generally supported also in other contexts, and while one may argue this is effectively achieved by establishing reliable and accessible judicial systems which may adjudicate such matters to the extent the international entitlements are incorporated in domestic law (or may be considered self-executing rights under domestic legal theory and practice), it is no doubt a welcome stipulation in the CEI

Instrument that such is to be done specifically with regard to the rights set forth in the CEI Instrument. This would remove any doubt about the existence of such rights for those so entitled, in terms of their practical invocation before domestic institutions finally backed up by judicial recourses. The degree to which this has been achieved within the domestic law and practice of CEI Member States would require a survey and analysis, which would be merited as part of a broader review of the success of the Instrument and the degree to which it has been brought in reach of persons belonging to national minorities within CEI States.

**- With regard to Article 25, could you, according to your OSCE practice, give some concrete positive examples from the CEI region where “measures to ensure that those who do not belong to a minority (representing the majority of the population in a certain area) shall not suffer from any disadvantage” have been successfully implemented?**

**Packer:** This provision essentially addresses the “minority within a minority” phenomenon and specifically the case where persons belonging to the majority community within the State as a whole may be in the position of a minority at regional or local level. It is not a strange or rare case, as it simply reflects the real-life distribution of people across geographical spaces; not only is “national” purity largely a myth, but the idea that persons belonging to such groups neatly and perfectly divide along territorial lines is obviously untrue and, indeed, has been and remains among the principal sources of tension insofar as the competing needs, interests and aspirations of differing groups may clash within the same territory.

The solution to this apparent problem lies within the rights themselves and the broader system and range of democratic alternatives. First, it is a rudimentary matter of human rights that rights may not be invoked to violate those of others. This applies equally for minority rights: they are neither a privilege nor an entitlement to violate the rights of others (whether persons belonging to other minorities or to a majority). Second, minority rights are to be enjoyed by everyone belonging to a minority, which has been well-established (especially in the Council of Europe and OSCE contexts) as meaning everyone in the position of a minority. This is determined vis-à-vis the specific context and especially the applicable authority (typically reflecting a “majority” which may well be local rather than national) on a case-by-case basis. As a matter of democratic organization, and specifically territorial divisions within the State along legislative, executive or administrative lines, it is common that minorities within the State as a whole may find themselves to be in the position of a majority in particular territorial units with particular powers against which those in the position of a minority in that context are entitled to protection, in fact to their own “minority rights”.

There are many examples of such cases, partly depending upon the distribution of powers from the central/State authorities either through general decentralization or through dedicated minority rights regimes (notably granting specific powers to territorially concentrated communities who constitute minorities in the State as a whole).

One example is that of Crimea within Ukraine, where the Autonomous Republic of Crimea has specified (and unique as compare with other parts of Ukraine) powers largely aimed to respect and accommodate the mainly Russian and also other non-ethnic-Ukrainian communities on the peninsula who comprise the overwhelming majority there. But, within Crimea, the rights of ethnic Ukrainians are guaranteed fundamentally as equal citizens of the Republic of Ukraine as a whole. Similar accommodations can be observed in Gagauzia in Moldova, the Province of Vojvodina in Serbia and Montenegro, or in localities of Istria in Croatia. Where language is essentially the issue (and this is generally the case across Central Europe), a more obvious solution is local bilingualism in various forms and degrees.

This does not need to be seen as arising from “minority rights”, but could simply be viewed as a matter of good governance. From this perspective, and leaving aside its particular history and manifestation, the case of South/Sud Tyrol / Alto Adige seems a good example. Other cases are still working themselves out, but can do so with the benefit of reference to, *inter alia*, the international regimes for the protection of minorities, including Article 25 of the CEI Instrument.

**- As emphasized in Article 26, “nothing in this Instrument shall affect the duties related to persons belonging to national minorities as citizens of the States concerned”. In this regard, it is often stated that if persons belonging to national minorities are content within the wider society, they are less likely to pursue policies or strategies against the interests of the majority; similarly, “kin-States” are less likely to be attracted to irredentist policies if they perceive that “their” minorities in neighbouring States are treated well. Could we say that Europe has – particularly after the bloodshed in the Balkans – “learned this lesson”?**

**Packer:** Echoing para 37 of the OSCE’s Copenhagen Document and Article 21 of the Council of Europe’s Framework Convention, this provision reflects the fundamental fear of many States that the granting of minority rights might be the thin edge of a wedge or a slippery slope upon which the State might slide into disintegration. A dispassionate reading of the actual scope and content of the stipulated provisions would hardly yield such fears: while certainly important, the accorded minority rights are clearly limited and modest. Moreover, it is hard to construe from any of the rights either an excuse from general duties (notably respect for the rule of law) or an entitlement to contravene international or domestic law.

To the extent States felt it necessary to include such a provision perhaps reflects a deeper lack of trust in persons belonging to minorities and a lack of confidence in the overall project of conferring and fulfilling rights. This is all the more apparent in the felt need further to stipulate that persons belonging to minorities will, in the exercise of their rights, respect the rights of others. From a legal perspective, this goes without saying as a matter of the existence of others rights and as a basic principle of law and of human rights in particular. Politically, while it may be comforting to some especially

among suspicious majorities, it is even less necessary since the fact of life for persons belonging to minorities is that they are exactly in a minority (i.e. vulnerable and disadvantaged) position and so they require “protection” against the tyranny of the majority and not the reverse. Indeed, as already indicated, nothing in the stipulated rights would subject others (whether belonging to the majority or other minorities) to minority impositions; most rights are stipulated in terms of effective choices (as, practically, is bilingualism) for which persons belonging to majorities already have opportunity by virtue of their majority position. From this perspective, such provisions as Article 26 are hardly welcoming to or expressive of trust and confidence in persons belonging to minorities.

To the question at hand, yes, it is at least the essence of the proposition (“the deal”, as mentioned above), and perhaps a lesson being learned, that contented minorities will be less politically trouble-some and specifically threatening of majority interests. However, it should be noted that the proposition is the relative “less likely”; it does not argue or require that minorities “will not” much less “shall not” persist with such demands or claims. Essentially, it is a policy calculation, partially based on bad experience borne of suppression, and so it has its normative expression in Article 26 of the CEI Instrument. But, it is not a guarantee.

For example, the case of Quebec demonstrates that even with tremendous accommodations, such demands and claims may not disappear. Of course, the question is almost a tautology insofar as it is premised on the key condition IF they are content; evidently, they are not content if they choose to pursue conflictual aims. But, perhaps more important is the effect of cutting the sharp edges of various demands or claims and possibly deflating them. In this sense, the vigour and tenor of such demands and claims will almost certainly diminish for lack of validity or relative unimportance (compared with costs against existing benefits), and so possibly wither away in time. Both States and minority groups in effect make such calculations, and their supporters will be asked to do so in assessing their own stakes as they actually live together.

Another important consideration is what may constitute “against the interests of the majority”; this very much depends on what exactly is being pursued and how exactly it may be “against” which “interests”. Indeed, it may seem heretical to say, but even as extreme a pursuit as secession may not be “against the interests of the majority” if, e.g., it were pursued peacefully and with the aim of creating a neutral entity within a united European Union – say, another Luxembourg or perhaps something more like another Aaland Islands – which might alleviate the majority of certain responsibilities, simplify administrative and other matters, and provide necessary guarantees. To be clear, nothing in any existing international instruments of law or politics forbids or precludes such an outcome.

What is required is that such ideas be expressed and pursued strictly in peaceful terms under the rule of law. Admittedly, even such extreme considerations would require

some new politics on the part of many, and an ability to think in more than zero-sum and nineteenth century terms. This applies to all concerned; including not least the leaders of political movements representing national minorities for whom increasingly the fundamental question is "What exactly would the group gain as a result of what would undoubtedly be a consuming and costly process?" In other words, assuming full respect of all their rights and also good governance in the existing State structure, is irredentism or other separatism worth it in concrete terms? I am confident the answer increasingly is clearly "No"... which does not mean people may be prohibited from pursuing what may not in fact be in their interest in material terms. Such is freedom.

In my view, none of this is helped by the persistent (or resurrected) idea of the "kin-State" and its effectively proprietary attitude towards "its" minorities abroad. Underlying this paradigm is the implication that the "natural" and better state of affairs would be the "unity of the nation" with its coincidence of "nation" and State, i.e. people and territory. To the extent this idea persists, the lesson has not been learned: the lesson is the opposite, i.e. that nation and State may not and need not coincide and that efforts to achieve this are conflict-generating and finally irresolvable. They are also short-sighted, and fit for a past century or two. Instead, it has been among the basic thrusts of human rights, including minority rights, and also of European integration and EU enlargement that persons sharing the same ethno-cultural identity need not share the same State and need not have to depend upon a "kin-State" - that they are entitled to maintain and develop their identity and enjoy their culture where they live, with the protection and support of that State, i.e. of their State.

Further, it seems evident from this, and follows anyhow from basic human rights, that one does not and need not share the same citizenship in order to share the same identity, and so such persons and groups may freely pursue their interests across frontiers. This is all the more easier and "natural" to the extent man-made borders diminish in importance. It will be clearer that Europe has "learned this lesson" when more States more confidently pursue such approaches through their own policies and practices.

**- As implicitly pointed out in all major minority rights' documents, including the CEI Instrument (Article 26), the rights of persons belonging to minorities are different from the rights of peoples to self-determination. Therefore, minority rights cannot serve as a basis for claims of secession or dismemberment of a State. This question is certainly clarified on the political level. Would you say that it is also fully clarified on the level of minority rights experts as there is still a discussion among them how to define a minority?**

**Packer:** As a matter of positive international law, the right of peoples to self-determination is not part of the body of minority rights. This is not only true in the sense that there is no provision of a minority instrument which stipulates a right to self-determination, but it is especially so when taking into account the limitation provisions of the various instruments and the intentions behind these. This is true among both

politicians and diplomats and also scholars insofar as “self-determination” is understood to mean secession or dismemberment of the State.

However, the idea has evolved that an “internal” form of self-determination (i.e. not including secession or any other basis of State dismemberment) may characterize the breadth of minority rights and especially the range of alternatives to accommodate minorities within the politico-legal order of the State (including autonomy arrangements) and ensure them not only a significant voice in public affairs but a high degree of self-governance. This is so with regard to matters affecting especially or, more so, only minorities. Essentially, these concern identity-related matters (e.g. schooling).

The question over the relationship between minorities, minority rights and self-determination is, in my view, less a matter of definition and more a matter of the specific scope and content of the rights. While the matter of definition of “minority” and “belonging to a minority” is still not yet fully resolved<sup>25</sup> (for example the determinative extent of the subjective element remains disputed notwithstanding clear provisions such as Article 2 of the CEI Instrument, and the matter of citizenship is certainly at issue in both principle and practice), there is a broad consensus that the subjective element is virtually determinative and that an increasingly inclusive understanding of group membership applies. Similarly, the content of minority rights is more or less clarified: they are part of human rights, identity-related, and additive (i.e. not privileges). Within these terms, minorities are entitled to a high degree of accommodation, not least effective participation in public life including possible forms of self-governance (i.e. autonomy arrangements).<sup>26</sup>

Nonetheless, there may be and are situations where a group which constitutes, under international law, a minority in the context of a specific State and, thereby, has entitlements arising from “minority rights” may, at the same time, also constitute a “people” for the purposes of Article 1 of the two United Nations Covenants which stipulates for such peoples a right to self-determination. In other words, there is no necessarily exclusionary element to, or stipulated limitation upon, the same group qualifying simultaneously or successively for different protections and rights under different headings. Certainly, this raises a number of considerations and invites a detailed discussion which is beyond the scope of this publication, and is not helped by the absence of specialized bodies of international law to adjudicate peacefully expressed (or other) claims of this kind.

*Questions prepared by Milan Predan*

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<sup>25</sup> For a discussion on some of the persistent problems, see John Packer, “Problems in Defining Minorities” in B. Bowring and D. Fottrell (eds.), *Minority and Group Rights in the New Millennium* (The Hague: Martinus Nijhoff Publishers, 1999), pp. 223-274.

<sup>26</sup> A systematic and rights-based exposition of the alternatives is found in the Lund Recommendations on the Effective Participation of National Minorities in Public Life found at [http://www.osce.org/documents/hcnm/1999/09/2698\\_en.pdf](http://www.osce.org/documents/hcnm/1999/09/2698_en.pdf)

## **MINORITIES IN THE CEI REGION: DATA, LEGISLATION**





*The following overview of the minority legislation in the CEI region was prepared jointly by the **South-Tyrolean Minority Institute (Südtiroler Volksgruppen Institut) in Bozen/Bolzano**, Italy, the governmental authorities dealing with minority issues in CEI Member States and by the CEI Executive Secretariat. Prof. **Christoph Pan** and **Dr. Beate Sibylle Pfeil** provided the basic text for the countries concerned. For all countries they used the same structure and style of data presentation, making the summarised overviews clear, “user friendly” and easier to update. The intention was not to evaluate the situation in which the minorities live country by country but to present facts illustrating the current state of the legislative protection of minority rights in the CEI region.*

*Therefore, the draft overviews, prepared in Bozen/Bolzano (in German, then translated into English by the CEI-ES, as well as by several Member States), were sent for checking and updating to the Member States. All facts and figures, published in the following pages, reflect the most updated state of affairs with regard to minority protection in the region and are checked by the responsible governmental offices.*

## 1. ALBANIA, MINORITY LEGISLATION

### 1.1. Basic Fundamental Rights

According to the new Albanian constitution adopted in 1998, Aromanians (Vlachs) and Romanies were recognised as ethno-linguistic minorities, in addition to the Greeks, Macedonians and Montenegrins recognised as national minorities.<sup>27</sup> The new constitution (Art.18) assures “everybody”, that is, persons belonging to national or ethnic minorities as well, equality before the law (para.1), prohibition of discrimination *inter alia* on the basis of racial, ethnic or linguistic characteristics (para.2) and the possibility to utilize specific measures when reasonable and objective grounds exist (para.3).<sup>28</sup>

The basic rights, guaranteed to persons belonging to national minorities by the new Constitution (Art.20) are the rights of equality before the law; freely to express, preserve and develop their identity; to study and be taught in their mother language; to unite in organisations for the protection of their interests and identity.<sup>29</sup>

In addition, there are a number of rights deriving from international obligations incorporated in the internal legal system that ought to be directly implemented and have – in case of discrepancy - priority with regard to national legislation.<sup>30</sup>

### 1.2. Use of Language

There are no legal obstacles for the free use of minority languages in the private sphere.<sup>31</sup> According to the Constitution, the official language is Albanian.<sup>32</sup> Nevertheless, the minorities are entitled to use their language orally as well as with the local authorities, particularly where minorities represent an important part of the population.<sup>33</sup>

As to the court, all persons unacquainted with the Albanian language are – according to the Constitution (Art.31 sec. c) - entitled to a translation.<sup>34</sup>

Persons belonging to national minorities can freely use their names in their mother language but in the written form, they are to utilise Latin letters (instead of the Cyrillic writing, used by the Macedonian, and the Greek alphabet, used by the Greek minority). The private use of inscriptions and other signs, written in the minority language (also in public spaces) is free. Geographic names in areas traditionally settled by the minorities have been maintained in their original forms. There is no legal regulation for the public

<sup>27</sup> Albania Report 2001: 8; Aromanians in Albania 2001: 1.

<sup>28</sup> Albanian Constitution 1998; Albania Report 2001: 57; Albania Helsinki Committee 1999: 5; U.S.Department of State 1999: 11.

<sup>29</sup> Albanian Constitution 1998; Albania Report 2001: 8, 58; Albania Helsinki Committee 1999: 5 f.

<sup>30</sup> Art.122 para.1 and 2 Const. (Albanian Helsinki Committee 1999: 6).

<sup>31</sup> Albania Report 2001: 20, 33.

<sup>32</sup> Art.14 Const. (Albanian Constitution 1998).

<sup>33</sup> Albania Report 2001: 33 f.

<sup>34</sup> Albanian Constitution 1998; Albania Report 2001: 34.

use and display of traditional local names, street names and other topographical indications.<sup>35</sup>

### 1.3. Teaching of Language

Law Nr.7952, adopted in 1996, states (Art.10 para.1) that "Opportunities shall be created for persons belonging to national minorities to study and be taught in their mother tongue."<sup>36</sup> The legal framework for this provision is complemented by the respective decisions of the Council of Ministers on Elementary Education of Minority People in their native language. In 1994, in several high schools they started teaching Greek as well as followed the respective instructions of the Ministry of Education.<sup>37</sup>

There are public elementary schools with Greek as a teaching language in the south of the country where the majority of the Greek minority lives.<sup>38</sup> Some subjects are also taught in Albanian. In the first four years of schooling, 90 percent of teaching is carried out in Greek, 10 percent in Albanian, from year 8-11 this relation is 6:4.<sup>39</sup> In minority schools, every teacher has an average of 6 pupils, in Albanian schools this rate is 1:19.<sup>40</sup>

A public Greek elementary school was set up in Tirana in 1998. Simultaneously, the Parliament acknowledged Greek as one of the foreign languages that could be taught in all public schools. There are two high schools for the Greek minority in the districts of Gjirokastra and Saranda.<sup>41</sup> In addition, in the Pedagogical High School of Gjirokastra there is a branch named "Teacher Training for Minorities"<sup>42</sup> and a Greek language branch at the University of Gjirokastra. In 1995, the Greek language branch was opened at the faculty for foreign languages of the University of Tirana as well.<sup>43</sup>

For Macedonians there are schools in the regions bordering Macedonia (Korça and Devoll districts),<sup>44</sup> using teaching material from Macedonia.<sup>45</sup>

There are no classes in the Roma language.<sup>46</sup> As underlined by the Albanian government, no such request from Roma exists. Albanian has become their mother language.

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<sup>35</sup> Albania Report 2001: 35 f.

<sup>36</sup> Albania Report 2001: 36 f.

<sup>37</sup> Albania Report 2001: 37 and 40; Albanian Helsinki Committee 1999: 6.

<sup>38</sup> For 1999/2000 academic year, in the districts of Gjirokastra, Saranda, Delvina and Permet there were altogether 26 Greek kindergartens as well 41 elementary schools and 32 primary schools (Albania Report 2001: 37 f.).

<sup>39</sup> Albania Report 2001: 40 f. Many members of the Greek minority do not consider sufficient the possibilities for their children to be taught in their mother tongue and let them therefore attend schools in the neighbouring Greece. That causes a continuing fall of the number of pupils in the schools of the Greek minority (OSCE HCNM 1994: 2 und Albania Report 2001: 39).

<sup>40</sup> Albania Report 2001: 39.

<sup>41</sup> Albania Report 2001: 39.

<sup>42</sup> Albania Report 2001: 37.

<sup>43</sup> U.S. Department of State 1999: 11; Albania Report 2001: 37.

<sup>44</sup> For 1999/2000 academic year, in the districts of Korça and Devoll there were altogether 9 Macedonian kindergartens as well as 2 elementary schools and 8 primary schools (Albania Report 2001: 37 f.).

<sup>45</sup> U.S. Department of State 1999: 12; U.S. Department of State 2000: 10.

<sup>46</sup> Aromanians 1997: 7; Aromanians in Albania 2001: 1.

### 1.4. Right to Associations

The Constitution provides for everybody's right to associations (Art.15). Moreover, Art. 20 para. 2 Const. gives this right specifically to persons belonging to minorities.<sup>47</sup> The law on political parties, adopted in 1991,<sup>48</sup> did not include provisions enabling their establishment on a religious, ethnic and regional basis. The new law, adopted in 2000, has created the legal framework for establishing political parties on an ethnic basis as well.<sup>49</sup>

### 1.5. Right to Unimpeded Contacts

The Constitution (Art. 38) assures all citizens the right to free movement in the country and the right to leave the country freely.<sup>50</sup>

### 1.6. Right to Information

Freedom of expression is guaranteed by Art. 22. of the Constitution. The same article provides for the freedom of the press for all print and audio-visual (including the minority) media. No censorship of media is allowed.<sup>51</sup>

The Greek minority disposes of its own newspapers (Lajko Vima, I Foni tis Omonias, "2000") and illustrated reviews (Oaz, Progres). Around 15 papers and reviews come from Greece on a regular basis.<sup>52</sup> Everyone has access to the press from Macedonia and Montenegro.<sup>53</sup> The Aromanians (Vlachs) have their own newspaper (Fratia-Vellazerimi – Brotherhood), monthly published in Albanian and Aromanian.<sup>54</sup>

In 1999, the state radio and TV was transformed into a public corporation, led by a body composed of 15 members appointed by the Parliament. According to the law, one of the members has to be a representative of national minorities.<sup>55</sup>

The new broadcasting legislation (1998)<sup>56</sup> entitles the minorities to have access to electronic media. Special programmes for minorities can be excluded from the general regulation that the use of Albanian in all broadcasting programmes is obligatory. Broadcasting licenses can be obtained on the basis of internationally accepted criteria. The central and regional broadcasting stations are obliged to provide national minorities with information in order to meet their needs.<sup>57</sup>

Radio Tirana broadcasts twice a day for 30 minutes and Radio Gjirokastra broadcasts a programme in Greek on a daily basis for 45 minutes. With funds from the State, local

<sup>47</sup> Albania Report 2001: 26.

<sup>48</sup> Art.6 para.5 Act of 25 July 1991, no. 7502 (Albanian Helsinki Committee 1999: 7). Further see International Helsinki Federation 1999: 4.

<sup>49</sup> Law no. 8580 of 17 February 2001 on Political Parties (Albania Report 2001: 26 f.).

<sup>50</sup> Albania Report 2001: 51.

<sup>51</sup> Albania Report 2001: 30.

<sup>52</sup> Albania Report 2001: 31; U.S. Department of State 2000: 6.

<sup>53</sup> Albania Report 2001: 31.

<sup>54</sup> Albania Report 2001: 31.

<sup>55</sup> Albania Report 2001: 32.

<sup>56</sup> Act of 30 September 1998, no. 8410, on the public and private Radio and TV in the Republic of Albania (Albania Report 2001: 31).

<sup>57</sup> Albania Report 2001: 31 f.

authorities have also installed TV amplifiers in Albania in order to be able to watch Greek TV stations.

Radio Korça broadcasts news in Macedonian three times a week. The local channel offers special programmes for this region only. The population has no problems in receiving radio and TV signals from the neighbouring Macedonia.<sup>58</sup>

The same goes for the Montenegrin minority with regard to radio and TV programmes from Serbia and Montenegro. Radio Skhodra (Skutari) broadcasts special programmes for this minority group.<sup>59</sup>

Altogether, around 50 private TV channels and 30 private radio channels are active throughout the country. Foreign channels are accessible via satellite.<sup>60</sup>

### **1.7. Right to Political Representation**

There is no direct representation of minorities in the Parliament. Nevertheless, there has always been an average of 5-10 people belonging to minorities (especially the Greek one), who have been elected in the Parliament on the lists of other parties. At general elections, the party "Union for Human Rights" representing the interests of the minorities, gained 4 seats in 1997 and 3 seats in 2001, favoured by the law, which has reduced the threshold to gain seats from 4 to 2 percent.<sup>61</sup>

The efficient participation of the national minorities in the decision-making process can be realised through their participation in the local government organs. In particular in the districts of Gjirokastra, Saranda and Devina there are several mayors, municipal council chairmen, communal/municipal councillors and regional councillors belonging to the Greek minority. Regarding the Macedonian minority group, in the city hall of Liqenas in the Korça district all representatives of the local government are members of this minority group.<sup>62</sup> Referring to the elections of October 2003, no reports of direct discrimination against recognised minority groups or obstacles harming their participation were received.<sup>63</sup>

### **1.8. Right to Autonomy**

The country's legal framework does not provide for this right.

### **1.9. Right to Co-determination**

According to the Code of Administrative Procedure (Art.13), the public administration structures have the obligation to ensure the participation of private persons and/or associations in the decision-making process when their interests are involved.<sup>64</sup>

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<sup>58</sup> Albania Report 2001: 32.

<sup>59</sup> Albania Report 2001: 32 f.

<sup>60</sup> U.S. Department of State 2000: 6.

<sup>61</sup> Albania Report 2001: 44.

<sup>62</sup> Albania Report 2001: 44 ff.

<sup>63</sup> OSCE/ODIHR 2004: 18.

<sup>64</sup> Albania Report 2001: 49.

Nevertheless, it is a general provision, which cannot be considered as specifically related to the minorities.

Nevertheless, in 2004, the State Committee for Minorities was established, which depends on the Prime Minister and has to follow and improve the implementation of this norm.

A Sector for Minorities has also been established and has been functioning in the Ministry of Local Government and Decentralization since 1998. Their duties are inter alia to deal with issues related to the effective participation of the national minorities in the decision-making process, both at local government and public administration level. In 2001, the minority municipalities received special financial contributions for the investment promotion quite higher than in other municipalities.<sup>65</sup> In considering this issue one should bear in mind the difficult economic situation of Albania, especially the Northeastern area, and the limited possibilities of the Albanian Government. Nevertheless, it can be assumed that the needs of those municipalities – with regard to their peripheral location – are also greater as in other parts of the country.

### **1.10. Specific Legal Protection**

The ombudsman, introduced by the new Constitution in 1998 (Art. 60-63), has the task to deal with the general guard of citizens against violations of rights by the state and public administration.<sup>66</sup> In this indirect form he also acts as the safeguard of minority rights but cannot be considered in terms of a specific legal protection of minorities.

In 2000, the Office for Minorities was established at the Ministry of Foreign Affairs. This Office has as one of its fundamental duties to follow the fulfilment of international obligations and commitments of Albania in the field of the rights of national minority people.

### **1.11. Population and Minorities in Albania**

During 2003 the Institute of Statistics (INSTAT) has accomplished a survey on minorities in Albania. This survey is based on data from the census of the population and households of April 2001 and also on the LSMS (Living Standard Measurement Survey) questionnaire, completely assisted by the World Bank also including the question on nationality. In this regard, this survey provides an estimate of the number of minorities in Albania. The persons belonging to minorities amounted to 42,892 (1.4%), out of which Greeks making up 35,829 (1.17%), Macedonians 4,148 (0.17%), Montenegrins 678 (0.02%), Aromanians 992 (0.03%), Others 1,245 (0.04%).

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<sup>65</sup> Albania Report 2001: 47 ff.

<sup>66</sup> Albanian Constitution 1998; Albania Report 2001: 18 and 61; Albanian Helsinki Committee 1999: 8.

Total population (cen. 2001) <sup>67</sup>		3.069.275	100,0 %
Albanians <sup>68</sup>		3.026.383	98,6 %
Minorities: <sup>69</sup>			42.892
1,4 %			
1.	Greeks <sup>70</sup>	35.829	1,17 %
2.	Vlachs (Aromanians) <sup>71</sup>	992	0,03%
3.	Macedonians <sup>72</sup>	4.148	0,14 %
4.	Roma and others <sup>73</sup>	1245	0,04 %
5.	Montenegrins <sup>74</sup>	678	0,02 %

## 1. 12. Implementation Mechanisms

The following governmental and parliamentary bodies deal – exclusively or partially - with the minority issues:

### PARLIAMENTARY COMMITTEE OF HUMAN RIGHTS AND MINORITIES

Vangjel DULE, Chairman, Agron TATO, v/chairman, Pjeter ARBNORI Secretary

E-mail: rights@parlament.al

Tel: of the Committee in office: +355 4 24 73 21

<sup>67</sup> Istat 2003 (Italian Statistical Office). In April 2001, the new census was carried out under the observation of international institutions. As the census forms only had a column for citizenship not offering the possibility to indicate one's own ethnic or linguistic identity, the Macedonian and the Greek minority organisations refused to recognize the results of the census. (Cvetanoski 2001).

<sup>68</sup> Number of ethnic Albanians as the difference between the total population and the total of members of minorities.

<sup>69</sup> Originally, Serbs and Croats were also counted among the national minorities in Albania. In more recent sources, these hardly appear any more. The number of Montenegrins and Serbs was only provided by Yugoslavia at the end of the 1980s and given as 15.000. For further details, see Schmidt-Neke 1990: 11 ff., 13, 15 f.

<sup>70</sup> CIA World Factbook 2001. The details or estimates on the part of the Albanians and the Greeks range between 50.000 (1989 census: 58.758) and 400.000. For further details, see Stavrou 1993: 67 ff.

<sup>71</sup> I.S.I.G. 1997: 81. Another source gives the number of Vlachs in Albania as up to 50.000 (Minority Rights Group 1998: 18).

<sup>72</sup> With the Maceonians, as well, there are greatly differing reports, depending upon whether they come from the Albanian (1989 census: 4.697) or Yugoslavian (40.000 - 60.000 Macedonians) side. See Schmidt-Neke 1990: 11 ff., 13, 15 f.

<sup>73</sup> I.S.I.G. 1997: 81. Another source speaks of from 10.000 to 120.000 Romany (Klopjic / Polzer 1999: 3). In any case, there are four groups to be distinguished with the Romany: the *Kallbuxhinj* (in urban areas), the *Meçkare* (in Lushnja, Fieri, Vlora), the *Kurtofet* (who are settled dispersedly) and the *Cergaret* (nomads) (Albania Report 2001: 12).

<sup>74</sup> Albanian Helsinki Committee 1999: 3.

**OFFICE FOR MINORITIES**

Representative of the Office: Mr. Agron Tare

Address: Ministry of Foreign Affairs,

Bulevardi Gjergj Fishta, Tiranë

Tel: +355 4 233493, +355 4 364090 ext.136, +355 4 364090 ext.180

<http://www.mfa.gov.al/english/ministria.asp>

**STATE COMMITTEE FOR MINORITIES**

**Chairwoman:** Kostandina Bezhani

Address: Prime minister Office, Bulevardi "Dëshmorët e Kombit",

Kutia Postare 7436 Posta Qëndrore, Tirana,

Tel/Fax: +355 4 256 843, Email: [kbeziani@km.gov.al](mailto:kbeziani@km.gov.al)

**MINISTRY OF LOCAL GOVERNMENT AND DECENTRALIZATION**

**Department for Minorities,**

**Head of Department:** Mrs.Violeta Qebini

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Email: [mpvd@mpvd.gov.al](mailto:mpvd@mpvd.gov.al)

**MINISTRY OF EDUCATION AND SCIENCE**

Department of curricula's development

Fatmir Bezati

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**OMBUDSMAN/PEOPLE'S ADVOCATE**

Ermir Dobjani

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## 2. AUSTRIA, MINORITY LEGISLATION

The Austrian law on ethnic groups is based, *inter alia*, on a number of norms of Constitutional status. Among these are Art. 19 of the *State Basic Law* of 1867 (StGG)<sup>75</sup>, Art. 66, 67 and 68 of the *State Treaty of St. Germain* of 1920<sup>76</sup>, Art. 8 of the *Federal Constitution* (B-VG)<sup>77</sup> and also Art. 14 of the *European Human Rights Convention* (ECHR). Protection provisions, especially to the benefit of Slovenians and Croats in Carinthia, Burgenland and in Styria are included in art.7 of the *Austrian Treaty of 1955*<sup>78</sup> (in the following: Treaty of Vienna).

### 2.1. Basic Rights

An individual right to identity, also for the members of ethnic groups, results from the Austrian liberal Constitution; everyone's right to free, personal decisions on the fact of belonging to a national minority is included in § 1 para.3 of the law on ethnic groups of 1976.<sup>79</sup>

In Austria the following six national minorities are acknowledged officially as 'ethnic groups' in terms of law of ethnic minorities: the so-called Burgenland Croats, the Slovenians, the Hungarians, the Czechs, the Slovaks (from 1992) and the Roma.<sup>80</sup>

In Austria the right to equality is realised a priori by the equality law, which is valid for every citizen of the Federation, according to art.7 para.1 Federal Constitution.<sup>81</sup> The legal – and factual – equality, especially of members of minorities (the citizens) is written in art.67 of the State Treaty from St. Germain.

Art.7 of the State Treaty of Vienna is also relevant to Slovenians and the Burgenland Croats. A prohibition of specific minority discrimination is also included in art.66 para.1 of the State Treaty of St. Germain and in art.14 of the ECHR.

The postulate of so-called *positive discrimination*, regarding the establishment of the equality of opportunities for members of the ethnic groups derives from the Constitutional Court from various constitutional provisions.<sup>82</sup> On 1<sup>st</sup> August 2000, a programme type provision listing objectives for the State authorities with reference to national minorities was introduced in art.8 para.2 of the Federal Constitution.<sup>83</sup> Art.8 para.2 comprises an acknowledgement by the Republic of its 'linguistic and cultural diversity' as reflected in its 'autochthonous ethnic groups', whose 'language and culture, existence and preservation' are to be 'respected, protected and promoted'. The

<sup>75</sup> RGB1 no 142/ 1867; (the extent of) its applicability is, however, controversial.

<sup>76</sup> StGB1 no 303/ 1920.

<sup>77</sup> BGB1 no 1/ 1930.

<sup>78</sup> Austrian Treaty of Vienna of 15.05.1955, BGB1 no 152/ 1955.

<sup>79</sup> Federal law of 7 July 1976 on the legal status of ethnic groups in Austria (Law on ethnic groups), BGB1 no 196/1976.

<sup>80</sup> Austria Report 2000: 2 f. The official acknowledgement as ethnic group takes place in Austria by the establishment of an advisory council for the ethnic group in question. More in Austria Report 2000: 124f.

<sup>81</sup> Austria Report 2000: 27; cfr. also art. 66 para.1 of the state treaty from St. Germain.

<sup>82</sup> VfSlg. 9224/ 1981. Cfr. Austria Report 2000: 28 f. and Pernthaler/ Ebensperger 2000: 124.

<sup>83</sup> Art.8 para.2 of the Federal Constitution may be gathered as an interpretative assistance, Austria Report 2000: 29.

promotion clause is included in § 8 para.1 of the ethnic groups law. In practice, there is financial support by the Federation and the regions (*Laender*) in favour of the organisations and associations active within the field of culture<sup>84</sup>; in this context, the support for the ethnic groups by the Office of the Federal Chancellor, according to the §§ 8 ff. of the ethnic groups law should be particularly mentioned<sup>85</sup>.

## 2.2. Use of Language

The right to the free use of ones mother tongue in the private sphere in Austria derives from art.8 ECHR (the right to protection of private and the family life), the general equality right and art. 66 para.3 of the State Treaty of St-Germain<sup>86</sup>.

According to Art.8 para.1 of the Federal Constitution, the official language in Austria is German, this is however not negatively affecting the linguistic minorities' federally conceded rights<sup>87</sup>. The status of an official language for Slovenians and Croats in the administrative and court districts of Carinthia, Burgenland and Styria 'with Croatian, Slovenian and mixed population' is constitutionally secured by art. 7 Z 3 of the State Treaty of Vienna. On the basis of § 2 para.1 Z 3, §§ 13 ff. of the ethnic groups law, the Austrian federal government released orders regarding Burgenland Croatian in the Burgenland, Slovenian in Carinthia and Hungarian in Burgenland.<sup>88</sup>

According to Austrian law, personal names do not need to be German, if necessary, the foreign diacritical characters should be taken over. Members of the ethnic groups can also, on the basis of the *Law on the right of name change*, for example assume again their original names in the minority language, which is by rule free of charge.<sup>89</sup>

As for the official language, according to art.7 Z 3 of the State Treaty of Vienna, bilingualism is stipulated also for the topographic signs and inscriptions in the relevant districts, as long as it concerns districts with Slovenian, Croatian or mixed population. On the basis of § 2 para.1 Z 2 and § 12 of the ethnic groups law, the federal government has released relevant (topographic) regulations for the Slovenians from Carinthia, (1977), the Croatians from Burgenland and Hungarians (2000).<sup>90</sup>

The regulation in § 2, para.1 Z 2 of the ethnic groups law, according to which bilingualism is considered only for the areas with a 'proportionally considerable number (a quarter)' of the members of the ethnic groups living there, was in the meantime

<sup>84</sup> Apart from this there are special social means of support to the benefit of Roma children, Austria Report 2000: 30.

<sup>85</sup> More on that in Austria Report 2000: 31-33.

<sup>86</sup> Thereafter the restrictions of the free use of 'any language' by the citizens during the 'private and professional activities' are illegal. See Austria Report 2000: 68 f.

<sup>87</sup> Cfr. also art. 19 para.2 StGG as well as art. 66 para.4 of the State Treaty from St. Germain.

<sup>88</sup> Cfr. the order regarding the official languages – Slovenian: BGBl no 307/ 1977, Croatian: BGBl no 6/ 1991, Hungarian: BGBl. II no 229/ 2000, in force since 01.10.2000 – in the meantime the Austrian Constitutional Court has revoked a clause of the regulation for Kaernten because of the violation of art. 7 Z 3 of the State Treaty from Vienna, because it had excluded from the bilingualism one community with the share of more than 10% of Slovenian speaking population (recognition of 4.10.2000, VfGGV 91/ 99, cfr. also the Erk. VfSlg 11.585/ 1987).

<sup>89</sup> More on that in Austria Report 2000: 74.

<sup>90</sup> Regulation on the topography – Slovenian: BGBl no 306/ 1977 and no 308/ 1977; Burgenland (Croatian and Hungarian): BGBl II no 2000/ 170. See OEVS 2001: 36, Austria Report 2000: 75, 20; Austria Report/ Minority Council 2000: 4, OEVS 2001: 51.

revoked by the Constitutional Court, due to the violation of art. 7 Z 3 of the State Treaty of Vienna, as well as the relevant provisions of the regulations for Carinthia.

According to the Court's finding, bilingual inscriptions are possible also in cases of a 'not quite insignificant' number of members of an ethnic group (about 10%). In the absence of the appropriate corrections, this point of the State Treaty from Vienna is at the moment not properly executed.<sup>91</sup>

### 2.3. Teaching of Language

For the Slovenians from Carinthia and Styria and for the Croats from Burgenland, a requirement of 'mother tongue elementary instruction and a proportional number of high schools teaching the and in the minority languages' arises from art. 7 Z 2 of the State Treaty of Vienna.<sup>92</sup>

In relation to the Slovenians from Carinthia, – but not to Slovenians from Styria – this right is substantiated by § 7 of the Constitution on the minority schooling law for Carinthia<sup>93</sup> and by §§ 10 and 12 of the same law, namely there are bilingual elementary schools,<sup>94</sup> such as 'German language' secondary schools with departments for Slovenian language lessons.<sup>95</sup> Moreover there is, *inter alia*, a Slovenian language secondary school as well as some communal and private bilingual kindergartens.<sup>96</sup>

As for the Croats and Hungarians from Burgenland, a special law regulates their minority schooling. In both cases there are bilingual elementary schools.<sup>97</sup> The secondary schools and general high schools are either – rarely – bilingual or they offer Croatian or Hungarian as teaching subjects. In the autochthonous areas of settlement of Croats and Hungarians there is, on the basis of the *Land* (regional) law, a bilingual kindergarten.<sup>98</sup> For the Roma from Burgenland the minority schooling law (§ 14 para. 1 and 3) only provides for the possibility of offering Roma classes on request.<sup>99</sup>

Czech and Slovak are only offered – besides Hungarian – in one secondary school in Vienna as the tuition language or teaching subject, another public school offers lessons of Slovak. Moreover there is also a private school, which offers bilingual tuition

<sup>91</sup> Pernthaler 2004: 77.

<sup>92</sup> On the mother tongue tuition for *all* ethnic groups of Austria, cfr. art. 19 StGG as well as art. 68 para.1 of the State Treaty from St. Germain.

<sup>93</sup> On the spatial ambit of art. 7 Z 2 of the state Treaty from Vienna cfr. the decision of the Austrian Constitutional Court VfSlg 12.245/1989; more in Pernthaler/ Ebensperger 2000: 127.

<sup>94</sup> Following the finding by the constitutional Court, that bilingual tuition in the 1- 3 grade is not sufficient it was subsequently extended to the 4<sup>th</sup> grade (Erkenntnis of 19.03.2000, G 2-4/ 00; Austria Report 2000: 98 – 100).

<sup>95</sup> Pernthaler/ Ebensperger 2000: 127 f.

<sup>96</sup> On the issue of financing of kindergartens Austria Report/ Minority Council 2000: 4, Austria Report 2000: 105 f

<sup>97</sup> More on that Pernthaler/ Ebensperger 2000: 131.

<sup>98</sup> Austria Report 2000: 88, 108.

<sup>99</sup> So far there are no such lessons. This has also practical grounds, as only a few years ago the codification of Romanes has started. More on that in Austria report 200: 109 f.

either in Czech-German or Slovak-German starting from Kindergarten to secondary school.<sup>100</sup>

#### **2.4. Right to Associations**

The rights to association and to assembly are generally guaranteed by Art. 12 StGG and Art. 11 ECHR, [and] for the Slovenians and Croats from Carinthia, Styria and Burgenland also by Art. 7 Z 1 of the State Treaty of Vienna.<sup>101</sup> The freedom to establish parties is constitutionally guaranteed by § 1 para.3 of the party law. The ethnic groups in Austria have made ample use of the existing possibilities.<sup>102</sup>

#### **2.5. Right to Unimpeded Contacts**

The right to contacts, also to trans-border ones, in Austria is guaranteed generally and therefore also includes members of the ethnic groups.<sup>103</sup>

#### **2.6. Right to Information**

Art. 13 StGG guarantees the freedom of opinion, freedom of media and prohibits censure,<sup>104</sup> naturally members of the ethnic groups also benefit from these liberties. Slovenians from Carinthia and Styria and Croats from Burgenland have a special right to mother language press, conferred to them by art. 7 Z 1 of the State Treaty of Vienna.

Public television and radio is especially paying attention to the ethnic groups. Section 5 of the Federal Act on the Austrian Broadcasting Corporation<sup>105</sup> lay down special mandates to the Austrian Broadcasting Corporation (ORF). "In the frame work of the programmes of the ORF, reasonable programme shares must be provided in the languages of those national minorities which are represented by a National Minority Council" (para.1) and "The ORF may also partly comply with its mandate under para.1 in that it broadcasts programmes under para.1 following a contractual agreement with other broadcasters in the areas of autochthonous minorities in Austria by using transmission capacities allocated to these broadcasters" (para.2). Similarly, the ORF may participate in the creation and production of programmes by other broadcasters, which distribute a separate programme geared to the needs of national minorities. Moreover, there is Croatian, Hungarian and Slovenian information of ORF on the internet.<sup>106</sup> Despite the state support so far there are only two private ethnic group radio broadcasters.<sup>107</sup> In the field of print media, only the Croats and Slovenians from

<sup>100</sup> More in Austria Report 2000: 109, 121 – cfr. to that also the Treaty of Brünn/Brno between Austria and Czechoslovakia of 07.06.1920 (BGBl no 163/ 1921; OEVZ1993: 25).

<sup>101</sup> Cfr. also art. 67 of the State Treaty of St. Germain.

<sup>102</sup> Cfr. Austria Report 2000: 33 – 46 and Austria Report/ Minority council 2000: 8 f.

<sup>103</sup> Cfr. eg art. 4 and 6 of StGG, art 2 4 ZP EMRK; see Austria Report 2000: 129, 130 f., 112.

<sup>104</sup> Austria Report 2000: 53; cfr. also art. 10 EMRK and art. 66 para.3 of the State Treaty from St. Germain.

<sup>105</sup> BGBl. I no. 83/2001

<sup>106</sup> Austria Report 2000: 60.

<sup>107</sup> One for the Slovenians from Carinthia, one for the ethnic groups in Burgenland (Austria Report 2000. 63 f.).

Carinthia dispose (each) of two ethnic group language weekly magazines.<sup>108</sup> As regards the other ethnic groups, the respective media scene is, despite state support (eg. by the Office of the Chancellor) even scantier.<sup>109</sup>

## 2.7. Right to Political Representation

Ethnic groups in Austria as such do not have any specific political rights to representation. Their own political parties have only Slovenians from Carinthia and the Czechs, out of which, on the other hand, only the United List (*Enotna Lista*) of Slovenians (beside other Slovenian electoral alignments) is represented at the communal level, but not in the regional parliament (Landtag)<sup>110</sup> due to *de facto* 10% threshold.<sup>111</sup> Apart from that, single members of ethnic groups are represented only within general parties.<sup>112</sup>

## 2.8. Right to Autonomy

A right to autonomy of ethnic groups is not foreseen in Austrian law. On the basis of Art. 116 of the Federal Constitution, the communal self-administration makes it possible for members of ethnic groups to take part in co-designing at the communal level, where they constitute a significant part of the total population.<sup>113</sup> It regards however only the administration and not their own legislative competences, as is the case in a 'genuine' autonomy.

## 2.9. Right to Co-determination

§§ 3 ff. of the law on ethnic groups include the establishment of ethnic *groups advisory councils (Volksgruppenbeiräte)* by the Office of the Federal Chancellor, which advise the federal government and the federal ministers with competencies in ethnic group affairs.<sup>114</sup> According to the regulation of the federal government<sup>115</sup>, released on the basis of § 3 para.3 of the ethnic groups law, Croats have at the moment a 24 person ethnic group advisory council, Slovenians and Hungarians have each a 16 person council (Volksgruppenbeirat), the Advisory Council for Czechs has ten, the one for Slovaks six and the one for Roma eight members.<sup>116</sup> The establishment of an ethnic group advisory council means at the same time in public opinion the recognition of the

<sup>108</sup> One for the Slovenians from Carinthia, one for the ethnic groups in Burgenland (Austria Report 2000. 63 f.).

<sup>109</sup> More in Austria Report 2000: 55, 65 – 67, Austria Report/ Minority Council 2000: 10.

<sup>110</sup> The parties of Czechs are the *Czech Socialistic Party in Austria* and the *Czechoslovak People's Association*, see Austria Report 2000: 127 f.

<sup>111</sup> Electoral ordination of Carinthia. More in Austria Report 2000: 126 – 128, OEZV 1993: 33.

<sup>112</sup> The Croats from Burgenland and Hungarians (Austria Report 2000: 126, 128).

<sup>113</sup> e.g. the Croatian district Oberpullendorf (Burgenland), partly the Slovenians from Carinthia (OEZV 2001: 17 – 20).

<sup>114</sup> More on that in § 3 para.1 and 2 of the ethnic groups law, cfr. Austria Report 2000: 122-124.

<sup>115</sup> More on that in § 3 para.1 and 2 of the ethnic groups law, cfr. Austria Report 2000: 122-124.

<sup>116</sup> One representative of the Slovenians from Styria is a member of the Slovenian advisory councils.

relevant ethnic group, although the law on ethnic groups gives only an abstract definition of an ethnic group. Members of an ethnic group advisory council are appointed by the federal government for four years; they have to be selected among the candidates proposed by the representative ethnic group association on one hand and among the candidates proposed by churches or religious communities and by the ethnic group members, taking part in the general representative bodies, on the other.<sup>117</sup>

## 2.10. Specific Legal Protection

A certain basis for specific legal protection of minorities arises from the method of appointment for the members of the ethnic group advisory council, according to § 4 para.1 of the ethnic group law. The representatives of ethnic group associations, entitled to propose their candidates, have the possibility of expressing their opinion before the appointment. Moreover, they have the right to formal information on their demurs;<sup>118</sup> if necessary they can question the composition of the ethnic group advisory council before the constitutional court.<sup>119</sup>

## 2.11. Population and Ethnic Groups in Austria

Total population (2001 cen)		8.065.166	100,0%
German speaking Austrians <sup>120</sup>		7.159.236	88,8%
Ethnic groups: <sup>121</sup>			
1.	Slovenians <sup>122</sup>	50.000	0,6%
2.	Croats <sup>123</sup>	42.000	0,5%

<sup>117</sup> One representative of the Slovenians from Styria is a member of the Slovenian advisory councils.

<sup>118</sup> Some ethnic group organisations demand strengthening of the collective possibilities of complaints (Austria Report 2000: 26).

<sup>119</sup> Some ethnic group organisations demand strengthening of the collective possibilities of complaints (Austria Report 2000: 26).

<sup>120</sup> The difference between the total population and the total of members of ethnic groups and foreign nationals. In the 1991 census, 7.107.411 people listed German as their colloquial language (Council of Europe 1994a: 3).

<sup>121</sup> The following data come mainly from the State Report Austria (Austria Report 2000: 4 ff.) which refers to the self-evaluation of the Austrian ethnic groups organisations. The results of the recent census are only conditionally usable, as it is not the mother tongue but the colloquial language which is mentioned (Austria Report 2000: 16 f.).

<sup>122</sup> Out of these about 3.000 up to 5.000 live in Styria (cfr. also Marauhn 1993b: 226), the rest in Carinthia (see Austria Report 2000: 8). During the census in 1991, 20.191 persons, out of whom 1.697 from Styria have listed Slovenian as their colloquial language (Austria Report 2000: 15).

<sup>123</sup> Beside the about 30.000 Croats from Burgenland, there are also about 12.000 Croats with the stable domicile in Vienna (Austria Report 2000: 4). During the census in 1991, altogether 29.596 persons have declared Croatian as their colloquial language (Austria Report 2000: 15).

3.	Hungarians <sup>124</sup>	20.000 – 30.000	0,4%
4.	Czechs <sup>125</sup>	15.000 - 20.000	0,2%
5.	Roma-Sinti <sup>126</sup>	10.000 – 20.000	0,2%
6.	Slovaks <sup>127</sup>	<u>5.000 – 10.000</u>	<u>0,1%</u>
		142.000 – 172.000	2,1%
	Foreign nationals <sup>128</sup>	733.030	9,1%

## 2.12. Implementation Mechanisms

The following governmental and parliamentary bodies deal - exclusively or partially – with the minority issues.

### FEDERAL CHANCELLERY

MMag. Dr. Christa Achleitner  
 Bundeskanzleramt  
 Ballhausplatz 2  
 1014 Wien  
 Tel: +43/1/53115-2465  
 Fax: +43/1/53115-2699  
 E-mail: christa.achleitner@bka.gv.at  
<http://www.bka.gv.at/bka/volksgruppen/index.html>

**Tasks:** Co-ordination of all federal activities with regard to minority issues; matters concerning the Minorities Act and relevant implementing ordinances or regulations; assistance to the Ethnic Advisory Councils/Advisory Councils for National Minorities; promotion of ethnic groups; contact with federal states, pertinent organisations and other institutions with regard to minority issues; documentation of pertinent legal materials; participation in projects of the European Union and technical representation of the Republic of Austria in fora of the EU, the Council of Europe, the UN and the OSCE.

### ADVISORY COUNCIL FOR THE BURGENLAND CROATS ADVISORY COUNCIL FOR THE CZECH MINORITY (in Vienna) ADVISORY COUNCIL FOR THE HUNGARIAN MINORITY (in the Burgenland) ADVISORY COUNCIL FOR THE ROMA MINORITY (in the Burgenland)

<sup>124</sup> Out of these the bigger part lives in Vienna and the rest particularly in Burgenland and in Graz (Austria Report 2000: 10). The Hungarian ethnic group advisory council estimates the general number of the ‚Austrian Hungarian origins‘ even at 30.000 to 50.000 (Austria Report / Minority Council 2000: 8). During the census in 1991 altogether 19.638 persons have given Hungarian as their colloquial language (Austria Report 2000: 16).

<sup>125</sup> These live almost exclusively in Vienna. During the census in 1991, altogether 9.822 persons have given Czech as their colloquial language. See Austria Report 2000: 11 f., 16.

<sup>126</sup> OEZ 2000: 14. By emphasising the particularly difficult estimation of the number of autochthonous Roma in Austria, the State Report speaks only roughly about ‚several ten thousands‘ (Austria Report 2000: 17, 13 f.).

<sup>127</sup> Approximately two thirds of them live in Vienna. During the census in 1991 the total of 1.015 persons gave Slovak as their colloquial language. See Austria Report 2000: 12, 16.

<sup>128</sup> Data from census 2001.

**ADVISORY COUNCIL FOR THE SLOVAK MINORITY (in Vienna) ů  
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**FEDERAL MINISTRY OF EDUCATION, SCIENCE AND CULTURE  
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**Tasks:** Legal matters; co-ordination of information requests on minorities within the field of the Ministry's competence. Requests for information should to be addressed to the Human Rights Co-ordinator.

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**Tasks:** Education and other youth-related projects

**School advisory office for Migrants**

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E-mail: sbm@wif.wien.at

**Tasks:** Assistance and advice for migrants, including ethnic minorities, in school-related matters.

### 3. BELARUS, MINORITY LEGISLATION

Belarus, a former part of the Soviet Union, became independent in 1991. It consists of 6 regions (oblasts) and the capital city of Minsk with special status.<sup>129</sup> In the beginning, the newly independent state has put much emphasis on the revitalization and strengthening of the Belarus identity<sup>130</sup> and has simultaneously supported the cultural development of minorities in the country. Such approach was underlined by the independence declaration in July 1990<sup>131</sup> and by the Minority Law, adopted in 1992,<sup>132</sup> finally amended and in force since 2004.

After 1994, the Belarus authorities re-strengthened their relations with Russia. In the framework of this policy,<sup>133</sup> Russian was introduced as the second official language, in addition to Belarusian.

#### 3.1. Basic Rights

The Belarus constitution (Art.50) provides for the right to preserve and develop the ethnic belonging and forbids that anyone is forced to express such belonging.<sup>134</sup> Art.51 Const. assures everyone's right to take part in the cultural life. The Minority Law guarantees to persons being citizens of Belarus and belonging to minorities a "free development" and defines the obligation of the state to support (as well financially) the development of their "national culture". Art.6 of the Minority Law of 1992<sup>135</sup> contains the right of minorities to preserve their national traditions and customs.

The Constitution (Art.22) contains a general individual right to equality and non-discrimination and a collective right to equality for the "social, ethnic and other communities".<sup>136</sup> The Minority Law (Art.13 para.1) assures the citizens belonging to minorities the right to equal protection by the state and guarantees (Art.6) equal political, economic and social rights and freedoms to them. The Minority Law (Art.4 and 13 para.2) provides for the protection of minorities against discrimination. The Constitution contains additional provisions on equality and non-discrimination and against ethnic hatred.<sup>137</sup>

<sup>129</sup> Cf. Art.9 para.2, 3 Const. (Belarus UNESCO Report 1999: 1).

<sup>130</sup> UNDP Belarus 1996: 1.2. Shimov /Krukov 1997: 5.2.1.

<sup>131</sup> Preamble, art.2 and art.9 Declaration of Independence.

<sup>132</sup> The Law on National Minorities of the Republic of Belarus was adopted on 11.11.1992. See Shimov/Krukov 1997: 5.2.2.

<sup>133</sup> Art.1 and 3 Minority Law of 1992.

<sup>134</sup> Art.2,5,6 Minority Law as amended.

<sup>135</sup> as amended in force since 2004.

<sup>136</sup> According to art.14 Const. the relations between these communities are defined "on the basis of the principles of equality before the law and of the respect before their rights and interests".

<sup>137</sup> Art.5 Const., art.13 Minority Law. According to art.50 para.2 Const. should "offences against the ethnic dignity" be sanctioned by the law.

### 3.2. Use of Language

The right to use one's mother language in the private sphere and to choose the language for everyday communication freely is defined by the Constitution (Art.50) and – with reference to persons belonging to minorities - by the Minority Law.<sup>138</sup> In practice, the use of the Russian language prevails.<sup>139</sup> By the constitutional amendments in 1996, the Russian language became the second official language in the country and has since then gained importance, particularly as the main administrative language.<sup>140</sup>

### 3.3. Teaching of Language

The Constitution (Art.50) guarantees the freedom of choice with reference to the teaching language.<sup>141</sup> The Minority Law (Art.5) ensures citizens belonging to minorities the right to learn their native language and gives public associations of citizens, which refer themselves to national minorities the right to establish private teaching units at their own expenses.<sup>142</sup> In practice, Russian is the teaching language used most.<sup>143</sup> In a certain number of schools, the minority languages (Polish, Ukrainian, Tatar, Lithuanian or Hebrew) have the status of the teaching language or are taught as a separate subject. State educational institutions upon request organize lessons in national minority languages. Necessary funds are allocated from state and local budgets (exception – 1 Lithuanian and 2 Hebrew schools). As to Polish and Lithuanian schools,<sup>144</sup> Poland and Lithuania provide financial contributions.<sup>145</sup>

### 3.4. Right to Associations

The Constitution (Art. 36) guarantees the general right to associations whereas Minority Law 6 ensures citizens belonging to minorities the right to establish their own organizations in the form of "public associations".<sup>146</sup> The Constitution foresees the existence of political parties<sup>147</sup> and the right to establish political parties is ensured by the law.<sup>148</sup> It is not excluded to establish political parties on ethnic bases.<sup>149</sup>

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<sup>138</sup> Art.6 Minority Law (Mother language in the area of religion and „national“ ceremonies).

<sup>139</sup> More in ABM Belarussian Language 2001, IHF Belarus 1999: Ethnicity.

<sup>140</sup> IHF Belarus 1999: Ethnicity, ABM Belarussian Language 2001.

<sup>141</sup> Schools having Polish as the teaching language are also the result of the agreement on education between Belarus and Poland in 1992 (Minorities at Risk Project 2000: Chronology).

<sup>142</sup> Additional legal basis for the educational system in Belarus represent the Law on Education, 29.10.1991, and the Law on Languages, 26.01.1990 (Belarus UN Report 1996: Ziff. 48).

<sup>143</sup> Many Belarussian schools were closed. (IHF Belarus 1999: Ethnicity). Also see BelaPAN 1998, Minorities at Risk Project 1999: Chronology (Sept. 1998), ABM Belarussian Language 2001.

<sup>144</sup> In 2002/2003 academic year over 20.000 people studied Polish language.

<sup>145</sup> Belarus UN Report 1996: pt. 52, Volgmann / Tracevskis 2000: 2.

<sup>146</sup> Art.9,10 Minority Law. For more on minority organisations in Belarus, see Belarus UN Report 1996: Ziff. 10. Currently there are 122 NGOs of 24 national minorities active in Belarus, including 47 Jewish, 12 Polish and 8 Russian.

<sup>147</sup> Art.5 para.1, 2 and Art.4 para.1 Const.

<sup>148</sup> Law on Political Parties, 05.10.1994.

<sup>149</sup> See Minorities at Risk Project 2000: Chronology.

### **3.5. Right to Unimpeded Contacts**

The Constitution (Art.30) guarantees to all citizens the right to unimpeded contacts as well to freely establish cross-border contacts.<sup>150</sup> That includes the right of persons belonging to minorities to have contacts with their co-nationals. Existing visa-system limits to a certain extent the exercise of this right.<sup>151</sup> Cross-border contacts with neighbouring Poland, Latvia and Lithuania have become more complicated due to their accession to the European Union.

### **3.6. Right to Information**

The right to information and freedom of expression is guaranteed by the Constitution (Art.33 and 34). The Media Law provides the right to the freedom of the press, with some limitations as the registration procedures of media are quite complicated.<sup>152</sup> Most print media and broadcasting stations are state-owned.<sup>153</sup> The Media Law defines that the languages used in the media can be the official language as well as “other” languages. Among 900-1.000 registered media there are only one Ukrainian, twelve Polish and two newspapers that are published by the Jewish community. Moreover, the certain number of media outlets is not registered, because their circulation does not exceed the minimum level (299 copies), established by the legislation in force.

### **3.7. Right to Political Representation**

The legal system does not envisage political representation which would be particularly “tailored” for minorities.

### **3.8. Right to Autonomy**

The legal system does not envisage the right to autonomy for national minorities.

### **3.9. Right to Co-determination**

The legal system does not envisage the right to co-determination for national minorities.

### **3.10. Specific Legal Protection**

The legal system does not envisage specific protection measures for national minorities.

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<sup>150</sup> Right to free movement, free choice of residence, freedom of leaving and entering the country.

<sup>151</sup> Cf. . art.5 Act on the rules of departure or entry of citizens from or in the Republic of Belarus. More in IHF Belarus 1999: Freedom of Movement.

<sup>152</sup> Art.5 Media Law.

<sup>153</sup> More in IHF Belarus 1999: Freedom of Expression and the Media.

### 3.11. Population and Nationalities/Minorities in Belarus

Population (1999 cen) <sup>154</sup>		10.045.000	100,0 %
Belarus		8.159.074	81,2 %
Nationalities/Minorities:			
1.	Russians	1.141.731	11,4 %
2.	Polish	395.712	3,9 %
3.	Ukrainians	237.015	2,4 %
4.	Jews	27.798	0,3 %
5.	Tatars	10.089	0,1 %
6.	Roma <sup>155</sup>	9.927	0,1 %
7.	Lithuanians <sup>156</sup>	6.387	0,1 %
		1.828.659	18,3 %
Others <sup>157</sup>		52.267	0,5 %

### 3.12. Implementation Mechanisms

The following governmental and parliamentary bodies deal with minority issues:

#### **COMMITTEE ON RELIGIONS AND NATIONALITIES TO THE COUNCIL OF MINISTERS**

220029, Minsk, Kommunisticheskaya str., 11  
Phone/Fax: +35717 284 63 44

#### **STANDING COMMITTEE ON HUMAN RIGHTS, NATIONAL RELATIONS AND MASS MEDIA CHAMBER OF REPRESENTATIVES OF THE NATIONAL ASSEMBLY (PARLIAMENT)**

220010, Minsk, House of Government  
Phone: +37517 222 60 12  
Fax: +37517 222 37 05  
e-mail: pravch@house.gov.by  
<http://house.gov.by>

<sup>154</sup> Belarus embassy - Census 1999. If not stated otherwise, all following figures are from the same source.

<sup>155</sup> Other sources mention 10.000 to 15.000 (Klopčic / Polzer 1999: 3).

<sup>156</sup> Other sources mention 18.000 (Volgmann / Tracevskis 2000: 1).

<sup>157</sup> The difference between the number of total population and the total of Belarussians and persons belonging to minorities.

**MINISTRY OF JUSTICE**

220010, Minsk, Kollektornaya str., 10  
Phone: +37517 220 96 87  
Fax: +37517 220 96 83  
e-mail: [kanc@minjust.belpak.minsk.by](mailto:kanc@minjust.belpak.minsk.by)  
<http://ncpi.gov.by>

**MINISTRY OF EDUCATION**

220010, Minsk, Sovetskaya str., 9  
Phone: +37517 226 51 59  
Fax: +37517 220 84 83  
e-mail: [root@minedu.unibel.by](mailto:root@minedu.unibel.by)  
[www.minedu.unibel.by](http://www.minedu.unibel.by)

**MINISTRY OF FOREIGN AFFAIRS**

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Fax: +37517 227 45 21  
e-mail: [mail@mfabelar.org.by](mailto:mail@mfabelar.org.by)  
[www.mfa.gov.by](http://www.mfa.gov.by)

**MINISTRY OF INFORMATION**

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Fax: +37517 223 34 35  
e-mail: [compress@mail.gov.by](mailto:compress@mail.gov.by)  
<http://mininform.gov.by>

**MINISTRY OF CULTURE**

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## 4. BOSNIA AND HERZEGOVINA, MINORITY LEGISLATION

The Preamble of the Constitution of Bosnia and Herzegovina guarantees explicitly „Bosniacs, Croats and Serbs“ the status of „constituent peoples“ of the state. The “national minorities“ are protected by the provisions of the Law for the Protection of Rights of Persons Belonging to National Minorities, adopted on 18 June 2003,<sup>158</sup> which declared the Council of Europe Framework Convention to be directly implemented. The constituent role of the nations is reflected in the specific structure of the State which consists of two multiethnic entities<sup>159</sup> (although one of the two, constitutive peoples dominates in each of them) with their own Constitutions: the Federation of *Bosnia-Herzegovina*, and *Republika Srpska* (RS). The Brcko District enjoys a special status of an independent administrative and territorial unit in Bosnia and Herzegovina, established in 1999 by arbitrary decision, and functioning since 2000. The federation consists of ten autonomous *cantons and both entities have self-administration structures as well.*

### 4.1. Basic Rights

For the persons belonging to minorities, the Law for the Protection of Rights of Persons Belonging to National Minorities guarantees (in art.4 and 17) their right to identity. Art.2 Const. provides for the right to homeland (the right of refugees to return to their homes, including the property rights).

The Constitution of Bosnia and Herzegovina contains general non-discrimination provisions on equality before the law, the same provisions are included in the Constitutions of both entities. In practice, there are - due to the consequences of war – many problems in the implementation of those provisions, particularly with regard to the Roma and the areas of education, employment and media.<sup>160</sup> Nevertheless, the equality of opportunities has largely improved – also on the level of both entities - for all three nationalities.

According to the Law for the Protection of Rights of Persons Belonging to National Minorities (Art.8), regional and local authorities are obliged to provide financial means for the implementation of the minority rights. The provisions of positive discrimination in favour of refugees were adopted in order to create “political, economic and social conditions” for their return.<sup>161</sup>

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<sup>158</sup> Law for the Protection of Rights of Persons Belonging to National Minorities. Art.3 defines the national minority as a part of citizens (with B&H citizenship) which do not belong to the three constituent nationalities and share common traditions, religion, culture, history and other characteristics. The minorities are the following: Albanians, Montenegrins, Czechs., Italians, Jews, Hungarian, Macedonians, Germans, Polish, Roma, Romanians, Russians, Ruthenians, Slovaks, Slovenians, Turks and Ukrainians.

<sup>159</sup> Art 1 para.3 Constitution of Bosnia and Herzegovina..

<sup>160</sup> Helsinki Committee of Bosnia and Herzegovina 2003: 6, 7, 12.

<sup>161</sup> Art.2 para.5 Constitution of Bosnia and Herzegovina; Art.2 para.1 Annex 7 Dayton-Agr.; Art.1 para. 3 Annex 7 Dayton-Agr.

## 4.2. Use of Language

The languages of the three constituent peoples show little differences,<sup>162</sup> (the Serbian language is written both in Cyrillic and in the Latin alphabet). The right to private use of one's mother tongue is explicitly guaranteed to the persons belonging to minorities (Law for the Protection of Rights of Persons Belonging to National Minorities, Art.11 para.1).<sup>163</sup>

After the Constitutional amendments, adopted in 2002, the languages and alphabets of all three constituent nationalities have an official status in both entities. That includes the use of these when in contact with the authorities and courts as well as with regard to the topographic names, schools, media, economic life and personal names.<sup>164</sup>

(Nevertheless, in Republic Srpska, certain topographic names were changed at the end of 1992 and beginning of 1993 by adding „Srpski“ („Serbian“), usually replacing the previous “Bosanski“ („Bosnian“). However, with the Decision of the Constitutional Court of Bosnia and Herzegovina made in April 2004, these toponyms have been revoked and 13 municipalities in Republic Srpska were obliged to change the adjective “Srpski” (“Serbian”) in their names. With this decision the Constitutional Court of Bosnia and Herzegovina did not oblige these municipalities to take the names which they had before the war.

The use of the minority language in contacts with authorities and – on request – with regard to topographic names is – according to the Law for the Protection of Rights of Persons Belonging to National Minorities, Art.12 – compulsory for the local entities where a minority represents a relative or absolute majority.<sup>165</sup> Art.11 Law for the Protection of Rights of Persons Belonging to National Minorities also provides for the right to –officially – register a personal name in the minority language.

## 4.3. Teaching of Language

Generally, teaching in both entities is to be performed in the official languages. In the local bodies where minorities represent relative or absolute majority of the population, the Law for the Protection of Rights of Persons Belonging to National Minorities (Art.14) obliges them to organise the educational system in the respective minority language as well (minority literature, history, culture).<sup>166</sup>

At the beginning of 2004 the authorities of Bosnia and Herzegovina, in cooperation with the OSCE Mission to B&H, have elaborated the Action Plan on the educational need of

<sup>162</sup> The difference is more symbolic. The description „Bosnian“ emerged mainly after the war; before the war it was mostly described as the „Serbo-Croat language“.

<sup>163</sup> Art. 6 para.2 Fed. Const., Art.34 para.1 RS-Const.

<sup>164</sup> Art. 6 para.1 Fed. Const., Art.7 para.1 RS-Const. Decision of BiH Constitutional Court U 5/98-IV (2000): No. 19-34 (RS), No. 59-66 (Federation); No. 26 f.

<sup>165</sup> Art.18 of Law for the Protection of Rights of Persons Belonging to National Minorities envisages the use of language as well for public services in the financial and banking sector, social institutions such as hospitals etc.

<sup>166</sup> Art.14 para.2 Law for the Protection of Rights of Persons Belonging to National Minorities. In regard on the establishment of the private minority schools, see Art.13 Law for the Protection of Rights of Persons Belonging to National Minorities.

national minorities, with a special plan on educational needs of Roma. Educational institutions in entities and cantons of the Federation of Bosnia-Herzegovina are obliged to implement this Plan.

#### 4.4. Right to Association

The right to association is constitutionally guaranteed.<sup>167</sup> The Constitutions of both entities also provide for the right to establish political parties.<sup>168</sup> For example, at the beginning of 2003, Roma in Canton Tuzla established the Roma Democratic Party. The Law for the Protection of Rights of Persons Belonging to National Minorities (Art.5) also confirms the right to - political - „self-organisation“. The majority of the national minorities have their own organizations or some other kind of nongovernmental organizations. Some of the national minorities (for example Slovenians, Hungarians, Italians, Jews, Czechs, Ukrainians, Macedonians, etc.) have more than one organization. Particularly the Jews are very well organised whereas the Roma nongovernmental organisations, about 40 (10 of which in the Republic of Srpska), mostly exist in the Federation.<sup>169</sup>

#### 4.5. Right to Unimpeded Contacts

The individual right to unimpeded – as well as cross-border - contacts is guaranteed in general<sup>170</sup> and specially for the persons belonging to minorities (Art.6 Law for the Protection of Rights of Persons Belonging to National Minorities). In practice, obstacles in contacts between the two entities still exist. Particularly for the Serbs and Croats it is important that the entities are entitled to establish „special parallel relations with the neighbouring States“. Therefore, the official relations on the cantonal level of authorities can be established as well.<sup>171</sup>

#### 4.6. Right to Information

According to Art.15 of the Law for the Protection of Rights of Persons Belonging to National Minorities, the persons belonging to minorities have the right to establish their own media. As to the public radio and TV, Art.16 envisages special programmes in minority languages which should generally consist of at least an hour of information programme on a weekly basis. On the level of both entities and of the cantons, the extent of the minority programmes is to be regulated according to the percentage of the minority population in the total population.<sup>172</sup> However, up to now the official

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<sup>167</sup> Art.2 para. 3 Constitution of Bosnia and Herzegovina Art.2 para.2 Constitution of Bosnia and Herzegovina, Art. 30 RS-Const.

<sup>168</sup> II A Art.2 para.2 a Fed.-Const., Art.31 RS-Const.

<sup>169</sup> Helsinki Committee of Bosnia and Herzegovina 1999: 4 (Jewish Community), 6 (Roma-Associations).

<sup>170</sup> Art.2 para.3 m Constitution of Bosnia and Herzegovina and Art.2 para.2 Constitution of Bosnia and Herzegovina.

<sup>171</sup> More in Art.3 para.2 a Constitution of Bosnia and Herzegovina., Comp. Art.4 RS-C.; Art.3 Fed.Const. (cantonal co-operation).

<sup>172</sup> See Art.2 para.3 h Bosn. C. , Art.2 para.2 Bosn. C., Art.2 para.1 I Fed. C., Art.25 and 26 RS-C.

languages clearly prevail in the media, although a lot of media (particularly in the Republic of Srpska, including TV of te Republic of Srpska) started producing minority programmes about lives of persons belonging to national minorities and their nongovernmental organizations.<sup>173</sup>

#### 4.7. Right to Autonomy

The entities and the cantons dispose of autonomous constitutional and legislative competencies, except those which are explicitly defined as the competencies of the joint institutions. They can delegate certain competencies to municipalities and cities as well they are even obliged to do so in certain areas and when the local majority of the population is different from the majority on the cantonal level.<sup>174</sup> That creates the basis for a local autonomy which is favourable for the protection of minorities. For all leading legislative, executive and judicial posts in the country, the parity rule, acknowledging the constitutional status of the three nationalities, is applied. They can use their veto-right if they consider that their "vital interests" are at stake.

#### 4.8. Right to Political representation

The three constituent peoples enjoy collective political representation and co-determination rights. The 42 deputies of the first chamber of the national parliamentary assembly (House of representatives) are elected out of 2/3 of the population of the Federation and out of 1/3 of the population of the Republika of Srpska.<sup>175</sup> The second Chamber, House of the Peoples, consists of 5 Bosnians, Croats and Serbs, elected by the respective entity-parliaments.<sup>176</sup>

The laws have to be approved by both chambers. Nevertheless, their decision can be blocked by a two-third majority from one of the entities.<sup>177</sup> In addition, through their delegates in the House of Peoples, the three nationalities can by a veto right at least postpone certain decisions of the national parliament if they consider them as a threat for their vital interests. The Presidency consists of three members; each of them is elected by the population of „their” entity.<sup>178</sup> They rotate as the Presidency’s chairs<sup>179</sup> and a consensual decision-making is envisaged. Nevertheless, they can also use the right to veto. The Presidency nominates the Head of the Council of Ministers, who is then nominated by the Parliamentary Assembly. The Head of the Council of Ministers nominates the ministers; a maximum of two thirds of them may come from the Federation.

<sup>173</sup> Radio and TV broadcasts and Printmedia in Roma language does not exist. (Helsinki Committee of Bosnia and Herzegovina 2003: 7).

<sup>174</sup> Cfr. Art.2 para.2 Fed. C.

<sup>175</sup> More in Art.4 para.2 Constitution of Bosnia and Herzegovina.

<sup>176</sup> More in Art.4 para.1 Constitution of Bosnia and Herzegovina.

<sup>177</sup> Art.4 para. 3 c Constitution of Bosnia and Herzegovina., Art.4 para.3 d Constitution of Bosnia and Herzegovina.

<sup>178</sup> Art.5 S.1, Art5 para.1 a Constitution of Bosnia and Herzegovina.

<sup>179</sup> Art.5 Constitution of Bosnia and Herzegovina, see also Art5 para. b 2 b Constitution of Bosnia and Herzegovina.

As determined by the Law for the Protection of Rights of Persons Belonging to National Minorities (Art.19 and 20), the minorities in B&H should have on all levels of the legislative, executive and judicial authorities and in the public services their representation according to their share in total population.<sup>180</sup> The Law (Art.21, 22 and 23) also envisages the establishment of advisory bodies for minority issues within the national parliament and the entity-parliaments.

#### 4.9. Specific Legal Protection

The three constituent nationalities indirectly dispose – through the entities – of collective legal protection instruments.<sup>181</sup> Annex 6 of the Dayton-Agreement also defines a system of legal protection which consists of a human rights commission, ombudsman and chamber for human rights.<sup>182</sup> The non-governmental organisations and groups of victims also have the right to turn to those bodies. Nevertheless, the current stage of development of the country's legal system imposes limitations upon the actual level of legal protection.

#### 4.10. Population and Nationalities/ Minorities in Bosnia and Herzegovina

	1991 cen		2000 est	
Population <sup>183</sup>	4.362.067	100,0 %	4.060.000	100,0 %
Nationalities/national minorities:				
1. Bosniacs	1.905.829	43,7 %	1.948.800	48,0 %
2. Serbs	1.369.258	31,4 %	1.502.200	37,0 %
3. Croats	755.895	17,3 %	568.400	14,0 %
4. Montenegrins <sup>184</sup>	10.048	0,2 %	13.094	0,3 %
5. Roma <sup>185</sup>	8.864	0,2 %	6.000	0,1 %
6. Jews <sup>186</sup>	426	————	600	————

<sup>180</sup> In May 2004 the changes and amendments to the Election Law of Bosnia and Herzegovina were adopted. They regulate the terms of electing national representatives in the bodies of the local authorities.

<sup>181</sup> Art.6 para. 3 Constitution of Bosnia and Herzegovina, on the cantonal level Art.10 Fed. Const.

<sup>182</sup> Cfr. Art.2 para. 1, Art.4–6 and Art.7–12 Annex 6 Dayton-Agr.

<sup>183</sup> If not stated otherwise, all data are from the census of 1991, I.S.I.G. 1997: 91, estimations from 2000 in Worldalmanach 2004: 151. Since 1991, app. 272.000 peoples were killed as victims of „ethnic cleansing“ and 1,2 million refugees had to leave their homes. They are gradually returning.

<sup>184</sup> Census 1991 (Worldalmanach 2001: 129). This census was taken in the time of sovereignty of another state – Socialist Federal Republic of Yugoslavia – that is in the time when Montenegrins in Bosnia and Herzegovina were considered constitutional people, not national minority. In addition, in that period the term national minority was not used, but it substituted two terms: nationality and ethnic group.

<sup>185</sup> The most actual census of Roma is from 1981 (I.S.I.G. 1997: 92), the current estimation was made by the Helsinki Committee of Bosnia and Herzegovina 1999: 2.

<sup>186</sup> World Jewish Congress 1998: 2 (number after war), Gauß 2001: 20 (number before the war).

	4.050.320	92,9 %	4.039.094	99,5 %
„Jugoslavs“ <sup>187</sup>	240.000	5,5 %	-	-
Others <sup>188</sup>	71.747	1,6 %	20.906	0,5 %

#### 4. 11. Implementation Mechanisms

In Bosnia and Herzegovina and its entities, the following institutions and organs are dealing with the issues of promoting and protection of the rights of national minorities:

1. **MINISTRY FOR HUMAN RIGHTS AND REFUGEES – DEPARTMENT FOR HUMAN RIGHTS**  
address: Trg Bosne i Hrecegovine br. 1, 71000 Sarajevo  
Tel: 00-387-33-206655  
E-mail: ljufprav@mhrr.gov.ba
2. **HOUSE OF REPRESENTATIVES OF PARLIAMENTARY ASSEMBLY BiH**  
address: Trg BiH br. 1, 71000 Sarajevo  
Tel: 00387-33-284450
3. **OMBUDSMAN OF BOSNIA AND HERZEGOVINA**  
Address: Maršala Tita br. 7, 71000 Sarajevo  
Tel: 00387-33-666006, 666007  
E-mail: ombudsman@ohro.ba
4. **FEDERAL MINISTRY OF EDUCATION**  
Address: Ulica Obala Maka Dizdara br. 2, 71000 Sarajevo  
Tel: 00387-33-663-693
5. **MINISTRY OF EDUCATION AND CULTURE OF REPUBLIC SRPSKA**  
Address: Ulica Vuka Karadžica br. 4, 78000 Banja Luka  
Tel: 00387-51-331422
6. **MINISTRY OF ADMINISTRATION AND SELF-ADMINISTRATION OF REPUBLIC SRPSKA**  
address: Ulica Vuka Karadžica br. 4, 78000 Banja Luka  
tel:00-387-51-331680
7. **OMBUDSMAN OF REPUBLIC SRPSKA**  
address: Ulica Kralja Alfonsa XIII, 78000 Banja Luka  
tel:00-387-51-3313578  
e-mail: ombudsman@blic.net

<sup>187</sup> Self-description (Worldalmanach 2001: 129).

<sup>188</sup> The difference between the total population and the total of members of constituent peoples / minorities (1991: also „Jugoslavs“), among which, for example, are Albanians, Czechs, Italians, Hungarians, Macedonians, Germans, Polish, Romanians, Russians, Ruthenians, Slovaks, Slovenians, Turks and Ukrainians.

**8. OMBUDSMAN OF FEDERATION OF BOSNIA AND HERZEGOVINA**

Address: Ulica Vladimira Perica Valtera br. 15, 71000 Sarajevo

tel:00-387-33-653461

e-mail: ombudfbjh@bih.net.ba

**9. CONSTITUTIONAL COURT OF BOSNIA AND HERZEGOVINA**

address: Prvomajska bb, 71000 Sarajevo

tel:00-387-33-251210, 260560

**10. CONSTITUTIONAL COURT OF REPUBLIC SRPSKA**

address: Ulica Kralja Alfonsa XIII, 78000 Banja Luka

tel:00-387-51-324830

**11. CONSTITUTIONAL COURT OF FEDERATION OF BOSNIA  
AND HERZEGOVINA**

address: Ulica Reisa Džemaludina Cauševica br. 6, 71000 Sarajevo

tel:00-387-33-232142

## 5. CROATIA, MINORITY LEGISLATION

### 5.1. Basic Rights

In the Republic of Croatia all national minorities are recognised and they are not enumerated separately in the law. Art.5 of the Constitutional Law on the Rights of National Minorities,<sup>189</sup> adopted in December 2002, stipulates that a national minority is a group of Croatian citizens whose members traditionally reside in the Republic of Croatia and who have ethnic, linguistic, cultural and religious characteristics different from other citizens and who are dedicated to the preservation of these characteristics. The following 19 organised national minorities currently live in Croatia: Albanians, Austrians, Bosniaks, Bulgarians, Czechs, Germans, Hungarians, Italians, Jews, Macedonians, Montenegrins, Poles, Roma, Russians, Ruthenians, Serbs, Slovaks, Slovenians, Ukrainians. Their association programmes are financed by the central budget of the Republic of Croatia.

Art.14 Const. guarantees the protection of human rights and fundamental freedoms, regardless of race, colour, gender, language, religion etc. and everyone's equality before the law. In addition, Art.15 para.1 Const. contains the equality before the law of all persons belonging to national minorities and determines that equality and protection of the rights of national minorities shall be regulated by the Constitutional law. Furthermore, persons belonging to national minorities are granted the special right of representation in the Parliament (Art.15 para.3), as well as the freedom to express their nationality, the freedom to use their language and script as well as cultural autonomy. A special protection of minority rights is included in the Constitutional norm which says that laws regulating minority rights shall be passed by the Croatian Parliament by a two-thirds majority vote of all representatives.

The basic provisions contained in Art.1 Constitutional Law stipulate that the Republic of Croatia shall undertake the obligations to observe and protect the rights of national minorities and other fundamental human and civic rights and freedoms, the rule of law and all of the highest values of its constitutional and international legal system, with respect to all citizens, in accordance with the Constitution of the Republic of Croatia and international documents pertaining to human rights and minority rights to which Croatia is a signatory, including the CEI Instruments for the Protection of Minority Rights.

The Republic of Croatia, pursuant to the provisions of the Constitutional Law, ensures the exercise of the special rights and freedoms of members of national minorities which they enjoy individually or together with other persons belonging to the same national minority, such as the right to cultural autonomy (by way of preservation, development and expression of one's own culture and the preservation and protection of one's cultural assets and traditions), the right to use their own language and script, the right to self-organisation and association for the purpose of exercising mutual interest and

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<sup>189</sup> Pursuant to Article 88 of the Constitution of the Republic of Croatia, at its session held on 13 December 2002 the Croatian Parliament adopted the Decision on Proclamation of the Constitutional Law on the Rights of National Minorities.



the right to media access and the public dissemination of information in their own language.

## 5.2. Use of Language

The Constitution of the Republic of Croatia stipulates that both public and private use of minority languages is unrestricted, as is their official use in accordance with the law. This provision presumes that private use of minority languages and their public use (in the media, publishing, etc.) is not subject to any regulation or any prior approval. The Law on the Use of Languages and Scripts of National Minorities in the Republic of Croatia,<sup>190</sup> enacted in 2000, has continued and further developed previous practices in the use of minority languages in administrative and judicial proceedings.

The grounds for the introduction of a minority language with an equal official status can be found in Art.12 and 15 Const. The afore-mentioned Law elaborates the necessary conditions for the introduction of an equal official use of a minority language and how this right may be exercised.

Pursuant to the conditions stipulated by the law, members of national minorities are entitled to use their language and script in proceedings before administrative and judicial bodies of first instance and in proceedings before local and regional governmental bodies and legal entities vested with public authority if they come from the territory of a municipality or a town which has accorded the language and script of a national minority equal official status. This means that the proceedings themselves are conducted in the language of the national minority whenever the party makes such a request, and that the party receives all motions and communications in its language and script. Moreover, if the party were entitled to use its own language and script but were not informed of that right or the exercise of such right was denied, this constitutes grounds for an appeal and it is considered a severe breach of procedural rules.

Furthermore, members of national minorities coming from the territory of a municipality or town where the minority language or script has equal official status are entitled to bilingual public documents, and private documents written in the minority language are deemed valid.

In municipalities and towns where the language of a national minority is accorded equal official status, the nameplates of administrative and judicial bodies and public institutions, as well as the names of streets and squares, the names of places- and geographic sites must be bilingual.

The exercise of the right to an equal official use of the minority language is mandatory if members of the national minority comprise at least one third of the population of a municipality or town, or if they have acquired this right by previous regulations, or if the charter of a municipality or town stipulates that right or if that right is anticipated in an international treaty.

In local and regional government units where the language and script of a national minority are accorded equal official status, the work of representative and executive bodies proceeds in the Croatian language and in the language of the national minority.

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<sup>190</sup> The Law on the Use of Languages and Scripts of National Minorities in the Republic of Croatia was adopted by the Croatian Parliament on 11 May 2000.

All official notifications and decisions taken by representative and executive bodies are written in both languages.

It is worth mentioning that the Republic of Croatia ratified the European Charter for Regional or Minority Languages in 1997 (it was the fifth country to do so), enabling the Charter to come in force. By ratifying this document, the Republic of Croatia has committed itself to implement its provisions with respect to the Czech, Slovak, Serbian, Italian, Ruthenian and Ukrainian languages, already traditionally in official use in certain territories of the Republic of Croatia.

### 5.3 Teaching of Language

Members of national minorities exercise the right to education in their own language and script in accordance with the Constitution of the Republic of Croatia, the Constitutional Law on the Rights of National Minorities and the Law on Education in Languages and Scripts of National Minorities.<sup>191</sup> Members of national minorities can be instructed in their mother tongue at all levels of education, from pre-school education to higher education territorial or minority languages and non-territorial languages. The regional or minority languages of instruction are: Italian, Serbian, Hungarian, Czech, Slovak, Ruthenian and Ukrainian, while non-regional languages of instruction are German, Hebrew and Romany. Members of national minorities exercise their constitutional right to education by means of three basic models and special forms of schooling.

In Model A lessons are held in the language and script of the national minority with mandatory learning of Croatian. This educational model is available to the Italian, Serbian and Hungarian national minorities.

In Model B lessons are carried out in Croatian and in the national minority language and script: so-called bilingual instruction. This model is available to the Serbian, Hungarian, Czech, German and Austrian national minorities. Natural sciences are taught in Croatian, while social or national curriculum is covered in the national minority language.

Model C – nurturing language and culture – is a special curriculum implemented through five-hour courses per week in Croatian. The model is available to the Hungarian, Serbian, Slovak, Czech, Ruthenian and Ukrainian national minorities.

The special summer school programme is available to Ruthenian, Ukrainian, Montenegrin and Roma national minorities.

Instruction in which the minority language is taught as the language of the local community is available to the Italian national minority. The law guarantees the establishment of a school institution in the language and script of a national minority even for a smaller number of pupils than established for a schooling institution in which instruction is held in the Croatian language and script. The total number of pupils of all minorities encompassed in all forms of schooling is approximately 11,000 (not including the Roma population), of which 9,000 are participating in Model A, 800 in Model B, and approximately 1,250 in Model C. Approximately 1,570 Roma children

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<sup>191</sup> The Law on Education in Languages and Scripts of National Minorities was adopted in May 2000.

participate in the educational system from pre-school to higher education. In institutions using the language and script of national minorities, instruction is conducted by teachers from among the ranks of the national minority concerned or by teachers who have excellent command of the language and script of the national minority. Textbooks from the mother country of the national minority concerned may be used for instruction, following the approval of the relevant Ministry.

#### **5.4. Right to Associations**

The Constitution guarantees the right of national minorities to establish associations wherein they can affirm their national belonging and exercise cultural and other rights. The right to association is regulated by the separate Law on Associations<sup>192</sup> which provides a very liberal groundwork for the establishment of associations. The minimum number of members required in an association is three.

Over and above achievement of the objectives for which an association is established, the Constitutional Law on the Rights of National Minorities in the Republic of Croatia and the accompanying electoral legislation authorise national minority associations to nominate candidates for representative bodies at all levels without stipulating any specific conditions (such as gathering a certain number of signatures and so forth). In this manner, national minority associations have the same status as political parties in the nomination of candidates.

Special emphasis is also placed on the fact that national minorities can establish their own political parties under the same conditions as all other citizens of the Republic of Croatia.

#### **5.5. Right to Unimpeded Contacts**

The conclusion of bilateral treaties on mutual protection of minorities is also important to securing the rights of national minorities. In 1995, the Republic of Croatia and the Republic of Hungary signed the Agreement on Protection of the Hungarian Minority in Croatia and the Croatian Minority in Hungary. The Agreement on National Minority Rights between the Republic of Croatia and the Republic of Italy was signed in 1996. The drafting of the Agreement on Protection of the Croatian Minority in Serbia-Montenegro and the Serbian and Montenegrin Minorities in the Republic of Croatia is in its final phase. The Republic of Croatia undertakes all measures to encourage trans-border cooperation between national minorities and their mother countries.

#### **5.6. Right to Information**

Pursuant to the afore-mentioned Constitutional Law, the Republic of Croatia secures access to all media and the receiving and dissemination of information in the national minority. In the interests of securing the right of national minorities to a press and radio and television broadcasting in the scripts and languages of national minorities, their national minority councils and national minority representatives and their associations

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<sup>192</sup> The Law on Associations was enacted by the Croatian Parliament on 28 September 2001.

may engage in the public dissemination of information (publish newspapers, produce and broadcast radio and television programmes and perform news agency activities) in accordance with the law.

Central budgetary funds have been secured for registered national minority associations operating in the Republic of Croatia to regularly publish newspapers and books in national minority languages and scripts<sup>193</sup>.

The Croatian Television News Department has its National Minority Editorial Board which edits and prepares a one-hour variety show for national minorities which is aired every Saturday. Croatian Radio broadcasts a weekly sixty-minute programme dealing with national minority issues and a monthly one-hour variety programme called "Agora."

The Rijeka and Pula radio stations have Italian departments which broadcast news programmes and programmes dealing with the culture, traditions and customs of the Istrian Italians. The Osijek radio station features regular daily broadcasts for the Hungarian and Slovak minorities and a weekly broadcast for the German national minority. Cakovec Television has begun broadcasting a programme for the Roma national minority in the Bayash language. Radio Daruvar broadcasts programmes in the Czech and Serbian languages, and Radio Danube broadcasts programmes in the Serbian language. Croatian Television is preparing programmes in the languages of national minorities and training national minority journalists.

### 5.7. Right to Political Representation

The Constitution of the Republic of Croatia guarantees national minorities the right to political representation at all levels of state administration. The Constitutional Law on the Rights of National Minorities in the Republic of Croatia and the accompanying electoral legislation guarantee the representation of national minorities in the Croatian Parliament. National minorities elect their representatives in a separate electoral unit which encompasses the entire territory of the Republic of Croatia. Eight parliamentary deputies are elected in the following manner: 3 deputies by the Serbian national minority, 1 deputy each by the Italian and Hungarian minorities, while the remaining 19 national minorities, divided into groups, elect 3 more deputies.

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<sup>193</sup> The Italians publish the daily newspaper *La voce del popolo*, the bi-weekly *Panorama*, the children's paper *Arcobaleno* and the literary review *La batana*. The Czechs publish the weekly *Jednota*, the children's paper *Detski koutek* and the annual *Prehled*. The Slovaks publish the monthly *Pramen*. The Hungarian minority has two weeklies, *Uj Magyar Kepes Ujsag* and *Magyar Naplo*, the monthly *Horvatorszagi Magyarsag*, the children's paper *Barkoca* and the annual *Rovatkak*. The Ruthenians have the quarterly *Nova dumka*, while the Ukrainians have the monthly *Naša gazeta*. The Serbian national minority has the weekly *Novosti*, the monthly *Identitet*, the bi-monthly *Prosvjeta* and the children's paper *Bijela pcela*. The Germans publish the bilingual newspaper *Deutsches Wort*. The Jewish national minority publishes two bi-monthlies, *Ha kol* and *Novi omanut*, and the annual *Voice*. The Slovenians publish the monthly *Planika* and *Novi odmev* three times annually. The Albanians publish the monthly *Informatore*, while the Bosniaks publish *Preporodov journal*, the bi-monthly *Behar*, the quarterly *Bošnjacka pismohrana* and the children's paper *Jasmin*. The Roma national minority has the bi-monthly children's paper *Mladi za mlade* and two quarterlies: *Romengo cacipe* and *Anglunipe-Buducnost*. The Montenegrins publish the bi-monthly *Crnogorski glasnik*, while the Macedonians publish the quarterly *Makedonski glas*.

At local and regional levels, representation has been secured for national minorities in the representative bodies of local and regional units in proportion to the share of national minorities in the population of said units. If the corresponding representation of national minorities is not secured in regular elections, by-elections are held to elect that number of members of a representative body which must be elected to insure the appropriate representation, and the total number of members in a given representative body is increased by that amount.

In those local and regional units in which the right to representation in representative bodies is exercised, national minorities are also entitled to the corresponding representation in the executive bodies of local and regional units. They are also entitled to corresponding representation in administrative and judicial bodies.

### **5.8. Right to Autonomy**

The Constitutional Law on the Rights of National Minorities in the Republic of Croatia guarantees national minorities the right to cultural autonomy, by way of preserving, developing and expressing their own culture, and preserving and protecting their cultural assets and traditions. Croatia's central budget finances 63 associations and institutions of the country's 19 organised national minorities. National minorities nurture various cultural activities through their cultural associations.

The Italian Union is the central association of the Italian national minority, which unites 45 Italian communities. The Czechs implement their cultural programmes through 24 Czech associations known as *beseda*. Slovaks implement their cultural programmes through 4 cultural societies and 8 Slovak associations known as *matice*. For the Hungarian national minority, amateur cultural programmes are carried out by two associations that encompass the operations of 22 cultural societies and 6 county organisations. The Ruthenians and Ukrainians have 11 cultural societies. Within the Serbian national minority, there is a central association that unifies the operations of 43 sub-committees.

The Germans and Austrians are organised into three associations, while the Jewish minority has one central association. The Slovenians nurture their cultural identity through four associations, while the Albanians have six county associations. The Bosniak minority has two cultural associations, while the Macedonian minority has one central association. Montenegrins implement their cultural programmes through two associations, while the Roma have two umbrella organisations and 8 independent associations. The Russians, Bulgarians and Poles implement cultural programmes through their central associations. In the interests of encouraging the cultural creativity of national minorities and the affirmation of minority culture, each year a joint cultural event is organised, which is important to all national minorities, as it validates minority creativity and encourages intercultural cooperation and tolerance in Croatian society.

### **5.9. Right to Co-determination**

The basic novelty introduced by the Constitutional Law on the Rights of National Minorities is the participation of national minorities in decision-making processes

through councils of national minorities and representatives of national minorities. In the course of implementation of the law, the Amendments to the Law on Election of Members to Representative Bodies of Local and Regional Self-government Units were enacted. These govern the methods for election to the councils. The first elections for councils of national minorities were held on 18 May 2003, while repeated elections and by-elections were held on 15 February 2004. In the first elections, 207 councils of national minorities were elected, while 115 were elected in the repeated elections. The elected councils are currently being constituted.

The national minority councils so formed have the status of legal entities and, together with national minority representatives, have the right and obligation to propose measures to self-government bodies to improve the status of national minorities in the country or in a given region, nominate candidates for duties in administrative bodies and submit opinions and proposals for radio and television broadcasts intended for national minorities.

At the state level, the Constitutional Law instituted the Council for National Minorities, which was established to secure the participation of minorities in Croatia's public life, particularly to consider and propose the regulation and resolution of issues pertaining to the exercise and protection of the rights and freedoms of national minorities. The members of the Council are appointed by the Government for a period of four years, as follows: seven from among the ranks of persons proposed by the national minority councils, and five from among the ranks of prominent public personalities proposed by minority associations, citizens, religious communities and legal persons. National minority representatives sitting in the Croatian Parliament are also members of the Council.

### **5.10. Ombudsman**

In the Republic of Croatia there is the institution of the ombudsman, with general jurisdiction in the area of human rights and protection of national minorities. The authority of the ombudsman is specified by the Constitution, the Law on the Ombudsman<sup>194</sup> and the Procedural Rules governing the work of the ombudsman. Under the provision of Article 93 of the Constitution, based on the model that exists in Nordic countries, the institution of the ombudsman was established to promote and protect human rights and fundamental human and civic liberties. Under the Constitution, the ombudsman is designated as the authorised proxy of the Croatian Parliament, who protects the constitutional and legal rights of citizens before state bodies and bodies vested with legal authority.

The Constitution stipulates that the ombudsman is elected by the Croatian Parliament for a period of eight years. Pursuant to the Law, the ombudsman considers individual cases of the rights of citizens being endangered by bodies of state authority and bodies vested with public authority or officials in these bodies during the execution of the tasks entrusted to them. Yet, the ombudsman has to be available for all citizens, not exclusively for the persons belonging to national minorities.

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<sup>194</sup> The Law on the Ombudsman was enacted by the Croatian Parliament on 25 September 1992.

### 5.11. Population and Minorities in Croatia

Total population (census 2001) <sup>195</sup>		4.437.460	100.0 %
Croats		3.977.171	89.6 %
National Minorities		331.383	7.5 %
1.	Albanians	15.082	0.3 %
2.	Austrians	247	
3.	Bosniaks	20.755	0.5 %
4.	Bulgarians	331	
5.	Montenegrins	4.926	0.1 %
6.	Czechs	10.510	0.2 %
7.	Hungarians	16.595	0.4 %
8.	Macedonians	4.270	0.1 %
9.	Germans	2.902	0.1 %
10.	Polish	567	
11.	Roma	9.463	0.2 %
12.	Romanians	475	
13.	Russians	906	
14.	Ruthenians	2.337	0.1 %
15.	Slovaks	4.712	0.1 %
16.	Slovenians	13.173	0.3 %
17.	Serbs	201.631	4.5 %
18.	Italians	19.636	0.4 %
19.	Turks	300	
20.	Ukrainians	1.977	
21.	Vlachs	12	
22.	Jews	576	
Others <sup>196</sup>		21.801	0.5 %
Have not declared their national affiliation <sup>197</sup>		89.130	2.0 %
Unknown		17.975	0.4 %

<sup>195</sup> Croatian Census 2001.

<sup>196</sup> inclusive 19.677 (0.4%) persons who declared that their nationality was Muslim.

<sup>197</sup> inclusive 9.302 (0.2%) persons with regional affiliations.

## 5. 12. Implementation Mechanisms

The following governmental and parliamentary bodies deal – exclusively or partially - with the minority issues:

### **MINISTRY FOR FOREIGN AFFAIRS**

Trg Nikole Šubica Zrinskog 7-8, Zagreb

Tel: (+ 385-1) 4569-964

Fax: 4551-795, 4920-149

E.mail: mvp@hr

### **MINISTRY FOR JUSTICE**

Ulica Republike Austrije 14, Zagreb

Tel: (+ 385-1) 3710-666

Fax: 3710-612, 3710-602

E.mail: dalanovic@pravosudje.hr

### **CROATIAN PARLIAMENT**

#### **Committee for human and minority rights**

Trg. Svetog Marka br. 6, Zagreb

Tel: (+ 385-1) 4569-416

Fax: 4569-628

E.mail: radinf@sabor.hr

### **GOVERNMENT OF THE REPUBLIC OF CROATIA**

#### **Office for human rights**

Trg M. Tita 8, Zagreb

tel: (+ 385-1) 4877-660

fax: 4813-430

E.mail:

ured@ljudskaprava-vlada.hr

### **GOVERNMENT OF THE REPUBLIC OF CROATIA**

#### **Office for National Minorities**

Mesnicka 23, Zagreb

Tel: (+ 385-1) 4569-358

Fax: 4569-324

E.mail: nacionalne.manjine@vlada.hr

### **NATIONAL OMBUDSMAN**

Opaticka 4, 41000 Zagreb,

Tel: (+ 385-1) 4851-853

ombudsman@hinet.hr



## 6. CZECH REPUBLIC, MINORITY LEGISLATION

The Czech Republic, established in 1993 after the break up of Czechoslovakia (CSSR), is – pursuant to Art.1 of its constitution – a democratic state based upon the rule of law. The Charter of Fundamental Rights and Freedoms from 1991 (hereinafter referred to only as “Charter of Fundamental Rights”), which is a part of the constitutional order, provides in Art.25 for the rights of citizens who “form a national or ethnic minority”. The Act on Minorities necessary for the implementation of Art.25 was enacted as recently as 2001<sup>198</sup> and its §2 para.1 defines a “national minority”<sup>199</sup> as a community of citizens who live on the territory of the Czech Republic and

- usually differ from the other citizens by their shared ethnic origin, language, culture and traditions;
- represent a minority and at the same time express their will to be considered a national minority for the purpose of their joint efforts aimed at preserving and developing their own identity, language and culture, as well as expressing and preserving the interests of their community that developed over time.<sup>200</sup>

Even before the Act on Minorities came into force, Slovaks, Roma, Poles, Germans, Hungarians and Ukrainians (hereinafter referred to as “the main minorities”) were already fully recognised as minorities in their own right. To a certain extent, smaller communities, e.g. Bulgarians, Ruthenians (as long as they did not see themselves as part of the Ukrainian minority), Russians, Jews, Croats and Greeks<sup>201</sup>, are also seen as minorities.<sup>202</sup> Slovaks, who ceased to be a “nation” and have become a minority through the break up of Czechoslovakia, are strongly “integrated”, as far as the language and culture are concerned, and the Czech Republic in general is (unlike former Czechoslovakia) relatively homogenous, with the minorities accounting for only 3.1% of its population.<sup>203</sup>

### 6.1. Basic Rights

The right of members of individual minorities to comprehensive development (with emphasis on cultural development) and thereby the right to national identity is anchored in Art.25 para.1 of the Charter of Fundamental Rights.<sup>204</sup> § 12 para.1 of the Act on Minorities specifically guarantees minorities the right to preservation and

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<sup>198</sup> The Act on Minorities of July 10, 2001 (Czech Report 1999: Section I, No. 3, 8).

<sup>199</sup> After WW2, minorities tended to be classified as “ethnic”, as this adjective was preferable to the (politically more sensitive) term “national” for some time. For more details see Czech Report 1999: Section I, No. 6-8.

<sup>200</sup> § 2 para.2 of the Act on Minorities also defines an individual “member of a national minority”.

<sup>201</sup> Including ethnic Macedonians (Czech Report 1999: Art. 3).

<sup>202</sup> Persons who are not citizens of the Czech Republic (e.g. Slovaks, Ukrainians) and are permanent or long-term residents may also participate in the activities of the minorities’ organisations, schools and media (Czech Report 1999: Art.3). – Alongside ethnic identity, regional identity has come to life once again (“Moravians”, “Silesians”) (Czech Report 1999: Section I, No. 8).

<sup>203</sup> This is due to the small size, fragmented settlement and assimilation of most minorities. For more details see Czech Report 1999: Section I, No. 1, 6, 11 – 15.

<sup>204</sup> Czech Report 1999: Art.5 para.1.

development of and respect for their language, culture and traditions. Art.3 para.2 of the Charter of Fundamental Rights also contains the right to freely decide about one's national identity.<sup>205</sup> Corresponding provisions on the protection of personal data are contained in § 4 para.2 of the Act on Minorities.<sup>206</sup>

Art.1 of the Charter of Fundamental Rights guarantees everyone's equality before the law.<sup>207</sup> Furthermore, pursuant to Art.3 para.1 of the Charter of Fundamental Rights any discrimination whatsoever (including that based on an individual's belonging to a national or ethnic minority or that based on features such as race, colour, language or ethnic origin) is forbidden.

In practice, the ongoing discrimination against the Roma constitutes a significant problem, which is closely linked to the rapid escalation of violent acts against foreigners committed since 1989.<sup>208</sup> In 1995 these problems led to the introduction of stronger sentences for race- or nationality-motivated offences.<sup>209</sup> A 1998 amendment of the Act on State Citizenship removed the obstacles that previously unduly complicated the acquisition of the Czech citizenship by former Czechoslovak citizens, in particular the Roma.<sup>210</sup>

Furthermore, various taskforces were set up to provide the government with expert advice concerning the issues of human rights and minorities and there is also an *Inter-Ministerial Committee for Romany Affairs*.<sup>211</sup> With the help of these consultative bodies the government has adopted a range of measures aimed at combating racism and xenophobia, as well as improving the general situation of the Roma.<sup>212</sup> However, existing country reports suggest that there is still a significant need for preventive, e.g. social, measures designed to prevent acts of discrimination and xenophobia, which are sometimes also directed against Germans.<sup>213</sup>

Another discrimination problem results from the Czech Republic's insistence on decrees issued by the Czechoslovak President Eduard Beneš back in 1945/46, governing the collective deprivation of citizens of German and Hungarian origin of all rights and property and defining them – among other things – as “untrustworthy individuals”. Even nowadays this leads to direct and indirect discrimination against these minorities by the Czech state.<sup>214</sup>

<sup>205</sup> Pursuant to Art.24 of the Charter of Fundamental Rights (hereinafter referred to as “CFR”) and § 4 para.1 of the Act on Minorities, individuals may not be put at any disadvantage for reasons of their identity/nationality.

<sup>206</sup> Detailed research into and surveys of individual minorities are not possible (Czech Report 1999: Art.3).

<sup>207</sup> For more details see Czech Report 1999: Section I, No. 16.7, 16.8 and Czech Helsinki Committee 1999: 8.6 f.

<sup>208</sup> Cf. Czech Report 1999: 16.8 – 16.11 and Art.6 para.2).

<sup>209</sup> In reality such acts often altogether fail to be punished or are punished too mildly. This is why the government has come up with an initiative aimed at special monitoring of the investigation of such crimes (Czech Report 1999: 16.8 – 16.11 and Art. 6 para. 2).

<sup>210</sup> Czech Report 1999: Section I, No. 16.6, Czech Helsinki Committee 1999: 4.

<sup>211</sup> For more details see Czech Report 1999: Section I, No. 16.2, 16.3: Art.4 and Art.15.

<sup>212</sup> For more details see Czech Report 1999: Section I, No. 16.15, 16.17, Art.6 Art.12 para.1 and 2.

<sup>213</sup> Czech Report 1999: Section I, No. 16.16, also Czech Helsinki Committee 1999: 8 f., 10 – the country report mentions a “traditionally anti-German attitude”. More information about the problem of minority stereotypes (in particular the representation of Germans, Jews and Roma) in school textbooks can be found in Czech Report 1999: Art.12 para.1 Section I No. 16.12, 16.16.

<sup>214</sup> More information about this can be found in Pan / Pfeil 2002, also Cf. Czech Report 1999: Art. 4.

§ 12 para.2 and § 13 para.2 of the Act on Minorities are devoted to the improvement of the cultural attitude to equality of opportunities. In § 12 para.2 the state undertakes to create conditions that will allow for the preservation and further development of the culture, traditions and languages of individual minorities that have “traditionally and for a long time” lived on the territory of the Czech Republic, even where this requires funds from the state budget. § 13 para.2 contains a corresponding provision on support for the media using a minority language.

In practice, financial support is channelled in particular into cultural and educational projects and initiatives, e.g. magazines published in minority languages.<sup>215</sup> As far as such magazines are concerned, since 1993 the state has been providing financial assistance exclusively to the six “main minorities”. On the other hand, support for cultural projects has also been provided to the Croatian, Greek, Ruthenian and other minorities. In the context of efforts aimed at reinforcing the equality of economic and social opportunities, especially those of the Roma minority, the anti-discrimination measures mentioned above have been accompanied by a range of initiatives in the areas of education and employment,<sup>216</sup> which have, however, hardly been successful as yet.<sup>217</sup>

## 6.2. Use of Language

The right to free use of one’s mother tongue in the private sphere indirectly follows from the Czech Republic’s constitution, based on the principles of freedom and the rule of law.<sup>218</sup>

The Czech legal system does not contain any general regulation concerning the country’s official language(s). However, the language normally used in official communication is Czech and certain laws also prescribe its use in specific areas and for specific purposes (e.g. as the language of defence counsels in court, registrars and the legal system in general).<sup>219</sup> However, for the members of minorities Art.25, para.2, of the Charter of Fundamental Rights foresees the right to use their mother tongue in official communication.

This right is further specified in § 9 of the Act on Minorities, which stipulates that members of minorities that “have traditionally and for a long time” lived on the Czech territory may use their language in official documents as well as in court. § 9 also contains a reference to special regulations, which however (with a few insignificant exceptions<sup>220</sup>) do not provide for the possibility of minority languages being used in official communication. In practice, the language that is used in official communication without hardly any restrictions is Slovak, of which most Czechs still have at least a passive knowledge.<sup>221</sup>

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<sup>215</sup> For more information on this see Czech Report 1999: Section I, No. 16.7, Art.5 para.1, Art. 9 para 3.

<sup>216</sup> For more information on this see Czech Report 1999: Section I, No. 16.7, Art.12 para.3, cf. Art.5 para.2.

<sup>217</sup> For more information on this see Czech Helsinki Committee 1999: 11, 8, 9 f.

<sup>218</sup> Besides, there is no legislation that would actually prescribe any language to be obligatorily used (Czech Report 1999: Art.10 para.1).

<sup>219</sup> Czech Report 1999: Art.10 para.1.

<sup>220</sup> Concerning documentation for accounting and tax purposes as well as documentation concerning state lotteries (Pospíšil 2002).

<sup>221</sup> Czech Report 1999: Art.10 para.1 and 2.

As far as court proceedings are concerned, the Charter of Fundamental Rights only provides language-related rights for those who do not speak the official language used during the proceedings.<sup>222</sup> On the other hand, the relevant special legislation (referred to in § 9) explicitly provides everyone with the right to use their mother tongue in court proceedings,<sup>223</sup> although usually through an interpreter, whereby the cost of such interpretation is taken over by the state only in cases defined by law and otherwise has to be borne by the user himself/herself.<sup>224</sup> As far as the Constitutional Court is concerned, the relevant legislation allows for the parties' mother tongue (other than Czech) to be used only in oral communication. Where a party's mother tongue is Slovak, the parties may decide to use the services of an interpreter.<sup>225</sup> Since the Registration Act was changed in 2000, members of minorities no longer need to adjust their names to satisfy the rules of Czech grammar.

Therefore, female members of minorities may - upon request and for a fee - shed the "-ova" or "-a" suffix that is indicative of female surnames in Czech.<sup>226</sup> In general, § 7 of the new Act on Minorities provides the members of minorities with the right to use names in a form that reflects the grammar rules of their mother tongue rather than the Czech language.

As for local names, Czech legislation did not provide for them to be written in minority languages for a long time (nor did many names actually exist in the relevant minority language).<sup>227</sup> This was criticised in particular by the Polish minority, which constitutes a relatively compact settlement in the districts of Frýdek-Místek and Karviná.<sup>228</sup> Pursuant to § 8 para.1 of the new Act on Minorities, minorities that have lived on Czech territory traditionally and for a long time have recently obtained the right to signposting of municipalities, parts of towns, streets, public areas, official buildings and election rooms in their minority language. Pursuant to § 8 para.2 the details are to be specified by a special regulation and the relevant special regulation (The Municipality Act) stipulates that the aforesaid right shall be enforced only in municipalities where the minority represents at least 10% of the total population and where a petition for signposting in the minority language is signed at least by 40% of the local members of the relevant minority.<sup>229</sup>

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<sup>222</sup> Insofar a person declares his/her lack of knowledge of the language in which the proceedings are conducted, he/she is entitled to an interpreter, as provided for in Art.37 para.4 of the Charter of Fundamental Rights.

<sup>223</sup> § 2 of the Rules of Criminal Procedure, § 18 of the Rules of Civil Procedure, § 7 of the Act on Courts and Judges (Pospíšil 2002).

<sup>224</sup> Cf. § 7 of the Act on Courts and Judges (Pospíšil 2002, cf. also Czech Report 1999: Art.10 para.3).

<sup>225</sup> Cf. § 33 of the Act on Constitutional Court (Pospíšil 2002).

<sup>226</sup> Act No. 301/2000 (Pospíšil 2002), previously: Registration Act No. 268/1949 (Czech Report 1999: Art.11 para 1).

<sup>227</sup> See Czech Report 1999: Art.11 para. 3.

<sup>228</sup> Cf. Czech Report 1999: Art.11 para. 3.

<sup>229</sup> Municipality Act No. 128/2000, amended by Act. No. 273/2001 (Pospíšil 2002).

### 6.3. Teaching of Language

Art.25 para.2a, of the Charter of Fundamental Rights guarantees the members of minorities with the right to education in their mother tongue, on terms and conditions specified by law. Pursuant to § 11 para.1 of the Act on Minorities this right concerns elementary and pre-school education of the members of minorities that have “traditionally and for a long time” lived on Czech territory and is further specified in special regulations.<sup>230</sup>

In practice<sup>231</sup>, the only minority to have a well developed system of public schools teaching in its minority language are the Poles living in the districts of Karviná and Frýdek – Místek. As for German schools, notwithstanding the promotion of bilingual education there is currently only one state-funded (but private) secondary school of the “*gymnasium*” type with German instruction, located in Prague. Apart from German pupils, this secondary school is also open to students of other nationalities. Many Czech elementary schools also offer their pupils optional courses in the German language. Slovaks only have one public elementary school in Karviná and a plan to open a secondary school with Slovak instruction in 1997/98, which has been stalled due to lack of applications.

### 6.4. Right of Association

The freedom of association for members of minorities is specifically anchored in Art.25 para.1 of the Charter of Fundamental Rights<sup>232</sup> and in § 5 of the Act on Minorities, together with the right to establish political parties, within the limits defined by law.<sup>233</sup> In practice, there is a relatively wide range of various minority organisations, whereas political parties have been founded in particular by Poles and the Roma.<sup>234</sup>

### 6.5. Right to Unimpeded Contacts

The right to contacts, including cross-border contacts, is generally provided for in Art.14 of the Charter of Fundamental Rights<sup>235</sup> and minorities also use the relevant provisions.<sup>236</sup> For the sake of the cultural interests of the Polish minority settled close to the border in particular, the Czech Republic also has a treaty with Poland on cross-border cooperation.<sup>237</sup>

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<sup>230</sup> For information about the right to establish private schools see § 11 para.2 of the Act on Minorities and Art.33 para.3, of the Charter of Fundamental Rights.

<sup>231</sup> For more information on minority schools see Czech Report 1999: Art.13 and 14.

<sup>232</sup> Czech Report 1999: Art.5 para.1.

<sup>233</sup> For more information on freedom of assembly, association and establishment of political parties see Art.19, 20 of the Charter of Fundamental Rights.

<sup>234</sup> For more information on this see Czech Report 1999: Art.7, Art.17 para.2.

<sup>235</sup> Cf. Art.14 para.1 (free movement, freedom of establishment), para.2 (right to leave the country) and para.4 (right to enter the country), of the Charter of Fundamental Rights. These freedoms apply to all Czech citizens.

<sup>236</sup> For more details see Czech Report 1999: Art.17.

<sup>237</sup> Cf. government resolution No. 84/1994. For more information see Czech Report 1999: Art.18 para.2.

## 6.6. Right to Information

The right to disseminate and receive information in the mother tongue is guaranteed to members of minorities by Art.25 para.1 of the Charter of Fundamental Rights and § 13 para.1 of the Act on Minorities.<sup>238</sup> As far as the radio is concerned, § 13 para.3 of the Act on Minorities leaves the regulation to special legislation, which however does not prescribe broadcasts in any of the minority languages, only insisting on "balanced programming".<sup>239</sup> The six "main minorities" have between one and six minority-language magazines each, whereby these magazines receive financial support from the state.<sup>240</sup> The broadcasting services offer no minority-language programmes (with the exception of occasional radio broadcasts and films in Slovak), but only programmes for minorities broadcast in Czech.<sup>241</sup> The TV has established an independent department for the preparation of Roma-targeted programmes, while the radio has four such departments, responsible for regular broadcasts of programmes for the Hungarian, Ukrainian, Croatian and Jewish minorities.<sup>242</sup>

## 6.7. Right to Political Representation

The Czech Republic does not give its minorities as such any rights to political representation.<sup>243</sup> In practice, the five existing Roma political parties have not achieved any representation at any level, whereas the Polish *Coexistencia* movement has achieved some representation at municipal level.<sup>244</sup>

## 6.8. Right to Autonomy

The Czech legal system does not provide for the rights of minorities to autonomy.

## 6.9. Right to Co-determination

Pursuant to Art.25, para.2c of the Charter of Fundamental Rights, members of minorities have the right to participate in decision-making processes regarding their affairs, within the limits specified by law. Pursuant to § 6 para.1 of the Act on

<sup>238</sup> Czech Report 1999: Art.5 para.1. Cf. Art 17 of the Charter of Fundamental Rights (freedom of information in general, ban on censorship).

<sup>239</sup> The balance shall be established also in view of the national and ethnic origin of individuals featuring in the broadcasts and with a view to balanced representation of minorities. Cf. Acts No. 483/1991 and 484/1991 (TV/Radio) (Pospíšil 2002).

<sup>240</sup> Cf. Acts No. 86/1990 and No. 37/1995. The Slovak and the Roma minorities have three magazines each, the Polish minority has as many as six magazines in Polish, Germans have two and Hungarians and Ukrainians have one magazine each. The aforesaid magazines are published at various intervals (Czech Report 1999: Art. 9, para 2,3).

<sup>241</sup> Czech Report 1999: Art.10 para.1.

<sup>242</sup> For more information see Czech Report 1999: Art.9 para.2. The only existing Roma-TV-programme has been criticised by the Czech Helsinki Committee (1999:9) for being broadcast too seldom and outside the main viewing times.

<sup>243</sup> Czech Report 1999: Art.15.

<sup>244</sup> In the Karviná and Frýdek – Místek districts. For more information on this see Czech Report 1999: Art.7.

Minorities, minorities have the right to participate in public affairs (in particular those that concern them) and in cultural, social and economic life at all levels.

In practice, the “main minorities” have certain codetermination rights that they can wield through two advisory bodies to the government, the *Council for National Minorities of the Government of the Czech Republic* (in short: Minorities’ Council) and the *Intra-Ministerial Committee for Roma Affairs*. The Roma Committee consists of 12 representatives of the Roma minority on the one hand and deputy ministers of individual ministries on the other hand.<sup>245</sup> From the legislative point of view, the existence of the Minorities’ Council goes back to § 6 para.2 – 6 of the Act on Minorities.<sup>246</sup> Pursuant to § 6 para.4 the Minorities’ Council consists of the representatives of the relevant authorities and at least a half of its members must be the representatives of minority associations, nominated by such associations.<sup>247</sup> The remit and individual tasks of the Minorities’ Council follow from § 6 para.5.<sup>248</sup>

### 6.10. Minority-Specific Legal Protection

In the Czech Republic there are no minority-specific means of legal protection. However, the Petition Committee of the Chamber of Deputies of the Czech Republic has established a sub-committee for national minorities and another sub-committee for the application of the Charter of Fundamental Rights.<sup>249</sup>

### 6.11. Population, Ethnic Groups and Minorities in the Czech Republic

Population (Z 2001) <sup>250</sup>		10,292,933	100.0%
Czechs:		9,655,157	93.8%
Regional distribution:			
1.	Czechs (Bohemia)	9,655,157	90.1%
2.	Moravians	373,294	3.6%
3.	Silesians	11,248	0.1%
Minorities:			
1.	Slovaks	183,749	1.8%
2.	Poles	50,971	0.5%
3.	Germans (incl. Austrians)	38,321	0.4%

<sup>245</sup> For more details concerning the tasks of the Roma Committee (relevant regulations: government resolutions No. 640/1997, 580/1998) see Czech Report 1999: Art.15.

<sup>246</sup> The existence of the Minorities’ Council was first based only on government resolutions (Czech Report 1999:Art.15).

<sup>247</sup> The details of this procedure remain to be worked out and approved by the government (§ 6 para.6 of the Act on Minorities).

<sup>248</sup> Cf. also see Czech Report 1999: Art.15.

<sup>249</sup> Resolution No. 18 of the Petition Committee of October 1, 1998 (Czech Report 1999: Art.15).

<sup>250</sup> Czech Statistical Office 2002. Unless stipulated otherwise, the figures have been provided by the Czech Statistical Office.

4.	Hungarians <sup>251</sup>	19,932	0.2%
5.	Roma <sup>252</sup>	11,716	0.1%
6.	Ukrainians / Ruthenians <sup>253</sup>	10,146	0.1%
7.	Russians <sup>254</sup>	5,062	
8.	Greeks <sup>255</sup>	3,379	_____
		323,276	3.1%
	others <sup>256</sup>	314,500	3.1%

## 6.12. Implementation Mechanisms

The following governmental and parliamentary bodies deal – exclusively or partially - with the minority issues:

### OFFICE OF THE CZECH REPUBLIC GOVERNMENT

#### Council of the Government for National Minorities

Details (Charter, members, contacts) see [www.vlada.cz](http://www.vlada.cz)

#### Council of the Government for Roma community affairs

Vladislavova 4, 110 01 Praha 1

Phone: 420 296 153 511

[www.vlada.cz](http://www.vlada.cz)

**Tasks:** The Council is a permanent and initiative body of the government for specific issues concerning Roma community. It aims to facilitate the integration of Roma community into the society. It monitors the situation and issues related to the Roma community, evaluates the performance of government decisions, ensures the preparation of governmental measures concerning Roma community, expresses its opinion with respect to bills, proposals of governmental directives and measures concerning Roma community, proposes the allocation of financial resources of programmes focused on the integration of the Roma community, analyses and evaluates information on Roma community development, once a year at least it elaborates an exhaustive report on Roma community etc.

### MINISTRIES INVOLVED IN THE PROTECTION OF MINORITIES:

#### MINISTRY OF CULTURE

<sup>251</sup> 1991 census, Czech Report 1999: Section I, sec 10.

<sup>252</sup> Other sources estimate the size of the Roma minority at 150,000 – 300,000 persons (Klopčic / Polzer 1999: 3) or at 200,000 persons (Czech Report 1999: Section I, sec. 8).

<sup>253</sup> More specifically 8,220 Ukrainians and 1,926 Ruthenians (1991 census, Czech Report 1999: Section I, sec 10).

<sup>254</sup> 1991 census, Czech Report 1999: Section I, sec 10.

<sup>255</sup> Czech Report 1999: Section I, sec 10.

<sup>256</sup> The difference between the total population and the total of Czechs and an members of national minorities.



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## 7. HUNGARY, MINORITY LEGISLATION

### 7.1. Basic Rights

In Hungary 13 minorities are recognised: Armenians, Bulgarians, Germans, Greeks, Croats, Poles, Roma (Gypsies), Romanians, Ruthenians, Serbs, Slovaks, Slovenians and Ukrainians.<sup>257</sup> The Constitution<sup>258</sup> stipulates that the minorities share the people's power and are a constituent part of the state.<sup>259</sup> According to Art.70/A para.1 Const., the human rights and fundamental freedoms are everybody's rights, without discrimination on the basis of race, language, religion, national or social origins. The law shall provide for strict punishment of discrimination (art.70/A para.2 Const.), whereas everyone's equality before the law is guaranteed in Art.57 para.1 Const. Furthermore, minorities have the constitutional right to the collective participation in public affairs, to form local and national bodies for self-government, to the fostering of their cultures, to the use of their native languages, education in their native languages and the use of names in their native languages (Art.68 para.1-4 Const.).<sup>260</sup>

The *Minorities Act*,<sup>261</sup> passed by the Parliament in 1993 with a vast majority of 96% votes, contains individual and collective rights, the right to personal autonomy and the right to establish self-government bodies.<sup>262</sup> In addition to it, a series of specific regulations was incorporated, which are of importance to minority protection. Article 70/A of the Constitution stipulates that the Republic of Hungary shall respect the human rights and civil rights of all persons in the country without discrimination on the basis of race, colour, gender, language, religion, political or other opinion, national or social origins, financial situation, birth or on any other grounds whatsoever. Moreover, there is room for *positive discrimination*, i.e. the equal rights for everyone shall be implemented through measures that create fair opportunities for all (Art.70/A para.3 Const.).

The Act No 125 of year 2003 on Equal Treatment and the Promotion of Equal Opportunities prohibits discrimination on the grounds of gender, race, colour, nationality, national or ethnic affiliation, mother tongue, disability, health state, religion or creed, political opinion, marital or parental status, sexual orientation, gender identity, age, social origin, property status, the conditions of employment (part-time or fixed-term employment), membership in an interest protecting organization or any other situation or characteristic feature.

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<sup>257</sup> Hungary Report 1999: 4.

<sup>258</sup> Constitution of 20 August 1949 with amendments incl. those of 1996.

<sup>259</sup> Art.68 par.1 Const. (Hungary Report 1999: 11),

<sup>260</sup> Hungary Report 1999: 11; Brunner 1996: 41, as well as Hofmann 1995: 177.

<sup>261</sup> Law LXXVII of 7 July 1993 on the rights of national and ethnic minorities (Hungary Report 1999: 12).

<sup>262</sup> Hungary Report 1999: 12.

## 7.2. Use of Language

Hungary has no law stating that Hungarian is the official language.<sup>263</sup> However, everyone is free to use his/her native language.<sup>264</sup> The use of minority languages in contact with authorities is at least partly possible at local level within the framework of minority self-governments. The Act on General Rules of Administrative Procedure provides that everyone can use his/her native language, orally and in writing, and that nobody can be disadvantaged as a result of lack of knowledge of the Hungarian language.<sup>265</sup> However, a concrete implementation is often missing.<sup>266</sup> In the field of public administration, such use of languages is rather rare and is mostly limited to oral communications. The preconditions of use of languages in the written form are in place; only the citizens do not require it. No complaint has been recorded concerning this particular issue.<sup>267</sup>

With regard to the use of minority languages before the court, in criminal proceedings everyone is entitled to use both orally and in writing his/her mother tongue or his/her regional or minority language within the framework of commitments undertaken by the Republic of Hungary with regard to the European Charter for Regional or Minority Languages as well as – in case of lack of command of the Hungarian language - any other language he/she designates.<sup>268</sup>

According to Art.68 para.2 Const., first and last names can be used in native languages. However, according to Art.12 of the Minorities Act, if names are not registered using Latin characters, it is compulsory to give the phonetic representation of the names with Latin letters. Apart from that, the opportunity to change the name or to change it back in the earlier form is given by a simple way and practically without difficulty.<sup>269</sup> By changing the provisions of the act on registration in 2002, Parliament specified that members of minorities can give their children first names that have been traditionally used in the given minority community. A catalogue of first names whose compilation is the task of the national minority self-governments contains the eligible first names.<sup>270</sup>

The names of settlements, where minorities reside, can be used in two languages. Geographical names may be also established in minority language, however in such cases the following issues should be taken into consideration: the actual name used by

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<sup>263</sup> Hungary Report 1999: 43.

<sup>264</sup> Art.68 para.2 Const. and art.51 Minorities Act 1993 (Hungary report 1999: 84).

<sup>265</sup> Hungary Report 1999: 81.

<sup>266</sup> Opinion on Hungary 2000: point 35.

<sup>267</sup> 2nd Report on the Implementation of the European Charter for Regional or Minority Languages 2002, Chapter II.6. Re: Recommendation No 3.

<sup>268</sup> Act. 1 of 2001, art. 4.

<sup>269</sup> Hungary Report 1999: 83 f.

<sup>270</sup> Hungary Report 2004: Art.11.

the population concerned, the opinions of the local organisations and authorities, and historical traditions, in particular local historical research.<sup>271</sup>

### 7.3. Teaching of Language

The right to education in one's native language is guaranteed in Art.68 para.2 Const. and regulated in the Minorities Act as well as in the Act on public education.<sup>272</sup> Upon the request of the parents of at least 8 school children of one and the same minority, it is mandatory to organize and maintain a minority class. The additional costs are to be covered by the state or by the respective local government.<sup>273</sup>

There are three types of minority schools, namely: a) native language schools, in which apart from Hungarian language and literature, all subjects are taught in the native language of the minority, b) bilingual schools, in which a significant part of the subjects (at least 50% of them) are taught in a minority language while the other subjects are taught in Hungarian, c) schools where the minority language is taught as a second language in at least 4 or 5 lessons a week (the most frequent type). A special programme conducted by the Roma ministerial commissioner of the Ministry of Education supports the school desegregation and the integrated education of Roma schoolchildren.

The state is responsible for the training of teachers. The state provides also subsidies for the employment of visiting teachers from the mother countries of the respective minorities.<sup>274</sup> Through international agreements the recognition of diploma or graduation degrees earned at the universities and high schools abroad has been secured, in order to guarantee a professional training in native languages to teachers of minority schools.<sup>275</sup>

### 7.4. Right to Associations

The right to association is guaranteed by Art.62 (freedom of assembly) and Art.63 Const. (freedom of association). It is a fundamental freedom to which everyone is entitled.<sup>276</sup> Moreover, the Minorities Act declares that the participation of minority persons in public life shall not be restricted and that they, in compliance with constitutional provisions, have the right to establish associations, parties or other social organisations to articulate and safeguard their particular interests.<sup>277</sup>

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<sup>271</sup> Hungary Report 1999: 85 f.

<sup>272</sup> Hungary Report 1999: 43 and 79.

<sup>273</sup> Hungary Report 1999: 86 f.

<sup>274</sup> There are yearly around 140-150 visiting teachers from Germany, around 9 from Slovakia, one from Greece, Croatia and Slovenia employed in minority schools (Hungary Report 1999: 87).

<sup>275</sup> Such treaties of equivalency have been signed with the following countries: Bulgaria, Croatia, Germany, Poland, Romania and Ukraine (Hungary Report 1999: 87)

<sup>276</sup> Art.1 para.2 act on the right of association no II of 1989 (Hungary report 1999: 61).

<sup>277</sup> Hungary Report 1999: 61 f.

### 8.5. Right to Unimpeded Contacts

Everyone's right to move freely and to choose the place of residence, including the right to leave the domicile or the country, is guaranteed by Art.58 Const. The Minorities Act gives the minorities and their organisations the right to establish and maintain extensive and direct international contacts. Minority local governments and local minority self-government bodies have the right to maintain contact with any minority organisation and association, including the right to conclude cooperation agreements.<sup>278</sup> The neighbour and friendship agreements Hungary concluded with several countries also have a supporting function.<sup>279</sup>

### 7.6. Right to Information

Everyone's right to freely express his opinion (Art.61 Const.) belongs to the basic constitutional rights. It ensures that the public media broadcast programmes in minority languages and assures the regular transmission of radio and television programmes in minority languages. The state covers the costs of establishment and maintaining of at least one press organ for each minority.<sup>280</sup>

According to the Minorities Act, public service radio and television should guarantee the regular transmission of minority programmes. Moreover, the Act on Radio and Television obliges public radio and television stations to assist in looking after the culture and native languages of the minorities in Hungary and to provide systematic information in their native languages.<sup>281</sup> On this basis, both the Hungarian Television and the Hungarian Radio broadcast programmes for the 13 minorities. The national self-governments of national and ethnic minorities may freely decide on the use of the programme time available to them in the public service media. Public service broadcasters are bound by law to take the decision of the minority self-governments into consideration.<sup>282</sup>

However, there is an uneven allocation of resources and broadcasting time to different minorities, notably of sound radio broadcasting time. It is especially apparent that the largest minority, the Roma, has broadcasting time amounting to less than a quarter of the time available for some of the other minorities.<sup>283</sup> Also with regard to assignment of the hours of the day at which minority programmes are broadcast there is still room for improvement.<sup>284</sup>

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<sup>278</sup> Art.19 Minorities Act (Hungary Report 1999: 126 f.).

<sup>279</sup> As, e.g. with Germany, Croatia, Romania, Slovakia, Slovenia, Ukraine, Serbia and Montenegro, but also with Russia (Hungary Report 1999: 129 ff., 2004: see art.2.).

<sup>280</sup> Hungary Report 1999: 73.

<sup>281</sup> Hungary Report 1999: 74.

<sup>282</sup> Hungary Report 2004: Art. 11.

<sup>283</sup> Opinion on Hungary 2000: point 29.

<sup>284</sup> Opinion on Hungary 2000: point 31.

### 7.7. Right to Political Representation

The right of minorities to have a political representation in parliament is guaranteed by Art.68 para.3 Const. and Art.2 para.1 Minorities Act. However, the issue concerning the effective possibilities for minorities to be represented in parliament still needs to be solved.<sup>285</sup> Recommendations, aimed at improving the status of minorities in this concern imply positive discrimination, however, the provisions on the protection of personal data limit the feasibility of such discrimination as the affiliation of citizens to a certain minority is not confirmable.<sup>286</sup> Apparently, for minorities there is no simple way to achieve parliamentary representation in the current system, which is based on the representation of political parties. Until the final solution is found, lawmakers remain dedicated to come up with a temporary solution to ensure the presence of minorities in the Parliament.<sup>287</sup>

There are several representatives in the Parliament of minority origin, however they did not win their seat on account of their minority background.<sup>288</sup> Nevertheless, the representatives of national self-governments for minorities are invited to all sessions of the Parliament Standing Committee on Human Rights, Minorities and Religion, in which they can discuss minority related issues.<sup>289</sup>

### 7.8. Right to Autonomy

Minorities in Hungary have the constitutional right to form local and national bodies of self-government,<sup>290</sup> whose competences and spheres are regulated by the Minorities Act. The legitimately elected bodies function as partners with local governments of settlements in local issues and as partners to the legislation and central authorities in national issues. Of the various forms of minority self-governance it is worth paying particular attention to the type that is at one and the same time a settlement (municipal) government and a minority self-government body. A municipal government within which more than half of the representatives were elected as candidates of a national or ethnic minority may declare itself a local minority self-government. This body is called "minority settlement self-government", and its status confers the same rights as regional autonomy, opening the way to providing the most efficient means for the realisation of the interests of minorities.<sup>291</sup>

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<sup>285</sup> Opinion on Hungary 2000: point 48.

<sup>286</sup> A person's affiliation to a minority cannot be registered officially, therefore it is not possible to limit the real effect of a certain provision to the persons entitled to it, that means that measures of so-called *positive discrimination* risk to infringe the principle of equality guaranteed by the constitution.

<sup>287</sup> Before the parliamentary elections in 1998 a party called 'Minority-Forum' was established, which however could not delegate any representative to the parliament.

<sup>288</sup> Hungary Report 1999: 123.

<sup>289</sup> Hungary Report 1999: 123.

<sup>290</sup> Art.68 para.4 Const. (Hungary Report 1999: 109).

<sup>291</sup> In 2004, there are 62 such bodies, most of them belonging to the German and Croatian minorities.

### **7.9. Right to Co-determination**

Minority self-governments are granted extensive consent and consultation rights. In respect of settlements, they have the right of consent (veto right) in local public education, local media, preservation of heritage, culture and collective language use related issues. At the national level, the national minority self-government bodies have consultation rights in draft legislation whenever minorities are concerned. They have the right of veto in legislation concerning the protection and the preservation of traditional historical minority settlements and architectural monuments as well as concerning the core teaching material used in minority public education.<sup>292</sup>

In 1994 for the first time, out of 13 minorities, a total of 822 minority self-governments were elected. Following the 1998 elections, 1,376 local minority self-governments were established across the country. This growing trend continued also in 2002 when elections were held for 1870 bodies. The number of minority self-governments operating on the 1<sup>st</sup> of May 2004 was 1838.

### **7.10. Specific Legal Protection**

The institution of parliamentary commissioners includes among others an ombudsman responsible specifically for the protection of national and ethnic minority rights. This institution was set up in conformity with the provisions of the Constitution (Art.32B para.2 Const.) as well as the Act 59 of 1993 on the parliamentary commissioners of civil rights. The commissioners were first elected in 1995. The minorities' ombudsman is responsible for investigating any kind of abuse of minority rights that comes to his attention and for initiating general and individual measures in order to remedy it. He is authorised to get involved into affairs of individuals, communities or minority self-governments. He/she is entitled to conduct an inspection and to access official documents, to propose measures for remedying the injury or for the amendment of the law in order to improve the situation.<sup>293</sup>

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<sup>292</sup> Minorities Act Art. 25-30, 35- 39.

<sup>293</sup> Act LIX of 1993 on the parliamentary commissioner of civil rights (Hungary Report 1999: 12, 33).

### 7.11. Population and Minorities in Hungary

Total population 2001)<sup>294</sup>: 10,198,315

Hungarians<sup>295</sup>: 9,884,256

	Ethnic groups/ minorities: <sup>296</sup>	Minority affiliation declared in 2001 census	Minority mother tongue (2001 census)	Earlier estimates
1.	Roma <sup>297</sup>	190,046	48,685	500,000 - 600,000
2.	Germans	62,233	33,792	200,000 - 220,000
3.	Slovaks	17,692	11,816	100,000 - 110,000
4.	Croats	15,620	14,345	80,000 - 90,000
5.	Romanians	7,995	8,482	25,000
6.	Poles	2,962	2,580	10,000
7.	Serbs	3,816	3,388	5,000 - 10,000
8.	Armenians	620	294	3,500 - 10,000
9.	Ruthenians <sup>298</sup>	1,098	1,113	6,000
10.	Slovenians	3,040	3,187	5,000
11.	Greeks	2,509	1,921	4,000 - 4,500
12.	Bulgarians	1,358	1,299	3,000 - 3,500
13.	Ukrainians	5,070	4,885	2,000
Total		314,059	135,787	943,500-1,096,000

<sup>294</sup> Census Statistics 2001.

<sup>295</sup> The difference between the total population and the total number of people declaring national or ethnic minority affiliation.

<sup>296</sup> During the census 2001, even though such criteria as nationality, mother tongue, cultural identity or home language were listed and the anonymity of the survey respected, more than 500.000 persons did not make use of this possibility as answering was optional. 95% of the recorded population responded to these questions. The report of the Hungarian government to the Council of Europe (Council of Europe 1994a: 34) also includes a reference to an estimated 80.000 to 100.000 Jews in Hungary, the overwhelming majority of whom do not consider themselves as a minority, cf. Golczewski 1994: 265 ff.

<sup>297</sup> Other estimates put the figure at between 500.000 and 700.000 (Council of Europe 1994a: 34) or between 550.000 and 800.000 (Klopčič/ Polzer 1999: 3).

<sup>298</sup> Given that Ruthenians are considered in Hungary as a separate group, they are quoted here separately from the Ukrainians.



## 7. 12. Implementation Mechanisms

The following governmental and parliamentary bodies deal – exclusively or partially - with the minority issues:

### 1. PARLIAMENTARY COMMITTEE FOR RELIGION, HUMAN AND MINORITY RIGHTS

Chairman: László SZÁSZFALVI

Address: 1055 Budapest, Kossuth Lajos tér 1-3

Tel:00-36-1-441-5031

### 2., OFFICE FOR NATIONAL AND ETHNIC MINORITIES

Chairman: Antal HEIZER

Address: 1085 Budapest Baross u. 22-26.

Tel: 0036-1-226-6343

### 3. OFFICE OF THE PARLIAMENTARY COMMISSIONAL FOR THE RIGHTS OF NATIONAL AND ETHNIC MINORITIES

Comissional:dr.Jeno KALTENBACH

address:1054 Budapest Tüköry u. 3.

Tel: 0036-1-269-3500

### 4. MINISTER WITHOUT PORTFOLIO FOR EQUAL OPPORTUNITIES

Office for Equal Opportunities, Directorate for Roma Affairs

Minister: Katalin LÉVAI

Acting Director: Mariann VÁRFALVI BOGNÁR

Address: 1054 Budapest Vigadó u 6

Tel:00-36-1-325-4530

### 5. PRIME MINISTER'S OFFICE, STATE SECRETARY FOR ROMA AFFAIRS

State Secretary: László TELEKI

Address: 1055 Budapest Kossuth lajos Tér 4.

tel:00-36-1-441-3170

## 8. ITALY, MINORITY LEGISLATION

### 8.1. Basic Rights

In the Italian Republic, the legal concept of a “minority” is mainly related to the linguistic minorities.<sup>299</sup> The following minorities are recognised: Albanians, Germans, French-speakers<sup>300</sup>, Friulians, Greeks, Catalonians, Croats, Ladins, Occitans, Sardinians and Slovenians. Their language and culture is to be protected by special measures.<sup>301</sup> The minorities traditionally live in:

- a) the border regions, sharing common culture and language with the population on the other side of the border (French-speakers, German speakers, Ladins, Slovenians). Areas of their traditional settlement enjoy different levels of administrative autonomy;
- b) as the so-called historic linguistic minorities, they are dispersed throughout the Italian territory (Albanians, Greeks, Franco-Provençals, Catalonians, Croats, Occitans). Their protection is difficult due to their dispersity and their small number;
- c) as the population of the regions carrying their name who find it necessary that their culture and language be protected (Friulians and Sardinians).<sup>302</sup>

In 1999, the minority protection was regulated by a framework law,<sup>303</sup> followed by the implementation provisions in 2001,<sup>304</sup> which are aimed to equalize the differences in regard on the minority protection which might occur for subjective and regional reasons.<sup>305</sup> Articles 2 and 3 Const. guarantee the human inviolable rights and equality before the law to all citizens, without any distinction, and therefore, also to the people belonging to minorities. For the factual equality provides the instrument for autonomy which was designed and adopted for special cases (Aosta Valley, Trentino-Alto Adige /South Tirol, Friuli-Venezia Giulia).<sup>306</sup>

### 8.2. Use of Minority Languages

In Italy, there are no restrictions for the private use of minority languages.<sup>307</sup> The official language of the Republic is Italian.<sup>308</sup> Nevertheless, on a regional or local level there administrative languages exist as well such as French in the region of Aosta,<sup>309</sup>

<sup>299</sup> Italy Report 1999: 4.

<sup>300</sup> Including Provençals.

<sup>301</sup> Art. 6. Const. and Art. 2. Law No.482, 15 December 1999 (the so called Minority Law). The law does not include Roma as in their particular case there is a need for a special legal regulation (Italy Report 1999: 35. Opinion on Italy 2001).

<sup>302</sup> Cfr. Italy Report 1999: 4 f.

<sup>303</sup> Minority Law 482/1999 (Italy Report 1999: 13 ff).

<sup>304</sup> DPR 345/2001 (G.U. 13 September 2001).

<sup>305</sup> Opinion on Italy 2001: Pt.23, 28 and 29.

<sup>306</sup> Italy Report 1999: 43 and 92 f.

<sup>307</sup> Oellers-Frahm 1993: 200. The Law on the Use of Languages and Scripts of National Minorities in the Republic of Croatia was adopted by the Croatian Parliament on 11 May 2000.

<sup>308</sup> Art.1 para.1 Minority Law; Italy Report 1999: 45.

<sup>309</sup> Art.38 Special Statute for Valle d'Aosta (Constitutional Law, 26 February 1948). Cfr. Italy Report 1999: 60, 63.

German in the province of Bolzano (Alto Adige/South Tirol)<sup>310</sup> and the Ladin language in the Dolomites' valleys in Alto Adige/South Tirol and Trentino.<sup>311</sup> In the Friuli-Venezia Giulia region, in the provinces Trieste, Gorizia and Udine, law guarantees the use of the Slovenian language<sup>312</sup>, which is under implementation.<sup>313</sup> The so-called historic minorities can use their language in contact with the local authorities in the communities, which enjoy the status of a minority community.<sup>314</sup> Personnel with the knowledge of those languages have to be provided.<sup>315</sup> When a document is bilingual, the Italian wording is considered as legally decisive.<sup>316</sup> In addition, the minority municipalities are allowed to publish all state, regional and local official documents in the minority languages as well (at their own costs).<sup>317</sup>

Many minority municipalities have already started implementing projects financed according to the Minority law for this purpose. As to the Roma, they do not dispose of traditional areas of settlement where they could use their language in their contacts with the local authorities, and they do not put forward requests of this kind.<sup>318</sup> They share this particularity with the Roma throughout Europe.

The use of personal names in the minority languages is allowed.<sup>319</sup> The names can be returned in their original form free of charge within 90 days after the request was made.<sup>320</sup> The use of topographic names in the minority languages is regulated in different ways. The special statutes of the Aosta Valley, Trentino-Alto Adige /South Tirol, and Friuli-Venezia Giulia explicitly provide a competence of the region and of the autonomous provinces to legislate in the field of topographic names. In Aosta Valley, the topographic names are mostly written only in French, in Alto Adige/South Tirol they are bilingual (Italian and German). Bilingual names are also partially used in Sardinia and in Friuli-Venezia Giulia.

A minimum of 25 percent of the Slovenian population as a criterion for bilingual topography in the areas of their traditional settlement was changed to 15 percent share in the local electoral body.<sup>321</sup> In the rest of the state territory, the topographic names in the minority languages can be used in the minority municipalities along with the Italian names.<sup>322</sup>

<sup>310</sup> Art.99 and 100 of Special Statute for Trentino-Alto Adige /South Tirol (Italy Report 1999: 60).

<sup>311</sup> The Law Decrees No.592 (1993) and No.321 (1997) provided the Ladins in Trentino with the same rights that are enjoyed by the Ladins in Alto Adige/South Tirol (Italy Report 1999: 62 f.).

<sup>312</sup> Art.8 Law on Slovenians 38/2001. The norm was already a part of the special statute of FVG (Art.3) and goes back to Art.5 of the special statute for Trieste and to the annex to London Memorandum from 5 October 1954 which became part of the internal Italian legislation by the agreement of Osimo 1975 (ratified by Italy in 1977). The right of Slovenians to use their language in the contacts with the authorities was confirmed by the decision of the Constitutional Court in 1982 (Italy Report 1999: 63 f.).

<sup>313</sup> Opinion on Italy 2001: pt.48.

<sup>314</sup> A status of a minority community is obtained if 15 percent of the electoral body in a certain municipality supports such status (Art. 3. of Minority Law 482/1999).

<sup>315</sup> In this regard, a national fund for the protection of minorities was established (Art.9 of Minority Law 482/1999).

<sup>316</sup> Art.7 Minority Law 482/1999.

<sup>317</sup> Only the Italian version is legally binding (Art. 8 of Minority Law 482/1999).

<sup>318</sup> Opinion on Italy 2001: pt.51.

<sup>319</sup> Law No.935 (October 1966) and Law No.114 (March 1991), Italy Report 1999: 69.

<sup>320</sup> Art.11 Minority Law; Art. 7 of the Law on Slovenians 38/2001.

<sup>321</sup> Art.4 of the Law on Slovenians.

<sup>322</sup> Art1 10 Minority Law 482/1999).

### 8. 3. Teaching of Language

Members of national minorities have the right to education in their own language but there are various ways of implementing this right:

- a) The German speaking minority in Alto Adige/South Tirol makes use of this right at all school levels, from primary school to university.
- b) The Ladins as a strong linguistic minority dispose in Alto Adige/South Tirol of their own school system in which the Ladin language is taught along with Italian and German. The Ladins in Trentino have bilingual schools.
- c) The French-speakers in Aosta Valley have bilingual schools where subjects are - in equal shares - taught in French and Italian. In primary schools, French is for some subjects the only teaching language.
- d) Slovenians in the provinces of Trieste, Gorizia and Udine have the right to pre-, primary and secondary schools in their own language.<sup>323</sup>

When the minority language represents the prevailing teaching language (German, Slovenian), Italian has to be taught as the first second language.<sup>324</sup> In addition, teachers for the minority language have to be native speakers. As to the historic minorities, their language has until recently been spoken as a teaching language mainly in kindergartens (Friulian, Catalanian, Albanian etc.), only partially (Friulian) and experimentally (i.e. Greek, Catalanian, Provençal) in primary and secondary schools. This uneven situation was abolished by Art.4 Minority Law which allows pre-schools and primary schools in the minority municipalities to introduce – besides Italian – the minority language as the teaching language.<sup>325</sup> Almost all schools of minority languages have already started implementing projects financed according to the Minority law for this purpose. The integration of Roma into the school system is still a problem.<sup>326</sup>

### 8.4. Right to Association

Art.17 Const. guarantees the right to peaceful assembly and Art.18 provides for the right to association. That, of course, includes persons belonging to national minorities.<sup>327</sup>

### 8.5. Right to Unimpeded Contacts

According to Art.16 para.2 of Const., everybody is free to leave the state territory and return to it.<sup>328</sup> Persons belonging to minorities can – as all other citizens - establish and maintain unimpeded contacts with persons living on the other side of the border. Italy has signed numerous international agreements on fostering cross-border co-operation.<sup>329</sup>

<sup>323</sup> Art.11 and 12-14 of the Slovenian Law.

<sup>324</sup> In the Italian schools in Alto Adige/South Tirol, German as the first second language is compulsory. In the Italian schools in FVG, Slovenian is not taught as the second language. (Italy Report 1999: 87 ff).

<sup>325</sup> Italy Report 1999: 89 f.

<sup>326</sup> Opinion on Italy 2001: pt. 54, 55, 60.

<sup>327</sup> Italian Constitution 1947; Italy Report 1999: 35 and 48 f.

<sup>328</sup> Italian Constitution 1947.

<sup>329</sup> Italy Report 1999: 104 f.

## 8.6. Right to Information

Art.21 Const. provides for the right to freedom of opinion and determines that no directives or censorship can impose limitations upon the freedom of press<sup>330</sup>. Agreements between the state and the public broadcaster RAI provide for radio and TV programmes in minority languages in border regions (in French, German, Ladin and Slovenian).<sup>331</sup> In addition, the legal basis for the financial support of daily newspapers in those minority languages was established.<sup>332</sup> As to other minorities, the situation differs from case to case. The Sardinian, Albanian, Catalanian and Greek languages are used in one-language or bilingual newspapers as well as in radio programme. Nevertheless, only the Sardinian language has up to now been used in public TV programmes as well<sup>333</sup>.

This situation is about to change in line with the Minority Law 482/1999. The state agreements with RAI will be extended to all minorities and the regions are entitled to sign respective agreements with RAI and its local broadcasters.<sup>334</sup> Regional entities can also provide for support to private print media and radio and TV stations, which use a recognised minority language.<sup>335</sup>

## 8.7. Right to Political Representation

According to Art.49 Const., the establishment of political parties is free, provided that they respect the objectives, set by the Constitution.<sup>336</sup> The same rule applies for the minorities. Some have used this right and established their own parties: the German minority (*South-Tyrolean Peoples Party*) and Ladins (*Ladins*) in Alto Adige/South Tyrol, Slovenians (*Slovenian Union*) in FVG, French-speakers (*Union Valdotaïne*) in Aosta Valley.<sup>337</sup> The Law foresees a special treatment for the parties which represent the minorities.<sup>338</sup> In the traditional settlement of the minorities, the law also determines that the electoral districts for the parliamentary elections should be as narrow as possible.<sup>339</sup>

Nevertheless, as the minorities represent only 5% of the total population of Italy, it is not easy for their representatives to enter the national parliament. There is a 4% threshold at national level. Moreover, 75% of the deputies are elected according to the majority and only 25% according to the proportional system. Only Sardinians,

<sup>330</sup> Italian Constitution 1947; Italy Report 1999: 52.

<sup>331</sup> Italy Report 1999: 53. Due to technical difficulties, the programme can not be seen everywhere without disruptions, i.e., in mountain regions of provinces Belluno and Udine.

<sup>332</sup> Law No. 250 (1990) was renewed and extended by Law 278 (1991) which provides for support of minority newspapers in Aosta, FVG and Trentino-Alto Adige/South Tyrol. (In FVG also the regional law No.19, 1991).

<sup>333</sup> Oeller-Frahm 1993: 211.

<sup>334</sup> Art.12 Minority Law. and DPR 14.2.2003 (agreement between the state and the public broadcasting RAI, which at art. 12, implements art. 12 of the Minority law)

<sup>335</sup> Art.14 Minority Law.

<sup>336</sup> Italian Constitution 1947.

<sup>337</sup> Oeller-Frahm 1993: 222 f.

<sup>338</sup> The right to return of the costs (Law 515, December 1993), special provisions in regard on the elections to the European parliament (Law 18, January 1979).

<sup>339</sup> Art.7 Law 277 (1993) and Art.7 Law 276 (1993).

Germans from Alto Adige/South Tyrol and French-speakers from Aosta are able to obtain parliamentary representations through their own parties. Slovenians and Friulians also have their representatives in parliament, but they are not elected as representatives of minorities but as candidates on the lists of Italian political parties. In the regional parliaments of Aosta Valley, Trentino-Alto Adige/South Tyrol, Friuli-Venezia Giulia and Sardinia, the minorities are usually represented according to their share in the total population. An analogous presence of the historic and the territorially dispersed minorities in the regional parliaments is hardly possible.

### 8.8. Right to Autonomy

The regions in the border areas enjoy – because of the minority protection – territorial autonomy: Aosta Valley, Friuli-Venezia Giulia and Trentino-Alto Adige/South Tyrol. The latter consists of the two autonomous provinces Trento (Trentino) and Bolzano (Alto Adige/South Tyrol). Sardinia also enjoys autonomy. They all dispose of own legislative and executive bodies with the respective administrative structures.<sup>340</sup>

### 8.9. Right to Co-Determination

In the framework of their territorial autonomy, the francophone minority in Aosta Valley, the German and Ladin minority in Trentino-Alto Adige/South Tyrol and the Sardinians enjoy significant co-determination rights.<sup>341</sup> In addition, the representations of Ladins in legislative and governmental bodies in the autonomous region Trentino-Alto Adige/South Tyrol was largely improved by the constitutional law No.2 from January 2001.<sup>342</sup> The Slovenians in FVG dispose of an important instrument for co-determination in the form of the so-called Parity Committee.<sup>343</sup>

Since 1999, other minorities have the possibility to establish associations beyond the regions and provinces, which can be recognised and financially supported by the respective regional and local entities.<sup>344</sup>

In March 2000, an Advisory Committee within the Ministry for Regions was established in order to monitor the implementation of the Minority Law. In addition, the Committee for Italy of the European Bureau for Linguistic Minorities (CONFEMILI) was acknowledged as the representative organisation for minorities. Nevertheless, its role is mainly advisory.<sup>345</sup>

### 8.10. Specific legal protection of minorities

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<sup>340</sup> Italy Report 1999: 92 ff.

<sup>341</sup> Italy Report 1999: 94 ff.

<sup>342</sup> Opinion on Italy 2001: pt. 62.

<sup>343</sup> Art.3. Slovenian Law 38/2001. See also Opinion on Italy 2001: pt. 63.

<sup>344</sup> Art3 pPara.3 and Art.14 Minority Law.

<sup>345</sup> Opinion on Italy 2001: pt. 64

In certain Italian regions, there is the institution of the ombudsman with general competencies in the area of human and civil rights but with no specific competencies with regard to the protection of minority rights.

### 8.11. Population and Minorities in Italy

Figures about the consistency of minorities are not indicated, as the existing ones that go back mostly to 1994, are not up date yet. Up date operation is particularly laborious for the fact that the Italian legislation, except the one for the provinces of Trento and Bolzano, does not provide any census<sup>346</sup>

<sup>346</sup> The minority consistency figures, going back to 1994, are shown as a pure indication:

Population (2001 cen)		56.305.000	100,0 %
Italians		52.876.900	93,9 %
Linguistic minorities:			
1.	Sardinians	1.660.000	2,9 %
2.	Friulians (Rhaeto-Romanics)	720.000	1,3 %
3.	Germans(d)	304.500	0,5 %
4.	French-speakers (incl. Provençals)	200.000	0,4 %
5.	Occitans (e)	178.000	0,3 %
6.	Sinti-Romany (f)	130.000	0,2 %
7.	Albanians (g)	90.000	0,2 %
8.	Slovenians	53.000	0,1 %
9.	Ladins (Rhaeto-Romanics) (h)	43.000 - 57.000	0,1 %
10.	Catalonians (i)	18.000	
11.	Greeks (j)	15.000	
12.	Croats (k)	<u>2.600</u>	_____

## 8.12. Implementation mechanisms

The following governmental and parliamentary bodies deal – exclusively or partially - with the minority issues:

### **PRESIDENCY OF THE COUNCIL OF MINISTERS**

#### **Department of Regional Affairs**

Services for Italian Regions which have a Particular Form of Autonomy under Special Status for Policies Linked to Special Autonomies and Minorities - Service X

Head of Department (Capo Dipartimento)

Mr. Sebastiano Piana

Via della Stamperia, 8

00186 Roma

Tel. 06-67794113

e-mail [s.piana@palazzochigi.it](mailto:s.piana@palazzochigi.it)

General Manager (Dirigente Generale)

Mr. Giovanni Oieni

Ufficio politiche speciali e riforme istituzionali

Via della Stamperia, 8

00186 Roma

Tel. 06-67794683

e-mail [g.oieni@palazzochigi.it](mailto:g.oieni@palazzochigi.it)

Information Officer (Responsabile del Servizio - referente)

Mr. Renato Fedele

Via della Stamperia, 8

00186 Roma

Tel. 06-67796364

e-mail [r.fedele@palazzochigi.it](mailto:r.fedele@palazzochigi.it)

**Tasks:** Co-ordination of all activities regarding minority issues; matters concerning the Minorities Act and the related implementing regulations; assistance to the advisory committees for the implementation of the linguistic minority legislation.

### **ADVISORY COMMITTEES FOR THE IMPLEMENTATION OF THE LIGUISTIC MINORITIES LEGISLATION**

Secretary (Segretario)

Mr. Giuseppe Bignone

Department of Regional Affairs

Via della Stamperia, 8

00186 Roma

Tel. 06.6779.6239 – 6387

Fax 06.67796295 -

e-mail: [g.bignone@palazzochigi.it](mailto:g.bignone@palazzochigi.it)

**Tasks:** Consultative and advisory board to the Central Government on minority issues in application of the law 15.12.1999, n. 345



**INSTITUTIONAL BILATERAL COMMITTEE FOR SLOVENE MINORITY ISSUES**

Secretary (Segretario) / Head of the Department of Regional Affairs

Mr. Sebastiano Piana

Via della Stamperia, 8

00186 Roma

Tel. 06.6779.4113 – 4209

Fax 06.67794383

e-mail: [s.piana@palazzochigi.it](mailto:s.piana@palazzochigi.it)

**Tasks:** Consultative and advisory board for the application of the law 23.2.2001, n. 38.

**HOME OFFICE****Department for Civil Freedoms and Immigration**

Directorate-General for Civil Rights, Citizenship and Minorities

Area V- Old and New Minority Groups

Director of Main Office (Direttore Centrale)

Mr. Elio Maria Landolfi

Via Balbo, 39 – 00184 Roma

Tel. 06-46537316

e-mail: [landolfi@mininterno.it](mailto:landolfi@mininterno.it)

Manager (Dirigente dell'Area - referente)

Mr. Giuseppe Mario Scalia

Via Balbo, 39 – 00184 Roma

Tel. 06-46547910

**Tasks:** Protection and promotion of the historic linguistic minorities and of the new minorities; studies and advice; international Relations and implementation of international agreements.

**MINISTRY OF FOREIGN AFFAIRS (MINISTERO DEGLI ESTERI),****Directorate-general for European Countries**

Min.PI. Andrea Mochi Onory

Tel. 0039-06-3691.2708 or 2155

Fax.0039-06-3691.8263

Counsellor (Consigliere)

Mr. Andrea Orizio

Office III (The Balkans)

Tel. 0030-06-3691.2282

Fax. 0039-06-3235.833

**MINISTRY OF EDUCATION, UNIVERSITY AND OF RESEARCH****Directorate-general for Educational Training Structures**

Director General (Direttore Generale)

Mr. Silvio Criscuoli

Head of office – Focal Point:

Ms. Elisabetta Davoli (referente)

Tel. +39.06.5849-2747/2407

Fax. +39.06.58493209

e-mail: [elisabetta.davoli@istruzione.it](mailto:elisabetta.davoli@istruzione.it)

**Tasks:** Implementation of the law n. 482/99 on education (articles 4-5-6). In particular; Co-ordination of all teaching activities in schools belonging to the linguistic minorities; Technical, legal and financial support to such schools; Support to the participation of the minority schools to

European projects; Establishment of a network among schools and exchange of experiences; Ongoing teaching updating and promotion of the Universities collaboration.

### **MINISTRY OF EDUCATION, UNIVERSITY AND OF RESEARCH**

#### **Study Group for Linguistic Minorities**

Focal Point

Ms. Elisabetta Davoli (referente)

Tel. +39.06.5849-2747/2407

Fax. +39.06.58493209

e-mail: [elisabetta.davoli@istruzione.it](mailto:elisabetta.davoli@istruzione.it)

**Tasks:** Group of general managers of the Education Ministry and of representatives of the linguistic minorities. The group is in charge of working out criteria and priorities to implement the programmes.

### **MINISTRY OF EDUCATION, UNIVERSITY AND RESEARCH**

#### **Directorate-General for International Affairs**

Focal Point

Mr. Antonio Giunta La Spada (referente)

Tel.+39.06.5849.2275

Fax+39.06.5849.3381

e-mail: [agiuntalaspada@istruzione.it](mailto:agiuntalaspada@istruzione.it)

**Tasks:** Promotion and development of the European projects in the schools.

### **REGIONAL INSTITUTES OF EDUCATION RESEARCH (IRRE)**

I.R.R.E Calabria

Via XX settembre, 62

88100 Catanzaro

Tel. 0961/722026 – 727819 - 7220014

Fax 0961/722027

e-mail: [irre.calabria@istruzione.it](mailto:irre.calabria@istruzione.it)

President (Presidente)

Prof. Giuseppe Trebisacce

e-mail: [Nicola.trbisacce@libero.it](mailto:Nicola.trbisacce@libero.it)

Director (Direttore)

Prof. Salvatore L'andolina

E-mail: [landolinasal@yahoo.it](mailto:landolinasal@yahoo.it)

**Tasks:** Collaboration with the schools to the projects, researches and experimental programmes in minority field.

## 9. MACEDONIA, MINORITY LEGISLATION

### 9.1. Basic rights

The amended 2001 Constitution of the Republic of Macedonia contains the fundamental freedoms and rights of the individual and citizen, recognized in international law, among which the fundamental right of free expression of *national* identity (Art.8 para.1), equality before the law (Art.9 para.1 and 2) and adequate representation of all non-majority communities<sup>347</sup> in the organs of the state authority and other public institutions at all levels (Art.8).

In this context, members of communities shall have the right to freely express, foster and develop their identity and the Republic of Macedonia shall guarantee the protection of ethnic, cultural, linguistic and religious identity of all communities (Art.48 para.1 and 2). Members of communities further have the right to establish cultural, art, educational institutions as well as scientific and other associations for expressing, fostering and developing their identity (Art.48 para.3). The Constitution also guarantees the right to instruction in the mother tongue in primary and secondary education regardless of the obligation to learn the Macedonian language (Art.48 para.4).<sup>348</sup>

### 9.2. Use of Language

There are no limitations regarding the private use of languages of minorities.<sup>349</sup> Pursuant to the Constitution, the official language in the Republic of Macedonia is the Macedonian language and its Cyrillic alphabet<sup>350</sup>, while an official language is also any other language spoken by at least 20% of the population with its alphabet according to the conditions set out in Art.7 Const.<sup>351</sup> This refers to the Albanian language only. In the local self-government units where a community comprises at least 20% of the population, the language of that community shall be used as an official language in addition to Macedonian and its Cyrillic alphabet. If the percentage of any community is less than 20% of the population in local self-government units, the organs of those units<sup>352</sup> will decide on the use of the languages spoken by less than 20% of the population.

In local self-government units where in addition to the Macedonian language another official language is used, that language may be used in the communication with the regional office of the central government with responsibility for that municipality. Such an office shall reply in that language in addition to Macedonian. Any person may use

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<sup>347</sup> The expression 'communities that in Macedonia do not represent the majority of the population' in the amended 2001 Constitution replaces the former expression of nationalities (see the Macedonian Constitution 1991/2001; 2001 Ohrid Framework Agreement).

<sup>348</sup> Macedonian Constitution; Aromanians (Vlachs) in Macedonia 2001:1.

<sup>349</sup> Macedonian Helsinki Committee 1999: 16 and 18.

<sup>350</sup> Art.7 para.1 Const.

<sup>351</sup> Art.7 para.2 Const.

<sup>352</sup> Art.7 para. 6 Const.

any official language to communicate with a main office of the central government which shall reply in that language in addition to Macedonian.<sup>353</sup>

In organs of the Republic of Macedonia, any official language apart from Macedonian may be used in accordance with the law.<sup>354</sup>

These constitutional norms, along with the amendments made to the Law on local self government, were formalized in 2002.

In 2002, the Parliament of the Republic of Macedonia adopted the laws amending the criminal, civil and administrative procedure regarding the use of an official language other than Macedonian before the court, in order to harmonize them with the corresponding provisions of the amended Constitution.<sup>355</sup>

Personal documents of citizens speaking an official language other than Macedonian shall be issued in that language, in addition to the Macedonian language, in accordance with the law.<sup>356</sup> Persons belonging to the non-majority communities have the right to register their names in the Registry of Births, Marriages and Deaths, as well as in their identity cards, in their own language and alphabet. Identity cards of the citizens speaking an official language other than the Macedonian shall be issued on a bilingual basis, i.e. both in their own language and alphabet and in the Macedonian language.<sup>357</sup>

### 9.3. Teaching of Language

Members of communities have the right to instruction in their language in primary and secondary education that means that pupils from the Albanian, Turkish or Serbian communities, as well as the Roma and Vlach pupils have the right to instruction in their mother tongue. However, they are all obliged to study the Macedonian language.<sup>358</sup>

For persons belonging to the Albanian, Turkish and Serbian communities, there is pre-school kindergarten education as well as primary and secondary education in their mother tongue. For the Roma and Vlachs, the instruction in the primary and secondary schools is to be carried out in their respective mother tongues only if there are a sufficient number of pupils.<sup>359</sup>

All citizens are guaranteed equal access to higher education. The education of the teaching staff for primary and secondary schools, as well as the methodological education of teachers for secondary schools may be carried out also in their mother tongue.<sup>360</sup>

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<sup>353</sup> Art.7 para. 4 Const.

<sup>354</sup> Art.7 para.5 Const.

<sup>355</sup> Art.89 and 90 Law on Local Self-Government, dated 24 January 2002 (Official Gazette, No. 5/2002)

<sup>356</sup> Art.7 para.3 Const.; Art.1 Law on Personal Names in the Official Gazette No. 8/1995 (Macedonia Report 2003: 79).

<sup>357</sup> Art.9 para.3 Law on Personal Names and Art.5 para.2 Law on Identity Cards (Macedonian Helsinki Committee 1999; 11 f; Macedonia Report 2003: 79).

<sup>358</sup> Art.48 para.4 Const.; Art.8 para.2 Law on Primary Education and Art.4 para.2 and 3 Law on Secondary Education (Macedonian Helsinki Committee 1997: 7 and 12; Macedonia Report 2003).

<sup>359</sup> Macedonia Helsinki Committee 1999:23.

<sup>360</sup> Art.6 para. 96 Law on Higher Education (Macedonia Report 2003: 85).

In order to create equal conditions for access to higher education, the Government has envisaged additional quotas for the candidates belonging to non-majority communities who want to enrol in higher education establishments.<sup>361</sup>

The University in Tetovo, established by the Albanian minority in 1994, which gave rise to great tensions and where since 2001 the instruction for teaching staffs is carried out in the Macedonian, Albanian and English languages, was recognized in 2004 as the private University of South East Europe.<sup>362</sup>

#### 9.4. Right to Associations

The basic right to freedom of assembly and association is guaranteed by Art.8 (within the framework of the fundamental freedoms and human rights), Art.20 (freedom of association) and Art.21 (freedom of assembly) Const. This basic right is elaborated in detail in the Law on Associations of Citizens and Foundations.<sup>363</sup>

Citizens are free to set up political parties and trade unions if they pursue goals in compliance with the Constitution (Art.20 Const.).

#### 9.5. Right to Unimpeded Contacts

Art.27 Const. guarantees the right of free movement on the territory of the Republic of Macedonia and freely to choose his/her place of residence, as well as the right to leave the territory of the Republic and return to the Republic. Limitations to this basic right are allowed only in accordance with the law.<sup>364</sup>

#### 9.6. Right to Information

The fundamental right to freedom of expression as well as to the freedom of imparting and receiving information is guaranteed by Art.16 Const. Art.48 Const. guarantees non-majority communities the right to freely foster and express their identity.<sup>365</sup>

The Macedonian Radio and Television is obliged to broadcast programs in the languages of communities living in the Republic of Macedonia.<sup>366</sup> Furthermore, there is also an obligation for the local radio and television stations to broadcast programs in the languages of communities which constitute a majority or an essential part of local population in a given municipality.<sup>367</sup>

The private radio-television stations have the right to prepare programs in the language of non-majority communities. The allocation of concessions to private radio-television

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<sup>361</sup> Macedonia Report 2003: 85.

<sup>362</sup> Art.34 Law on Higher Education (Macedonia Report 2003: 85 f).

<sup>363</sup> Law on Associations of Citizens and Foundations, Official Gazette No. 31/98 (Macedonia Report 2003: 133).

<sup>364</sup> For the reasons of security, criminal law or public health (Macedonia Report 2003: 112 ff).

<sup>365</sup> Macedonian Constitution (Macedonia Report 2003: 63).

<sup>366</sup> Art.45 para.2 Law on Radio (Official Gazette No. 20/97) and Art.6 para.1.1. Law on establishment of public enterprise for radio and television (Official Gazette No. 6/98 and 98/2000) (Macedonia Report 2003: 64 f).

<sup>367</sup> Art.45 para.3 Law on Radio (Macedonia Report 2003: 64 f).

stations is carried out at public tenders, in which respect the needs of the particular community in a particular area shall be taken into consideration.<sup>368</sup>

In fact, there are 30 operators comprising the public broadcasting sector, of which Macedonian Radio and Television as a public broadcasting service at national level having 3 TV and 3 radio channels and 29 local public broadcasting organizations. There are also 108 commercial broadcasting companies, 4 of which at national level and 104 at local level (48 televisions and 56 radio stations).

The offered programs of these stations, public and/or private ones, include programs in the languages of not-majority communities in both public and commercial sectors.<sup>369</sup>

On its second channel, *the Macedonian Television* broadcasts 31 programs in the languages of the communities: 19 hour programmes weekly in the Albanian language, 9 in the Turkish language and 1 hour programme each in the Roma, Vlach and Serbian languages.

*The Macedonian Radio* broadcast 104 hours programs weekly in the languages of the non-majority communities of which 59.5 hours weekly in the Albanian, 38.5 hours in the Turkish and 3 hours each in the Roma and Vlach languages.<sup>370</sup>

Out of 29 public local broadcasters, 7 public local radio stations (Radio Tetovo, Gostivar, Debar, Kicevo, Struga Kumanovo, Krusevo) broadcast 284.5 hours programs weekly in the languages of the communities, of which 238.5 hours in the Albanian, 41 hours in the Turkish, 2.5 hours in the Roma, 2 hours in the Vlach and 1 hour in the Serbian language.<sup>371</sup>

There are 17 commercial TV stations and 11 commercial radio stations broadcasting programs in the languages of the communities.<sup>372</sup> There are also daily and weekly newspapers in the languages of the communities.<sup>373</sup>

## 9.7. Right to Political Representation

At the local elections in 1996, out of 118 elected mayors 28 or 24% were members of the non-majority communities. At the 2000 elections this percentage was raised to 26%.<sup>374</sup>

At the parliamentary elections in 1990, out of 120 elected members of the Assembly, 27 (22,5%) were members of non-Macedonian communities, then at the 1994 parliamentary elections 22 (18.3%) of the elected members of the Assembly were candidates of the non-majority communities while at the 1998 elections their number raised to 27 (22,5%), of which 24 of the Albanian, 1 of the Roma and 2 of other communities.<sup>375</sup>

<sup>368</sup> Art.45 para.4 Law on Radio (Macedonia Report 2003: 64 f).

<sup>369</sup> In the sense of Art.45 para.2, 3 and 4 Law on Radio (Macedonia Report 2003: 66).

<sup>370</sup> Macedonia Report 2003: 67.

<sup>371</sup> Macedonia Report 2003: 67.

<sup>372</sup> Macedonia Report 2003: 67f.

<sup>373</sup> Macedonian Helsinki Committee 1999: 16 and 18.

<sup>374</sup> Macedonia Report 2003: 105 f.

<sup>375</sup> Macedonia Report 2003: 90 ff.

At the parliamentary elections held on 15 September 2002 the Albanian parties won 19.4% of the votes, by which they managed to maintain the same number of seats as in 1998.<sup>376</sup>

There are no other special measures to facilitate the political representation especially of the smaller minority groups.

### 9.8. Right to Autonomy

Art.115 Const. envisages that the competences regarding issues of local relevance are transferred as autonomous competencies to the units of local self-government (municipalities).<sup>377</sup> By this norm the units of local self-government even in areas traditionally populated by non-majority communities are provided with a kind of *local autonomy* granting them a minimum of autonomous scope.

### 9.9. Right to Co-determination

The amendments of the 2001 Constitution envisage the establishment of the *Committee for Inter-Community Relations* consisting of 19 members elected by the Macedonian Assembly (Ar.78 para.1 and 3) of whom seven members each from the ranks of the Macedonian and Albanian representatives, one from among the Turks, Vlachs, Romanies, Serbs and Bosniacs respectively (Art.78 para.2). This Committee deals with issues of inter-community relations and makes appraisals and proposals for their solution (Art.78 para.4).

The Assembly is obliged to take into consideration the appraisals and proposals and to make decisions regarding them (Art.78 para.5).<sup>378</sup>

Since 2001, for laws that directly affect culture, use of language, education, personal documentation and use of symbols, the Assembly of the Republic of Macedonia makes decisions by a majority vote of the Representatives attending who belong to non-majority communities. In the event of a dispute within the Assembly regarding the application of this provision, the *Committee on Inter-Community Relations* shall resolve the dispute.<sup>379</sup>

The Law on Local Self-Government provides that decisions on issues relating directly to culture or use of "*language and alphabet of those citizens that are less than 20% of the local population*" require a majority vote of the total number of Representatives, within there must be a majority of the votes of the total number of the members of the Assembly belonging to the non-majority communities.<sup>380</sup>

Furthermore, in case of a minority with a share of at least 20% of the local population in a municipality, the council of that municipality shall establish a *Committee for Inter-*

<sup>376</sup> World Almanac 2004: 574.

<sup>377</sup> Public services, urban and rural planning, environmental protection, local economic development, local finances, communal activities, culture, sports, social security and childcare, education, health care and other fields determined by law (Art.115 Const.).

<sup>378</sup> Macedonian Constitution.

<sup>379</sup> Ohrid Framework Agreement 2001: Art.69 para.2; Const.

<sup>380</sup> Art.114 Const.; Art.41 para.3 Law on Local Self-Government, 24 January 2002 ("Official Gazette" No. 5/2002).

*Community Relations*, in which every community living in that municipality would be represented in an equal number.<sup>381</sup>

The appointment of judges must represent the equitable representation of non-majority communities.<sup>382</sup> Art.104 Const. stipulates for *the Republic Judicial Council*, made up of 7 members elected by the Assembly of the Republic of Macedonia, that 3 of the members shall be elected by a majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives belonging to the communities not in the majority in the Republic of Macedonia.<sup>383</sup> The analogous right of co-decision making of the Representatives of the non-majority communities in the Assembly of the Republic of Macedonia is also provided for the election of the Public Attorney (Ombudsman).<sup>384</sup>

Art.86 Const. provides that *the Security Council of the Republic of Macedonia* shall be composed of institutional members (President of the Republic, President of the Assembly, the Prime Minister, the Ministers heading the bodies of state administration in the fields of security, defence and foreign affairs) and 3 additional members appointed by the President of the Republic. Attention must be paid that the Security Council as a whole reflects the composition of the population of Macedonia.<sup>385</sup>

Art.114 and 131 Const. confirm the granted rights of the non-majority communities as well as the Law on Local Self-Government, by means of a constitutional-law guarantee clause saying that their amendment in the future is only possible with a 2/3 majority vote of the total of the Representatives of the Assembly of the Republic of Macedonia, within which there must be a majority of the votes of the Representatives belonging to the communities not in the majority of the population.<sup>386</sup>

## 9. 10. Specific Legal Protection

Art.77 Const. stipulates that the Public Attorney (Ombudsman) shall give particular attention to safeguarding the principles of non-discrimination and equitable representation of communities in public bodies at all levels and in other areas of public life.<sup>387</sup> This norm signifies at least partially a legal protection for the specific rights of the members of the non-majority communities.

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<sup>381</sup> Art.55 para.1-5 Law on Local Self-Government, 24 January 2002 ("Official Gazette" No. 5/2002; Ohrid Framework Agreement, 2001, Annex A, Art. 114 Const.).

<sup>382</sup> Art.40 Law on Courts (Official Gazette no. 36/95, 45/95), cfr. Macedonia Report 2003: 126. Out of 631 judges in the Republic of Macedonia, 73 (= 11.5%) come from non-majority communities. The number of judges belonging to non-majority communities in the first-instance courts is 58 (= 10.9%), in the appellate courts 11 (= 13.4%), and in the Supreme Court 4 (= 21%); cfr..Macedonia Report 2003: 103.

<sup>383</sup> Macedonian Constitution; Ohrid Framework Agreement, 2001: Annex A, Constitutional Amendments (Macedonia Report 2003: 103 f).

<sup>384</sup> Ohrid Framework Agreement, 2001: Annex A, Macedonian Constitution Art.77 para.1-2.

<sup>385</sup> Ohrid Framework Agreement, 2001: Annex A, Constitutional Amendments.

<sup>386</sup> Ohrid Framework Agreement, 2001: Annex A; Art.114 and 131.

<sup>387</sup> Macedonian Constitution.



### 9.11. Population and Ethnic Communities in Macedonia

	1991 cen		2002 cen	
population <sup>388</sup>	2.033.964	100,0 %	2.022.547	100,0 %
Macedonians	1.328.187	65,3 %	1.297.981	64,2 %
"Communities that are not in the majority of the population" <sup>389</sup>				
1. Albanians	441.987	21,7 %	509,083	25,2 %
2. Turks	77.080	3,8 %	77.959	3,8 %
3. Roma <sup>390</sup>	52.103	2,6 %	53.879	2,7 %
4. Serbs	42.775	2,1 %	35.939	1,8 %
5. Vlachs <sup>391</sup>	7.764	0,4 %	9.695	0,5 %
6. Bosniacs			17.018	0,8 %
	621.709	30,6 %	703.573	34,8 %
Others <sup>392</sup>	84.068	4,1 %	20.993	1,0 %

### 9.12. Implementation Mechanisms

The following governmental and parliamentary bodies deal – exclusively or partially - with the minority issues:

#### PARLIAMENT OF THE REPUBLIC OF MACEDONIA

"11 Oktomvri" bb

1.000 Skopje, Macedonia

Tel: +389 2 3 112 255

Fax: +389 2 3 111 675 and 3 237 947

Website: www.sobranie.mk

#### Permanent Survey Committee for Protection of Citizen's Freedoms and Rights

**Tasks:** In order to protect the human and citizen's freedoms and rights, the Parliament of the Republic of Macedonia founded a Permanent Survey Committee for Protection of Citizen's Freedoms and Rights (Article 76, paragraph 4, of the Constitution). Its findings present a basis for initiating a procedure with a purpose of determining the responsibility of the public position holders. This responsibility primarily refers to the acts and behaviour of the holders of such positions, by which the citizens' freedoms and rights are violated or threatened. In its work, the Committee cooperates with scientific and professional organizations in the sphere of citizen's freedoms and rights protection, with appropriate foreign and international bodies in the field of

<sup>388</sup> With regard to the 1991 population census, see Lazarov, 1996: 242, then Libal, 1993: 123 ff, and Macedonia Report 2003: 12 f. With regard to the 2002 population census, see: Statistical Office of Macedonia: 19.

<sup>389</sup> A term used in the 2001 Ohrid Framework Agreement replacing the term "national minorities".

<sup>390</sup> Another source quotes 110.000 to 260.000 Roma in Macedonia (Klopčic / Polzewr, 1999: 3).

<sup>391</sup> Another source quotes 20.000 Vlachs (Aromanians) in Macedonia (Aromanians in Macedonia, 2001: 2).

<sup>392</sup> Of these, 3.000 to 4.000 are Bulgarians (Minority Rights Group, 1998: 13).

citizen's freedoms and rights protection, as well as with appropriate working bodies in the Parliament.

### **Parliamentarian Council for relations among communities**

**Tasks:** The members of the Council are elected by the Parliament (Article 78, paragraphs 1, and 3 of the Constitution): seven members from the ranks of the Macedonian and Albanian members of Parliament, then five members from the ranks of other communities (Article 78, paragraph 2). The Council deals with issues related to the relations among minority communities and gives proposals (Article 78, paragraph 4). The Parliament of the Republic of Macedonia is obliged to take into consideration these proposals and decide upon them (Article 78, paragraph 5).

## **MINISTRY OF CULTURE**

### **Department for promotion and advancement of communities culture in the Republic of Macedonia**

Ilinden bb  
1.000 Skopje, Macedonia  
Director Engin Musli  
Tel: + 389 2 3 113 019  
Fax: + 389 2 3 124 233; 3 113 058

**Tasks:** The Department carries out informative-documentational, operational-technical and expert-administrative work on the culture of the communities in connection with the encouragement and development of their cooperation with the European and neighbouring countries. It organizes on daily basis meetings with institutions, associations, cultural-artistic associations, non-governmental and other organizations engaged in the cultural activities of the communities in order to help in their advancement and to help them in solving their problems, etc.

## **MINISTRY OF EDUCATION AND SCIENCE**

### **Department for development and advancement of the education in the languages of the communities**

Bul."Ilinden" bb.  
1.000 Skopje, Macedonia  
Director Dragan Nedeljkovic  
Tel: + 389 2 3 238 62841; mobile: + 389 70 250 040  
Fax: + 389 2 3 239 641  
Email: dnedeljkovic@mn.gov.mk

**Tasks:** The Department should implement the Ohrid Framework Agreement in the sphere of the education of the communities in accordance with the Constitution and the international conventions and declarations to which the Republic of Macedonia is a party, with participation in the work of all the bodies of the Government and other institutions in the area of education of the communities; it works to overcome the linguistic barriers and to advance the interethnic conference; it undertakes activities in order to prepare, together with the governmental strategic

partnership group and the Bureau for the advancement of the education, a Strategy and Action Plan for „Education for human rights“ in the primary and secondary schools in the Republic of Macedonia; it opened six classes in Turkish language in the primary and secondary schools as well as seven classes to be taught in Serbian language across the country on voluntary basis and the Vlach language to be taught as separate subject in the Pedagogical Faculty in Stip on voluntary basis; the Department works towards the opening of multiethnic clubs in 20 secondary schools across the country with financial help from the OSCE; it also takes part in many projects in cooperation with the UNESCO, OSCE, UNICEF, Council of Europe, and domestic and international NGOs in the sphere of educational development of the languages of the communities in the Republic of Macedonia.

#### **Bureau for the advancement of the education**

„Dimitrie Cupovski“ No.9

1.000 Skopje, Macedonia

Director Kamil Dzeladini

Tel: + 389 2 30 61 116; Fax: + 389 2 30 61 057

Email: pimak@mt.net.mk

**Tasks:** Strengthens the legal framework; translates the necessary documents into Albanian language; carries out all the correspondence simultaneously in Macedonian and Albanian languages; professional meetings are held in Macedonian, Albanian and Turkish languages; it prepares teaching plans for the secondary and professional education; in the planned activities from the teaching plans, there is a subject “Peace, tolerance and protection” in order to teach the students to prepare projects of mutual interest and development with the help from the international community; the students should develop a culture for peace and security and should know the position, the role and the perspectives of the Republic of Macedonia as an applicant country for the membership of NATO and the EU.

#### **MINISTRY OF JUSTICE**

##### **Human Rights Unit**

„Dimitrie Cupovski “ No. 9

1.000 Skopje, Macedonia

Tel: + 389 2 3 117 277

Fax: + 389 2 3 226 975

Email: tkikerekova@mjustice.gov.mk

**Tasks:** Operationalization and improvement of the constitutional order of human rights system and preparation of normative solutions; following implementation of the human rights Conventions ratified by the Republic of Macedonia and giving proposals for adequate legal solutions; preparation of reports for the compatibility of Macedonian legislation with international convention for human rights; dissemination of the information concerning human rights and development of civil society through cooperation with nongovernmental organizations.

#### **MINISTRY OF FOREIGN AFFAIRS**

##### **Multilateral Department - Human Rights Unit**

Dame Gruev 6

1.000 Skopje

Tel.: +389/2 3 110 333 ext.113

Fax: +389/2 3 115 790

www.mnr.gov.mk

E-mail: mailmnr@mnr.gov.mk

**Tasks:** To monitor the developments in international human rights law and jurisprudence, drafting studies on the compatibility of domestic laws with relevant international standards and formulating proposals for national policy, recommendations for new laws and regulations, or recommendations for adjustments in the existing domestic legislation and administrative practice; initiate procedures for signing or ratification of international human rights treaties and relevant protocols; prepare, in cooperation with relevant Governmental departments, of state reports and other inputs arising from obligations under ratified international treaties; participate in the implementation of national technical cooperation programs of the United Nations Office of the High Commissioner for Human Rights, etc.

## **MINISTRY OF LABOR AND SOCIAL POLICY**

### **Unit for Gender Equality**

"Dame Gruev" No. 14

1.000 Skopje, Macedonia

Head of the Unit – Ms. Elena Grozdanova

Tel.+389/2 3 106 233 and 3 117 288

**Fax: +389/2 3 118 242**

Email: elenagro@yahoo.com

**Tasks:** The main task of the Unit is to positively influence the promotion of women's position, in accordance with the international conventions and documents ratified or joined by the Republic of Macedonia, and in accordance with the activities for designing a clear concept and strategy for overcoming the problems faced by the women in the country. The Unit, inter alia, initiated amendments to the legal regulations or adoption of new regulations, etc; coordinates project implementation in the field of gender equality, prepares reports for the international conventions in the field of gender equality, prepares reports on the women's status in the Republic of Macedonia etc.

## **THE OFFICE OF THE OMBUDSMAN**

Dimitrie Cupovski, No.2

1.000 Skopje, Macedonia

Tel: + 389 2 3 129 351

Fax: + 389 2 3 129 359

**Tasks:** The Ombudsman is a body of the Republic of Macedonia, with the head office in Skopje, which protects the constitutional and legal rights of the citizens and all other parties, in case of such rights' violation by acts, actions and omissions of actions of the state administration bodies and other bodies and organizations exercising public mandate, and which takes actions and measures to protect the principles of nondiscrimination and just representation of persons belonging to all communities in the government authority bodies, local self-government bodies and public institutions and services. The Ombudsman carries out his/her competencies on the basis and within the prescriptions of the Constitution, law and international treaties ratified in accordance with the Constitution. He/she is independent and autonomous in performing its function and funded from the budget of the Republic of Macedonia.

## 10. MOLDOVA, MINORITY LEGISLATION

The independent Moldova, former Moldavian Socialist Soviet Republic (bringing together the parts of historic Besarabia and Transnistria), was established in 1991. The Minority Law from 2001 defines the persons belonging to national minorities as persons with the permanent residence in the country, citizenship and their own ethnic, cultural, linguistic and religious characteristics. In regard on the relative smallness of the titular nation and considering the long years of Russian influence during the Soviet times, the legislation encourages the use of the official Moldovan language. The unsolved problem of Transnistria, a region eastwards from the river Dnjester, is a great burden for the country. The majority of its population (around 750.000) is Slavic (28 % Ukrainians, 25 % Russians, 1,9 % Bulgarians), 40 % are Moldovans, along with the small number of Gagauz. A proposal for autonomy of the region was submitted by the Moldovan government, nevertheless, the conflict remains unsettled and negatively affects the human rights situation in the region.

### 10.1. Basic fundamental rights

Art. 10 para 2 Const. contains the right to ethnic, cultural, linguistic and religious identity. The right to express the belonging to a minority is provided by the Art. 2 of Minority Law. The right to equality and non-discrimination is assured by the Art 16 para 2 Const. and in Art. 4 of Minority Law (explicitly for persons belonging to minorities). In Art. 5 of Minority Law, the state assumes the obligation to create the necessary conditions for the preservation and development of ethnic, cultural, linguistic and religious identity of persons belonging to minorities. Concrete measures were undertaken in favour of the cultural development of Ukrainians, Russians, Gagauzians, Bulgarians, Gypsies (Romany), and representatives of other nationalities. All minorities profited from measures that encourage the establishment of cultural and ethno-cultural associations.

Regarding to the National Policy Conception of the Republic of Moldova from 19 December, 2003, the Moldovans – founding nationality of the state – together with the representatives of other ethics - Ukrainians, Russians, Gagauzians, Bulgarians, Jews, Romanians, Belarussians, Gypsies (Romany), Polishes and others, - are the people of Moldova for which the Republic of Moldova is their common motherland. The State commits itself to take fully care of preservation, development and free expression of ethnic, cultural, religious and linguistic identity of all ethnic communities living in Moldova.

### 10.2. Use of language

Art. 13 para 2 Const. and Art. 4 of the Linguistic Law as well as Art. 7 of the Minority Law guarantees the right to use the mother language in private sphere. Art. 6 of the Linguistic Law determine the use of Moldovan and Russian language in communication with and within public authorities and private NGOs and enterprises. According to the Linguistic Law, the employees in organisations and companies in

certain professions in the areas of Gagauz settlement should dispose as well of the knowledge of the Gagauz language, along with Moldovan and Russian. Publicly visible information has to be written in Moldovan; with Russian or Gagauz translation, "if needed". There are exceptions as well in favour of Ukrainian, Russian and Bulgarian language.

The official language is Moldovan in Latin writing (Art. 13 para 1 Const.). In regard on the contacts with authorities, the Minority Law (Art. 12) provides for the right of minorities to use their mother language in areas where they represent a significant part of the population, as well for the right to use (and receive a response in) Russian language. In court proceedings, other languages can be used in agreement with the process-participants or in favour of persons who do not speak Moldovan. In Gagauzia, Moldovan, Gagauzian and Russian are the official languages, however, Russian is the prevailing language.

In regard of the official use of personal names, the Minority Law determines their transcription in Moldovan language according to the Moldovan grammatic rules. Topographic names are written in Moldovan and Russian, in Gagauzia, their language can be used as well.

### **10.3. Teaching of Language**

The Minority Law (Art. 6 para 1) guarantees the right to education in minority language. The Law envisages the creation of conditions for such education. The Linguistic Law, which guarantees the right to education in Moldavian and Russian languages, as well as in other languages (Gagauzian, Ukrainian, Bulgarian, Jewish, Yiddish), some experimental classes in Ukrainian and Bulgarian already exist. Gagauzia disposes of primary and secondary schools with Gagauzian as the teaching language. Some primary and secondary schools offer minority languages as the teaching subject.

### **10.4. Right to Associations**

The right to assembly and establishment of political parties is guaranteed by the Art. 41 Const. The Minority Law (Art. 18) foresees the right of persons belonging to minorities to establish „cultural, religious and humanitarian“ organisations. Among 88 *ethno-cultural organisations that are active throughout the country, there are the so-called national communities established by Ukrainians, Russians, Bulgarians, Gagauzian, Jews, Belarusian, Gypsies, Poles, Germans, Armenians, Georgians, Central Asia's ethnics, Latvians, Lithuanians, Greeks, and Koreans, native of Africa.* Although some of those communities have the ambition to act as the representatives of the respective minority, regarding to the Minority Law, no one from the ethno-cultural organizations can't pretend on the whole representation of the minorities interests, respectively.

### **10.5. Right to Unimpeded Contacts**

In regard on minorities, this right is assured by Art. 21 Minority Law which explicitly allows the co-operation between the minority organisations and foreign institutions which deal with issues that are of interest for the respective minority organisations.

### **10.6. Right to Information**

The Constitution guarantees the freedom of expression, press and to free access to information. The State is providing for minority programmes on the state-owned radio and TV; 65 % of the programme has to be broadcasted in the official languages, however, in the areas where the minorities live, this notification is not applied. Currently, about 50% of the Moldovan media are in the minority languages.

### **10.7. Right to Political Representation**

The Minority Law (Art. 24) provides for the right to „proportional representation“ of minorities on all executive and judicial levels. No political parties established by the minorities exist. The administrative reform in 2001 and 2003 introduced the so-called rayons, smaller centralised administrative units (32 altogether) which had a certain impact on the proportion between the majority and minority population in certain areas but did not, i.e., influence the interests of Bulgarian minority in the *rayon* Taraclia where they still represent 65% of the population.

### **10.8. Right to Autonomy**

Gagauzia enjoys since 1994/1995 an administrative and cultural autonomy (*Gagauz-Yeri*). The holder of autonomy is the „multinational Gagauzian peoples“, among them almost 79% Gagauz. Gagauzia disposes of an assembly with legislative powers and a directly elected governor (*Baskan*).

### **7.9. Right to Co-determination**

In regard on the issues related to culture and education and affecting minorities, the government is – according to the Minority Law (Art. 22) – obliged to consult the minorities. They are represented in the coordination council, established within the governmental Department of Interethnic Relations, responsible for the implementation of the Minority Law and other laws in respect of interethnic relations.

### **10.10. Specific Legal Protection of Minorities**

No specific legal protection exists.

### 10.11. Population, Nationalities and Minorities

Populations (F 2001) (C 1989)		4.270.000 4.335.360	100,0 %
Moldovans		2.794.749	64,5 %
Nationalities/Minorities			
1.	Ukrainians	600.366	13,8 %
2.	Russians	562.069	13,0 %
3.	Gagauz	153.458	3,5 %
4.	Bulgarians	88.419	2,0 %
5.	Jews	65.672	1,5 %
6.	Belarussians	19.608	0,5 %
7.	Roma	11.571	0,3 %
8.	Germans	7.335	0,2 %
9.	Polish	<u>4.739</u>	<u>0,1 %</u>
		1.513.230	34,9 %
Others		25.823	0,6 %

In 2005, the data of the population census from Republic of Moldova, performed in October 2004, will be published.

### 10.12. Implementation Mechanisms

The following governmental and parliamentary bodies deal – exclusively or partially - with the minority issues:

#### PARLIAMENT OF THE REPUBLIC OF MOLDOVA

Stefan cel Mare 105 Bd.

Chisinau, MD-2073

tel: +373 (22) 23-30-12

E-mail: [info@parlament.md](mailto:info@parlament.md) The Parliament is the supreme representative body of the people and the sole legislative authority of the State in the Republic of Moldova.

**Tasks:** Passes bills and decrees; declares referendums; interprets the bills and ensures the unity of the legislative regulations on the whole state's territory; approves the main trends of the domestic and foreign policy of the country; exercises the parliamentary control on the executive power, under the configurations and the limits of the Constitution; ratifies, denounces, suspends and defeats the validity of the international treaties concluded by the Republic of Moldova; approves the state budget and exercises its control upon it; suspends the activity of the administrative local public bodies, in cases provided by law; passes acts regarding amnesty; performs other tasks, decided by Constitution and laws.



### **Parliamentarian Committee on Human Rights**

**Tasks:** The Committee is the working body of the Parliament, which performs the Parliament's activity. The Committee is subordinated to the Parliament and answer in front of it. The Committee informs upon the project bills and judicial proposals, makes the parliamentary inquiries, debates and decides upon several problems at the assignment of the Parliamentary president and vice presidents. The public administrative bodies, other organs and enterprises, institutions and organizations may consult the Committee on the issues regarding its field of activity. At the end of the consulting session, the permanent committees send out the consultative notices as a recommendation.

### **DEPARTMENT OF INTERETHNIC RELATIONS**

MD-2009, Chisinau

Mateevici str. 109/1 Tel/fax: (37322) 21 40 80

Website: [www.dri.moldova.md](http://www.dri.moldova.md) E-mail : drimoldova@moldova.md

The Department of Interethnic Relations is a central public administrative body, which promotes the state policy of the Republic of Moldova in the field of interethnic relations and realizing the constitutional rights of the citizens regarding the expression of the ethnic, cultural and linguistic identity, contributes on the functioning of the state language, Russian language and other languages according to legislation in force.

**Tasks:** The Department promotes the state policy in the field of interethnic relations and functioning of the spoken languages on the territory of the Republic of Moldova according to the legislation in force; generalizes the practice of the legislative applications in force in respect of the Department's competence. It monitors the ethno linguistic situation in the country; collaborates with the parliamentary commissions, local and central public administrative authorities for maintaining the balance in such domains as education, culture, use of native language, renaissance of traditions, as well as their cultural and linguistic interaction; collaborates with the state bodies from other countries and the international organizations in questions regarding its field of activity; contributes on the national, cultural, linguistic and educational necessity's fulfils of the Moldova's Diaspora representatives; controls, in accordance with the legislation in force, the use of language in the regions densely inhabited by the national minorities, ensuring the observance of the linguistic legislation and achievement of measures for settling the issues in respect with the Department's competences; coordinates the activity regarding the implementation of the Framework Convention for the protection of national minorities ; has participated on the passing the Law on the rights of persons belonging to national minorities and judicial statutory of their organizations, the National policy Concept of the Republic of Moldova, the National Plan of Actions on human rights for 2004-2008.

### **STATE SERVICE FOR RELIGIOUS ISSUES UNDER THE GOVERNMENT OF THE REPUBLIC OF MOLDOVA**

Stefan cel Mare 124 Bd.

Chisinau, MD-2073

tel: +373 (22) 27-04-87

E-mail: [culte@moldata.md](mailto:culte@moldata.md)

The State Service for Religious Issues is the state body, which ensure the state relations with all the religious confessions, communities and associations from the Republic of Moldova and its activity is subordinated to the Government.

**Tasks:** Elaborates and achieves the state policy in respect of confession's activity; monitors the situation regarding religions; maintains its relations with the international religious centers and the religious organizations from abroad.

**MINISTRY OF CULTURE**

Piata Marii Adunari Nationale 1 str.  
Government House, MD-2033

tel: +373 (22) 25-01-33

E-mail: [culte@moldata.md](mailto:culte@moldata.md)

**Tasks:** The Ministry of Culture elaborates and promotes the state policy in respect of culture and arts; sets up the future arrangements and perspective concepts, state programs on culture, arts and national cinema; elaborates normative and legislative acts, destined to arrange its activity in culture and arts spheres; exercises the state control on the legislation's observance in culture and arts domain; sets up the prerogatives, directions of activity and the short-term programs in the field of culture and arts; maintains the international culture collaboration.

Within the Ministry of Culture works the National Minorities Section, that ensures the development and sustenance of the national minorities' culture in the Republic of Moldova.

**MINISTRY OF EDUCATION**

Piata Marii Adunari Nationale 1 str.  
Government House, MD-2033

tel: +373 (22) 23-33-48

E-mail: [consilier@edu.md](mailto:consilier@edu.md)

The Ministry of Education is the organ of the central public administration on teaching and education.

**Tasks:** promotes the state policy, determines the priorities directions and elaborates the concept and strategy on the education development, teaching, professional education; elaborates, approves and implements the state educational standards and controls their achievement; sets up the national system of evaluation on education.

Within the Ministry of Education works the Education Division for national minorities, which ensures the access on education of the national minorities, carries out the educational process in languages of the national minorities, the teaching of history, languages and culture of the national minorities within the teaching institutes (the Russian, Ukrainian, Gagauzian, Bulgarian, Jewish languages and the others).

**MINISTRY OF JUSTICE**

31 August str., 82.

Chisinau MD2012, Republic of Moldova

Phone: (+373 22) 23.33.40

Fax: (+373 22) 23.57.27

[www.justice.gov.md](http://www.justice.gov.md)

E-mail: [viftooli@justice.gov.md](mailto:viftooli@justice.gov.md)

**Tasks:** The Ministry of Justice is the central organ of the public administration, which exercises its control, coordination and guidance in the fields of its competence; ensure the state policy in the justice sphere and is subordinated by the Government. The Ministry of Justice passes the main projects of bills, informs them to the Government; ensure the activity regarding the organization, sustenance and financial resources of the courts; exercises the control of the sentences performance; registers the parties and other socio-political organizations. It represents the interests of the Government of the Republic of Moldova to the European Court for Human Rights and maintains the international relations in respect of justice and human rights, ensures the Government's interaction with the Court of Law. It participates on the international judicial protection of citizens' legitimate rights and interests.

**MINISTRY OF FOREIGN AFFAIRS**

31 August str., 80.

Chisinau MD2012, Republic of Moldova

Phone: (+373 22) 578207, 578206, 578205

Fax: (+373 22) 23 23 02

[www.mfa.md/en](http://www.mfa.md/en)

E-mail: [secdep@mfa.md](mailto:secdep@mfa.md)

The Ministry of Foreign Affairs is the central body of the public administration, destined to promote the State's foreign policy.

**Tasks:** elaborates the foreign policy's Concept of the Republic of Moldova and advances the appropriate proposals to the President, Parliament and Government; promotes the foreign policy of the Republic of Moldova in its relations with other states and international organizations; coordinates the activity of central relevant bodies and other administrative authorities of the Republic of Moldova in order to insure the establishment and further development of the relations with other countries; contributes on the maintenance of the relations with the Moldova's Diaspora. The Ministry is the governmental body empowered with the function of coordinator in the issues concerning the respect of the obligations under international treaties, and the representation of the State's interests in the framework of international organizations, inclusively in the area of human rights; conducts and controls the activity of diplomatic missions and consular offices of the Republic of Moldova in other states and international organizations.

**CENTRE FOR HUMAN RIGHTS**

16, Sfatul Tarii street,

Chisinau 2012, Republic of Moldova

Telephone: 234-800

Fax: 373-2/225-442

[www.iatp.md/cpdom](http://www.iatp.md/cpdom)

E-mail: [cpdom@un.md](mailto:cpdom@un.md)

**Tasks:** The Centre for Human Rights is a national independent institution, which consists of Parliamentary Advocates, and of auxiliary staff who grant in activity of Parliamentary Advocates organizational, informational, legal, financial-economic assistance and assistance carrying other character. CHRM examines complaints on violations of individual's rights of lawful interests; Contributes to national legislation's modification and its adjustment to international legal instruments; Contributes to legal education and information of the population.

## 11. POLAND, MINORITY LEGISLATION

### 11.1. Basic Rights

Basic fundamental rights, such as the right to equality before the law and the right not to be discriminated were included already in the previous (communistic) Constitution of 1952.<sup>393</sup> However, these provisions had only a declaratory character.<sup>394</sup>

In Article 32 of the new Constitution of 1997 they are confirmed again. The prohibition of discrimination is included in Art.13 Const., and explicitly in Art.118 of the Criminal Code<sup>395</sup> and in Art.11 of the Labour Code.<sup>396</sup>

Moreover, there is also everybody's right to peaceful assembly (Art.57 Const.) and association (Art.58 Const.), to the freedom of belief and religion (Art.53 Const.), to freedom of expression and to receive and disseminate information (Art.54 Const.). Notably further goes however Art.35 of the new Constitution, which ensures Polish citizens belonging to national or ethnic minorities the freedom to maintain and develop their own language, to maintain customs and traditions, and to develop their own culture and further the right to establish educational and cultural institutions designed to protect religious identity, as well as to participate in the resolution of matters connected with their cultural identity.<sup>397</sup>

All these fundamental rights should be then once again further elaborated in the *Minority Law*, the draft of which has been worked on in the parliament since 1998. Its first reading took place in March 1999. On 28 April 2004 the Special Subcommittee for the consideration of a draft law *on the national and ethnic minorities in the Republic of Poland* finished its work and forwarded the agreed text of the draft to further parliamentary works. The current title of the draft is: *The Act on the National and Ethnic Minorities and the Regional Language*. Apart from that the important fundamental rights are included already in bilateral treaties, which were concluded between Poland and its neighbouring countries.<sup>398</sup>

Poland is divided, after the recent Constitutional reform, which entered in force on 1 January 1999, into 16 provinces (voivodships), which are further subdivided into 315 districts (powiats) and 2.489 municipalities (*gminas*).<sup>399</sup>

### 11.2. Use of Language

Polish is the official language (Art.27 Const.). Moreover, Art.35 Const. ensures citizens belonging to minority preservation and development of their language. In the Act on the Polish language it is stated explicitly, that the regulations of this Act are not in breach of the rights of national minorities.<sup>400</sup> Therefore, the private use of minority languages,

<sup>393</sup> Cf. Hofmann 1995: 119.

<sup>394</sup> Banaszak 2002: 80.

<sup>395</sup> Poland Report 2002: 22.

<sup>396</sup> Poland Report 2002: 19.

<sup>397</sup> Poland Report 2002: 22.

<sup>398</sup> Poland Report 2002: 22; Helsinki Foundation for Human Rights 1999: 10 f.

<sup>399</sup> Poland Report 2001: 4.

<sup>400</sup> Art. 2 Act on the Polish language of 7 October 1999 (Poland Report 2002: 31, 60).

also in public, is not subject to any restrictions.<sup>401</sup> Moreover, the free use of minority languages, private and public, is guaranteed in the bilateral treaties with neighbouring countries.<sup>402</sup>

There is however a postulate that in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, efforts shall be made to ensure the conditions which would make it possible to use the minority language in relations among those persons and the administrative authorities.<sup>403</sup> However, the legal basis for such practice and its implementation is missing and the use of a minority language as *official language* in contacts with commune and town authorities in the areas where persons belonging to these minorities prevail, is not allowed and also informally barely possible.<sup>404</sup>

On March 18, 2002, the Minister of the Interior and Administration issued the regulation, which makes possible the translation of names and texts placed on the boards of the offices or the institutions of the public use, as well as in the means of public transport - into the national and ethnic minorities languages. The possibilities given by these regulations were first used by the German minority members who placed the boards in their mother tongue in the town of Lasowice Wielkie in Opolskie Voivodship.

The use of personal names in minority languages is officially recognized. Polish citizens belonging to national minorities may change their name and surname free of charge by the local administration into a version consistent with wording and spelling of their mother tongue.<sup>405</sup>

Polish legislation does not provide for the possibility to display in national minority languages traditional local names, street names other topographical indications intended for the public.<sup>406</sup> The official use of the territorial names is allowed only in the official language.<sup>407</sup>

One should also notice that on May 12, 2003 Poland signed the *European charter for regional or minority languages*. Currently, the ratification process is in its preparatory phase and discussions are held with the participation of the national and ethnic minorities over the scope of the provisions of the *Charter* that should be binding for Poland.

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<sup>401</sup> Helsinki Foundation for Human Rights 1999: 20.

<sup>402</sup> With Germany and Czechoslovakia (1991), with Ukraine and Belarus (1992) and Lithuania (1994). More on that cf. Poland Report 2002: 31, 81, 84, 86, 90, 96.

<sup>403</sup> Poland Report 2002: 31.

<sup>404</sup> Helsinki Foundation for Human Rights 1999: 21.

<sup>405</sup> Between 1990 and 2000 it was mainly the members of the German minority that made use of this possibility (Poland Report 2002: 32).

<sup>406</sup> Poland Report 2002: 32.

<sup>407</sup> Decree of the President of Poland of 24 October 1934 (Helsinki Foundation for Human Rights 1999:21).

### 11. 3. Teaching of Language

In Poland the right to education is everybody's right, according to Art. 70 Const., Therefore national minorities also fall within this category. Education to 18 years of age is compulsory.<sup>408</sup>

In principle, the right of persons belonging to national minorities to be instructed in their mother tongue is recognized.<sup>409</sup> Private educational institutions are allowed.<sup>410</sup>

However, schools organising minority language teaching or instruction in a minority language are mainly public schools managed by local self-government authorities.<sup>411</sup>

Instruction of a minority is possible at all education levels in one's native language: kindergartens, primary schools, middle schools and high schools, and depending on the number of people interested in this, three types of schools may be organised:<sup>412</sup> a) schools with tuition in a minority language; b) bilingual schools with tuition in two equivalent languages (*Polish and minority language*); c) schools with additional study of a minority language, where that minority language is obligatory for pupils belonging to that minority.

Moreover, there are also *inter-school groups* composed of pupils from different schools, for whom additional native language study is organised.

Tuition of minority languages is financed by the state budget funds. The local self-government authorities receive from the state budget subsidies for educational purposes increased by 20% per each student in larger schools and by 50% per each student in smaller schools where the language of a national minority is taught.

The number of schools with the minority languages as teaching language has increased a great deal since the beginning of 90's, to the largest extent in case of the German minority. In 2002/2003 there were already 618 schools of this kind (of the three types) with altogether nearly 49.000 students, which however represent only a minor part of the Polish school system embracing 7 million students and around 600.000 teachers.<sup>413</sup>

The education issue of Roma is a separate problem. Their integration in the general education system is very difficult. Nevertheless, it is urgent as there are still around 30% of the Roma children who do not fulfil the compulsory schooling obligation. One of the solutions for problems connected with education of Roma children is a *Programme for the Roma community in Poland* adopted by the Government on 19 August 2003.

<sup>408</sup> Poland Report 2002: 35.

<sup>409</sup> Art.13 Education System Act of 7 September 1991 as well as the decree of the Minister of National Education of 24 March 1992 (Poland Report 2002: 36).

<sup>410</sup> Art.13 Education System Act of 7 September 1991 and Art.13 decree of the Minister of National Education of 21 September 2000 (Poland Report 2002: 35).

<sup>411</sup> Only the Jewish minority has created its own educational institutions in Warsaw and Wrocław, namely 'Lauder-Morasha' Schools (Poland Report 2002: 35).

<sup>412</sup> Helsinki Foundation for Human Rights 1999: 23.

<sup>413</sup> Poland Report 2002: 37.

#### 11. 4. Right to Associations

The right to assembly and to association is guaranteed by Art.57 and 58 Const. and everybody's right to establish political parties is guaranteed by Art.11 Const.<sup>414</sup> The Association Act of 7 April 1989 has led to a increasing number of new associations<sup>415</sup> the basic form of which is the socio-cultural association. So far, the Belarussian minority is the only minority, which has established its own political party.<sup>416</sup>

#### 11. 5. Right to Unimpeded Contacts

Freedom of movement and the choice of place of residence and sojourn within the territory of the Republic of Poland as well as the freedom to leave Poland are ensured to everyone by the Polish Constitution (Art.52).<sup>417</sup> There are no restrictions for transfrontier co-operation contacts that the minorities are developing within the country and across borders.<sup>418</sup> As Poland has signed numerous bilateral treaties with its neighbouring countries and with other countries of Central Europe, the transfrontier co-operation is supported by special measures. Indeed, several Euro-regions have been established in the meantime.<sup>419</sup>

#### 11. 6. Right to Information

Everybody's right to freedom of expression as well as freedom to receive and disseminate information is guaranteed by Art.54 Const.<sup>420</sup> Bilateral treaties between Poland and its neighbouring countries grant the respective minorities the right to dissemination and exchange of information in their mother tongue.<sup>421</sup> Additionally, there is the Act on Radio and Television from 1992, which has definitely improved the minorities' access to the public radio and television in the 90's, especially in the regional broadcasting stations.<sup>422</sup>

The Polish *television* (TVP) has in the past prepared many programmes on culture, tradition and history of national and ethnic minorities. They are broadcasted both by the central and the regional broadcasting stations.<sup>423</sup>

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<sup>414</sup> Poland Report 2002: 23, 40.

<sup>415</sup> Until the end of 1998, over 150 new organisations were established by persons belonging to national minorities and officially registered. With 60 organisations the Germans have the highest number, and are followed by the Ukrainians, which equally with Belarussians and Roma have over a dozen organisations. The significant increase in number of minority organisations results from the fact that only a few of them are nationwide, most of the others restrict their activity to one region or to a local society (Helsinki Foundation for Human rights 1999: 18).

<sup>416</sup> Helsinki Foundation for Human rights 1999: 18.

<sup>417</sup> Poland Report 2002: 41.

<sup>418</sup> Helsinki foundation for Human Rights 1999: 10.

<sup>419</sup> For more details cf. Poland Report 2002: 44.

<sup>420</sup> Poland Report 2002: 23.

<sup>421</sup> More on that compare Poland Report 2002: 27, 81, 84, 56, 90, 96.

<sup>422</sup> Art.21 para.9 of the Act on Radio and Television 1993 (Poland Report 2002: 26 f.).

<sup>423</sup> In 2000, the regional TV stations have broadcasted a total of 210.8 hours of the minority oriented programmes (Bialystok, Gdansk, Katowice, Kraków, Lublin, Poznan, Rzeszow, Szczecin, Warszawa). Apart from that there are also 22,5 hours of a shared frequency band (Poland Report 2002: 28 f.).

The situation with radio broadcasters is similar. First of all the regional stations have broadcasted programmes devoted to important problems and events of the minorities, partly also in respective minority languages.<sup>424</sup>

An important improvement was introduced by the amendment of the Act on Radio and Television in 2001,<sup>425</sup> namely the category of 'social broadcaster', which is exempted from licensing fees.<sup>426</sup>

As regards the print media, there are weekly and monthly magazines which are fully financed by the public means. They are published for Lithuanians, Belarussians, Ukrainians and Lemks, Germans, Armenians, Roma, Tatars, Jews and Slovaks.<sup>427</sup>

### 11. 7. Right to Political Representation

During the elections to the self-government authorities in 1990, 1994, 1998 and 2002, the Germans, Belarussians, Lithuanians, Lemks and Ukrainians have submitted their own constituency lists.<sup>428</sup> They succeeded in achieving results, which were basically corresponding to the number of their inhabitants in the respective communes (the number of seats obtained amounts to about 50).

The Act on elections to the Sejm of 1993 provided, in respect of election committees of registered organisations of national minorities, for exemption from gaining at least 5% of the total of votes in the electoral constituencies and 7% nationwide.<sup>429</sup> The act on electoral ordinance of 2001<sup>430</sup> as well comprises the minority's exemption from the 5% threshold, valid in electoral constituencies.<sup>431</sup>

During the elections in 2001, the German minority could obtain two seats in the Sejm. The same was valid for the Belarussian minority who received as well one seat in the Senate.<sup>432</sup>

The minorities, whose settlements are distracted in entire Poland, are interested in their steady representation in the Sejm through introduction of "curiae" system i.e. of at least one reserved seat for them.<sup>433</sup>

### 11. 8. Specific Legal Protection

The Polish legislation does not provide for further rights, such as the right to autonomy or to co-determination or to specific legal protection of minorities.

<sup>424</sup> In 2000, the regional radio stations have broadcasted a total of 908.5 hours devoted to the minorities (Koszalin, Wrocław, Rzeszów, Białystok, Katowice, Szczecin, Opole, Olsztyn, Kraków) (Poland Report 2002: 30).

<sup>425</sup> Act of 1 February 2001 on Amending the Act of the Radio and Television (Poland Report 2002: 27).

<sup>426</sup> Poland Report 2002: 27.

<sup>427</sup> Poland Report 2002: 7ff.; Helsinki Foundation for Human Rights 1999: 19 f.

<sup>428</sup> Poland Report 2002: 40.

<sup>429</sup> Art.3-5 Act on elections to the Sejm of 28 May 1993 (Helsinki Foundation for Human Rights 1999: 25).

<sup>430</sup> Act on Electoral Ordinance to the Sejm and to the Senate of 12 April 2001 (Poland Report 2002: 40).

<sup>431</sup> Poland Report 2002: 40.

<sup>432</sup> Poland Report 2002: 40 f.

<sup>433</sup> Helsinki Foundation for Human Rights 1999: 25.



### 11. 9. Population, Ethnic Groups and Minorities in Poland

Total population (2002) <sup>434</sup>	37.529.751	
Poles <sup>435</sup>	36.859.241	
National and ethnic minorities <sup>436</sup>		
1. Germans	147.094	
2. Belarussians	47.640	
3. Ukrainians	27.172	
4. Roma	12.731	
5. Lemks	5.850	
6. Lithuanians	5.639	
7. Russians	3.244	
8. Slovaks	1.710	
9. Jews	1.055	
10. Tatars	447	
11. Czechs	386	
12. Armenians	262	
13. Karaites	43	
TOTAL:	253.273	
52.490 persons declared that they use kashubian language (regional language in Poland) at home.		

### 11. 10. Implementation Mechanisms

The following governmental and parliamentary bodies deal –exclusively or partially - with the minority issues:

#### 1. NATIONAL AND ETHNIC MINORITIES COMMITTEE, SEJM OF THE REPUBLIC OF POLAND

Ul. Wiejska 4/6  
 00-902 Warsaw, Poland  
 Phone: (+48 22) 6941829  
 Phone/fax: (+48 22) 6942048  
 E-mail: zjablon@sejm.gov.pl  
<http://www.sejm.gov.pl>

<sup>434</sup> According to the results of the National Population and Housing Census held in 2002.

<sup>435</sup> The difference between the total population and the total number of persons belonging to minorities.

<sup>436</sup> National Population and Housing Census 2002.

**2. TEAM FOR NATIONAL MINORITIES** (*advisory and consultative body of the Prime Minister*)

Postal address (Secretariat):

Ministers two Spraw Wewnętrznych i Administracji

Departament Wyznan i Mniejszości Narodowych

Wydział Mniejszości Narodowych

**3. NATIONAL MINORITIES DIVISION****DEPARTMENT OF DENOMINATIONS AND NATIONAL MINORITIES  
MINISTRY OF THE INTERIOR AND ADMINISTRATION**

Ul. Stefana Batorego 5

02-591 Warsaw, Poland

Phone: (+48 22) 6011539, 6014352, 6011975, 6011538

Phone/fax: (+48 22) 6011696

e-mail: [wmn.dw@mswia.gov.pl](mailto:wmn.dw@mswia.gov.pl)

<http://www.mswia.gov.pl>

**3. NATIONAL MINORITIES DIVISION DEPARTMENT OF DENOMINATIONS AND NATIONAL  
MINORITIES MINISTRY OF THE INTERIOR AND ADMINISTRATION**

Ul. Domaniewska 36/38

02-672 Warsaw, Poland

Phone: (+48 22) 6011539, 6014352, 6011975, 6011550, 6011538

Phone/fax: (+48 22) 6011696

E-mail: [wmn.dw@mswia.gov.pl](mailto:wmn.dw@mswia.gov.pl)

<http://www.mswia.gov.pl>

Postal address:

ul. Stefana Batorego 5

02-591 Warsaw, Poland

**4. MINISTRY OF CULTURE****DEPARTMENT OF CULTURE OF NATIONAL MINORITIES**

Ul. Krakowskie Przedmieście 15/17

00-071 Warsaw, Poland

Phone: (+48 22) 8260116, 8264272

E-mail: [dmn@mk.gov.pl](mailto:dmn@mk.gov.pl)

<http://www.mk.gov.pl>

**5. MINISTRY OF NATIONAL EDUCATION AND SPORT DEPARTMENT OF GENERAL AND  
SPECIAL EDUCATION AND SOCIAL PREVENTIVE MAINTENANCE**

Al. Szucha 25

00-918 Warsaw, Poland

Phone: (+48 22) 6289128, 6288136

E-mail: [minister@menis.gov.pl](mailto:minister@menis.gov.pl)

<http://www.menis.gov.pl>

**6. MINISTRY OF FOREIGN AFFAIRS LEGAL AND TREATY DEPARTMENT**

Al. Szucha 23

00-580 Warsaw, Poland

Phone: (+48 22) 5239424, 5239420, 5239981

Fax: (+48 22) 523 8329, 5239512

E-mail: [dpt@msz.gov.pl](mailto:dpt@msz.gov.pl)

<http://www.msz.gov.pl>

**7. GOVERNMENT PLENIPOTENTIARY FOR EQUAL STATUS OF WOMEN AND MEN, CHANCERY OF THE PRIME MINISTER**

Al. Ujazdowskie 1/3  
00-583 Warsaw, Poland  
Phone: (+48 22) 5200831  
Fax: (+48 22) 5200451  
E-mail: [rownystatus@kprm.gov.pl](mailto:rownystatus@kprm.gov.pl)  
<http://www.kprm.gov.pl>

**8. COMMISSIONER FOR CIVIL RIGHTS PROTECTION (OMBUDSMAN)**

al. Solidarnosci 77  
00-090 Warsaw, Poland  
Phone: (+48 22) 5517700  
Phone for attendees: (+48 22) 5517760, 5517811  
fax: (+48 22) 8276453  
<http://www.brpo.gov.pl>

**9. COUNCIL FOR THE PROTECTION OF MEMORY OF COMBAT AND MARTYRDOM**

Ul. Wspólna 2  
00-926 Warsaw, Poland  
phone: (+48 22) 6618838  
fax: (+48 22) 6280375, 6283582  
e-mail: [rada@radaopwim.pl](mailto:rada@radaopwim.pl)  
<http://www.rada.opwim.pl>

## 12. ROMANIA, MINORITY LEGISLATION

### 12.1. Basic Rights

Hungarians, Roma, Ukrainians, Germans, Lipoveni/Russians, Turks, Tatars, Serbs, Slovaks, Bulgarians, Croats<sup>437</sup>, Greeks, Jews, Czechs, Poles, Italians, Armenians and Csangos are considered national minorities. At the census of 2002, the ethnic group Romanians included Macedonian-Romanians; the ethnic group Hungarians including Szeklers; the ethnic group Germans including Saxons and Swabians; the other nationalities included Carashovenians, Albanians, Macedonians. The Csango minority was also taken into account.

The general right of equality is guaranteed in Art.16 of the Constitution, while Art.6 para.1 Const. explicitly guarantees the right to identity, preservation, development and expression of ethnic, cultural, linguistic and religious identity of persons belonging to national minorities. The Constitution also guarantees the equality before the law and authorities without any discrimination (Art.4 para.2; Art.6 para.2; Art.16 para.1). However, these legal norms still need implementation and the integration of Roma is to a large extent an unsolved problem.<sup>438</sup> Their factual discrimination, *inter alia*, concerning housing, employment and health care shows that there is still much to be improved.<sup>439</sup>

### 12.2. Use of Language

The right to private use of one's mother tongue, also in public, is included in the right to identity (Art.6 Const.).<sup>440</sup> Romanian is the official language in Romania.<sup>441</sup> It is valid naturally also in communication between the citizens and administrative authorities, however, in the territorial administrative units with a quota of minority members of at least 20%, persons belonging to this minority may use their mother tongue and receive information in the same language in contact with local authorities. In local councils (of districts, communities) in which councillors from minorities constitute at least one-third of the council's membership, the language of the respective minority can on request be used at council sittings.<sup>442</sup>

However, the implementation of those legal provisions depends on the availability of bilingual or multilingual personnel who must be instructed accordingly.<sup>443</sup> According to Art.23 Const., any person detained or arrested should be promptly informed, in a language he/she understands, of the grounds for his/her detention and of the charges

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<sup>437</sup> Including Carasoveni.

<sup>438</sup> Opinion on Romania 2001: point 25-29.

<sup>439</sup> Opinion on Romania 2001: point 37, 38. Within the Roma-group the most discriminated category are above all women and girls.

<sup>440</sup> Romania Report 1999: 26.

<sup>441</sup> Romania Report 1999: 26.

<sup>442</sup> Official documents need however to be composed in Romanian; cf. law on local public administration of May 2001 (Comments of Romania 2002: 3).

<sup>443</sup> Opinion on Romania 2001: point 50.

against him/her, through an interpreter, if applicable and free of charge (Art.127 Const.).<sup>444</sup>

The use of personal names in minority languages is possible without any restrictions. In addition, private signs or inscriptions in a minority language are free. From 2001 the use of bilingual topographic information, names of cities and streets is legally regulated in the areas where inhabitants belonging to a minority constitute at least 20% of the population.<sup>445</sup> The Government Decision no. 1206/2001 approved the application norms of the provisions regarding the rights of the citizens belonging to national minorities to use their mother tongue in the local public administration, as established in the Law of the Local Public Administration no. 215/2001.

One can find below a brief table-report with the practical results of the application of the mentioned provisions, which are entirely compliant with the rights granted by the Framework Convention, in the counties concerned. The provisions are put into practice by the local authorities (mayors, prefects and presidents of the county councils).

### ***The stage of the implementation of the provisions of the Government Decision no. 1206/2001, by county***

#### **1. ALBA**

The names of localities where the Hungarian minority exceeds 20% (7) and the Roma minority exceeds 20% (1) are bilingually written. Names of public institutions are bilingually written in a single locality. Mayor and ten councilors belong to Hungarian minority in one locality. Hungarian –speakers were hired within three municipalities to facilitate communication.

#### **2. ARAD**

Mother tongue is used in local public administration in ten localities. There are bilingual inscriptions of locality names in 16 localities. In 3 localities, the use of mother tongue in local public administration was not requested (Chisineu-Cris, Sinteia Mare and Vingă)

#### **3. BIHOR**

The percentage of citizens belonging to minorities exceeds 20% in 50 localities. There are bilingual inscriptions of locality names in all of them, the agenda of local council meetings and the decisions adopted are communicated to people also in their mother tongue. Hungarian–speakers were hired in all these municipalities to facilitate contacts.

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<sup>444</sup> Romania Report 1999: 11 and 28.

<sup>445</sup> Law on local public administration of May 2001 (Opinion on Romania 2001: point 51). The barrier of 20% is problematic as apart from the Hungarian minority very few other minorities may surmount it (Tomiu 2001: 1).

**4. BISTRITA-NASAUD**

The names of localities where the Hungarian minority exceeds 20% are bilingually written. In most of localities public institutions names are bilingually written. 3-5 Hungarian speakers work in each municipality. The agenda of local council meetings and the decisions adopted are noticed to people also in their mother tongue only in Branistea commune. Although 7 councillors belong to the Hungarian minority, they have not used their right to speak their mother tongue during the council's meetings.

There are also citizens belonging to the Roma community, but they usually speak Romanian. Roma people work within the prefecture, as well as within Bistrita and Beclean municipalities. Roma mediators work within Bistrita, Budacu de Jos and Dumitrita municipalities.

**5. BOTOSANI**

The percentage of Ukrainian citizens exceeds 20% in a single locality. The mayor and 2 councillors belong to this minority. All the legal provisions are observed.

**6. BACAU**

In 4 localities the percentage of citizens belonging to minorities exceed 20%. The name of the locality is bilingually written and Hungarian is used during council's meetings only in Ghimes-Faget. There is a county office for the Roma community and 2 Roma councilors were elected within the county councils.

**7. BRASOV**

Citizens belonging to minorities exceeding 20% use without restraint their mother tongue in relationship with local authorities, the agenda of the local councils meetings is noticed also in this language and all the names of localities are bilingually written, as well as the names of public institutions.

**8. BUZAU**

There is a single locality- Calvine commune, where Roma citizens exceed 20%. There were no individual or Roma organizations requests to use their mother tongue in relation with local public administration.

**9. CARAS-SEVERIN**

People belonging to minorities exceed 20% in ten localities. The agenda of local council meetings is bilingually noticed in 2 localities: Lupac and Girnic. In two localities mother tongue is used in relation with the local administration: Carasova and Girnic, and during the local council's meetings in 2 localities: Girnic and Lupac. Bilingual inscriptions of locality names are placed in all these localities. Public institutions are bilingually adopted in 6 localities: Carasova, Coronini, Girnic, Lupac, Pojejena and Socol.

28,85 % of the population belong to the Roma community in a single locality- Ticvanu Mare. They do not use their mother tongue in writing. A Roma expert works within the municipality, facilitating the contacts.

<p><b>10. CLUJ</b> In 25 localities people belonging to a minority exceed 20%. In all these localities Hungarian speakers were hired within local councils and bilingual plates with locality names were placed. In 9 localities mayors and in 13 the deputy mayors belong to the Hungarian minority. Mother tongue is used in relationship with local administration and during local councils meetings (24 localities), and the agenda of local councils meetings is bilingually noticed to the citizens. Citizens can address to the local authorities in mother tongue. Hungarian speakers were hired within municipalities to facilitate communication.</p>
<p><b>11. CONSTANTA</b> In 2 localities people belonging to a minority exceed 20%. The use of mother tongue was not requested in relation with local public administration or for the agenda of local council meetings and wedding. Bilingual plates for locality names and public administration institutions will be placed during this year. Turkish or Russian speakers were hired within these municipalities to facilitate communication.</p>
<p><b>12. COVASNA</b> In all the 39 localities where people belonging to a minority exceed 20%, the agenda of local councils and their decisions are noticed also in their mother tongue; full and simultaneous translation is provided during council meetings, weddings are celebrated in Hungarian and Hungarian speakers were hired within municipalities to ensure a proper communication. The bilingual inscriptions of localities names observe the legal provisions. Cases were recorded when the name of the county capital was written only in Hungarian, the Hungarian name for the city was used in written correspondence and selections were organized for hiring personnel, a compulsory condition for the applicants being the knowledge of Hungarian. Legal measures have been taken to settle the matter.</p>
<p><b>13. DOLJ</b> People belonging to the Roma minority exceed 20% in 9 localities. No requests for using their mother tongue in relation to the local public administration were recorded.</p>
<p><b>14. HARGHITA</b> In all the 60 localities where citizens belonging to the Hungarian minority exceed 20%, Hungarian language is used in relation with the local administration, bilingual plates with the names of localities were placed, as well as for public institutions, the agenda of local councils meetings is noticed also in mother tongue, as well as the decisions. Weddings are celebrated in Hungarian, if requested.</p>
<p><b>15. HUNEDOARA</b> Bilingual plates for the locality names were placed in all the 4 localities mentioned in the Appendix to the Norms for the implementation of GD 1206/ 2001</p>
<p><b>16. IASI</b> Requests for placing bilingual plates for locality names were recorded only in Stolniceni-Prajescu commune. No requests for using mother tongue were recorded.</p>

<p><b>17. MARAMURES</b> Bilingual plates with locality names were placed in all the 17 localities where citizens belonging to a minority exceed 20% and the use of their mother tongue in relationship with local administration has been ensured. The decisions of the local councils are noticed in mother tongue, too.</p>
<p><b>18. MEHEDINTI</b> There is a single locality- Svinita - where people belonging to a minority (Ukrainians) exceed 20%. Mother tongue is used in relation with local authorities. On the basis of a decision of the local council, the agenda and the decisions of the local council are noticed in Romanian until equipment with Cyrillic letters is bought. A bilingual inscription for the locality name is provided.</p>
<p><b>19. MURES</b> The provisions of the GD 1206/ 2001 are fully observed in all the localities where people belonging to a minority exceed 20%.</p>
<p><b>20. SATU MARE</b> The provisions of the GD 1206/ 2001 are fully observed in all the localities where people belonging to a minority exceed 20%.</p>
<p><b>21. SALAJ</b> The provisions of the GD 1206/ 2001 are fully observed in all the localities where people belonging to a minority exceed 20%.</p>
<p><b>22. TIMIS</b> There are bilingual inscriptions with locality names in all the 6 localities where people belonging to a minority exceed 20%. Hungarian speakers were hired within the municipalities in order to facilitate communication. No requests for noticing the agenda of local councils meetings, decisions and translating the debates during council meetings have been recorded.</p>
<p><b>23. TULCEA</b> In 3 of the 7 localities where people belonging to a minority exceed 20%, bilingual inscriptions with locality names are placed. The same measure is to be implemented for the other 4 localities. The names of public administration institutions were not stated bilingually. Minority language speakers were hired within municipalities to facilitate communication and translation of the debates during the local council meetings was ensured.</p>

### 12.3. Teaching of Language

Art.32 para.3 Const. guarantees the right of persons belonging to national minorities to learn their mother tongue and the right to be educated in this language. Chapter XII of the new Education Law 151/ 1999 further elaborates these rights.<sup>446</sup> Thus, there are minority schools (or departments or classes) in which education is provided in the languages of national minorities (Art.118 and Art.119 para.1). History and geography

<sup>446</sup> Articles 119-126 of the Education Law no 84 of 24 July 1985, amended and completed with the law no 131 of 29 December 1995 (Romania report 1999: 12 f., 28 and 30 f.), amended with the law no 151/ 1999.



shall be taught in minority languages in the primary school and in Romanian in secondary schools (Art.120 para.2).

The history and traditions of the minorities residing in Romania must be respected (Art.120 para.4). Pupils belonging to national minorities that attend schools with Romanian as the education language, are entitled, where they so request, to study their mother tongue (Art.121). Students undergoing vocational training of secondary schools and at post-secondary-school level, shall receive their specialist training in Romanian and where possible will also have the opportunity to acquire the specialised terminology in their mother tongue (Art.122 para.1). Medical students in State universities may receive their vocational training in their mother tongue, provided that they assimilate the specialised terminology in Romanian (Art.122 para.2). State universities may, upon request, organise groups and departments where teaching is provided in the mother tongue (Art.123). Final examinations to all levels of education (excluding minority schools) shall be in Romanian (Art.124). Out of almost 30.000 schools in Romania with 4.283.000 pupils there are almost 3.000 minority schools (= 10%) with the total number of 222.000 minority students (= 5,2%), out of which the Hungarian minority has the highest share.

To that number one should add around 13.000 pupils belonging to national minorities (= 0,3%) attending 164 schools where teaching is provided in Romanian.<sup>447</sup> The Hungarian minority has at its disposal some university facilities.<sup>448</sup> Therefore, the instruction at the university may be carried out partly in Hungarian.<sup>449</sup> However, this is considered insufficient from the side of the Hungarian minority.<sup>449</sup>

The new Education Law contains certain basic approaches favourable for the minorities. However, the minority pupils that are taught in mother tongue (5,2%) or learn their mother tongue (0,3%) are strongly underrepresented as their share in the overall number of students is 5,5% whereas the share in the total number of inhabitants is 10,4%. In addition, a significant percentage of Roma children attend school irregularly or not at all.<sup>450</sup>

#### 12.4. Right to Associations

As everybody's right, the Constitution guarantees the right of assembly (Art.36)<sup>451</sup> as well as the right of association (Art.37), as long as the implementation of this right (to freely associate in political parties, trade unions and other forms of association) does not follow subversive or constitutionally adverse aims.<sup>452</sup>

<sup>447</sup> Romania Report 1999: 33 ff.

<sup>448</sup> Among them there are departments in the universities of Cluj-Napoca, Targu Mures and Bucharest (Romania Report 1999: 42). The universities of Petöfi-Schiller or Babes-Bolyai offer instruction also in Hungarian and in German (Opinion on Romania 2001: point 55).

<sup>449</sup> Andreescu 1999: 12 and 19.

<sup>450</sup> Opinion on Romania 2001: point 57.

<sup>451</sup> Provided that it regards peaceful events (Romanian constitution 1991). Cf. also Art.1 Law no 609 of 23 September 1991 on the organisation and conduct of public assemblies (Romania Report 1999: 16 f.).

<sup>452</sup> Cf. also Art.8 para.2 and Art.9 Const. as well as the Law no 27 of 26 April 1996 on Political Parties (Romania Report 1999: 12 f. and 17 ff.).

## 12.5. Right to Unimpeded Contacts

Art.25 Const. guarantees to *everybody* and by this also to persons belonging to national minorities the right to free movement within the country and abroad. From 1996, that is from the time when the Hungarian Party joined the governmental coalition, the initiatives of cross border cooperation between territorial bodies or local authorities were intensified.<sup>453</sup>

## 12.6. Right to Information

Art.31 Const. guarantees to *everybody* the right to receive or to transmit information.<sup>454</sup> The law on Radio and Television Broadcasting of 1992 elaborates further this right.<sup>455</sup> Daily newspapers, magazines and publications that are published in minority languages, are sponsored with state grants.<sup>456</sup> From 1993 there are television programmes broadcast from the central studios in the mother tongue of persons belonging to national minorities, in addition, programmes are broadcast by the district studios in Cluj-Napoca, mainly for the Hungarian and German minorities.<sup>457</sup> Other minorities are provided with the series of broadcast entitled '*Convietuirii*' (*Cohabitation*) and '*The life of Gypsies/Roma*'.<sup>458</sup> In addition, the Romania Broadcasting Company produces and broadcasts programmes in minority languages both in its central studios and in its local studios.<sup>459</sup> Minorities complain that the access to public media is unequal comparing to the national majority.<sup>460</sup> There are mainly complaints regarding the assignment of broadcasting hours, which do not take into consideration the needs of the target groups of listeners and viewers.<sup>461</sup> Moreover there is an uneven distribution of resources, concerning both television and radio programmes, among the various minorities.<sup>462</sup>

## 12.7. Right to Political Representation

According to Art.59 para.2 Const., the national minorities, which fail to obtain the number of votes for representation in Parliament, have the right to one Deputy seat

<sup>453</sup> Romania is a signatory state of the European Framework Convention on Transborder Co-operation between Local Communities or Authorities (Romania Report 1999: 12 and 49 f.; also Andreescu 1999: 15 f.).

<sup>454</sup> The right to freedom of conscience, opinion and belief in Art.29 Const. as well as the right to free expression in Art.30 stay in close connection to it (Romania Report 1999: 21 ff.).

<sup>455</sup> Law no. 48 of 27 May 1992 on Radio and Television Broadcasting (Romania Report 1999: 24).

<sup>456</sup> There are around 130 periodicals published in the minority languages (Romania Report 1999: 25 f.).

<sup>457</sup> There are central television programmes broadcasted in the dimension of 3 hours a week in Hungarian and almost 2 hours a week in German (Romania Report 1999: 26).

<sup>458</sup> Romania Report 1999: 26.

<sup>459</sup> The Radio central studio broadcasts weekly for 25 hours and 20 minutes in Hungarian and for 24 hours and 40 minutes in German. The regional studios in Cluj-Napoca, Targu Mures, Timisoara and Constanta broadcast weekly for 95 hours in 10 minority languages. Radio Targu Mures and Craiova deliver a weekly programme of 60 minutes for Roma (Romania Report 1999: 25 f.).

<sup>460</sup> Andreescu 1999: 10.

<sup>461</sup> Opinion on Romania 2001: point 47.

<sup>462</sup> Opinion on Romania 2001: point 46.

each. However, they have to obtain at least 5% of the average number of votes required for one seat. The minority organisations are treated as political parties during elections, nevertheless, each national minority is entitled to be represented by one organisation only. During the electoral campaign the minorities' candidates are treated in the same manner as all other candidates and political parties with regard to their access to and treatment by the public radio and television and with regard to the financing of their campaign out of public resources.<sup>463</sup>

During the elections in 1996 there were elected 25 deputies and 11 senators as candidates of the Democratic Alliance of Hungarians in Romania (DAHR).<sup>464</sup> Furthermore there were 15 deputies, each of whom represented a different minority.<sup>465</sup> During the elections in November 2000 DAHR won 27 seats in the Chamber of Deputies and 12 in the Senate.<sup>466</sup>

In case of participation of persons belonging to the national minorities in the local elections, everybody's conditions shall apply.<sup>467</sup> Thereto they receive an access to the public radio and television programmes in proportion to their share of population within the constituencies in the district (Art.57 para.2). During the local elections in 1996, 151 persons belonging to national minorities were elected as mayors and moreover, representatives of minorities could win the total of 2.995 seats in the councils of villages, towns, cities, districts.<sup>468</sup>

During the municipal elections of June 2000 the minorities could place up to 160 mayors.<sup>469</sup> Moreover, in those elections, 2.997 members of the councils originated from the minorities.<sup>470</sup> Concerning the political participation of the national minorities in the local elections, the Law for the election of local public administration authorities states as follows: Art. 7 (1) Within the meaning of the present law, national minority means that ethnic group which is represented in the National Minorities Council. (2) Candidatures may be put forward by the organisations of the citizens belonging to national minorities represented in the Parliament. (3) Candidatures may also be put forward by other lawfully established organisations of the citizens belonging to national minorities, that shall submit a members' list to the Central Election Bureau. The number of members may not be less than 15% of the total number of citizens who, at the latest census have declared they belonged to that minority. After the June 2004 local elections, the organizations of national minorities have obtained 201 mayor seats and 2863 local counselor seats.

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<sup>463</sup> Art.4 para.1-3 and Art.46 para.1-2 of the law no 68 of 15 July 1992 on Elections to the Chamber of Deputies and the Senate (Romania Report 1999: 43).

<sup>464</sup> Hungarian *Romaniai Magyar Demokrata Szovetseg* (Boehmer 1994: 219).

<sup>465</sup> Albanians, Armenians, Bulgarians, Greeks, Jews, Germans, Italians, Poles, Roma, Russians, Serbs, Slovaks and Czechs, Tatars, Turks, Ukrainians (Romania Report 1999: 12 f. and 47 f.).

<sup>466</sup> Comments on Romania 2002: 1.

<sup>467</sup> Law no 25 of 12 April 1996 on local elections (Romania Report 1999: 43).

<sup>468</sup> Out of the total number, 89% were Hungarians, 6% Romany, 3% Germans, 1% Russians (Romania Report 1999: 49).

<sup>469</sup> 148 Hungarians, 5 Germans, 3 Ukrainians, 2 Czechs/ Slovaks, 1 Croat and 1 Lipoveni.

<sup>470</sup> Comments of Romania 2002: 1 f.

## 12.8. Right to Autonomy

Concerning autonomy, the Romanian Constitution states (Art. 120 Basic principles) that the public administration in administrative-territorial units is based on the principles of decentralization, local autonomy and deconcentration of public services. In administrative-territorial units where citizens belonging to national minorities hold a significant quota, the use of that national minority's language, in writing or speech, is ensured in relation to the authorities of local public administration and the deconcentrated public services, under the provisions of the organic law.

The Law on local public administration regulates the general regime of local autonomy, as well as the organisation and functioning of the local public administration authorities. Art. 3 of the above-mentioned Law states as follows: By local autonomy there shall be understood the right and effective capacity of the local public administration authorities to solve and to manage, in the name and in the interest of local collectivities that they represent, the public matters under the terms of the law. In the mean time, the local autonomy concerns the organisation, functioning, competencies and duties, as well as the managing of the resources which, according to law, belong to the commune, town or county, as the case may be (Art.4 para.2).

On the other hand, between the 15<sup>th</sup> and the 16<sup>th</sup> of January 2004, the Romanian task force on regionalisation held its first meeting with the participation of the president of the Congress of Local and Regional Powers in Europe, Mr. Giovanni di Stasi, and of the former president of the European organisation, Mr. Libert Cuatrecasas, the present secretary general for European Affairs of the Catalanian Government.

Mr. Adrian Nastase, Prime Minister of Romania, has recently declared that the prospects of regionalisation will be examined after this year's local and general elections, in the broader, European perspective, encompassing also the latest developments related to the eventual adoption of a Convention on regional autonomy, or other instrument, by the Council of Ministers of the Council of Europe.

## 12.9. Right to Co-determination

In 1997 within the framework of the machinery of the Government of Romania, a *Department for the Protection of National Minorities* was established, which was run by the Minister for national minorities. As such was appointed a representative of the Hungarian Alliance (DAHR).<sup>471</sup> To this, in 1998 an *Interministerial Committee of National Minorities* was established.<sup>472</sup> In January 2001 the former department for the Protection of National Minorities became the *Department for Inter-Ethnic Relations* in the Ministry of Public Information.<sup>473</sup>

The Emergency Ordinance 64/2003, published in the Official Gazette no. 464 of June 26, 2003, regulates the measures to be taken regarding the establishing, management and restructuring or functioning of certain structures within the Government, ministries, other specialized bodies of central administration and public institutions. According to

<sup>471</sup> Art.1 and 2 Government Decree no 17 of 31 January 1997, amended by the Government Decree no 506 of 12 September 1997 (Romania Report 1999: 44 ff.).

<sup>472</sup> Government Decree no 460 of 7 August 1998 (Andreescu 1999: 2).

<sup>473</sup> Comments of Romania 2002: 3.

the provisions in article 2, paragraph 1, letter e) of the above-mentioned document, the *Department for Inter-Ethnic Relations* is established as a structure without legal capacity, subordinated to the Prime Minister and coordinated by the General Secretariat of the Government, and takes over the activity regarding national minorities from the former Ministry of Public Information.

According to the Emergency Ordinance 11/2004 on setting the measures for the re-organization of central public administration, published in the Official Bulletin 266/2004, the *Department for Interethnic Relations* (DIR) took on responsibility for the *Office for Roma Issues*, including the PIU of PHARE Programme RO/2002/000-586.01.02 on Assistance for National Strategy for Improvement of Roma Situation, from the General Secretariat of the Government. This measure comes to support the institutional building measures for national minorities with more coherence and unity. The structure and main responsibilities of the *Department for Inter-Ethnic Relations* (DIR) are listed in Government's Decision no. 749 amended, as published in the Official Gazette 488 of July 7, 2003. A Secretary of State, Mr. Cristian Jura, assisted by three Undersecretaries of State, representing the Hungarian, the German and the Roma minorities respectively, supervise and co-ordinate the activity of the Department. In this framework, DIR has focused on promoting and developing programs aiming at guaranteeing, preserving, expressing, promoting and developing the ethnic, cultural, linguistic and religious identities of persons belonging to national minorities.

To achieve its purposes, the DIR establishes and maintains co-operation with the *Council of National Minorities* – advisory body of the Government including 19 minority NGOs – as well as with each of the organizations of citizens belonging to national minorities that are members of the Council, by offering them financial support and consultancy.

Moreover, DIR establishes and maintains co-operation activities with governmental and non-governmental bodies involved in the field of minorities and combating discrimination on ethnic grounds from Romania and abroad. According to the provisions of GD 749/2003, the DIR holds various other responsibilities, such as: requesting data and information necessary for its activity from public authorities; supporting scientific research in inter-ethnic relations by co-operating with bodies and institutions specialized in this field.

### **12.10. Specific Legal Protection**

The institution of ombudsman, introduced in 1997 for the protection of rights and freedoms of citizens towards the authorities applies to everybody and has no provision which is specifically exclusive for minorities.

### 12.11. Population, Ethnic Groups and Minorities in Romania

	1992	%	2002	%
Total population <sup>474</sup>	22.810.035	100,0	21.680.974	100,0
Romanians	20.408.542	89,5	19.399.597	89,5
Ethnic groups/ National minorities:				
1. Hungarians	1.624.959	7,1	1.431.807	6,6
2. Roma <sup>475</sup>	401.087	1,8	535.140	2,5
3. Ukrainians/Ruthenians	65.764	0,3	61.098	0,3
4. Germans	119.462	0,5	59.764	0,3
5. Russians (Lipoveni)	38.606	0,2	35.791	0,2
6. Turks	29.832	0,1	32.098	0,2
7. Tatars	24.596	0,1	23.935	0,1
8. Serbs	29.408	0,1	22.561	0,1
9. Slovaks	19.594	0,1	17.226	0,1
10. Bulgarians	9.851		8.025	
11. Croats	4.085		6.807	
12. Greeks	3.940		6.472	
13. Jews	8.955		5.785	
14. Czechs	5.797		3.941	
15. Poles	4.232		3.559	
16. Italians			3.288	
17. Armenians	1.957		1.780	
18. Csangos			1.266	
	2.392.125	10,5	2.260.343	10,4
Other	8.602		19.093	0,1
Unknown	766		1.941	

### 12.12. Implementation Mechanisms

The following governmental and parliamentary bodies deal –exclusively or partially - with the minority issues:

#### MINISTRY OF FOREIGN AFFAIRS

14, Modrogan st., sector 1, Bucharest

tel: +04 (21) 2302160

www.mae.ro

<sup>474</sup> Census 1992 and census 2002 (Recensământ 2002). Other sources are mentioned specifically. At the census of 2002, the ethnic group Romanians included Macedonian-Romanians; the ethnic group Hungarians included Szeklers; the ethnic group Germans included Saxons and Swabians; the other nationalities included Carashovenians, Albanians, Macedonians, Chinezi. The Csango minority was also taken into account.

<sup>475</sup> During the census of 1992 by far not all Roma declared themselves as such (Klopčič / Polzer 1999: 3; Sewering-Wollanek 1994: 253 ff., 256 and Müller 1999: 67).

**MINISTRY OF ADMINISTRATION AND INTERNAL AFFAIRS**

17, Mihai Voda st., sector 5, Bucuresti  
Telefon: +40 (21) 313.04.23; Fax: + 40 (21) 310.30.72  
E-mail: drp@mai.gov.ro

**MINISTRY OF EDUCATION AND RESEARCH**

28-30 Gen. Berthelot st, sector 1, code 70738, Bucharest  
tel +40 (21) 310 4320; +40 (21) 314 2680  
<http://www.edu.ro/>

**MINISTRY OF CULTURE AND RELIGIOUS DENOMINATIONS**

1, Piata Presei Libere, sect. 1, code 71341, Bucharest  
<http://www.ministerulculturii.ro>

**INSTITUTION OF THE ADVOCATE OF THE PEOPLE**

Ombudsman Office: 3, Eugeniu Carada st, sector 3. Bucharest.  
Telephone: +40 (21) 312.71.34

**DEPARTMENT FOR INTERETHNIC RELATIONS**

14, Viitorului st, sector 1, Bucharest  
dri@gov.ro

**DEPARTMENT FOR ROMANIANS ABROAD**

3, Smârdan st., sector 1, Bucharest  
Telefon: +40 (21) 314.55.25 Fax: +40 (21) 311.27.83  
E-mail: drp@gov.ro

### 13. SERBIA AND MONTENEGRO, MINORITY LEGISLATION

The State-union of Serbia and Montenegro, established on 5 March 2003, is the legal successor of the Federal Republic of Yugoslavia (FRY), established in 1992. In the new state structure, Montenegro enjoys a higher degree of self-determination, as was the case in FRY.<sup>476</sup> According to the new Constitution, the Union consists of the States of Montenegro and Serbia whereas the latter embraces the autonomous provinces of Vojvodina and Kosovo-Metohija.<sup>477</sup> Vojvodina started to regain its autonomy of which it was largely deprived during the regime of Slobodan Milosevic, in January 2002.<sup>478</sup> Kosovo has been under the UN-administration<sup>479</sup> (UNMIK) since 1998 which has provided for the constitutional framework for a temporary self-government (Kosovo-Framework).<sup>480</sup>

The Constitution defines the state-union as a democratic state of law<sup>481</sup> and refers to human and minority rights as its integral part.<sup>482</sup>

The Kosovo-framework also emphasises the respect for human and minority rights.<sup>483</sup> In 2002, a law on minorities, prepared with international support, came into force.<sup>484</sup> Its practical implementation is under way.<sup>485</sup> The law defines as national minorities (Art.2 para.1) „those groups of FRY citizens that – being a minority within the state – represent a significant part of its population, have a long-lasting and strong attachment to the territory of the state and dispose of characteristics (language, culture, national and ethnic belonging) that make them different from the majority population”.

<sup>476</sup> The new Constitution (Art.60) foresees the possibility that after three years both States decide on a referendum if they want to continue as an union or as independent States.

<sup>477</sup> The basic outline of the state-union was elaborated with the assistance of the EU.

<sup>478</sup> World Almanach 2004: 759. The so-called „omnibus-law“ for the extension of the autonomy of Vojvodina was the basis for the new autonomy statute (more in Rüb 2002).

<sup>479</sup> Resolution 1244 (1999) of the UN Security Council. The international administration in Kosovo consists of the international security forces (KFOR) and the temporary civil administration (UNMIK), led by a special envoy of the UN-Secretary General.

<sup>480</sup> United Nations Interim Administration Mission in Kosovo (UNMIK): Constitutional Framework for Provisional Self-Government, UNMIK/REG/2001/9, 15 May 2001.

<sup>481</sup> Art.1 and 2 Serb. Const., Art.1 para.1, Art.2 para.2 and 3, art.3 and art.4 Montenegrin Const. – Art. 65 obliges Serbia and Montenegro to adjust their Constitutions (adopted on 28.9.1990 and 12.10.1992) to the new state-union's constitution.

<sup>482</sup> Art.8 Const. and art.9 Const. (Regulation and protection of those rights is principally in competence of both Member States whereas the Union performs certain monitoring tasks (art.10 Const. – direct applicability of regulations as defined in international agreements). 8Art.11 ff. Serb. Const., Art. 14 ff. Mont. Const. (Human Rights), art. 67 ff. Mont. C. (Minority Rights). Kosovo-Framework (Chart of individual and collective minority rights).

<sup>483</sup> Art.11 ff. Serb. Const., art.14 ff. Mont. Const. (human rights), art.67 ff. Mont. Const. (Minority Rights). The Serb. Const. only in Art.32 para.4 (right to education in native language) explicitly mentions minorities as juridical subjects. Cf. no. 3.3 and no. 3.2 (application of some central international instruments of human rights and minority rights) and no. 4 Kosovo-Framework (catalogue of individual and collective minority rights).

<sup>484</sup> Law for the Protection of Rights and Freedoms of National Minorities, Official Bulletin of FRY Nr. 11, 27.02.2002.

<sup>485</sup> Helsinki Committee Serbia 2001, IHF Montenegro 2001: 392.



This term includes as well the former „nations“ and the former „nationalities“ in the ex-socialistic Yugoslavia<sup>486</sup> which all are subject of protection as defined in the Minority Law and the Chart.<sup>487</sup>

### 13.1. Basic Rights

Art.52 Chart contains the right of minority members to ethnic, cultural and religious identity, Art.48 Chart and Art.5 para.1 Minority Law ensure everyone's freedom to express his ethnic belonging whereas Art.50 (Chart) and Art.5 para.3 (Minority Law) prohibits any forced assimilation.<sup>488</sup> The Serbian and Montenegrin Constitution contains analogous rights; the Montenegrin Constitution explicitly defines them as the rights of „persons belonging to national and ethnic groups“.<sup>489</sup> In Kosovo, they are defined as the rights of “persons belonging to ethnic, religious or linguistic communities”.<sup>490</sup>

Art.49 Chart provides for equality of the minorities and forbids - as Art.3 para.1 Minority Law – their discrimination. The Constitutions of both States contain similar provisions.<sup>491</sup> The incitement of ethnic inequality is prohibited and punishable.<sup>492</sup>

The Chart (Art.55 para.1) allows the Member States to “take all necessary measures in economic, social, political and cultural life” in order to establish a “full and effective equality” between the minorities and the majority population.<sup>493</sup> Art.12 para.3 Minority Law<sup>494</sup> and Art.70 Montenegrin Constitution encourage the establishment of minority organisations.<sup>495</sup> Nevertheless, problems exist with regard to the non-discrimination of Roma and Jews, as well of Serbs, Roma and Turks in Kosovo. In Vojvodina, the massive in-flow of Serbian refugees changed the ethnic structure and lowered the percentage of the Hungarian population.<sup>496</sup>

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<sup>486</sup> The nations in former Yugoslavia were the following: Serbs, Croats, Slovenians, Macedonians, Montenegrins and – since 1968 – the Muslims in Bosnia-Herzegovina. As nationalities (the term included classic national minorities), the following were listed: Albanians, Hungarians, Slovaks, Czechs, Romanians, Bulgarians and Turks. Roma or Ruthenians were considered as classic ethnic minorities without a homeland.(König 2001: 7).

<sup>487</sup> Cf. Art.2 para.2 Minority Law, Art.47 para.5 Chart. - In FRY, the Croats were the Constitutive nation and the Vlachs were acknowledged as national minority.

<sup>488</sup> Art.12, Art.5, Art.16 Minority Law.

<sup>489</sup> Art.3 para.2 and art.49 Serb. Const., art.67, art.32 para.2 and 3 Mont. Const. Also art.1 Chart, art.3 para.1, Art. 11 Serb. Const., Art.13 para.1, Art. 15 Mont. Const. (Right to free development).

<sup>490</sup> No. 4.1, no. 4.2 and no. 4.4 Kosovo-Framework. Also no. 3.4 Kosovo-Framework (Rights of Refugees).

<sup>491</sup> Art.13 Serb. Const., Art.15 Mont. Const., also Art.3 Chart, no. 3.1 Kosovo-Framework.

<sup>492</sup> Art.51 Chart. Also Art.7 Minority Law, art.43 Mont. Const.

<sup>493</sup> Also Art.55 Chart and Art.4 para.1–3 Minority Law and no. 4.3, no. 4.4a, no. 3.4, no. 4.4j, no. 4.4.p Kosovo-Framework.

<sup>494</sup> Art.20 Minority Law (Federal funds for supporting the development of national minorities).

<sup>495</sup> Janjic 2000: 4, U.S. English/Yugoslavia 2000: 2 f, König 2001: 32, IHF Montenegro 2001: 398.

<sup>496</sup> Details at OSCE Kosovo 1999, OSCE Kosovo 2001, Osservatorio Kosovo 2000, König 2001: 32, 34 f.

### 13.2. Use of Language

Art.52 Chart and Art.10 Minority Law guarantee the right of persons belonging to minority to private use of mother language and of the corresponding writing.<sup>497</sup> The Montenegrin Constitution defines Serbian (Art.9 para.1) and the Serbian Constitution (Art.8 para.1) defines the “Serbo-Croatian” as official languages. The Cyrillic and Latin writing are put on equal level.<sup>498</sup> According to Art.52 Chart, persons belonging to national minorities who live in the communities with “significant” share of minority population enjoy the right to administrative procedures in their own language.<sup>499</sup> In addition, the Minority Law allows the local self-government units in the traditional settlements of minorities to use the minority language as an administrative language.<sup>500</sup> As to the traditional topographic inscriptions, Art.52 Chart provides for the right of minorities to officially use them as well in their language if they represent at least 15 percent of the population in certain areas (Art.11 para.5 Minority Law). In Vojvodina, there are topographic inscriptions in Hungarian, Slovak, Romanian and Ruthenian language as well.<sup>501</sup> Art.52 Chart and Art.9 Minority Law contain as well as the right to use the (first and family) names in the minority language.

### 13.3. Teaching of Language

Art.52 Chart defines the minority right to education in their mother language.<sup>502</sup> The Minority Law provides for more concrete provisions with regard to teaching in minority languages in primary, secondary and higher schools (Art.13).<sup>503</sup> In regions where the minority languages have also the status of administrative languages, it is foreseen - by Art.13 Minority Law - to introduce those languages in schools as special subjects.<sup>504</sup> The Chart (Art.53) and the Minority Law (Art.15) contain the right of minorities to their own, privately financed educational institutions.<sup>505</sup> In Vojvodina, Hungarian, Slovak, Romanian and Ruthenian schools exist, as well as Bulgarian and Albanian in central Serbia.<sup>506</sup>

<sup>497</sup> Art.68 Mont. Const., art.49 Serb. Const., no. 4.4 Kosovo-Framework.

<sup>498</sup> The introduction of Latin writing shall be - according to the Serbian Constitution - regulated by law.

<sup>499</sup> Also Art.16, para.1 and 4 Chart (Linguistic rights in Court Proceedings). See also art.123 Serb. Const., Art.72 Mont. Const., no. 4.4 Kosovo-Framework.

<sup>500</sup> Art.11 para.1 and 4 Minority Law. By a share of at least 15% of the local population, the use of the minority language as administrative language is compulsory (Art.11 para.2 Minority Law). Cf. also art.9 para.2 Serb. Const. and Art.9 para.3 Mont. Const. - For the use of minority language in the federal administration and in the parliament, a 2% clause is determined (art.11 para.2 Minority Law).

<sup>501</sup> Serbia-Info 2001: No. 1.

<sup>502</sup> Art.32, Serb. Const., Art.68 Mont. Const. and no. 4.4.b Kosovo-Framework.

<sup>503</sup> Detailed and provisional regulations in Art.13 and Art.14 Minority Law.

<sup>504</sup> Also Art.32 Serb. Const., art.68 Mont. Const. and no. 4.4.b Kosovo-Framework.

<sup>505</sup> Details in Art.15 Minority Law, Art.70 Mont. Const. and no. 4.4.j Kosovo-Framework..

<sup>506</sup> Cf. Yugoslav Government / Human Rights 2001: The Rights of Members of National Minorities, for Vojvodina see Serbia-Info 2001: no. 2, for Kosovo see OSCE Kosovo 2001: no. 24-28.

### 13.4. Right to Associations

Art.53 Chart provides for the right of persons belonging to minorities to establish privately financed educational and cultural organisations. Their special role in the implementation of minority rights is acknowledged.<sup>507</sup> The general freedom of assembly and the right to establish political parties is guaranteed by Art.32 Chart<sup>508</sup> (in the past, the attitude towards political parties established by the minorities was not always positive).<sup>509</sup>

### 13.5. Right to Unimpeded Contacts

The Chart (Art.37) ensures all citizens the right to free movement within the country and the right to leave the country freely.<sup>510</sup> Art.54 Chart guarantees to persons belonging to minorities the right to unimpeded cross-border contacts with their co-nationals.<sup>511</sup> In this respect, the situation in Kosovo is a specific one.<sup>512</sup>

### 13.6. Right to Information

Art.29 Chart guarantees the general freedom of expression and information<sup>513</sup> whereas Art.30 ensures the general freedom of press and broadcasting.<sup>514</sup> For persons belonging to minorities, Art.52 Chart provides for the right to information in mother language, including the right to print, receive and exchange such information and to establish their own public media.<sup>515</sup> New provisions aimed at developing special radio and TV programmes for minorities within the public broadcasting institutions, were introduced. During the past period, the use of Hungarian, Slovak, Romanian and Ruthenian language in public media was guaranteed in Vojvodina.<sup>516</sup>

### 13.7. Right to Political Representation and Co-determination

According to **Art.20** of the state-union's Constitution, the Assembly of Serbia and Montenegro consists of 126 members (91 from Serbia, 35 from Montenegro).<sup>517</sup> The Constitution does not allow having the president of the parliament and his deputy from the same member state. The same rule is applied with regard to the president of the state and the president of the parliament.<sup>518</sup> Parliamentary decisions have to be approved by the majority of MPs from both Member States. The ministerial council

<sup>507</sup> Also Art.70 Mont. Const., Art.12 Minority Law, no. 4.4.g Kosovo-Framework.

<sup>508</sup> Also Art.44 Serb. Const., art.40 and art.42 Mont. Const.

<sup>509</sup> Art.32 Serb. Const., art.68 Mont. Const., no. 4.4.b Kosovo-Framework.

<sup>510</sup> Also Art.17 para.1 Serb. Const. and Art.28 para.1 Mont. Const.

<sup>511</sup> Art.74 Mont. Const., no. 4.4.e and no. 4.4. Kosovo-Framework, art.6 Minority Law.

<sup>512</sup> More in OSCE Kosovo 2001: no. 10 f.

<sup>513</sup> Art.45 and Art.46 Serb. Const., Art.34 and Art.35 Mont. Const.

<sup>514</sup> Art.46 Serb const , art.35 and art.37 Mont. Const.

<sup>515</sup> Art.68 Mont. Const., no. 4.4.c, no. 4.4i, no. 4.4.o Kosovo-Framework.

<sup>516</sup> König 2001: 31, Serbia-Info 2001: Nr. 3.

<sup>517</sup> A provisional regulation was introduced for the first two years after the adoption of the constitution.

<sup>518</sup> A rotation of the presidential function between the two Member States is envisaged (Art.27 para.5 Const.)

(government) and the supreme court of Serbia and Montenegro are also set-up according to the parity and on the principle of co-determination.<sup>519</sup>

All minorities in Serbia and Montenegro enjoy – as assigned by Art.52 Chart – the explicit right to obtain a certain number of seats in the parliaments of the union and both Member States. In addition, they are entitled to an „appropriate“ representation in public services, state authorities and local self-government. Art.73 of the Montenegrin Constitution explicitly envisages a proportional minority representation in public services, a similar – but less explicit - provision is contained in Art.23 Minority Law. The extensive rights to political representation and co-determination in Kosovo have to be added to this picture.<sup>520</sup>

The Chart (Art.47 para.3) defines a fundamental collective right of minorities to participate in the decision-making process in matters of culture, education, information and use of language. Those rights are – according to Art.19 Minority Law, exercised through national councils, elected by persons belonging to minorities.<sup>521</sup>

### 13.8. Right to Autonomy

The federal system of the new state-union gives to the Serbs and Montenegrins far reaching internal self-determination rights. Both Member States have transferred to the union only a part of their competencies.<sup>522</sup> Art.6 Serbian Const. foresees „territorial autonomy“ for the “Autonomous Province Vojvodina” and for the “Autonomous Province Kosovo-Metohija” which have certain competencies as well in the areas relevant for minorities.<sup>523</sup>

Law can to a certain extent limit the autonomy regulations.<sup>524</sup> In Vojvodina, in January 2002 a new autonomy-statute was adopted whereas the UN-administration in Kosovo is considered as a step towards “substantial autonomy“.<sup>525</sup>

As determined by the Minority Law (Art.19), the minorities can exercise their rights to self-government in the areas of culture, education, information and use of language through national councils, which are entitled to take decisions and establish institutions.<sup>526</sup>

<sup>519</sup> The Ministerial Council is composed of five ministers, the president has the right to vote as well, therefore, a parity is established. (art.35 Const.), art.36 defines the veto-right of both sides. In regard to the Supreme Court, see art.47 Const.

<sup>520</sup> In the Parliament, government, courts. More in no. 9.1.3, no. 9.1.7, no. 9.1.29, no. 9.1.12 - 9.1.17, no. 9.1.39 - 9.1.42, no. 9.3.5, no. 9.3.16 and no. 9.4.7 Kosovo-Framework.

<sup>521</sup> Art.17 Minority Law. By art.18, a Federal Council for National Minorities as an „umbrella-association“ of the national councils .

<sup>522</sup> The required financial resources have to be provided by the Member States (art.18). The competencies of the Union are limited to few basic areas, see art.19 Const., also art.7, art.11, art.12, art.13, art.14 and art.15 Const.

<sup>523</sup> Details in art.108–112 Serb. Const.

<sup>524</sup> Art.109 para.1 no. 3 Serb. Const. According to art.112 Serb. Const., the federal authorities can directly intervene if the autonomy authorities show inactivity in the implementation of autonomy regulations.

<sup>525</sup> With regard to the possibilities of the UN to intervene, see no. 4.6, no. 8, no. 12, no. 13 Kosovo-Framework.

<sup>526</sup> Acc. to art.19 para.10 Minority Law, the state can transfer a part of its competencies in certain areas to the councils.

### 13.9. Specific Legal Protection of Minorities

The legal system of Serbia and Montenegro provides for protection of collective rights.<sup>527</sup> Specific legal protection mechanisms exist with regard to individuals belonging to minorities as well as national councils, which have, inter alia, the possibility (Art.23 Minority Law) to react on possible violations of minority rights in form of official (including constitutional) complaints to the authorities, either by their own initiative or following the initiative of an individual who feels disadvantaged.<sup>528</sup>

The Montenegrin Constitution (Art.76) envisages the establishment of a specific ombudsman for minorities. The Kosovo-Framework has installed a general ombudsman office, which is obliged to deal with the alleged violations of minority rights as a priority task.<sup>529</sup> The implementation of the above-mentioned regulations is – with certain difficulties – under way.<sup>530</sup>

### 13.10. Population, Ethnic Groups and Minorities in Serbia and Montenegro

Population (1991) <sup>531</sup>		10.394.026	100,0 %
Serbs		6.504.048	62,6 %
Ethnic groups/ Minorities:			
1.	Albanians	1.714.768	16,5 %
2.	Montenegrins <sup>532</sup>	519.757	5,0 %
3.	Hungarians	344.147	3,3 %
4.	(ethnic) Muslims <sup>533</sup>	336.025	3,2 %
5.	Roma <sup>534</sup>	143.519	1,4 %
6.	Croats	111.650	1,1 %
7.	Slovaks	66.863	0,6 %
8.	Romanians	42.364	0,4 %
9.	Bulgarians	26.922	0,3 %
10.	Ruthenians /Ukrainians <sup>535</sup>	23.189	0,2 %
11.	Vlachs	17.810	0,2 %
12.	Turks	11.264	0,1 %

<sup>527</sup> Art.46 Const.

<sup>528</sup> Art.22 Serb. Const., art.17 Mont. Const., no. 9.4.2 Kosovo-Framework..

<sup>529</sup> No. 10.1, no.10.2 and no. 10.3 Kosovo-Framework.

<sup>530</sup> Helsinki Committee Serbia 2001, in Montenegro at IHF Montenegro 2001: 392.

<sup>531</sup> According to the last census, the populations amount to 7.479.437 for Serbia (Serbian Census 2002), to 616.258 for Montenegro (Montenegrin Census 2003) and to 8.095.695 for the States union SCG. The ethnic composition of this first Census results not yet being available, here are presented still the data of the census 1991. Cf. Raduški 1996: 261 ff., 266 f. If not mentioned otherwise, the listed dates are from the same source.

<sup>532</sup> In Montenegro, the Montenegrins carry the role of eponymous ethnic community.

<sup>533</sup> Including the about 12.000 so-called Gorani in Kosovo, more OSCE Kosovo 2001: no. 127.

<sup>534</sup> Including the so-called Aschkali and Egyptians in Kosovo, OSCE 2001: Fn. 11. - According to some other estimations, the number of Roma is between 400.000 and 600.000 (Klopčic / Polzer 1999: 3).

<sup>535</sup> 18.099 Ruthenians and 5.090 Ukrainians.

13.	Germans	5.387	0,1 %
		3.363.665	32,4 %
	„Yugoslavs“ (self-description)	349.714	3,3 %
	Others / no specifics <sup>536</sup>	176.599	1,7 %

### 13. 11. Implementation Mechanisms

In Serbia and Montenegro, the following institutions and organs are dealing with the issues of promoting and protection of the rights of national minorities:

#### **MINISTRY OF HUMAN AND MINORITY RIGHTS**

Bulevar Mihajla Pupina 2 11000 Beograd  
 Phone +381 11 3112916 3113432  
 Fax 381 11 3114650  
 E-mail office@humanrights.gov.yu  
 Website www.humanrights.gov.yu

#### **BOARD FOR INTER-ETHNIC RELATIONS OF THE PEOPLE'S ASSEMBLY OF THE REPUBLIC OF SERBIA**

Kralja Milana 14 1100 Beograd  
 Phone: +381 11 3222001,3222002  
 Website www.parlament.sr.gov.yu

#### **BOARD FOR HUMAN AND MINORITY RIGHTS OF THE PEOPLE'S ASSEMBLY OF SERBIA AND MONTENEGRO**

Trg Nikole Pasica 13 11000 Beograd  
 Phone: +381 11 303 6200  
 Fax: 381 11 3227099  
 Website: www.gov.yu  
 Contact person Dragan Petkovic Secretary of the Board  
 Phone: 381 11 311 4975

#### **MINISTRY OF MINORITY PROTECTION**

Cetinjski put bb 81000 Podgorica Montenegro  
 Phone: 381 81 482 129 381 81 482 128  
 Fax: 381 81 234 198  
 E-mail: min.manj@cg.yu  
 Website: www.gom.cg.yu

#### **PROVINCIAL SECRETARIAT OF REGULATION, ADMINISTRATION AND NATIONAL MINORITIES**

Bulevar Mihajla Pupina 16. 21000 Novi Sad  
 Phone: 381 21 456 170  
 Fax: 381 21 421 366 , web site www.vojvodina.sr.gov.yu

<sup>536</sup> The difference between the total population and the total of Serbs, „Yugoslavs“ and persons belonging to minorities, which includes members of the “Nations” of the former Republic of Yugoslavia such as 47.118 Macedonians, 8.630 Slovenians and 1.174 Jews as well as the Czechs, Russians, Poles and Greeks.

## 14. SLOVAK REPUBLIC, MINORITY LEGISLATION

### 14. 1. Basic Rights

The Slovak statistics specifies Hungarians, Roma, Czechs, Moravians, Ruthenians, Ukrainians, Germans, Croats, Jews, Poles and Bulgarians as minorities.<sup>537</sup> In 2003 representatives of Russian minority became a member of the Government Council for National Minorities and Ethnic Groups and thus Russian minority became the 12<sup>th</sup> national minority in Slovakia. There is no procedure of official recognition of national minority in Slovakia, it is based on self-identification of citizens.

The basic rights and fundamental freedoms are guaranteed in Slovakia according to Art.12 para.2 Const. to everyone regardless of sex, race, colour, language, belief and religion, political affiliation or other conviction, national or social origin, affiliation to a nationality or ethnic group, property, descent or any other status. Para.3 of the same article provides for everybody's right to freely decide his nationality and prohibits any form of coercion aimed at assimilation.

Art.33 Const. implies that affiliation to any national minority or ethnic group must not be to anyone's detriment. Art.34 Const. explicitly mentions the national minorities and guarantees citizens belonging to them their comprehensive development, particularly the right to development of their own culture, together with other members of the minority or ethnic group, to disseminate and receive information in their mother tongue, to associate in minority associations, and the right to create and maintain educational and cultural institutions (para.2). It guarantees them also – in addition to the right to learn the official language - the right to be educated in their own language and the right to its use in official communication as well as the right to participate in the decision-making in matters affecting them (para.3).

According to the Constitution<sup>538</sup> international treaties on human rights and fundamental freedoms ratified by the Slovak Republic and proclaimed as requested by law take precedence over domestic laws.

The Government of the Slovak Republic has committed itself to prepare law on national minorities and the law on the financing of minority culture till the end of 2004.

### 14. 2. Use of Language

The Constitution declares Slovak as the official language and specifies that a law shall lay down the use of other than the official language in official communications.<sup>539</sup> The legal basis for such regulation is provided by the Official Language Act (No. 270/1995). It specifies that Slovak as the official language holds primacy before other languages used in Slovakia. The Act does not regulate the use of languages of national minorities, the use of which is regulated in other acts.<sup>540</sup>

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<sup>537</sup> Slovakia Report 1999: 9 f.

<sup>538</sup> Art.7 para.5 Constitution No. 460/1992.

<sup>539</sup> Art-6 para.1 and 2 Const.

<sup>540</sup> E.g. Criminal Code, Civic Judicial Code, Act on Slovak Television, Act on Slovak Radio etc.

In 1999 the Act (No. 184/1999) on the use of minority languages was approved. The main objective of this law is to lay down the rules for the use of minority languages in official communication in municipalities where a minority amounts to at least 20 per cent of the local population according to the latest census. According to the 2001 census there are 653 such municipalities (501 Hungarian, 6 Ukrainian, 93 Ruthenian, 51 Roma and 1 German and 1 Croatian).

In these municipalities:

- a citizen has a right to address written filing to governmental and self-governmental bodies also in a minority language,
- these bodies shall reply, apart from in the official language, also in the minority language, with the exception of public documents,
- the decisions made in administrative proceedings shall be issued, in the official language and also in a minority language in the form of a counterpart,
- the name of governmental and self-governmental bodies displayed on buildings are also given in a minority language,
- the body of local self-government shall provide the citizens with the official forms issued within its competence in the official language and, upon request, also in the minority language,
- a session of the local self-government body may be held also in a minority language, subject to the consent of all present persons,
- a member of the municipal council has the right to use at the session of this body a minority language, Interpretation shall be secured by the municipality,
- a chronicle of the municipality may be kept also in a minority language,
- the municipality may display the names of the streets and other local topographical indications also in a minority language,
- important information, in particular warnings, cautions and health information shall be displayed in publicly accessible places apart from the state language also in a minority language.

According to the Act on denomination of municipalities in languages of national minorities (No. 19/1994) municipalities, in which citizens of a national minority form at least 20 per cent of the population, are denominated in the language of the national minority on separate road signs denominating the beginning and the end of a municipality. The road signs are placed under road signs bearing the name of the municipality that is always stated in the official language.

In official relations, especially in public documents, stamps of municipalities, cartographic works and postal communications, names of municipalities are exclusively in the official language.

According to Art.47 para.4 Const., everybody who claims not to know the language used in the proceedings shall have the right to an interpreter. In court everyone may act in his own language, with the translation assistance, if necessary.<sup>541</sup> Parties in civil court proceedings have the same standing and the right to act before the court in their mother tongue, whereas the court is obliged to provide them with the same

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<sup>541</sup> Art.7 para.3 Act No. 335/1991 on the courts and judges.



opportunities for the exercising of their rights.<sup>542</sup> Also in case of criminal court proceedings everyone has the right to use his mother tongue.<sup>543</sup>

### 14. 3. Teaching of Language

In Slovakia, there is no separate minority school system. Every school is a part of the national education system and is regulated by the same regulations, study plans and schedules. The standards for education, syllabi and schedules for every school are approved by the Ministry of Education.

According to the School Act, training and education in primary and secondary schools is carried out in the official language, however the members of the Czech, Hungarian, German, Polish and Ukrainian (Ruthenian) nationality are ensured the right to education in their own language to an extent proportional to the interests of their development.<sup>544</sup> This exhaustive enumeration stands in not in line with Art.34, para.2 Const. that extends this right to all national minorities. The new school act will not include such enumeration.

There are generally three kinds of schools for persons belonging to national minorities, namely: a) schools with a minority language of instruction, where the state language is taught as a compulsory subject (this kind is preferred by the Hungarian minority), b) bilingual minority schools, where the instruction is carried out in the minority language or in the state language (this kind is preferred by the Ukrainian and German minority) and c) state language schools where a minority language is taught (e.g. Ukrainian, Ruthenian, German).<sup>545</sup>

At university level German (3 Departments), Roma (1 Department), Ukrainian (1 Department), Ruthenian (1 Department) and Hungarian languages (2 Departments) are represented. In 2003 the Government and Parliament approved the establishment of University of J. Selye in Komárno, the public university that will educate mainly future economists, educationalists and catechists of Reformed Christian Church. The main language of instruction will be Hungarian, but at the same time the graduates shall master the professional terminology also in Slovak and English or other European language. The university shall begin the instruction in academic year 2004/2005.

Special attention is paid to the education of Roma children. In 2001 the Concept of Education and Instruction of Roma Children and Pupils was approved and incorporated into the National Programme of Education and Instruction in the forthcoming 15 to 20 years.

In 1992 Ministry of Education prepared the project of so-called “zero classes” for pupils coming from disadvantaged environment. The establishment of the zero classes was enacted in 2002. Since 2003 the project of “Roma assistant” is implemented.

Roma language is used as a language of instruction since 1992, however it has not been codified until now. This codification is one of the priorities of the Office of the Government Plenipotentiary for Roma Affairs.

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<sup>542</sup> Art.18 Act. No. 99/1963 on civil procedure.

<sup>543</sup> Art.2 para.14 Act No. 141/1961 on criminal procedure.

<sup>544</sup> Art.3 para.1 Act No. 29/1984 on the network of primary and secondary schools (School Act).

<sup>545</sup> Slovakia Report 1999: 30.

#### 14. 4. Right to Associations

Everybody's right to assemble peacefully is guaranteed constitutionally,<sup>546</sup> as well as everybody's right to associate freely, including the right to establish political parties or movements and to become their members.<sup>547</sup>

Indeed, there are numerous associations, societies and groups of interest, established by the minorities. In addition, there are 14 political parties and movements of Roma, 3 of Hungarians and 1 of Ruthenians and Ukrainians.<sup>548</sup>

#### 14. 5. Right to Unimpeded Contacts

Every citizen's freedom of movement and of residence is constitutionally guaranteed<sup>549</sup> and there are no restrictions specific for minorities. Apart from that, Slovakia has a number of agreements with the neighbouring countries regarding the support for the cross-border co-operation, which is of benefit especially for the minorities.<sup>550</sup>

#### 14. 6. Right to Information

The Constitution guarantees the freedom of thought, conscience, religion and belief. This right shall include the right to change religion or belief and the right to refrain from a religious affiliation. Everyone has the right to express his or her mind publicly.<sup>551</sup> Freedom of expression and the right to information is also guaranteed. Everyone has the right to express his or her opinion in words, writing, print, images or by other means and also to seek, receive and disseminate ideas and information freely, regardless of the state borders. No approval process is required for press publishing. Entrepreneurial activity in the field of radio and television broadcasting may be subject to permission from the State. The censorship is prohibited.<sup>552</sup>

The Act on free access to information (No. 211/2000) stipulates that everyone has the right of access to information (without any need to prove legal or other reason or interest for which information is required) that the Obligees have available. The Obligees are state agencies, municipalities, as well as legal entities and natural persons that have been given the power by law to make decisions on the rights and responsibilities of natural persons or legal entities in the area of public information as far as their decision-making power is concerned. In municipalities where a minority amounts to at least 20 per cent of the population the Obligee discloses information stipulated by the law also in the language of national minorities.

<sup>546</sup> Art.28 para.1 Const., implemented by the Act No. 84/1990 on the Right to Assembly.

<sup>547</sup> Art.9 para.1 and 2 Const., implemented by the Act. No. 83/1990 on Association of Citizens and Act. No. 424/1991 on association in political parties and political movements.

<sup>548</sup> Slovakia Report 1999: 20 f.

<sup>549</sup> Art.23 para.1 and 4 Const.

<sup>550</sup> with Hungary, Poland, Germany, Czech Republic and Ukraine.

<sup>551</sup> Art.24 para.1 Const.

<sup>552</sup> Art.26 para.1, 2 and 3 Const.

The relevant law obliges the public Slovak Radio and Slovak Television<sup>553</sup> to ensure balanced broadcasting in the language on national minorities and ethnic groups living in Slovakia. It is also possible to receive radio and television programmes from abroad. There are several print media, which are published with the financial support of the state.

#### **14. 7. Right to Political Representation**

The Slovak Constitution guarantees the citizens the 'access to elected and other public positions under equal conditions'.<sup>554</sup> There are no special provisions in favour of minorities.

The Hungarian minority disposes 20 out of total 150 seats in the National Council (Parliament), which corresponds de facto to the share of Hungarians in the total number of citizens (10%). It is linked to their ability to organise themselves politically, which allows them to concentrate their forces and avoid dispersing them.<sup>555</sup>

Other minority parties cannot succeed in entering the National Council as they fail to pass the 5% threshold.<sup>556</sup> However, they are represented at the local level as a result of elections to local administration bodies. After the 2001 elections to municipal self-government bodies 250 mayors and 2536 MPs represent political parties of Hungarian minority, 6 mayors and 93 MPs represent political parties of Roma minority, 10 mayors and 35 MPs represent political parties of Ukrainian and Ruthenian minority. In 2001 another level of participation of national minorities in political and public life were created – self-governing regions. In 2001 elections to the regional self-governments 84 representatives of political party of Hungarian minority were elected to the regional parliaments (21 per cent of the total number of elected MPs).

#### **14. 8. Right to Autonomy**

The country's legal framework does not provide for this right.

#### **14. 9. Right to Co-determination**

The Constitution guarantees the persons belonging to national minorities the right to effectively participate in political and public life. This right is exercised at the civil level (through non-governmental organisations and civic associations), at the municipal and regional level (through representatives in municipal and regional councils), at the parliamentary level and at the institutional level (through institutional mechanisms for the protection of persons belonging to national minorities.)

Members of the Hungarian minority have 20 political representatives in Parliament (13%) and 4 members in the Government of the Slovak Republic. They are also represented in the leadership of the Parliament through the Vice-Chairman of the

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<sup>553</sup> Act No. 619/2003 on the Slovak Radio, Act No. 16/2004 on Slovak Television.

<sup>554</sup> Art.30 para.4 Const.

<sup>555</sup> Several movements of Hungarian have merged into the Party of Hungarian Coalition/Magyar Koalicio Partja.

<sup>556</sup> Slovakia Report 1999; 39.

Parliament, the Chairman of the Committee for Human Rights, National Minorities and Status of Woman, the Chairman of the Committee for Finance, Budget and Currency. The Hungarian national minority participates in the Government by holding the post of Deputy Prime Minister for European Integration, Human Rights and National Minorities and the posts of Minister of Construction and Regional Development, Minister of Environment and Minister of Agriculture.

As a part of the governmental structure national minorities are represented also in other offices and departments, e.g. the Office of Plenipotentiary for Roma Communities, Section of the Human rights and minorities of the Office of the Government, Governmental Council on National Minorities and Ethnic Groups, etc.

The possibility of the co-determination at the levels of regional and local self-administration depends on the share of a given minority in the total number of population.

#### 14. 10. Specific Legal Protection of Minorities

There is no specific legal protection with regard to minorities in Slovakia. In 2001 the post of ombudsman was created. Its task is to participate in the protection of the fundamental rights and freedoms of natural and legal persons in the proceedings, decision-making or inactivity of public administration bodies when this activity is inconsistent with the legal system or with the principles of a democratic state and the rule of law.

#### 14. 11. Population and Nationalities in Slovak Republic

		1991		2001	
Total population <sup>557</sup>		5.274.335	100,0 %	5.379.455	100,0 %
Slovaks		4.519.328	85,7 %	4.614.854	85,8 %
Other nationalities: <sup>558</sup>					
1.	Hungarians	567.296	10,6 %	520.528	9,7 %
2.	Roma <sup>559</sup>	75.802	1,4 %	89.920	1,7 %
3.	Czechs	52.884	1,0 %	44.620	0,8 %

<sup>557</sup> Slovak Statistics 2001. If not stated otherwise, the following data come from these sources. The latest census was held in May 2001. The Slovak government approved the use of bilingual Slovak-Roma, Slovak-Ukrainian, Slovak-Ruthenian, Slovak-Hungarian ballots in the census. The translation of the explanatory report was also ensured.

<sup>558</sup> The existence of national minorities is based on the individual fundamental right to freely choose ones nationality and any intervention into this decision and any form of coercion aimed at assimilation is forbidden.

<sup>559</sup> Statistic data on the number of Roma do not correspond to the actual situation as there is a free choice to choose nationality. According to unofficial information sources and different NGOs, the actual number of Roma living in the Slovak Republic is between 340 and 380 thousand persons.

4.	Ruthenians <sup>560</sup>	17.197	0,3 %	24.201	0,4 %
5.	Ukrainians	13.281	0,3 %	10.814	0,2 %
6.	Germans	5.414	0,1 %	5.405	0,1 %
	Moravians	6.442	0,1 %	2.348	0,1 %
7.	Croats			890	
8.	Jews <sup>561</sup>	134		218	
9.	Poles	2.659		2.602	0,1 %
10.	Bulgarians	<u>1.400</u>	_____	<u>1.179</u>	_____
		742.509	14,1 %	702.507	13,1 %
	others and unidentified	12.458	0,2 %	62.094	1,1 %

#### 14. 12. Implementation Mechanisms

The following governmental and parliamentary bodies deal – exclusively or partially - with the minority issues:

##### **OMBUDSMAN OFFICE**

P.O. BOX 1

820 04 Bratislava 24

Tel: +421/2/4828 7239

Fax: +421/2/4828 7203

E-mail: sekretariat@vop.gov.sk

www.vop.gov.sk

**Tasks:** The office participates in the protection of the fundamental rights and freedoms in the proceeding, decision-making or inactivity of public administration when the proceeding, decision-making or inactivity is inconsistent with the legal system or with the principle of a democratic state and the rule of law.

##### **NATIONAL COUNCIL OF THE SLOVAK REPUBLIC (PARLIAMENT)**

##### **Committee for Human Rights, National Minorities and Status of Woman**

Mudronova1

812 80 Bratislava

Tel.: +421/2/593 41 698, 593 41 699

Fax: +421/2/544 30 681

E-mail: lpn@nrsl.sk

www.nrsl.sk

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<sup>560</sup> Unlike other States, in Slovakia the Ruthenians are regarded as a separate group and they are quoted separately from the Ukrainians.

**Tasks:** A control body of the Parliament with regard to minority issues; detailed debate on draft laws, international treaties concerning minorities; may invite to the session and question members of Government, other governmental bodies, Prosecutor General, etc. and demand reports, explanations and necessary documents from them etc.

### **SLOVAK NATIONAL CENTRE FOR HUMAN RIGHTS**

Drotárska cesta 46  
811 04 Bratislava  
Tel./Fax: +421/2/6280 4338  
E-mail: lprava@zutom.sk  
www.snslp.sk

**Tasks:** To monitor and assess respecting of human rights and principle of equal treatment according to the Anti-discrimination Act; establish national information network of information centres on racism, xenophobia and anti-Semitism; help developing the effective system of human rights protection in Slovak Republic etc.

### **DEPUTY PRIME MINISTER FOR EUROPEAN INTEGRATION, HUMAN RIGHTS AND MINORITIES**

#### **Section of the Human Rights and Minorities of the Office of the Government**

Námestie Slobody 1  
813 70 Bratislava  
Tel.: +421/2/572 95 318  
Fax: +421/2/524 91 647  
E-mail: kancppvm@vlada.gov.sk  
www.vlada.gov.sk/csaky  
www.vlada.gov.sk/mensiny

**Tasks:** To give expertise on reports and other documents concerning human rights; work as a Secretariat of Governmental Council on National Minorities and Human Rights; cooperate with non-profit NGOs in the field of human rights; cooperate with relevant state bodies, public institutions, non-profit organisations in the field of human rights; prepare and implement projects, etc.

### **PLENIPOTENTIARY OF THE GOVERNMENT OF THE SLOVAK REPUBLIC FOR ROMA COMMUNITIES**

Námestie Slobody 1  
813 70 Bratislava  
Tel.: +421/2/572 95 833, 572 95 832  
Fax: +421/2/572 95 816  
E-mail: ingrid.tesarikova@strategy.gov.sk  
www.vlada.gov.sk/orgovanova

**Tasks:** To formulate, propose and implement tasks in cooperation with ministries, local state administration and self-governing authorities and advisory body of the Government for Roma communities; prepare background papers and position papers for the Government; prepare opinions on policy papers prepared by central and other state administration authorities, self-governing authorities and other interested institutions concerning issues affecting Roma communities; prepare, assign and formulate programmes designed to improve the situation of

the Roma communities, with special emphasis on upgrading the level of education and making a better use of human and labour potential, to improve living conditions in Roma settlements, raising legal awareness, increasing participation of the Roma in public life and in the running of public affairs; active participation in international projects aimed at improving the life of the Roma communities, etc.

#### **GOVERNMENTAL COUNCIL ON NATIONAL MINORITIES AND ETHNIC GROUP**

Námestie Slobody 1

813 70 Bratislava

Tel.: +421/2/572 95 318

Fax: +421/2/524 91 647

[www.vlada.gov.sk/vlada/poradneorgany](http://www.vlada.gov.sk/vlada/poradneorgany)

**Tasks:** To advise the Government on draft legislation to minorities; serve as a forum for discussion and dialogue between the Government and minorities; prepare the reports on situation and living conditions of the persons belonging to the national minorities and ethnic groups and submit it to the Government; recommend the solving of the issues regarding the persons belonging to the national minorities and ethnic groups the Government, etc.

#### **MINISTRY OF CULTURE**

##### **Minority culture section**

Námestie SNP 33

813 31 Bratislava

Tel.: +421/2/59 391 444

Fax: +421/2/59 391 474

E-mail: [smk@culture.gov.sk](mailto:smk@culture.gov.sk)

**Tasks:** To prepare prognostic documents, concepts, analyses and syntheses related to minority cultures; cooperate with other domestic and foreign institutions addressing the culture of national minorities and disadvantaged groups of population; cooperate with self-governments of cities and towns, participate in the creation of conditions for the operation of institutions dealing with the promotion of national minority cultures (theatres, museums, libraries, tutorial centres...) and the culture of disadvantaged groups of population; to ensure basic re-allocation of funds specifically assigned by the state budget to the culture of national minorities and disadvantaged groups of population, etc.

**MINISTRY OF EDUCATION****Department for national minority education**

Stromová 1

813 30 Bratislava

Tel.: +421/2/593 74 310

Fax: + 421/2/593 74 309

www.education.gov.sk

**Tasks:** To prepare long-term plans of training and education in minority languages; determine the content of the education in schools and school facilities of national minorities; approve the basic pedagogical document, training and educational programmes for schools and school facilities of national minorities; provide for the preparation and publication of school-books, school texts, school tools and other didactic materials used in the training and education of national minorities; provide for the preparation, realisation and distribution of bilingual school-reports and school-forms; methodical management of founders of schools and school facilities, governmental and self-governmental bodies in the field of education in minority languages, etc.

**Division for training and education of Roma communities**

Stromová 1

813 30 Bratislava

Tel.: +421/2/593 74 310

Fax: + 421/2/593 74 309

www.education.gov.sk

**Tasks:** To fulfil tasks in the field of training and education of Roma children and children from socially handicapped environment; deal with the human rights protection, including elimination of all forms of discrimination within the school system; prepare analytic, conceptual and legal documents in this field; prepare long-term plans of training and education of Roma children; determine the content of the education in schools and school facilities taking into account the special needs of Roma communities, etc.

**MINISTRY OF JUSTICE****International relations and human rights department**

Župné námestie 13

813 11 Bratislava

Tel.: +421/2/593 53 187

Fax: +421/2/593 53 605

www.justice.gov.sk



**MINISTRY OF FOREIGN AFFAIRS****Human rights department**

Hlboká cesta 2

833 36 Bratislava

Tel.: +421/2/5978 3731

Fax: +421/2/5978 3739

E-mail: olpr@foreign.gov.sk

**Tasks:** To follow the fulfilment of international legal and political obligations of Slovakia in the field of human rights including the rights of persons belonging to national minorities; participate in the process of drafting of international documents adopted within the international organisations; follow the human rights situation in the particular countries and regions; in cooperation with other relevant ministries and institution prepare reports on implementation of international conventions in the field of human rights including rights of persons belonging to national minorities, etc.

**MINISTRY OF LABOUR, SOCIAL AFFAIRS AND FAMILY****Department for equal opportunities and anti-discrimination**

Špitálska 4

816 43 Bratislava

Tel.: +421/2/5975 1420

Fax: +421/2/5292 1271

E-mail: adriana.mesochoritsova@employment.gov.sk

www.employment.gov.sk

**Tasks:** To create state policy in the field of equal opportunities and anti-discrimination; conceptual activity and creation of legislative measures in the field of equal opportunities and anti-discrimination; coordinate the state system of equality of women and men, national minorities and marginalized group of citizens; coordinate international projects in the field of gender equality; follow and analyse the equality of opportunities of women and men in the sphere of employment, participation of women in political life, etc.

## 15. SLOVENIA, MINORITY LEGISLATION

### 15. 1. Basic Rights

In Slovenia, the autochthonous Italian and Hungarian<sup>562</sup> national communities and the Romany community are recognised as minorities. In addition to the basic fundamental human rights they enjoy special rights guaranteed by the Constitution.<sup>563</sup> Serbs, Croats, Bosnians (ethnic Muslims), Macedonians, Montenegrins and Albanians are considered as immigrants<sup>564</sup> and do not enjoy the status of a minority. However, in Art.61 the Constitution guarantees everyone the right to freely express affiliation with his nation or national community, to foster and give expression to his culture and to use his language and script.

The Jews as a religious community and most others do not demand for a minority status whereas some “persons belonging to the German-speaking community”<sup>565</sup> demanded the same status as autochthonous Italian and Hungarian national communities. However, such a claim was not supported by all German speakers and was rejected by Slovenia. Art.14 para.1 Const. guarantees everyone equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other beliefs and Art.14 para.2 contains everybody’s equality before the law.<sup>566</sup>

According to Art.64 Const., as the special minority protection Italian and Hungarian minorities are guaranteed the right to own symbols, education in their own languages, to foster economic and cultural activities as well activities associated with the mass media (para.1), to establish autonomous organizations (para.2), to be directly represented at the local level and in the National Assembly (para.3) and to self-administration (para.4)<sup>567</sup> In addition, para.5 contains the provision that regulations and other legislative enactments which exclusively affect the status and the rights of these communities, may not be enacted without the consent of their representatives.<sup>568</sup>

<sup>562</sup> Avtohtona narodna skupnost, Kerner 2000: 7.

<sup>563</sup> Art.5, 64 and 65 of the Constitution adopted in December 1991; Slovenia Report 2000: 3.

<sup>564</sup> When Slovenia gained independence in 1991, the persons from other parts of former Yugoslavia became foreigners. The Citizenship Law offered them possibility to obtain Slovene citizenship. Around 171.000 people (9 % of population) have used this opportunity (Slovenia Report 2000: 20).

<sup>565</sup> Recognized by scholars as accurate, the Census of the Republic of Slovenia (2002) lists 1628 respondents who declared German language their mother tongue. (accessed on 15 September 2004: [http://www.stat.si/popis2002/si/rezultati/rezultati\\_red.asp?ter=SLQ&st=9](http://www.stat.si/popis2002/si/rezultati/rezultati_red.asp?ter=SLQ&st=9)) Although it is disputed that German speakers in Slovenia (considering their dispersed settlement and weak internal cohesion) actually constitute the “German-speaking community”, they are mentioned as such in the Cultural agreement between the Republic of Slovenia and Republic of Austria, 2001: Art.15. (E.g., Necak 2002) Since the majority of them live in the territory Slovenia Karner (1998: 177) considers that they can be described as “autochthonous”. Slovenia, however, explains that the same concept of the minority protection and special minority rights, based on the territorial concept of the protection of national minorities that is established for Italian and Hungarian minorities cannot be applied for the German speakers who live dispersed in the territory and do not establish a coherent community. In Slovenia’s view, Art.61 establishes and guarantees adequate constitutional protection for them.

<sup>566</sup> Slovenia Report 2000: 60.

<sup>567</sup> Slovenia Report 2000: 5. Marko 1994: 330 ff. Slovenia is divided in 193 municipalities. (Accessed on 15 September 2004: [http://www.stat.si/letopis/index\\_vsebina.asp?poglavje=2&leto=2003&jezik=si](http://www.stat.si/letopis/index_vsebina.asp?poglavje=2&leto=2003&jezik=si))

<sup>568</sup> Slovenia Report 2000: 5f.

Those rights are bound to the territory where they live.<sup>569</sup> Art.65 Const. determines that the status and special rights of the Gypsy (Romany) communities shall be regulated by statute.<sup>570</sup>

It should be mentioned that Slovenia is a party to all relevant international instruments for the protection of national minorities (i.e., UN documents, covenants and conventions, Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages, etc). and that the Republic of Slovenia and the Republic of Hungary concluded the bilateral agreement on the protection of national minorities.

## 15. 2. Use of Language

Everybody can use his mother language freely and shall be entitled to freely identify with his national grouping or autochthonous ethnic community (Art. 61 Const.).<sup>571</sup> The official language is Slovene, however, in those areas where autochthonous Italian and Hungarian national communities reside, the official language shall also be Italian and Hungarian (Art. 11 Const.).<sup>572</sup> The local and state administration in those "ethnically mixed areas" as well as judicial authorities has to operate bilingually.<sup>573</sup> There is foreseen the increase of basic salaries for those administrative posts that require the knowledge of a minority language.<sup>574</sup>

According to Art.5 Law on Court, in territories in which the autochthonous Italian and Hungarian national communities live, the business of the court shall be conducted available as well in the minority language if a party who lives in that territory uses such a minority language.<sup>575</sup>

The persons belonging to Italian and Hungarian minority can use names and surnames in the original form. In the ethnic mixed areas, all personal documents (identity cards, passports etc.) shall be bilingual or trilingual.<sup>576</sup> All topographic names of settlements, streets and buildings shall be written in both languages. The Slovene name has to be written above and the language of the minority below.<sup>577</sup> Both names shall be of the same size.

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<sup>569</sup> The Italian minority lives mainly in 3 municipalities of the coast region (Primorska) whereas the Hungarian minority inhabits mainly the 5 municipalities in the north-eastern region of Prekmurje (Slovenia Report 2000: 6f).

<sup>570</sup> The majority of Romany lives in Prekmurje and in the central region of Dolenjska. (Slovenia Report 2000: 6f).

<sup>571</sup> Slovenia Report 2000: 60.

<sup>572</sup> Slovenia Report 2000: 17, 144. According to Art.62 Const., the use of minority languages in administration and courts has to be regulated by law (Slovenia Report 2000: 60f).

<sup>573</sup> Public Administration Act no. 67/94 and Law no.19/94 on Courts (Slovenia Report 27 f.).

<sup>574</sup> 6 % increase of salary for active knowledge of a minority language and 3 % for passive knowledge of a minority language (Slovenia Report 2000: 27).

<sup>575</sup> Slovenia Report 2000: 146.

<sup>576</sup> Slovenia Report 2000: 28.

<sup>577</sup> Art.25 Act no. 10/80 on determining the names of settlements and streets (Slovenia Report 2000: 28).

### 15. 3. Teaching of Language

In the ethnic mixed areas, members of national communities are guaranteed education in their mother tongue from pre-school education to completed secondary education. In practice, there are two models of education applied. As for the Italian minority, the schools are either in Slovene or in Italian language whereas the learning of the other language in those schools is compulsory.

In the case of the Hungarian minority, bilingual education has been introduced for all children: the students of both nationalities attend classes together and the classes are held parallel in both languages<sup>578</sup>. This way, the fact that the members of a majority nation will learn the minority language is guaranteed.<sup>579</sup> If children from the minority communities, after finishing primary school, enrol at a secondary school outside the ethnically mixed area, their further education in native language is not any more guaranteed.<sup>580</sup>

As for the Romany children, they ought to be integrated in the general school system. Therefore, size regulation is necessary for Romany classes or for classes in which Romany children are included. Schools, integrating Romany children are granted additional classes to be able to organise teaching in smaller groups. The basic problem is the lack of teaching personnel with the knowledge of the Romany language. As to now it was difficult to find Romany people who would be interested to become teachers.<sup>581</sup>

The school system acknowledges as well the needs of the children of migrants by offering them education in their mother language on a voluntary basis.<sup>582</sup>

The Office for International Cooperation within the Ministry of Education, together with the Institute of Education offers assistance in training teachers for teaching the mother tongue as a second/ or foreign language.<sup>583</sup>

### 15. 4. Right to Associations

Art. 42 Const guarantees everybody's freedom of association and peaceful assembly. That comprises the realisation of interests at the private level and in the political arena, in the form of trade unions or political parties as far as they do not follow illegal or unconstitutional goals.<sup>584</sup>

Art.64 para.1 Const. guarantees the right of the autochthonous Italian and Hungarian national communities to establish their own organisations. In Slovenia, there are active several societies and cultural associations of national minorities and the Romany community.<sup>585</sup>

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<sup>578</sup> Slovenia Report 2000: 13.

<sup>579</sup> Slovenia Report 2000: 29.

<sup>580</sup> Slovenia Report 2000: 34.

<sup>581</sup> In primary schools, classes only for Romany are rare as their integration in regular classes is given the priority (Slovenia Report 2000: 32, 146 f.).

<sup>582</sup> Slovenia Report 2000: 19.

<sup>583</sup> Slovenia Report 2000: 19.

<sup>584</sup> Slovenia Report 2000: 22, 145.

<sup>585</sup> Slovenia Report 2000: 145.

There are several cultural and other associations of diverse ethnic communities (e.g., Albanians, Bosnians, Croats, Macedonians, Montenegrins, Roma and Serbs from the former Yugoslavia, but also Africans, Arabs, etc) established on the basis of private law. Among them there are also Jewish associations and the working community of German speaking associations in Slovenia, established in 2002.<sup>586</sup>

### 15. 5. Right to Unimpeded Contacts

Everybody is has the right to freedom of movement and to choose his place of residence, to leave the country and to return at any time (Art. 32 para.1 Const.) and all citizens have the right to freely establish cross-border contacts.<sup>587</sup> In addition, the Italian and Hungarian communities enjoy the right to foster contacts with the wider Italian and Hungarian communities living outside Slovenia (Art.64 para.1 Const.).<sup>588</sup> Moreover, such contacts are explicitly defined as one of the obligations of the self governing national communities.<sup>589</sup>

### 15. 6. Right to Information

The constitution (Art.39 para.1) guarantees the freedom of expression of thought, the freedom of speech and the freedom of press. As to the Italian and Hungarian minority, Art.64 para.1 Const. additionally guarantees those rights.

The Italian and Hungarian minority can fulfil their information needs through the press, radio and television. The programmes in both languages are part of the national broadcasting programmes. Both minorities can autonomously decide on the content of those programmes and have their representative in the Council of RTV Slovenia.<sup>590</sup> In addition, programmes for both minorities are prepared and broadcasted by regional radio and television centres.<sup>591</sup>

The Romany community disposes of a bilingual newspaper (in Slovene and Romany language)<sup>592</sup> and of local radio programmes that are co-financed by the Ministry of Culture.

The state encourages and financially supports the cultural creativity of the Italian and Hungarian minority as well as of the Romany people.<sup>593</sup>

In addition, the Ministry of Culture prepared a special programme for the national minorities, based on the principle of positive discrimination and taking into consideration their special needs; and an integration programme, aimed at finding way

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<sup>586</sup> The members of the working community are the association Bridge (Most) from Maribor, the cultural associations of German speaking women in Maribor, the Gottscheer (Kocevje) Altsiedler association, association of Peter Kozler in Ljubljana and the Austrian association Chrainow in Kranjska Gora (Anderwald 2002).

<sup>587</sup> Slovenia Report 2000: 39.

<sup>588</sup> As minorities live on both sides of the borders, the cross-border cooperation is in the interest of all neighbours (Slovenia Report 2000: 40)

<sup>589</sup> Slovenia Report 2000: 39.

<sup>590</sup> Slovenia Report 2000: 24ff.

<sup>591</sup> For the Italian minority the regional RTV Centre in Koper/Capodistria, for the Hungarian minority the regional RTV Centre Maribor (Slovenian report 2000: 14).

<sup>592</sup> Slovenia Report 2000: 26.

<sup>593</sup> Slovenia Report 2000: 16.

for an appropriate integration of the minority cultures in the culture of the national majority. Lately, the immigrants and other ethnic communities were included in this programme.<sup>594</sup>

### 15. 7. Right to Political Representation

The electoral law ensures the autochthonous Italian and Hungarian national minority two seats in the National Assembly and political representation on the local level.<sup>595</sup> Decisions, which concern those national communities, cannot be taken without their agreement.<sup>596</sup> In the areas where they live, the two national communities have the right to at least one representative in the municipal council. The same right is in force in the areas with the autochthonous Romany community.<sup>597</sup>

### 15. 8. Right to Autonomy

The Italian and the Hungarian national communities have the right to self-governing ethnic communities recognised as bodies of public law.<sup>598</sup> They enjoy cultural autonomy.<sup>599</sup> As all those special rights are bound to the territory where both minorities live (Primorska and Prekmurje), we can talk about certain elements of the territorial autonomy as well. The self-governing ethnic communities are primarily established on the municipal level. In the ethnically mixed areas their role is so important that no decision can be taken without their consensus.<sup>600</sup> That indicates even certain elements of local autonomy.

### 15. 9. Right to Co-determination

Beyond their autonomous competencies, the national minorities have the right to co-determination with regard to the questions that are related to their status. In this respect, they can make proposals to the authorities which are obliged to request their opinion and even bound to ask for their consensus in matters that are of particular relevance for them.<sup>601</sup> For this purpose, the government has established two commissions who deal with them, one for the national communities and one for the Romany people.<sup>602</sup>

### 15. 10. Specific Minority Protection

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<sup>594</sup> In 1992 the Romany, in 1993 immigrants and the autochthon German in region of Kocevje and in 1999 the Jews community (Slovenia report 2000: 16, 144).

<sup>595</sup> Out of 90 members of the national assembly, 1 seat is reserved for the Italian and 1 seat for the Hungarian minority.

<sup>596</sup> Art.64 Const.

<sup>597</sup> As to today, they have one representative in the municipal assembly of Murska Sobota (Slovenia Report 2000: 37, 147).

<sup>598</sup> Slovenia Report 2000: 143.

<sup>599</sup> In Slovenia, it is called "minority autonomy". (Slovenia Report 2000: 35).

<sup>600</sup> Slovenia Report 2000: 36

<sup>601</sup> Art.64 Const. (Slovenia Report 2000: 35ff.).

<sup>602</sup> Slovenia Report 2000: 37

The state legal protection system provides for the respect of human rights and for the necessary control mechanisms. That includes the institution of an ombudsman.<sup>603</sup> However, a specific legal protection system only for minorities does not exist.

### 15. 11. Population, Ethnic Groups and Minorities in Slovenia

		1991		2002	
Total population <sup>604</sup>		1.913.335	100,0	1.964.036	100,0
Slovenes		1.689.657	88,3	1.631.363	83,1
Ethnic groups/ National minorities:					
1.	Hungarians	8000	0,4	6.243	0,3
2.	Italians	2.959	0,3	2.258	0,1
3.	Romany <sup>605</sup>	2.259	0,1	3.246	0,2
4.	Germans (& Austrians) <sup>606</sup>	424		680	
All together		13.642	0,7	12.427	0,6
Other <sup>607</sup>		167.701	8,8	193.921	9,9
No data		42.355	2,2	126.325	6,4

<sup>603</sup> More about the ombudsman in Slovenia Report 2000: 12, 142.

<sup>604</sup> Statistical Office of Slovenia 2002.

<sup>605</sup> According to some other sources there are 7000 to 10.000 Romany in Slovenia (Horvat 1999: 14) and this number might be even higher due to recent migrations.

<sup>606</sup> The Census of 2002 officially registers 499 Germans and 181 Austrians. (Accessed on 15 September 2004: [http://www.stat.si/popis2002/si/rezultati/rezultati\\_red.asp?ter=SLO&st=15](http://www.stat.si/popis2002/si/rezultati/rezultati_red.asp?ter=SLO&st=15)) As mentioned, the census registers officially 1628 German speakers. However, some authors speak about "1.813 + X" Germans and old-Austrians; X in the opinion of those authors means those people that do not declare themselves as members of the German speaking community because they fear that it could have negatively effect their position in the society (Kamer 1998: 207; Krizman 1996: 185ff, 191).

<sup>607</sup> 1991: 52.876 Croats, 47.401 Serbs, 26.577 ethnic Muslims, 4.371 Macedonians, 4.339 Montenegrins, 3.534 Albanians, 12.075 "Yugoslavs", over 5000 persons with regional identity (i.e. "Istrians"); 2002: 35.642 Croats, 38.964 Serbs, 21.542 Bosnians, 10.467 ethnic Muslims, 3.972 Macedonians, 2.667 Montenegrins, 6.186 Albanians, 527 "Yugoslavs", 1.467 persons with regional identity (Statistical Office of Slovenia).

## 15. 12. Implementation mechanisms

The following governmental and parliamentary bodies deal – exclusively or partially - with the minority issues:

### OFFICE FOR NATIONALITIES

Tivolska 50

1000 Ljubljana

Tel.: +386/1/430-54-00

Fax: +386/1/432-00-45

e-mail: [janez.obreza@gov.si](mailto:janez.obreza@gov.si) or [gp.un@gov.si](mailto:gp.un@gov.si)

<http://www.gov.si/vrs/slo/ministrstva/urad-za-narodnosti.html>

**Tasks:** Monitoring the implementation of constitutional and statutory provisions relating to the special rights of members of the Italian and Hungarian national communities and monitoring and ensuring the protection of the special rights of the Romany community living in Slovenia, when this does not fall within the jurisdiction of other state or local community bodies; Carrying out activities related to the status, rights, obligations and developmental opportunities of the national communities, Romany community and other ethnic groups; Drawing up analyses, material, initiatives and proposals for sessions of the Government, government bodies and other state bodies, and monitoring the effectiveness of the adopted decisions relating to the two national communities and the Romany community.

### MINISTRY OF FOREIGN AFFAIRS

#### Department for Multilateral Relations

Prešernova cesta 25

1000 Ljubljana

Tel: +386/1/478-20-00

Fax: +386/1/478-23-40, 478-23-41

E-mail: [gp.mzz@gov.si](mailto:gp.mzz@gov.si)

<http://www.gov.si/mzz>

**Tasks:** The Department covers various security issues, human rights, humanitarian issues, international cooperation in various forums, etc. Issues pertaining to minorities in Slovenia also fall within the competence of some other departments of the Ministry.

### MFA OFFICE FOR SLOVENES ABROAD

Železna cesta 14

1000 Ljubljana

Tel.: +386/1/4302855

Fax: +386/1/4375511

**Tasks:** The concern for the Slovenian minority in the neighbouring countries is one of the most important tasks of the office.



**MINISTRY OF CULTURE****Department for Culture of the Italian and Hungarian National Communities, the Romany Community, Other Minority Ethnic Communities and Immigrants in the Republic of Slovenia**

Maistrova ulica 10

1000 Ljubljana

Tel.: +386/1/369-59-00

Fax: +386/1/369-59-01

e-mail: [gp.mk@gov.si](mailto:gp.mk@gov.si) or [suzana.curin-radovic@gov.si](mailto:suzana.curin-radovic@gov.si)

<http://www.kultura.gov.si>

**Tasks:** The Ministry's activities in this field include the creation of normative, organisational and financial conditions for satisfying the cultural needs and exercising the cultural rights of the national communities, the Romany community and other ethnic groups and immigrants, and of conditions for cultural diversity, which enriches life in Slovenia.

**MINISTRY OF EDUCATION, SCIENCE AND SPORT**

Trg OF 13

1000 Ljubljana

Tel.: +386/1/478-46-00

Fax: +386/1/478-47-19

E-mail: [gp.mszs@gov.si](mailto:gp.mszs@gov.si); <http://www.mszs.si>

**Tasks:** The education and social protection of children, young people and adults in pre-school institutions, elementary schools, music schools, secondary schools and adult education institutions, the field of higher education, halls of residence for pupils and students, the education of the Italian and Hungarian national communities and the Romany community, and the education of members of the Slovenian minority in Italy, Austria and Hungary etc.

**GOVERNMENT COMMISSION FOR ETHNIC COMMUNITIES**

Administration: Office for Nationalities

Tivolska 50

1000 Ljubljana

Tel: +386/1/430-54-00

Fax: +386/1/432-00-45

E-mail: [janez.obreza@gov.si](mailto:janez.obreza@gov.si) or [gp.un@gov.si](mailto:gp.un@gov.si)

<http://www.gov.si/vrs/slo/ministrstva/urad-za-narodnosti.html>

**Tasks:** The Commission is a working body of the Government of the Republic of Slovenia and, as such, acts as an advisory body to the Government, proffering its opinions, positions and recommendations relating to the implementation of the special rights of the Italian and Hungarian national communities in the Republic of Slovenia.

**GOVERNMENT COMMISSION FOR THE PROTECTION OF THE ROMANY COMMUNITY**

Administration: Office for Nationalities

Tivolska 50

1000 Ljubljana

Tel: +386/1/430-54-00

Fax: +386/1/432-00-45

E-mail: [janez.obreza@gov.si](mailto:janez.obreza@gov.si) or [gp.un@gov.si](mailto:gp.un@gov.si)

<http://www.gov.si/vrs/slo/ministrstva/urad-za-narodnosti.html>

**Tasks:** The Commission is a working body of the Government of the Republic of Slovenia and, as such, acts as an advisory body to the Government, proffering its opinions, positions and recommendations relating to the implementation of the special rights of the Romany community in the Republic of Slovenia.

**NATIONAL ASSEMBLY COMMISSION FOR NATIONAL COMMUNITIES**

National Assembly of the Republic of Slovenia

Šubiceva 4

1000 Ljubljana

Tel: +386/1/478-96-69; <http://www.dz-rs.si>

**Tasks:** A working body of the National Assembly of the Republic of Slovenia; dealing with issues relating to the status and rights of the Italian and Hungarian national communities.

**HUMAN RIGHTS OMBUDSMAN**

Dunajska cesta 56

1000 Ljubljana

Tel: +386/ 1/475-00-50

Fax: +386/1/475-00-40

E-mail: [info@varuh-rs.si](mailto:info@varuh-rs.si); <http://www.varuh-rs.si>

**Tasks:** By law, the Ombudsman has, above all, the authority to obtain, from state and other bodies that he/she can monitor, all data regardless of the degree of confidentiality to perform investigations in the area of human rights, including the rights of minorities.

**Hungarian National Self-Governing Community of Pomurje**

Glavna ulica 124

SI- 9222 Lendava

Tel. 00386 2 575 1449

**Italian National Self-Governing Community Izola**

Gregorciceva ul.76

SI- 6310 Izola

tel. 00386 5 641 50 31

*Additional bibliographical references:*

Necak, Dušan, ed. (2002), "Nemci" na Slovenskem 1941-1955: izsledki projekta – [zbornik] ("Germans" in Slovenia, 1941-1955: Findings of the project). Ponatis (Reprint). Ljubljana: Znanstveni inštitut Filozofske fakultete, 2002.

## 16. UKRAINE, MINORITY LEGISLATION

Ukraine, independent from 1991, consists of 24 regions (*oblasti*), the cities of Kiev and Sevastopol with a special status and the autonomous Republic of Crimea. The awareness of identity of Ukrainians<sup>608</sup> is stronger in western Ukraine; in the eastern part there is a stronger relation with Russians, which has cultural and historical origins.<sup>609</sup> In the Constitution the 'Ukrainian people' are defined as 'citizens of Ukraine of *all nationalities*'.<sup>610</sup> As regards the nationalities, Art. 11 Const. differentiates between the *national minorities* and *indigenous peoples*.<sup>611</sup> The minority law of 25.6.1992 defines national minorities as those groups of citizens of other than Ukrainian nationality (in the sense of ethnicity), which express their national self-identification and the corresponding awareness of the community among each other.<sup>612</sup> The consequences of deportations of the Crimean Tatars, who define themselves as a 'nation',<sup>613</sup> and other nationalities from Crimea during the World War II have not been overcome yet; Crimea is at the moment populated mainly by the Russians and Ukrainians.<sup>614</sup> Particularly after 1991 many Crimean Tatars returned to the country, nevertheless, due to the law on citizenship, many of them did not obtain the Ukrainian citizenship<sup>615</sup> yet and therefore they cannot benefit from the minority protection provisions.

### 16.1. Basic Rights

Art.23 Const. includes a general individual right to free development of personality. Art.6 minority law confers a special right to national minorities - a right to 'national and cultural autonomy', i.e. rights in the field of language and education, culture, mass media, their own institutions and religion.<sup>616</sup> An individual right to free decision on one's national identity is expressed in Art.11 minority law.<sup>617</sup> A citizens' right to equality and a prohibition of discrimination on the bases of race, colour, ethnic origins or language is included in Art.24 para.1 and 2 Const.<sup>618</sup> The rules of equality, which regard members of the minorities, are included in minority law.<sup>619</sup> The support clause in Art.11 Const. serves the realisation of equality of chances of minorities, which, among others, extend themselves from 'ethnic, cultural, linguistic and religious identity of national minorities and indigenous peoples'; according to Art.1

<sup>608</sup> To the Ukrainians belongs also the majority of inhabitants of the Carpatho-Ukraine, formerly known as 'Ruthenia' and today as Transcarpathia, the so called Ruthenians/ Rusyns (Ukraine Report 1999: 7; cf. Pan/ Pfeil 2000: 173).

<sup>609</sup> More on that at Filippova 1995: 1, 4 f.

<sup>610</sup> Preamble Const. (Ukraine Report 1999: 7).

<sup>611</sup> Ukraine Report 1999: 7.

<sup>612</sup> Art.3 of the *law of Ukraine on the national minorities* (Ukraine Report 1999: 7).

<sup>613</sup> Crimea Parallel Report 1999: 7.

<sup>614</sup> In 1996 2,6 million people lived in Crimea, out of whom 1,5 million (64%) Russians, 600.000 (23%) Ukrainians and 270.000 (12%) Crimean Tatars (Crimea Parallel Report 1999: no. 9-11).

<sup>615</sup> Crimea Parallel Report 1999: no 89 ff., cf. IHF Ukraine 2001: 326.

<sup>616</sup> Ukraine Report 1999: 8 f

<sup>617</sup> More in Ukraine Report 1999: 7.

<sup>618</sup> Furthermore, in art.3 law on the local self-administration (Ukraine Report 1999: 10).

<sup>619</sup> Art.1 and art.18 minority law. See Ukraine Report 1999: 8, 10, 16.

minority law, the State supports the development and manifestation of 'national' awareness.<sup>620</sup>

In practice the State grants the organisational and financial assistance e.g. for minority language, media or cultural events and education activities of the minorities; the local authorities contribute to the provision of spaces for cultural and education events of the minority organisations.<sup>621</sup>

## 16.2. Use of language

The right to private use of one's mother tongue is included in Art.10 para.3 Const.<sup>622</sup> According to Art.10 Const., Ukrainian is the State language. In Crimea Republic, such status enjoys as well the Russian, but not (as before the deportations) the Crimean Tatar language. In areas, where a minority constitutes the majority of population (this does not apply for e.g. Crimean Tatars,<sup>623</sup> according to Art.8 minority law, their language may be used by the authorities in their work.<sup>624</sup> There is Art.18 language law, which treats analogically the use of language before courts.<sup>625</sup>

According to Art.12 minority law and Art.39 language law, citizens should have or re-establish their names generally in accordance with 'national' traditions; the spelling should be however, after transcription, in Ukrainian, also in Cyrillic.<sup>626</sup> This creates problems to minorities who use other alphabets, especially to the Crimean Tatars, as the large linguistic differences make it impossible to express or spell their names correctly in Ukrainian.<sup>627</sup>

If a minority constitutes a majority of population in a certain area, the use of its language (apart from Ukrainian) in the topographic inscriptions is at the authorities' discretion, according to Art.38 language law.<sup>628</sup> Indeed, since 1990 in the areas of minorities' compact settlement, the historical names of cities are reintroduced,<sup>629</sup> however, this is not valid for the historical topographic names in the Crimea.<sup>630</sup>

## 16.3. Teaching of language

Art.53 para.5 Const. 'guarantees' members of the minorities 'in conformity with the law' the right to education in the mother language or adequate lessons in public education facilities and by the so-called *national-cultural associations*.<sup>631</sup> Furthermore, there is a

<sup>620</sup> Cf. also art.2, 3 of the *fundamental rights of the Ukrainian cultural legislation*. See Ukraine Report 1999: 8.

<sup>621</sup> See Ukraine Report 1999: 13 f. and 9.

<sup>622</sup> Ukraine Report 1999: cf. also art.6 minority law, Ukraine Report 1999: 8.

<sup>623</sup> Crimea Parallel Report 1999: no 41.

<sup>624</sup> Cf. also art.3 *Law on languages in Ukraine* and art.26 *Law on the local self-administration in Ukraine* (decision of the local self administration authorities); Ukraine Report 1999: 8.

<sup>625</sup> The right to interpreter and defence in one's mother tongue or other 'acceptable' language is given in the those participants in the court proceedings who do not know the language of the proceedings. See Ukraine Report 1999: 14.

<sup>626</sup> Ukraine Report 1999: 15..

<sup>627</sup> More in Crimea Parallel Report 1999: no 173 f.

<sup>628</sup> Ukraine Report 1999: 15.

<sup>629</sup> E.g. in the Transcarpathians and Chernivtsi regions. See Ukraine Report 1999: 15.

<sup>630</sup> They were replaced by the new Russian names, Crimea Parallel Report 1999: no 175 ff.

<sup>631</sup> More in the Ukraine Report 1999: 16, 17 (education of teachers, school books and documents).

right, guaranteed in Art.6 minority law and Art.25 - 27 language law, to establish adequate nursery schools and compulsory schools, which are explicitly allowed in the areas of compact settlement of 'citizens of other nationalities'.<sup>632</sup>

In practice, the minority language lessons are held in three variants: in monolingual or bilingual schools or, partly optionally, as the subject of teaching. As a result of Soviet times, the monolingual Russian schools are strongly over represented, whereas the number of students in Ukrainian language schools does not correspond to the number in the total population.<sup>633</sup> Additionally, there is a considerable number of bilingual Russian-Ukrainian and some Russian-Romanian schools. In general, the need of Hungarian and Romanian or Moldovian schools is to some extent covered; that does not apply for the monolingual Crimean Tatar or Polish schools.<sup>634</sup> There are no minority language schools for the Bulgarians (only partially living in compact settlements). Languages of the named minorities are offered partly as teaching subjects in the primary schools; Bulgarian, Greek and Hebrew, as well as Gagauzian, German, Czech and Slovak are offered.<sup>635</sup>

#### 16.4. Right to Associations

The right to associations and establishment of political parties by the citizens are included in general in Art.36 para.1 Const.<sup>636</sup>. For the members of the national minorities, the right to associations is confirmed in Art.13 minority law.<sup>637</sup>

At the moment there are over 1045 minority organizations, out of which 34 are active in the whole country. Single minorities have established umbrella organisations; there are also regional minority umbrella organisations, i.e. organisations of associations of various minorities of a certain area.<sup>638</sup>

#### 16.5. Right to Unimpeded Contacts

A general right to contacts, also cross border, is included in Art.33 Const. Minorities have, according to Art.15 minority law, 'within the existing order', the right to contacts with persons and associations of their nationality abroad and the right to receive from them linguistic, cultural and spiritual support, as well as to cooperation with international NGOs.<sup>639</sup> Practically the home cooperation of the minority associations is

<sup>632</sup> The establishment of private schools is still not possible. See Ukraine Report 1999: 8, 17f.

<sup>633</sup> Cf. Ukraine Report 1999: 17.

<sup>634</sup> Ukraine Report 1999: 17.

<sup>635</sup> In the Crimea Bulgarian, German, Armenian and Greek are a subject of choice, Ukraine Report 1999: 17, 19.

<sup>636</sup> Cf. also art.36 para.2, para.4, art.37 Const., art.39 Const.. More in the Ukraine Report 1999: 11.

<sup>637</sup> Cf. also art.6 minority law. See Ukraine Report 1999: 8.

<sup>638</sup> Especially Jews, Greeks, Germans, Poles and Crimea Tatars have established umbrella organisations. Regional minority umbrella organisations exist, *inter alia*, in Western Ukraine and in Crimea; Ukraine Report 1999: 12, 20.

<sup>639</sup> For the precise wording of art.15 minority law see Ukraine Report 1999: 20.

institutionalised within their umbrella associations,<sup>640</sup> a few of them have connections with international NGOs.<sup>641</sup>

### 16.6. Right to Information

The individual's right to receipt and distribution of information is included in Art.34 para.2 Const.<sup>642</sup> Art.8 of the *principles of the Ukrainian cultural legislation* confirms the right of citizens of any nationality to establish mass media and publishing houses.<sup>643</sup> With regard to the state mass media, Art.6 minority law and Art.33 para.4 language law explicitly allow the use of languages of 'other nationalities',<sup>644</sup> which primarily concerns the state radio.

Among the minority languages Russian is the dominant, also in relation to Ukrainian: it is spread among almost two thirds of the broadcasting time, and there are over 1.300 Russian print media.<sup>645</sup> Out of the other minority languages, some are represented in the (regional) radio stations.<sup>646</sup> Moreover, there are approximately 100 other than Russian print media, among which Belorussian, Polish, Tatar and German newspapers and Hungarian periodicals.<sup>647</sup>

### 16.7. Right to Political Representation

The right to political representation of the minority members exists as a democratic right to participation in the decision-making, vested to all citizens<sup>648</sup>. Nevertheless, the quorum for a public initiative or on a state-wide referendum is high and can be initiated only by the Russian side. In the Crimea Republic, the parliamentary representation of the Crimean Tatars is burdened by the citizenship question.

## 16. 8. Right to Autonomy

The *Republic of Crimea*<sup>649</sup> is nominally autonomous, i.e. endowed with its own organs and legislative competencies.<sup>650</sup> Their responsibilities cover *inter alia* the sectors of culture and state language or minority languages and participation in the state programmes for the

<sup>640</sup> Further examples of the home collaboration of minorities see Ukraine Report 1999: 10.

<sup>641</sup> More in Ukraine Report 1999: 20.

<sup>642</sup> Ukraine Report 1999: 13. On the liberty of expression of opinions see art.34 para.1 Const.

<sup>643</sup> Cf. also art.6 of the Announcement of *the rights of the Ukraine nationalities of 01.11.1991* (support of establishment of 'national' print media and periodicals). See Ukraine Report 1999: 11, 13.

<sup>644</sup> Ukraine report 1999: 13.

<sup>645</sup> Ukraine report 1999: 13.

<sup>646</sup> Most commonly represented are Romanian in Chernivtsi and Hungarian in Transcarpathians, much more seldom Polish in Zhytomyr. Besides, *inter alia*, Hebrew, German, Armenian, Crimea Tatar, Bulgarian and Gagauzian are regionally represented, whereas Hebrew also in the whole country. See the Ukraine Report 1999: 11, 13.

<sup>647</sup> More in Ukraine Report 1999: 13 f.

<sup>648</sup> Cf. art.9 minority law (equal access of minorities to the state organs and army)

<sup>649</sup> The city of Sevastopol does not count to the Autonomous Republic of Crimea (Crimea Parallel Report 1999: no. 8).

<sup>650</sup> Cf. art.134, art.135 para.1, art.136 para.1 and 2, art.136 para.3, art.137 I, art.138 Const.. On the possibilities of the delegation of competences by the state law see art.138 para.2 Const..

return of the deported.<sup>651</sup> The autonomy is however limited by the fact that the legal acts of the government and parliament may be restricted by a national law and by the acts of the president and the state government.<sup>652</sup>

The Crimean Tatars, underrepresented in the Crimean parliament, have a political representative organ, selected among 33 representatives, the so-called *National Assembly (Mejlis)*.<sup>653</sup> So far, it does not enjoy an official status, recognised by the state, however de facto it takes part in the safeguarding of the rights of the Crimea Tatars both at regional and state levels.<sup>654</sup>

## 16. 9. Right to Co-determination

Art.5 minority law provides for an establishment of advisory committees, consisting of representatives of national minorities, by the state organs and local self-administration organs. Their task is to represent the minority interests. There is, for example, the so called *State Committee for affairs of nationalities and migration*, which is established by the *Council of Representatives of public associations of national minorities*, and local and regional advisory committees in the areas of compact settlement of minorities.<sup>655</sup>

## 16.10. Specific Legal Protection of Minorities

There is no specific legal protection of minorities. Yet, there is a human rights ombudsman in the framework of the state parliament.<sup>656</sup>

## 16.11 Population, Nationalities and Minorities in Ukraine

Total population (2001) <sup>657</sup>		48.457.000	100,0%
Ukrainians (including Ruthenians)		37.541.700	77,5%
Other nationalities/ minorities			
1.	Russians	8.334.100	17,2%
2.	Romanians/Moldovians <sup>658</sup>	409.600	0,8%
3.	Tatars/Criamen Tatars <sup>659</sup>	321.500	0,7%
4.	Belorussians	275.800	0,6%

<sup>651</sup> Cf. art.137 para.1 no 6, art.138 para.1 no 8 and no 9 Const..

<sup>652</sup> Art.135 para.2 Const.. More on determination possibilities of the central state authorities at organs and legal acts of Crimea in art.136 para.3, art.136 para.4 and art.137 para.2 Const..

<sup>653</sup> See the Crimea Parallel Report 1999: no 217 ff.

<sup>654</sup> Crimea Parallel Report 1999: no 217, 221.

<sup>655</sup> Ukraine Report 1995; 5, 18.

<sup>656</sup> Cf. art.55 para.3, art.101 Const.. A so called *Committee for human rights, national minorities and international relations* was established by the Parliament. See Ukraine Report 1999: 4, 6

<sup>657</sup> Statistics Committee of Ukraine 2004. If not stated otherwise, the following data come from the same source.

<sup>658</sup> Romanians 151.000; Moldovians 258.600.

<sup>659</sup> Tatars 73.300; Crimea Tatars 248.200. – the number of the Crimea Tatars has significantly grown since the census in 1989 due to the return of the deported (cf. Ukraine Report 1999: 18).

5.	Bulgarians	204.600	0,4%
6.	Hungarians	156.600	0,3%
7.	Poles	144.100	0,3%
8.	Jews <sup>660</sup>	103.600	0,2%
9.	Armenians	99.900	0,2%
10.	Greeks	91.500	0,2%
11.	Romany	47.600	0,1%
12.	Aseris (Azerbaijanis)	45.200	0,1%
13.	Georgians	34.200	
14.	Germans	33.300	
15.	Gagauz	31.900	
16.	Uzbeks	12.353	
17.	Chuvash	10.593	
18.	Mordvinians	9.331	
19.	Lithuanians	7.207	
20.	Kazakhs	5.526	
21.	Czechs	5.917	
		10.384.427	21,4%
	others <sup>661</sup>	530.873	1,1%

## 16. 12. Implementation Mechanisms

The following governmental bodies deal with minority issues in Ukraine:

### National ombudsman office

Ms. Nina Karpachova, Ukrainian Parliament Commissioner for Human Rights.

Address: 21/8, Instyutyska Str., Kyiv, 01008

Tel: 8-044-253-2203

E-mail: omb@ombudsman.kiev.ua

### Governmental body dealing with the minority issues–

State Committee of Ukraine for Nationalities and Migration.

Address: 9, Volodymyrska Str.,

Kyiv, 01025

Tel/fax: 8-044-228-1718

www.scnm.gov.ua

<sup>660</sup> Krymchaks are also counted within the group of Jews. In Crimea, there are residing Jews since the 13/14 century who are linguistically and culturally close to Crimean Tatars. More in Vahtre / Viikberg 1991: Crimean Jews. During the census in 1989 the number of Krymchaks amounted to 679.

<sup>661</sup> The difference between the total population and the total of Ukrainians and members of nationalities.



## **TRANSLATIONS OF THE CEI INSTRUMENT**

*Albanian Version*

## INSTRUMENTI I NEQ-IT MBI MBROJTJEN E TE DREJTAVE TE MINORITETEVE

Vendet anetare nenshkruese te NEQ-it:

- duke patur parasysh se ceshtja qe ka te beje me pakicat kombetare mund te zgjidhet ne menyre te kenaqshme ne nje kuadër politik vërtet demokratik, të bazuar ne shtetin ligjor dhe qe garanton respektimin e plote te te drejtave te njeriut dhe te lirive themelore, te drejta dhe status te barabarta per te gjithë qytetaret,
- duke ri-afirmuar se mbrojtja e pakicave kombetare ka te beje vetem me qytetaret e shtetit respektiv, qe do te gezojne te njejtat te drejta dhe kane te njejtat detyra te qytetarise si gjithë pjesa tjetere e popullsisë,
- te bindur se pakicat kombetare perbejne nje pjese themelore te shoqerise ne shtetet ku ato jetojne dhe jane nje faktor i pasurimit te cdo shteti respektiv dhe shoqerie,
- duke patur parasysh se nje menyre efektive per te arritur stabilitetin ne rajon jane marredheniet e fqinjesise se mire, dhe duke qene te ndergjegjshem per nevojen per te shmangur inkurajimin e çdo tendence separatistete te pakicave kombetare ne rajon,
- duke konfirmuar se ceshtjet qe kane te bejne me te drejtat e personave qe i perkasin pakicave kombetare, jane ceshtje te shqetesimit legjitim ndekombetar dhe rrjedhimisht nuk perbejne ne menyre ekskluzive nje ceshtje te brendshme te shtetit respektiv,
- duke konsideruar se respektimi i te drejtave te personave qe i perkasin pakicave kombetare, si pjese e te drejtave humane te njohura universalisht, eshte nje faktor i rendesishem per paqen, drejtesine, stabilitetin dhe demokracine ne Shtetet, te bindura se mbrojtja nderkombetare e te drejtave te personave qe i perkasin pakicave kombetare, sic eshte edhe parashikuar ne Instrumentin e tanishem, nuk lejon asnje aktivitet, qe eshte ne kundërshtim me parimet themelore te ligjit nderkombetar dhe ne vecanti te sovranitetit, integritetit territorial dhe te pavaresise politike te Shteteve,
- duke njohur rendesine e vecante te rritjes së bashkepunimit konstruktiv midis tyre rreth ceshtjeve qe kane te bejne me pakicat kombetare dhe se nje bashkepunim i tille kerkon promovimin e mirekuptimit dhe besimit te nderdjellte, marredhenieve të fqinjesise se mire, paqen nderkombetare, sigurine dhe drejtesine,
- duke shprehur denimin e nacionalizmit agresiv, urrejtjen etnike dhe racore, anti-Semitizmin, ksenofobine dhe diskriminimin kunder personave dhe grupeve dhe te persekutimit mbi baza fetare dhe ideologjike

ka rene dakort si me poshte:

### Neni 1

Shtetet njohin egzistencen e pakicave kombetare, duke i konsideruar ato si pjese te rendesishme te shoqerise ne te cilen ato jetojne dhe garantojne kushtet e pershtatshme per promovimin e identitetit te tyre.

Per qellim te ketij Instrumenti, termi "pakice kombetare" do te thote nje grup qe eshte me i vogel ne numer sesa pjesa tjetere e popullsisë se nationals nje Shteti, anetaret e se ciles duke qene qytetare te atij Shteti kane karakteristika etnike, fetare apo gjuhesore te ndryshme nga ato te

pjeses tjeter te popullsisë dhe udhehiqen nga dëshira për të ruajtur kulturën, traditat, fene dhe gjuhën e tyre.

### **Neni 2**

T'i perkasesh nje pakice kombetare eshte nje ceshtje e nje zgjedhjeje te lire individuale dhe asnje disavantazh do te vije si rrjedhoje e ushtrimit apo mos ushtrimit te nje zgjedhjeje te tille.

### **Neni 3**

Shtetet njohin qe personat qe i perkasin pakicave kombetare kane te drejten te ushtrojne ne menyre te plote dhe efektive te drejta e tyre njerëzore dhe lirite themelore, individualisht ose ne grup pa ndonje diskriminim dhe te barazi te plote para ligjit. Keta persona do te jene ne gjendje te gezojne te drejta e parashikuara nga Instrumenti aktual, individualisht ose ne grup dhe te perfitojne nga masat qe sigurojne keto te drejta.

### **Neni 4**

Shtetet garantojne te drejten e personave qe i perkasin pakicave kombetare per te shprehur, ruajtur dhe zhvilluar identitetin e tyre etnik, kulturor, gjuhesor ose fetar dhe te ruajne e zhvillojne kulturën e tyre ne te gjitha aspektet.

### **Neni 5**

Adoptimi i masave te vecanta ne favor te personave qe i perkasin pakicave kombetare qe synojne promovimin e barazise midis tyre dhe pjeses tjeter te popullsisë, ose te marrjes parasysh te kushteve te tyre specifike nuk do te konsiderohet si nje akt diskriminimi.

### **Neni 6**

Shtetet do te marrin masa efektive per te siguruar mbrojtjen kunder cdo akti qe perben nxitjen e dhunes kunder personave ose grupeve, bazuar mbi diskriminimin kombetar, racial, etnik ose fetar, armiqesise apo urrejtjes duke perfshire edhe anti-Semitizmin.

### **Neni 7**

Shtetet njohin problemet e vecanta te Romeve. Ata ndermarrin adoptimin e gjithë masave ligjore administrative ose edukative sic parashikohet ne Instrumentin aktual në mënyrë që të ruhet dhe zhvillohet identiteti i Romeve, të lehtësone nepermjet masave specifike integrimin shoqëror të Romeve dhe të eliminojnë të gjithë format e intolerancës kundër tyre.

### **Neni 8**

Pa paragjykuar parimet demokratike, Shtetet, duke marre masa ne vazhden e politikës se tyre te pergjithshme integruese, do te shmangen nga ndjekja ose inkurajimi i politikave qe synojne asimilimin e personave qe i perkasin pakicave kombetare kunder dëshires se tyre dhe do te mbrojne keta persona kunder cdo lloj akti qe synon kete asimilim.

### **Neni 9**

Ne rastin e modifikimit të nen-ndarjeve administrative, juridike ose zgjedhore Shtetet duhet të marrin parasysh se modifikime të tilla, krahas kritereve të tjera, do të respektojnë të drejtat egzistuese të personave që i perkasin pakicave kombetare dhe ushtrimit të këtyre të drejtave. Në çdo rast, ato duhet të konsultohen, në bazë të legjislacionit kombëtar, me popullsinë që ndikohet drejtpërdrejt përpara adoptimit apo modifikimit të nen-ndarjeve në fjalë.

### **Neni 10**

Çdo person që i perket një pakice kombetare do të ketë të drejtën të perdore gjuhen e tij apo të saj lirisht, në publik apo privatisht me gojë ose me shkrim.

### **Neni 11**

Çdo person që i perket një pakice kombetare ka të drejtën që të perdore emrin dhe mbiemrin e tij ose të saj në gjuhen e tij ose të saj dhe të drejtën për pranimin dhe regjistrimin zyrtar të këtyre emrave dhe mbiemrave.

### **Neni 12**

Kurdohere, kur në një zonë, numri i personave që i perkasin një pakice kombetare, arrin, sipas regjistrimit me të fundit ose të metodave të tjera të sigurimit të konsistencës së saj, një nivel të konsiderueshëm, këta persona do të kenë të drejtën, kurdohere që të jete e mundur, të perdorin në përputhje me legjislacionin kombëtar, gjuhen e tyre me gojë dhe me shkrim, në kontaktet e tyre me autoritetet lokale të rajonit të sipërpermdur. Këto autoritete mund të pergjigjen, me aq sa mundën në të njëjtën gjuhë.

### **Neni 13**

Në përputhje me legjislacionin kombëtar Shtetet mund të lejojnë, aty ku është e nevojshme përmes marrëveshjeve bilaterale me Shtete të tjera të interesuara, në vecanti me Shtetet fqinje, shfaqjen e emertimeve tradicionale vendore dygjuhësore ose shumëgjuhësore, të emrave të rrugëve dhe emertimeve të tjera topografike në zonat ku numri i personave që i perkasin pakicave kombetare arrin, në bazë të numerimit ose të metodave të tjera të sigurimit të konsistencës së saj, një nivel të konsiderueshëm. Shfaqja e shenjave, ose mbishkrimeve ose të informacioneve të tjera të ngjashme të një natyre private, gjithashtu në gjuhen e pakicës, nuk duhet të jete subjekt i kufizimeve specifike, përveçse ato që në pergjithësi janë të aplikueshme në këte fushë.

### **Neni 14**

Çdo person që i perket një pakice kombetare dhe që ushtron një besim fetar, duhet të ketë të drejtën që të perdore gjuhen e tij në lutje, mesimdhënie, praktikime fetare apo vezhgime.

### **Neni 15**

Kurdohere që në një zonë, numri i personave që i perkasin një pakice kombetare përben, sipas regjistrimit me të fundit apo të metodave të tjera që sigurojnë konsistencën e saj, shumicën e popullsisë së kesaj zone, Shteti duhet të nxisë mesimin e gjuhës së pakicës për nepunësit e

administrates vendore dhe qendrore. Perpjekje duhet te behen qe te punesohen, nese eshte e mundur zyrtare, qe kane njohuri te mjaftueshme te gjuhes minoritare, pervec asaj zyrtare.

#### **Neni 16**

Shteti njej te drejten e personave qe i perkasin pakicave kombetare qe te ngrejne e ruajne institucionet e tyre fetare dhe kulturore, organizatat apo shoqatat, te cilat kane te drejte qe te kekojne fonde vullnetare per financim dhe kontribute te tjera, si edhe asistence publike ne perputhje me legjislacionin kombetar.

#### **Neni 17**

Shtetet njohin te drejten qe personat qe i perkasin pakicave kombetare te ngrejne kopshte,shkolla dhe institucione te tjera te arsimore ne gjuhen e tyre dhe mundesisht te gezojne njohjen e tyre ne perputhje te plote me legjislacionin kombetar ne fuqi. Keto institucione mund kerkojne financim publik apo kontribues te tjere.

#### **Neni 18**

Pavaresisht nga nevoja per te mesuar gjuhen zyrtare te shtetit qe jetojne, cdo njeri qe i perket pakices kombetare duhet te gezoje te drejten qe te mesoje gjuhen e tij ame dhe te arsimohet ne gjuhen e tij. Shtetet duhet te bejne te mundur sigurimin e llojit dhe niveleve te pershtatshme te arsimimit publik ne perputhje me legjislacionin kombetar, kur ne nje zone numri i personave qe i perkasin pakicave kombetare, ne baze te numerimit me te fundit apo te metodave te tjera te konsistences se saj, eshte ne nivel te konsiderueshem. Ne kontekstin e mesimdhënies se histories dhe kultures, ne nje institucion te tille publik edukativ, duhet te sigurohet nje mesimdhënie e pershtatshme e historise dhe kultures se pakices kombetare.

#### **Neni 19**

Shteti garanton te drejten e personave qe i perkasin pakicave kombetare, per te pasur akses ne media ne gjuhen e tyre ne perputhje me legjislacionin ne fuqi dhe me ane te nje asistence financiare te mundshme. Persa i perket radiove dhe televizioneve publike, Shtetet duhet te sigurojne, kurdohere qe te jete e mundur dhe e duhur, qe personat qe i perkasin pakicave kombetare te kene te drejten e nje aksesit te lire ne media te tilla, duke perfshire dhe prodhimin e programeve te tilla ne gjuhen e tyre.

#### **Neni 20**

Shteti duhet te beje te mundur qe cdo person qe i perket pakicave kombetare duhet te marre pjese pa asnje diskriminim ne jeten politike, ekonomike, sociale dhe kulturore te vendit ku ato jane shtetas dhe duhet te krijoje te gjitha kushtet per ushtrimin e ketyre te drejtave.

#### **Neni 21**

Shteti duhet te lejoje personat qe i perkasin pakicave kombetare te formojne parti politike.

### **Neni 22**

Ne perputhje me politikat e vetë Shteteve, Shtetet duhet te respektoje te drejten e personave qe i perkasin pakicave kombetare per pjesemarrje ne ceshtje publike, kryesisht ne proceset e vendim-marrjes ose ne ceshtje qe kane nje ndikim te drejtperdrejte mbi ta. Keshtu, shteti duhet te beje perpjekje qe te krijojë kushte per zhvillimin e identitetit etnik, kulturor, gjuhesor dhe fetar te minoritetit, duke marre masat e duhura qe perkojne me kushtet e veçanta te minoriteteve, sikurse parashikohet ne dokumentat e KSBE-se.

### **Neni 23**

Cdo person qe i perket nje pakice kombetare, nderkohe qe respekton integritetin territorial te Shtetit, ka te drejte qe te kete kontakte te lira dhe te pakufizuara me shtetasit e nje vendi tjetër me te cilet ndan karakteristika te njejta etnike, fetare, gjuhesore apo identitet te perbashket kulturor. Shtetet nuk duhet qe te ndalojne ushtrimin e ketyre te drejtave. Per me teper, Shtetet duhet te nxisin marreveshjet nderkufitare ne nivel lokal, kombetar dhe rajonal.

### **Neni 24**

Cdo person qe i perket nje pakice kombetare duhet te kete te drejten per t'ju drejtuar organeve kombetare te drejtesise per cdo padrejtesi apo dhunim te drejtave te percaktuara ne kete Instrument, nese keto te drejta jane te parashikuara ne ligj.

### **Neni 25**

Ne çdo zone, ku personat qe i perkasin nje pakice kobetare perbejne shumicen e popullsisë, shtetet duhet te marrin masat e nevojshme per te garantuar qe ata te cilet nuk i perkasin kesaj pakice te mos vuajne asnje disavantazh, duke perfshire ketu edhe ato qe rrjedhin si pasoje e zbatimit te masave per mbrojtjen e pakicave kombetare te parashikuara ne kete Instrument.

### **Neni 26**

Asnje nga keto angazhime nuk duhet interpretuar sikur nenkupton pjesemarrjen ne ndonje aktivitet qe bie ndesh me parimet themelore te se drejtes nderkombetare, dhe ne vecanti te barazise sovrane, integritetit territorial dhe pavaresise politike te Shtetit. Asgje ne Instrumentin aktual nuk ndikon detyrat qe kane te bejne me personat qe i perkasin pakicave kombetare si qytetare te Shteteve ne fjale.

Personat qe i perkasin pakicave kombetare do te respektojne gjithashtu, ne ushtrimin e te drejtave te tyre, te drejtat e te tjereve, duke perfshire ketu te drejtat e personave qe i perkasin shumices se popullsisë se shtetit respektiv ose pakicave te tjera kombetare.

### **Neni 27**

Ky instrument nuk duhet te paragjykoje dispozitat e legjislacionit te brendshem apo te ndonje marreveshjeje nderkombetare, e cila parashikon nje mbrojtje me te madhe per pakicat kombetare apo personave qe ju perkasin atyre.

**German Version (provided by Austria)**

# INSTRUMENT DER ZENTRALEUROPÄISCHEN INITIATIVE ZUM SCHUTZ VON MINDERHEITENRECHTEN

Die Mitgliedstaaten der Zentraleuropäischen Initiative, die dieses Instrument unterzeichnen,

- in der Erkenntnis, dass Fragen betreffend nationale Minderheiten nur in einem wahrlich demokratischen politischen Rahmen, der auf Rechtsstaatlichkeit beruht und die volle Achtung der Menschenrechte und Grundfreiheiten, gleiches Recht und gleichen Status für alle Bürger gewährleistet, zufriedenstellend gelöst werden können;
- unter erneuter Bekräftigung, dass der Schutz nationaler Minderheiten nur die Bürger des jeweiligen Staates betrifft, und dass sie die gleichen Rechte und staatsbürgerlichen Pflichten wie der Rest der Bevölkerung haben;
- in der Überzeugung, dass nationale Minderheiten einen integralen Bestandteil der Gesellschaft der Staaten bilden, in denen sie leben, und dass sie zur Bereicherung des jeweiligen Staates und der jeweiligen Gesellschaft beitragen;
- eingedenk der Tatsache, dass gutnachbarschaftliche Beziehungen zwischen Staaten ein sehr wirksames Mittel sind, Stabilität in der Region zu erreichen, und im Bewusstsein der Notwendigkeit, jede Bestärkung separatistischer Tendenzen nationaler Minderheiten in der Region zu vermeiden;
- unter Bekräftigung, dass Angelegenheiten betreffend die Rechte Angehöriger nationaler Minderheiten, Angelegenheiten legitimen internationalen Interesses sind und daher nicht nur eine innere Angelegenheit des jeweiligen Staates darstellen;
- in der Erwägung, dass die Achtung der Rechte Angehöriger nationaler Minderheiten als Teil der allgemein anerkannten Menschenrechte wesentlich zu Frieden, Gerechtigkeit, Stabilität und Demokratie in den jeweiligen Staaten beiträgt;
- in der Überzeugung, dass der internationale Schutz der Rechte Angehöriger nationaler Minderheiten, wie er in diesem Instrument niedergelegt ist, keine Handlungen erlaubt, die den wesentlichen Grundsätzen des Völkerrechts und insbesondere der Souveränität, territorialen Integrität und politischen Unabhängigkeit der Staaten zuwiderläuft;
- in Anerkennung der besonderen Bedeutung zunehmender nutzbringender Zusammenarbeit untereinander in Fragen betreffend nationale Minderheiten und in Anerkennung, dass diese Zusammenarbeit die Förderung gegenseitigen Verständnisses und Vertrauens, freundschaftlicher und gut nachbarschaftlicher Beziehungen, internationalen Friedens, Sicherheit und Gerechtigkeit anstrebt;
- im Ausdruck ihrer Verurteilung von aggressivem Nationalismus, rassischem und ethnischem Hass, Antisemitismus, Fremdenfeindlichkeit und Diskriminierung gegen jede Person oder Gruppe, sowie jeglicher Verfolgung aus religiösen und ideologischen Gründen,

sind wie folgt übereingekommen:

### **Artikel 1**

Die Staaten erkennen das Vorhandensein nationaler Minderheiten als solches an, betrachten sie als integrale Bestandteile der Gesellschaft, in der sie leben, und garantieren geeignete Bedingungen für die Förderung ihrer Identität. Für die Zwecke dieses Instruments bezeichnet „nationale Minderheit“ eine Gruppe, die zahlenmäßig kleiner ist als der Rest der Bevölkerung eines Staates ist, und deren Angehörige Staatsbürger dieses Staates sind sowie ethnische, religiöse oder sprachliche Eigenarten haben, die sich von jenen der übrigen Bevölkerung unterscheiden, und die gewillt sind, ihre Kultur, Traditionen, Religion oder Sprache zu bewahren.

### **Artikel 2**

Die Zugehörigkeit zu einer nationalen Minderheit ist eine Angelegenheit der freien Wahl des Einzelnen, aus deren Ausübung oder Nichtausübung kein Nachteil erwachsen darf.

### **Artikel 3**

Die Staaten erkennen das Recht von Angehörigen nationaler Minderheiten an, ihre Menschenrechte und Grundfreiheiten voll und tatsächlich, einzeln oder gemeinsam mit anderen, ohne Diskriminierung und in voller Gleichheit vor dem Gesetz auszuüben. Den Angehörigen nationaler Minderheiten können die in diesem Instrument vorgesehene Rechte einzeln oder gemeinsam mit anderen zustehen, ebenso wie ihnen die Maßnahmen, die diese Rechte sichern, zugute kommen können.

### **Artikel 4**

Die Staaten garantieren das Recht von Angehörigen nationaler Minderheiten, ihre ethnische, kulturelle, sprachliche oder religiöse Identität auszudrücken, zu erhalten und zu entwickeln und ihre Kultur in allen ihren Facetten aufrechtzuerhalten und zu entwickeln.

### **Artikel 5**

Die Vornahme besonderer Maßnahmen zu Gunsten von Angehörigen nationaler Minderheiten mit dem Ziel, die Gleichstellung zwischen ihnen und dem Rest der Bevölkerung zu fördern, oder die dazu dienen, ihre besonderen Umstände angemessen in Betracht zu berücksichtigen, wird nicht als Diskriminierung angesehen.

### **Artikel 6**

Die Staaten ergreifen wirksame Maßnahmen zum Schutz vor Handlungen, die zur Gewalt gegen Personen oder Gruppen aufgrund nationaler, rassistischer, ethnischer oder religiöser Diskriminierung, Feindseligkeit oder Hass, einschließlich Antisemitismus, aufrufen.

### **Artikel 7**

Die Staaten erkennen die besonderen Probleme der Roma (Zigeuner) an. Sie verpflichten sich, die in diesem Instrument vorgesehenen gesetzlichen, administrativen und bildungspolitischen Maßnahmen zu ergreifen, um die Identität der Roma zu erhalten und zu entwickeln, sowie durch



besondere Maßnahmen die soziale Integration von Angehörigen der Roma (Zigeuner) zu erleichtern und alle Formen der Intoleranz gegenüber diesen Personen zu beseitigen.

#### **Artikel 8**

Unbeschadet der Grundsätze der Demokratie, nehmen Staaten, die Maßnahmen im Rahmen ihrer allgemeinen Integrationspolitik ergreifen, davon Abstand, Politiken, die auf die Assimilierung von Angehörigen nationaler Minderheiten gegen deren Willen gerichtet sind, zu betreiben oder zu fördern, und schützen diese Personen vor solchen auf Assimilierung gerichteten Handlungen.

#### **Artikel 9**

Bei Änderungen von Verwaltungs-, Gerichts- oder Wahlbezirken sollten Staaten unter anderem berücksichtigen, dass diese Änderungen die bestehenden Rechte Angehöriger nationaler Minderheiten und die Ausübung dieser Rechte wahren. Jedenfalls sollten sie, im Einklang mit dem innerstaatlichen Recht, vor der Vornahme von Änderungen die unmittelbar betroffenen Bevölkerungsteile konsultieren.

#### **Artikel 10**

Jeder Angehörige einer nationalen Minderheit hat das Recht, seine oder ihre Sprache frei zu gebrauchen, in der Öffentlichkeit ebenso wie privat, mündlich und schriftlich.

#### **Artikel 11**

Jeder Angehörige einer nationalen Minderheit hat das Recht, seinen oder ihren Familien- und Vornamen in seiner oder ihrer Sprache zu gebrauchen, sowie das Recht auf amtliche Anerkennung und Registrierung dieser Familien- und Vornamen.

#### **Artikel 12**

Wenn in einem Gebiet die Zahl von Angehörigen einer nationalen Minderheit gemäß der letzten Volkszählung oder anderer Methoden der Erhebung ihres Bestands ein bedeutendes Ausmaß erreicht, haben diese Personen das Recht, soweit möglich und in Übereinstimmung mit dem anzuwendenden innerstaatlichen Recht, ihre Sprache mündlich und schriftlich im Verkehr mit den Verwaltungsbehörden dieses Gebietes zu verwenden. Diese Behörden können, soweit möglich, in der selben Sprache antworten.

#### **Artikel 13**

Im Einklang mit ihrem innerstaatlichen Recht können Staaten, wenn nötig mittels bilateraler Abkommen mit anderen interessierten Staaten, insbesondere Nachbarstaaten, in Gebieten, wo die Zahl der Angehörigen einer Minderheit gemäß der letzten Volkszählung oder einer anderen Methode der Erhebung ihres Bestands ein bedeutendes Ausmaß erreicht, die Anbringung zwei- oder mehrsprachiger Ortsnamen, Straßennamen oder anderer topographischer Bezeichnungen erlauben. Die Anbringung von Schildern, Aufschriften oder anderer ähnlicher Informationen privater Natur auch in der Minderheitensprache sollte keinen besonderen Beschränkungen anderer Art unterliegen als sonst in diesem Bereich üblich.

#### **Artikel 14**

Jeder Angehörige einer nationalen Minderheit hat in Ausübung seiner Religionsfreiheit das Recht, seine oder ihre eigene Sprache im Gottesdienst, Religionsunterricht und bei der Religionsausübung zu verwenden.

#### **Artikel 15**

Wenn die Zahl der Angehörigen einer Minderheit gemäß der letzten Volkszählung oder einer anderen Methode der Erhebung ihres Bestands die Mehrheit der Bevölkerung in einem Gebiet erreicht, werden die Staaten die Kenntnis der Minderheitensprache unter den Beamten der örtlichen und dezentralisierten staatlichen Verwaltungsbehörden fördern. Nach Möglichkeit sollten Anstrengungen unternommen werden, Beamte einzustellen, die, zusätzlich zur Kenntnis der Amtssprache, über ausreichende Kenntnis der Minderheitensprache verfügen.

#### **Artikel 16**

Die Staaten erkennen das Recht von Angehörigen nationaler Minderheiten an, ihre eigenen kulturellen und religiösen Institutionen, Organisationen und Vereinigungen zu errichten und zu unterhalten, und diese sind berechtigt, im Einklang mit dem innerstaatlichen Recht um freiwillige finanzielle und andere Beiträge ebenso wie um Unterstützung der öffentlichen Hand zu werben.

#### **Artikel 17**

Staaten erkennen das Recht von Angehörigen einer nationalen Minderheit an, ihre eigenen Kindergärten, Schulen und Bildungseinrichtungen einzurichten und zu unterhalten und nach Möglichkeit deren Anerkennung im Einklang mit dem anzuwendenden innerstaatlichen Recht zu erlangen. Solche Einrichtungen können um öffentliche finanzielle oder andere Beiträge ansuchen.

#### **Artikel 18**

Unbeschadet der Notwendigkeit, die Staatssprache des betreffenden Staates zu erlernen, hat jeder Angehörige einer nationalen Minderheit das Recht, seine oder ihre eigene Sprache zu erlernen und Unterricht in seiner oder ihrer Sprache zu erhalten. Die Staaten bemühen sich, im Einklang mit dem innerstaatlichen Recht geeignete Typen und Stufen von öffentlichem Unterricht bereitzustellen, wenn die Zahl der Angehörigen einer Minderheit in einem Gebiet gemäß der letzten Volkszählung oder einer anderen Methode der Erhebung ihres Bestands ein bedeutendes Ausmaß erreicht. Im Rahmen des Unterrichts von Geschichte und Kultur sollte in solchen öffentlichen Schulen angemessener Unterricht von Geschichte und Kultur der nationalen Minderheiten gewährleistet werden.

#### **Artikel 19**

Staaten garantieren das Recht von Angehörigen einer nationalen Minderheit, sich im Einklang mit dem innerstaatlichen Recht und nach Möglichkeit mit finanzieller Unterstützung Medien in ihrer eigenen Sprache zu bedienen. Befinden sich Fernseh- und Radiostationen in öffentlicher Hand, werden die Staaten, soweit angebracht und möglich, sicherstellen, dass Angehörige nationaler Minderheiten das Recht auf freien Zugang zu diesen Medien haben, einschließlich der Produktion solcher Programme in ihrer eigenen Sprache.

### **Artikel 20**

Staaten garantieren das Recht von Angehörigen nationaler Minderheiten, ohne Diskriminierung am politischen, wirtschaftlichen, sozialen und kulturellen Leben der Gesellschaft des Staates, dessen Staatsbürger sie sind, teilzunehmen, und fördern die Voraussetzungen für die Ausübung dieser Rechte.

### **Artikel 21**

Staaten erlauben den Angehörigen einer nationalen Minderheit, politische Parteien zu gründen.

### **Artikel 22**

In Übereinstimmung mit den Politiken der betroffenen Staaten werden Staaten das Recht Angehöriger nationaler Minderheiten auf effektive Teilnahme an öffentlichen Angelegenheiten achten, insbesondere am Entscheidungsprozess in sie betreffenden Angelegenheiten. Daher nehmen die Staaten die Bemühungen zum Schutz und zur Schaffung von Bedingungen für die Förderung der ethnischen, kulturellen, sprachlichen und religiösen Identität bestimmter nationaler Minderheiten, durch Maßnahmen, die den besonderen Umständen solcher Minderheiten entsprechen und wie sie in den KSZE-Dokumenten vorgesehen sind, zur Kenntnis.

### **Artikel 23**

Jeder Angehörige einer nationalen Minderheit hat unter gebührender Achtung der territorialen Integrität des Staates das Recht auf freie und ungehinderte Kontakte zu Staatsangehörigen eines anderen Landes, die die selben ethnischen, religiösen oder sprachlichen Züge aufweisen oder die selbe kulturelle Identität haben. Staaten beschränken die freie Ausübung dieser Rechte nicht ungebührlich. Weiters werden Staaten grenzüberschreitende Übereinkünfte auf nationaler, regionaler und lokaler Ebene ermutigen.

### **Artikel 24**

Unter der Voraussetzung, dass diese Rechte im innerstaatlichen Recht vorgesehen sind, hat jeder Angehörige einer nationalen Minderheit das Recht auf wirksame Rechtsmittel vor innerstaatlichen Rechtssprechungsorganen gegen Verletzungen der in diesem Instrument dargelegten Rechte.

### **Artikel 25**

In jedem Gebiet, in dem die Angehörigen einer nationalen Minderheit die Mehrheit der Bevölkerung darstellen, ergreifen die Staaten die erforderlichen Maßnahmen, um sicherzustellen, dass diejenigen, die nicht zu dieser Minderheit gehören, keine Nachteile erleiden, einschließlich solcher, die sich aus der Umsetzung der in diesem Instrument vorgesehenen Schutzmaßnahmen ergeben können.

### **Artikel 26**

Diese Verpflichtungen sind nicht so auszulegen, als gewährten sie das Recht, irgendeine Tätigkeit auszuüben, die den wesentlichen Grundsätzen des Völkerrechts, insbesondere der

souveränen Gleichheit, der territorialen Unversehrtheit und der politischen Unabhängigkeit der Staaten, zuwiderläuft. Dieses Instrument berührt nicht die Pflichten von Angehörigen nationaler Minderheiten als Staatsbürger der betreffenden Staaten.

Die Angehörigen nationaler Minderheiten werden bei der Ausübung ihrer Rechte auch die Rechte anderer, einschließlich jene der Angehörigen der Mehrheitsbevölkerung des betreffenden Staates oder jene der Angehörigen anderer nationaler Minderheiten, achten.

#### **Artikel 27**

Dieses Instrument berührt nicht Bestimmungen des innerstaatlichen Rechts oder internationaler Übereinkommen, die weiter gehenden Schutz für nationale Minderheiten oder ihre Angehörigen gewähren.

*Geschehen zu Turin am 19. November 1994, in englischer Sprache in einer Urschrift.*

**Croatian Version**

# INSTRUMENT SREDNJOEUROPSKE INICIJATIVE ZA ZAŠTITU PRAVA MANJINA

Države članice Srednjoeuropske inicijative potpisnice ovoga dokumenta

- priznajući da se pitanja koja se odnose na nacionalne manjine mogu na zadovoljavajući način riješiti samo u istinski demokratskom politickom okviru koji se zasniva na vladavini prava i koji jamci puno poštivanje ljudskih prava i temeljnih sloboda, jednaka prava i položaj svih građana,
- potvrđujući da se zaštita nacionalnih manjina odnosi samo na građane pojedine države, koji ce uživati u istim pravima i imati iste dužnosti kao građani koje imaju i ostali stanovnici te države,
- uvjere ne da nacionalne manjine cine sastavni dio društva u državama u kojima žive i da su cimbenik koji pridonosi obogacivanju svake pojedine države i njezinoga društva,
- imajući na umu da dobrosusjedski odnosi predstavljaju vrlo ucinkovit način za postizanje stabilnosti u regiji, i svjesne potrebe da se izbjegava ohrabrivanje separatistickih tendencija nacionalnih manjina u regiji,
- potvrđujući da su pitanja koja se odnose na prava pripadnika nacionalnih manjina tema koja zaslužuje međunarodnu pozornost i da kao takva ne predstavljaju isključivo unutrašnji problem pojedine države,
- smatrajući da je poštivanje prava pripadnika nacionalnih manjina, kao dijela univerzalne prihvacene ljudskih prava, ključan cimbenik mira, pravde, stabilnosti i demokracije u ovim državama,
- uvjere ne da međunarodna zaštita prava pripadnika nacionalnih manjina, kako je uređena ovim Instrumentom, ne dopušta nikakvo djelovanje koje je suprotno temeljnim nacelima međunarodnog prava a osobito suvereniteta, teritorijalnog integriteta i politicke neovisnosti država,
- priznajući osobitu važnost sve veće međusobne konstruktivne suradnje na pitanjima koja se odnose na nacionalne manjine, te da se takvom suradnjom nastoji primicati međusobno razumijevanje i povjerenje, prijateljski i dobrosusjedski odnosi, međunarodni mir, sigurnost i pravda,
- izražavajući svoju osudu agresivnog nacionalizma, rasne i etnicke mržnje, antisemitizma, ksenofobije i diskriminacije bilo koje osobe ili skupine kao i progona zbog vjere ili ideologije

sporazumjele su se o sljedećem:

## Članak 1

Države priznaju postojanje nacionalnih manjina kao takvih i smatraju ih sastavnim dijelom društva u kojem žive, te im jamce odgovarajuće uvjete za promicanje njihova identiteta.

U ovome Instrumentu izraz "nacionalne manjine" znat će skupinu koja je brojčano manja od preostalog dijela stanovništva u državi, čiji su članovi državljani te države, ali imaju etnicna, vjerska ili jezična obilježja po kojima se razlikuju od ostatka stanovništva i imaju želju sacuvati svoju kulturu, tradiciju, vjeru ili jezik.

## **Clanak 2**

Pripadnost nacionalnoj manjini stvar je slobodnog osobnog izbora, a odluka pojedinca hoće li iskoristiti to svoje pravo ili ne neće izazvati nikakve negativne posljedice.

## **Clanak 3**

Države priznaju da pripadnici nacionalnih manjina imaju pravo u potpunosti i učinkovito ostvarivati svoja ljudska prava i temeljne slobode, pojedinačno ili zajedno s drugima, bez ikakve diskriminacije i uz punu ravnopravnost pred zakonom. Te osobe imaju mogućnost ostvariti prava predviđena osim Instrumentom pojedinačno ili zajedno s drugima i iskoristiti mjere kojima se osiguravaju njihova prava.

## **Clanak 4**

Države jamče pripadnicima nacionalnih manjina pravo da izražavaju, sačuvaju i razvijaju svoju etnički, kulturni, jezični ili vjerski identitet i da zadrže i razvijaju svoju kulturu u svim njezinim vidovima.

## **Clanak 5**

Prihvatanje posebnih mjera koje idu u prilog pripadnicima nacionalnih manjina a čiji je cilj promicanje jednakosti između njih i ostalih stanovnika ili uzimanje u obzir njihove posebne situacije neće se smatrati diskriminacijom.

## **Clanak 6**

Države će poduzeti učinkovite mjere kako bi osigurale zaštitu od bilo kakvog čina kojim se potiče na nasilje protiv osoba ili skupina, a koji se temelji na nacionalnoj, rasnoj, etničkoj ili vjerskoj diskriminaciji, neprijateljstvu ili mržnji, uključujući i antisemitizam.

## **Clanak 7**

Države su svjesne osobitih problema koje imaju Romi. Obvezuju se da će prihvatiti sve upravno-pravne ili obrazovne mjere koje su predviđene ovim Instrumentom kako bi sačuvale i razvile identitet Roma, kako bi posebnim mjerama olakšale društvenu integraciju pripadnika romske manjine i kako bi uklonile sve oblike nesnošljivosti prema tim osobama.

## **Clanak 8**

Bez utjecaja na demokratska načela, i poduzimajući mjere kojima ostvaruju svoju općenitu politiku integracije, države će se suzdržati od ostvarivanja ili ohrabriranja politike čiji je cilj asimilacija pripadnika nacionalnih manjina protiv njihove volje i štitić ih od svakog djelovanja koje za cilj ima takvu asimilaciju.

## **Clanak 9**

U slučaju promjene upravnih, pravosudnih ili izbornih jedinica, države trebaju uzeti u obzir da takve promjene, uz ostale kriterije, poštuju postojeća prava pripadnika nacionalnih manjina i

ostvarenje njihovih prava. U svakom slučaju, trebaju se konzultirati, u skladu sa svojim državnim propisima, sa skupinama stanovnika na koje će takve promjene izravno utjecati i to prije prihvatanja takvih promjena.

#### **Članak 10**

Svaki pripadnik neke nacionalne manjine imaće pravo slobodno upotrebljavati svoj jezik, javno kao i privatno, u usmenom i pismenom komuniciranju.

#### **Članak 11**

Svaki pripadnik neke nacionalne manjine imaće prvo upotrebljavati svoje prezime i ime na vlastitome jeziku, i pravo da njegovo prezime i ime budu službeno prihvaćeni i zabilježeni.

#### **Članak 12**

Kad god u nekom području broj pripadnika jedne nacionalne manjine, prema posljednjem popisu stanovništva ili nekoj drugoj metodi utvrđivanja istoga, dosegne značajnu razinu, te osobe imaju pravo, gdje god je to moguće, da upotrebljavaju, u skladu s relevantnim državnim zakonima, vlastiti jezik kako u usmenom tako i u pismenom obliku, u svojim kontaktima s institucijama državne vlasti u tom području. Te vlasti mogu odgovoriti, ukoliko je to moguće, na istom jeziku.

#### **Članak 13**

U skladu sa svojim nacionalnim zakonodavstvom, države mogu dopustiti, kad je to potrebno putem bilateralnih ugovora s drugim zainteresiranim državama, osobito sa susjednim državama, postavljanje dvojezičnih i višejezičnih oznaka s imenima mjesta, imenima ulica i drugih topografskih oznaka u područjima u kojima broj pripadnika nacionalne manjine, prema posljednjem popisu stanovništva ili nekoj drugoj metodi utvrđivanja istoga, dosegne značajnu razinu. Postavljanje oznaka, natpisa i drugih sličnih privatnih informacija na manjinskom jeziku ne bi trebalo podlijeći nikakvih osobitim ograničenjima, osim onih koja se uobičajeno primjenjuju u tom području.

#### **Članak 14**

Svaki pripadnik nacionalne manjine imaće, u ostvarivanju svoje vjerske slobode, pravo na upotrebu vlastitog jezika tijekom vjerskih obreda, poduke, prakticiranja ili poštivanja vjerskih običaja.

#### **Članak 15**

Kad god u nekom području broj pripadnika neke nacionalne manjine, prema posljednjem popisu stanovništva ili nekoj drugoj metodi utvrđivanja istoga, postane takav da oni čine većinu u tom području, države će promicati poznavanje manjinskog jezika među službenicima lokalne i decentralizirane državne uprave. Potrebno je nastojati, ako je to moguće, da se zaposle službenici koji uz poznavanje službenog jezika, dovoljno poznaju i manjinski jezik.

### **Clanak 16**

Države priznaju pravo pripadnika nacionalnih manjina da osnivaju i održavaju svoje kulturne i vjerske institucije, organizacije i udruge, koje imaju pravo tražiti dobrovoljne financijske i druge priloge kao i pomoc javnosti, u skladu s državnim zakonodavstvom.

### **Clanak 17**

Države priznaju pravo pripadnika nacionalnih manjina da osnivaju i održavaju vlastite privatne institucije predškolskog obrazovanja, škole i obrazovne institucije te da one mogu biti priznate u skladu s relevantnim državnim zakonodavstvom. Takve institucije mogu od javnosti tražiti financijske i druge doprinose.

### **Clanak 18**

Unatoc potrebi da nauči službeni jezik pojedine države, svaki pripadnik nacionalne manjine imaće pravo učiti vlastiti jezik i pravo na obrazovanje na svom jeziku. Države će nastojati osigurati odgovarajuće vrste i razine javnog školstva u skladu s državnim zakonodavstvom, kad god u nekom području broj pripadnika nacionalne manjine, prema posljednjem popisu stanovništva ili nekoj drugoj metodi utvrđivanja istoga, dosegne značajnu razinu. U sklopu nastave povijesti i kulture u takvim ustanovama javnog školstva osigurat će se odgovarajuća nastava povijesti i kulture nacionalnih manjina.

### **Clanak 19**

Države jamče pravo pripadnicima nacionalnih manjina da se služe medijima na vlastitom jeziku, u skladu s relevantnim državnim zakonima i uz moguću financijsku potporu. Kad je riječ o televizijskim i radijskim postajama u javnom vlasništvu, države će osigurati, gdje god je to prikladno i moguće, da pripadnici nacionalnih manjina imaju pravo slobodnog pristupa takvim medijima uključujući i produkciju emisija na vlastitom jeziku.

### **Clanak 20**

Države će pripadnicima nacionalnih manjina jamčiti pravo na sudjelovanje bez ikakve diskriminacije u političkom, gospodarskom, društvenom i kulturnom životu društva u državi čiji su građani i promicati će uvjete za ostvarivanje tih prava.

### **Clanak 21**

Države će dopustiti pripadnicima nacionalnih manjina da osnivaju političke stranke.

### **Clanak 22**

U skladu s politikama ovih država, one će poštivati pravo pripadnika nacionalnih manjina da učinkovito sudjeluju u javnom životu, osobito u procesu donošenja odluka o pitanjima koja se na njih odnose. Stoga države primjećuju napore koji se ulažu kako bi se zaštitili i stvorili uvjeti za promicanje etičkog, kulturnog, jezičnog i vjerskog identiteta pojedinih nacionalnih manjina prihvaćanjem odgovarajućih mjera koje odgovaraju pojedinim situacijama u kojima se nalaze te manjine, kao što je predviđeno dokumentima OSSE-a.



### **Clanak 23**

Svaki pripadnik nacionalne manjine, uz nužno poštivanje teritorijalnog integriteta države, imat će pravo na održavanje slobodnih i neometanih doticaja s građanima druge zemlje koji dijele ista etnička, vjerska ili jezična obilježja ili kulturni identitet kao i ta manjina. Države neće nepotrebno ograničavati slobodno ostvarivanje tih prava. Nadalje, države će poticati prekogranične sporazume na državnoj, regionalnoj i lokalnoj razini.

### **Clanak 24**

Svaki pripadnik nacionalne manjine dobit će učinkovit pravni lijek pred državnim pravosudnim tijelima za bilo kakvu povredu prava koja su utvrđena ovim Instrumentom, pod uvjetom da su ta prava uključena u državno zakonodavstvo.

### **Clanak 25**

U svakom području u kojem pripadnici nacionalne manjine čine većinu stanovništva, države će poduzeti potrebne mjere kako bi osigurale da oni koji ne pripadaju toj nacionalnoj manjini ni na koji način ne budu oštećeni, uključujući i moguće posljedice provedbe mjera zaštite koje su predviđene ovim Instrumentom.

### **Clanak 26**

Niti jedna od ovih obveza neće se protumaciti kao da podrazumijeva bilo kakvo pravo da se poduzimaju ikakva djela kojima se krše temeljna načela međunarodnog prava, a osobito suverene jednakosti, teritorijalnog integriteta i političke neovisnosti države. Ništa u ovome Instrumentu neće utjecati na obveze koje imaju pripadnici nacionalnih manjina kao državljani zemalja na koje se ovo odnosi.

Pripadnici nacionalnih manjina poštivat će, u ostvarivanju svojih prava, i prava drugih, uključujući i pripadnike većinskog naroda u pojedinoj državi ili drugih nacionalnih manjina.

### **Clanak 27**

Ovaj Instrument ničime ne utječe na odredbe domaćeg prava ili bilo kojeg međunarodnog sporazuma koji pruža veću zaštitu za nacionalne manjine ili njihove pripadnike.

*Sastavljeno u jednom primjerku u Torinu, 19. studenog 1994., na engleskom jeziku.*

*Hungarian Version*

# KÖZÉP EURÓPAI KEZDEMÉNYEZÉS OKMÁNYA A KISEBBSÉGI JOGOK VÉDELMEÉRŐL

A Közép Európai Kezdeményezés Tagállamai, az aláíró államok,

- Elismerve, hogy a nemzeti kisebbségekre vonatkozó kérdéseket csakis olyan, a jogállamiságon alapuló, valóban demokratikus politikai keretek között lehet megoldani, amelyek biztosítják az emberi jogok és az alapvető szabadságjogok maradéktalan tiszteletben tartását, minden állampolgár egyenlő jogait és státusát,
- újra megerősítve, hogy a nemzeti kisebbségek szerves részét képezik azon állam társadalmának, amelyben élnek, és hogy az adott állam és társadalom gazdagító tényezői,
- szem előtt tartva, hogy a térség stabilitásának megteremtése szempontjából igen hatékony eszköz a szomszédok közötti jó viszony, és annak tudatában, hogy kerülendő a térség nemzeti kisebbségeit bármilyen módon az elszakadásra ösztönözni,
- megerősítve, hogy a nemzeti kisebbségekhez tartozó személyek jogait érintő kérdések a jogos nemzetközi érdeklődés tárgyának minősülnek, következésképpen nem képezik kizárólagosan egyes államok belügyét,
- úgy ítélve, hogy a nemzeti kisebbségekhez tartozó személyek jogainak – mint az egyetemesen elismert emberi jogok részének – tiszteletben tartása alapvető tényezője az államok békéjének, stabilitásának és demokráciájának,
- abban a meggyozodásban, hogy a nemzeti kisebbségekhez tartozó személyek jogainak a jelen Okmányban lefektetett nemzetközi védelme nem enged meg semmilyen tevékenységet, amely ellentmond a nemzetközi jog alapelveinek és kiváltképp az államok szuverenitásának, területi sérthetlenségének és politikai függetlenségének,
- elismerve annak különös fontosságát, hogy fokozzák az egymás közötti konstruktív együttműködést a nemzeti kisebbségekre vonatkozó kérdésekben, illetve elismerve, hogy az ilyen együttműködés arra irányul, hogy elősegítse a kölcsönös megértést és bizalmat, a baráti és jószomszédi viszonyt, a nemzetközi békét, biztonságot és igazságosságot,
- kifejezve elítélésüket az agresszív nacionalizmussal, faji, etnikai gyűlölettel, antiszemitizmussal, idegengyűlölettel és bármilyen személy vagy csoport ellen irányuló hátrányos megkülönböztetéssel, valamint a vallási, ideológiai alapon történő üldözéssel szemben,

megállapodnak a következőkben:

## 1. Cikk

Az államok elismerik a nemzeti kisebbségek, mint olyan, létezését, azon társadalom szerves részének tekintve őket, amelyben élnek, és biztosítják a megfelelő feltételeket identitásuk elmozdításához.

A jelen Okmány vonatkozásában a „nemzeti kisebbség” kifejezés olyan csoportot jelöl, amely lélekszámban kisebb, mint az állam lakosságának többi része, amelynek tagjai – miközben polgárai az adott államnak – olyan etnikai, vallási vagy nyelvi jellemzőkkel bírnak, melyek eltérnek a lakosság egyéb részétől, és az a szándék vezérli őket, hogy megóvják kultúrájukat, vallásukat és nyelvüket.

## **2. Cikk**

Valamely nemzeti kisebbséghez való tartozás szabad egyéni döntés kérdése, és nem származhat hátrány az ilyen választás gyakorlásából, illetve abból, ha valaki nem él azzal.

## **3. Cikk**

Az államok elismerik, hogy a nemzeti kisebbségekhez tartozó személyeknek joguk van teljes mértékben és érdemben gyakorolniuk emberi jogaikat és alapvető szabadságjogaikat, egyénileg vagy másokkal közösen, minden hátrányos megkülönböztetés nélkül és a törvény előtti teljes egyenlőségben. Ezen személyek a jelen Okmányban eloirányzott jogokat egyénileg vagy másokkal együtt élvezhetik, és élhetnek az ezen jogokat biztosító intézkedések elonyeivel.

## **4. Cikk**

Az államok biztosítják a nemzeti kisebbségekhez tartozó személyek azon jogát, hogy kifejezzék, megőrizték és fejlesszék etnikai, kulturális, nyelvi vagy vallási identitásukat és kultúrájukat minden vonatkozásban fenntartható és fejleszthető.

## **5. Cikk**

Különleges intézkedések meghozatala a nemzeti kisebbségekhez tartozó személyek javára abból a célból, hogy elomozdítsák az egyenjogúságot közöttük és a lakosság többi része között, illetve, hogy figyelembe vegyék sajátos viszonyaikat, nem tekinthető diszkriminációnak.

## **6. Cikk**

Az államok hatékony intézkedéseket tesznek annak érdekében, hogy védelmet nyújtsanak minden olyan cselekménnyel szemben, amely személyek vagy csoportok elleni, nemzeti, faji, etnikai, vagy vallási alapú eroszakra való felbujtást, hátrányos megkülönböztetést, ellenségességet vagy gyűlöletet képez, ideértve az antiszemizmust is .

## **7. Cikk**

Az államok elismerik a romák (cigányok) sajátos problémáit. Vállalják, hogy megteszik a jelen Okmány által felvázolt összes jogi, közigazgatási vagy oktatási intézkedést annak érdekében, hogy megőrizték és fejlesszék a romák identitását, hogy konkrét intézkedésekkel megkönnyítsék a roma (cigány) közösséghez tartozó személyek társadalmi integrálódását, és kiküszöböljék az ilyen személyekkel szembeni intolerancia minden formáját.

## **8. Cikk**

A demokratikus elvek csorbitása nélkül az államok, az általános integráció-politikájuk értelmében hozott intézkedések megtétele során, tartózkodnak attól, hogy olyan eljárásokat alkalmazzanak vagy ösztönözzenek, amelyek a nemzeti kisebbségekhez tartozó személyek akaratuk ellenére történő asszimilálására irányulnak, és megvédik ezen személyeket minden olyan cselekménytől, amely ilyen asszimilálásra irányul.

### **9. Cikk**

A közigazgatási, bírósági vagy választási körzetek módosítása esetén az államok figyelembe veszik, hogy az ilyen módosítások – egyéb ismérvek között – érintik a nemzeti kisebbségekhez tartozó személyek meglévő jogait és ezen jogok gyakorlását. Minden esetben, mielőtt bármilyen módosítást eszközölnének, az államok – a nemzeti jogszabályaikkal összhangban – kérjék ki a közvetlenül érintett népességeknek az ügygel kapcsolatos véleményét.

### **10. Cikk**

Minden nemzeti kisebbséghez tartozó személy jogosult anyanyelvre szabad használatára, nyilvánosan csakúgy, mint a magánéletben, szóban és írásban egyaránt.

### **11. Cikk**

Minden nemzet kisebbségéhez tartozó személy jogosult vezetéknévének és keresztnévének saját nyelvén való használatára, és ilyen vezetéknév és keresztnév hivatalos elfogadására és anyakönyvezésére.

### **12. Cikk**

Amennyiben egy térségben a nemzeti kisebbséghez tartozó személyek lélekszáma – a legfrissebb népszámlálás, vagy számbeli suruségük megállapításának más módszere szerint – egy jelentős szintet ér el, ezen személyek jogosultak – amennyire lehetséges – az alkalmazható nemzeti jogszabályokkal összhangban a saját nyelvük használatára mind szóbeli, mind írott formában, az érintett térség hatóságaival való érintkezésükben. Ezen hatóságok, amennyire lehetséges, ugyanezen a nyelven válaszoljanak.

### **13. Cikk**

Nemzeti jogszabályaikkal összhangban az államok – szükség esetén más érdekelt államokkal, különösen szomszédos államokkal, kötetlen kétoldalú megállapodások révén – engedélyezzék két- vagy többnyelvu helységnevek, utcanevek és más helyrajzi jelölések feltüntetését olyan körzetekben, ahol a nemzeti kisebbséghez tartozó személyek lélekszáma – a legfrissebb népszámlálás, vagy számbeli suruségük megállapításának más módszere szerint – jelentős szintet ér el. A jelzések, feliratok vagy más, magánjellegű információk szintén kisebbségi nyelven való feltüntetése nem eshet különleges korlátozás alá, az e területen általánosan érvényes korlátozáson kívül.

### **14. Cikk**

Minden nemzeti kisebbséghez tartozó személy a vallásszabadság gyakorlása során jogosult saját nyelvre használatára az istentisztelet, oktatás, vallásgyakorlás vagy szertartások során.

### **15. Cikk**

Amennyiben egy adott körzetben a nemzeti kisebbséghez tartozó személyek száma – a legfrissebb népszámlálás, vagy számbeli suruségük megállapításának más módszere szerint – eléri a többségi lakosság lélekszámát, az államok elomozdítják a kisebbségi nyelv ismeretét a helyi és decentralizált államigazgatási intézmények tisztviselői körében.

Amennyiben lehetséges, arra kell törekedni, hogy olyan tisztviselőket alkalmazzanak, akik a hivatalos nyelven felül a kisebbségi nyelvben is megfelelő jártassággal rendelkeznek.

### **16. Cikk**

Az államok elismerik a nemzeti kisebbségekhez tartozó személyek azon jogát, hogy saját kulturális és vallási intézményeket, szervezeteket vagy egyesületeket hozzanak létre és tartsanak fenn, amelyek jogosultak önkéntes pénzügyi és más hozzájárulásokat, valamint állami támogatást igényelni, a nemzeti jogszabályokkal összhangban.

### **17. Cikk**

Az államok elismerik a nemzeti kisebbséghez tartozó személyek azon jogát ahhoz, hogy saját óvodákat, iskolákat és intézményeket alapítsanak és működtessenek, és esetleg elnyerjék ezek elismertetését az idevágó nemzeti jogszabályokkal összhangban. Az ilyen intézmények állami finanszírozást vagy egyéb hozzájárulást igényelhetnek.

### **18. Cikk**

Mindamellet, hogy szükséges az érintett állam hivatalos nyelvének elsajátítása, minden személy, aki valamely nemzeti kisebbséghez tartozik, jogosult saját nyelvének elsajátítására és arra, hogy saját nyelvén tanulhasson. Az államok arra törekednek, hogy biztosítsák a közoktatás megfelelő típusait és szintjeit a nemzeti jogszabályokkal összhangban, amennyiben egy adott körzetben a nemzeti kisebbséghez tartozó személyek lélekszáma – a legfrissebb népszámlálás vagy számbeli s uruségük megállapításának más módszerei szerint – jelentos szintu. A történelem és a kultúra oktatásának összefüggésében az ilyen közoktatási intézményekben biztosítani kell a nemzeti kisebbségek történelmének és kultúrájának megfelelő megismertetését.

### **19. Cikk**

Az államok biztosítják a nemzeti kisebbséghez tartozó személyek azon jogát, hogy a tömegtájékoztatási eszközöket saját nyelvükön használhassák, az idevágó állami rendszabályokkal összhangban és esetleges pénzügyi támogatással. Az állami tulajdonban lévő közszolgálati televízió és rádió esetében az államok biztosítják – amennyiben ez indokolt és lehetséges – hogy a nemzeti kisebbségekhez tartozó személyek rendelkezzenek a tömegtájékoztatási eszközökhöz való szabad hozzáférés jogával, ideértve az ilyen musoroknak saját nyelvükön való készítését.

### **20. Cikk**

Az államok biztosítják a nemzeti kisebbségekhez tartozó személyek jogát ahhoz, hogy hátrányos megkülönböztetés nélkül részt vegyenek azon állam társadalmának politikai, gazdasági, társadalmi és kulturális életében, amelynek polgárai, és elomozdítják az ilyen jogok gyakorlásának feltételeit.

### **21. Cikk**

Az államok engedélyezik, hogy a nemzeti kisebbséghez tartozó személyek politikai pártokat hozzanak létre.

## **22. Cikk**

Az érintett államok politikai eljárásaikkal összhangban tiszteletben tartják a nemzeti kisebbségekhez tartozó személyek azon jogát, hogy érdemben részt vegyenek a közügyekben, különösen pedig az őket érintő kérdéseket illető döntéshozatalban. Az államok ezért elismerik azon erőfeszítéseket, amelyek bizonyos nemzeti kisebbségek etnikai, kulturális, nyelvi és vallási identitásának védelmére, illetve elmozdítása feltételeinek megteremtése érdekében történtek, azáltal, hogy az EBEÉ (Európai Biztonsági és Együttműködési Értekezlet) vonatkozó dokumentumaival összhangban a kisebbségek sajátos körülményeinek megfelelő intézkedéseket tesznek.

## **23. Cikk**

Minden nemzeti kisebbséghez tartozó személy – az állam területi sérthetlenségének kelő tiszteletben tartása mellett – jogosult arra, hogy szabadon és akadálytalanul érintkezhessek egy olyan másik ország állampolgáraival, amellyel ezen kisebbség etnikai, vallási vagy nyelvi közös vonásokkal, illetve közös kulturális identitással rendelkezik. Az államok indokolatlanul nem korlátozhatják ezen jogok gyakorlását. Az államok ezen kívül ösztönzik a határon átnyúló megállapodásokat a nemzeti, regionális és helyi szinteken.

## **24. Cikk**

Minden nemzeti kisebbséghez tartozó személy hatékony jogorvoslatra jogosult a nemzeti bíróságok előtt a jelen Okmányban foglalt jogok bármilyen megsértése esetén, feltéve, hogy ezek a jogok a nemzeti jogszabályokban is szentesítve vannak.

## **25. Cikk**

Minden olyan körzetben, ahol a nemzeti kisebbség a lakosság többségét képezi, az államok megteszik a szükséges intézkedéseket annak érdekében, hogy azok, akik nem tartoznak ezen kisebbséghez, ne szenvedjenek semmilyen hátrányt, ideértve az olyan hátrányokat, melyek a jelen Okmányban foglalt kisebbségvédelmi intézkedések végrehajtásából fakadhatnak.

## **26. Cikk**

Ezen kötelezettségek egyike sem értelmezhető úgy, mint amely magában foglalna bármiféle jogot olyan tevékenységek folytatására, amelyek ellentmondanak a nemzetközi jog alapelveinek, kiváltképpen az államok szuverén egyenjogúságának, területi sérthetlenségének és politikai függetlenségének. A jelen Okmány semelyik intézkedése nem érinti a nemzeti kisebbségekhez tartozó személyekre, mint az érintett államok polgáira vonatkozó kötelelességeket.

A nemzeti kisebbségekhez tartozó személyek jogaik gyakorlása során úgyszintén tiszteletben tartják mások jogait, ideértve az adott állam többségi lakosságához vagy más nemzeti kisebbségekhez tartozó személyek jogait.

**27. Cikk**

A jelen Okmány nem csorbítja a belső jog rendelkezéseit vagy bármilyen olyan nemzetközi megállapodást, mely nagyobb védelmet biztosít a nemzeti kisebbségek, illetve az azokhoz tartozó személyek részére.

*Torino, 1994. november 19.*

*Italian Version*

## CONVENZIONE DELL'INIZIATIVA CENTRO EUROPEA PER LA TUTELA DEI DIRITTI DELLE MINORANZE

Gli Stati Membri dell'Iniziativa Centro Europea firmatari della presente Convenzione,

- RICONOSCENDO che la questione riguardante le minoranze nazionali può soltanto essere risolta in maniera soddisfacente in un quadro politico effettivamente democratico sulla base del rispetto della legge e delle garanzie per il pieno rispetto dei diritti umani e delle libertà fondamentali, pari diritti e stato a tutti i cittadini,
- RIBADENDO che la tutela delle minoranze nazionali concerne soltanto i cittadini appartenenti al rispettivo Stato, i quali godranno degli stessi diritti nonché avranno gli stessi doveri di cittadinanza del resto della popolazione,
- CONVINTI che le minoranze nazionali costituiscono parte integrante della società degli Stati in cui vivono e che rappresentano un fattore di arricchimento di ogni Stato e società,
- TENUTO CONTO che le relazioni di buon vicinato costituiscono un mezzo efficace per raggiungere la stabilità della regione e consapevoli della necessità di evitare qualsiasi incoraggiamento alle tendenze separatiste di minoranze nazionali nella regione,
- CONFERMANDO che le questioni riguardanti i diritti delle persone appartenenti a minoranze nazionali sono materia di legittimo interesse a livello internazionale e di conseguenza non costituiscono esclusivamente un affare interno dello Stato interessato,
- CONSIDERANDO che il rispetto dei diritti delle persone appartenenti a minoranze nazionali, come parte di diritti umani universalmente riconosciuti a livello internazionale, sia un fattore essenziale per la pace, la giustizia, la stabilità e la democrazia negli Stati, convinti che la tutela a livello internazionale dei diritti delle persone appartenenti a minoranze nazionali, come suggellato nella presente Convenzione, non consente alcuna attività contraria ai principi fondamentali del diritto internazionale ed in particolare della sovranità, della integrità territoriale e dell'indipendenza politica degli Stati,
- RICONOSCENDO la particolare importanza di aumentare la costruttiva collaborazione tra gli stessi Stati su questioni riguardanti le minoranze nazionali e che tale cooperazione mira a promuovere la comprensione e la fiducia reciproca, i rapporti amichevoli e di buon vicinato, la pace a livello internazionale, la sicurezza e la giustizia,
- MANIFESTANDO la loro condanna del nazionalismo aggressivo, dell'odio etnico e razziale, dell'antisemitismo, della xenofobia e della discriminazione nei confronti di qualsiasi persona o gruppo di persone e della persecuzione per motivi religiosi e ideologici. HANNO CONVENUTO QUANTO SEGUE:

HANNO CONVENUTO QUANTO SEGUE:

### Art.1

Gli Stati riconoscono l'esistenza di minoranze nazionali in quanto tali considerandole una parte integrante della società in cui vivono e garantiscono ad esse le condizioni appropriate per favorire la promozione della loro identità.



Ai fini della presente Convenzione per "minoranza nazionale" si intende un gruppo di persone numericamente inferiore al resto della popolazione di uno Stato, i cui membri, essendo cittadini dello stesso Stato, hanno caratteristiche etniche, religiose o linguistiche diverse dal resto della popolazione e sono guidati dalla volontà di salvaguardare la loro cultura, tradizione, religione o lingua.

#### **Art. 2**

L'appartenenza ad una minoranza nazionale discende da una scelta individuale e nessuno svantaggio dovrà risultare dall'esercizio o meno di tale scelta.

#### **Art. 3**

Gli Stati riconoscono che le persone appartenenti ad una minoranza nazionale hanno il diritto di esercitare in maniera piena ed efficace i loro diritti umani e le libertà fondamentali, a livello individuale o in comune con altri, senza alcuna discriminazione e in piena uguaglianza davanti alla legge.

Tali persone dovranno essere messe in condizione di godere individualmente o in comune con altri dei diritti previsti nella presente Convenzione e di beneficiare delle misure che assicurano tali diritti.

#### **Art. 4**

Gli Stati garantiscono alle persone appartenenti ad una minoranza nazionale il diritto di esprimere, preservare e sviluppare la loro identità etnica, culturale, linguistica o religiosa e di conservare e sviluppare la loro cultura in tutte le sue forme.

#### **Art. 5**

L'adozione di speciali misure a favore delle persone appartenenti a minoranze nazionali, intesa a promuovere l'uguaglianza tra le stesse e il resto della popolazione o a tenere debitamente conto delle loro specifiche condizioni, non sarà considerata un atto discriminatorio.

#### **Art. 6**

Gli Stati adotteranno misure efficaci per garantire la protezione contro ogni atto basato sulla discriminazione nazionale, razziale, etnica o religiosa, sull'ostilità o sull'odio ivi compreso l'antisemitismo, che costituisca incitamento alla violenza contro persone o gruppi.

#### **Art. 7**

Gli Stati riconoscono i particolari problemi della popolazione Rom (zingari). Essi si impegnano ad adottare tutte le misure amministrative e educative, come previsto dalla presente Convenzione, al fine di conservare e sviluppare l'identità dei Rom, facilitarne attraverso misure specifiche l'integrazione sociale degli individui appartenenti ai Rom (zingari) ed eliminare tutte le forme d'intolleranza nei loro confronti.

**Art.8**

Senza pregiudizio ai principi democratici, gli Stati che adottano misure in conformita' alla loro politica generale di integrazione, si asterranno dal perseguire o incoraggiare politiche tendenti all'assimilazione di persone appartenenti a minoranze nazionali contro la volont  delle stesse e proteggeranno tali persone da ogni azione tendente a tale assimilazione.

**Art. 9**

In caso di cambiamenti di circoscrizioni amministrative, legali o elettorali gli Stati dovranno prestare attenzione affinche' cambiamenti, tra gli altri criteri, rispettino i diritti esistenti delle persone appartenenti a una minoranza nazionale nonche' l'esercizio di tali diritti. In ogni caso prima di apportare qualsiasi cambiamento in materia, essi dovranno consultare, conformemente alla legislazione nazionale, le popolazioni direttamente interessate.

**Art. 10**

Ogni persona appartenente ad una minoranza nazionale avr  il diritto di utilizzare liberamente la propria lingua, in privato e in pubblico, oralmente e per iscritto.

**Art. 11**

Ogni persona appartenente ad una minoranza nazionale avr  il diritto di utilizzare il proprio cognome e nome nella propria lingua e il diritto alla accettazione ufficiale e registrazione ufficiali di tale nome e cognome.

**Art. 12**

Ogniqualevolta in una certa area il numero delle persone appartenenti ad una minoranza nazionale raggiunga, sulla base dell'ultimo censimento o di altri metodi di rilevazione, un livello significativo, le stesse avranno il diritto, ove possibile, di utilizzare in conformita' con la legislazione nazionale applicabile, la propria lingua in forma orale e scritta nei contatti con le autorita' pubbliche di quella area. Tali autorita' potranno, per quanto possibile, rispondere nella stessa lingua.

**Art. 13**

In conformita' con la propria legislazione nazionale gli Stati possono riconoscere, allorch  necessario tramite accordi bilaterali con altri Stati interessati ed in particolar modo con quelli limitrofi, il diritto di utilizzare nomi locali bilingui o plurilingui, nonche' nomi di strade ed altre indicazioni topografiche in zone in cui il numero delle persone appartenenti a una minoranza nazionale supera livelli cospicui in base all'ultimo censimento o ad altri metodi di rilevazione. L'utilizzo di segnali stradali, iscrizioni o altre informazioni di natura privata anche nella lingua della minoranza, non deve essere soggetto a restrizioni specifiche se non a quelle generalmente applicate in questo settore.

**Art. 14**

Ogni persona appartenente ad una minoranza nazionale, che esercita la libertà di religione, avrà il diritto di utilizzare la propria lingua nel culto, nell'insegnamento e nelle pratiche e cerimonie religiose.

**Art. 15**

Ogniqualevolta in una determinata area il numero delle persone appartenenti ad una minoranza nazionale raggiunge, in base all'ultimo censimento o ad altri metodi di rilevazione, un livello significativo (la maggioranza rispetto al resto della popolazione), gli Stati promuoveranno la conoscenza della lingua della minoranza fra i funzionari degli uffici amministrativi statali, locali e decentrati. Andranno fatti sforzi per assumere, se possibile, funzionari che, oltre alla conoscenza della lingua ufficiale, abbiano anche una sufficiente conoscenza di quella della minoranza.

**Art. 16**

Gli Stati riconoscono il diritto alle persone appartenenti a minoranze nazionali di creare e mantenere istituzioni culturali e religiose, organizzazioni o associazioni, le quali hanno il diritto di richiedere contributi finanziari volontari o di altro genere ed assistenza pubblica in conformità con la legislazione nazionale.

**Art. 17**

Gli Stati riconoscono il diritto agli individui appartenenti a minoranze nazionali di creare e mantenere proprie istituzioni culturali e religiose, organizzazioni o associazioni che abbiano il diritto di richiedere contributi finanziari volontari o di altro genere ed assistenza pubblica, in conformità con la legislazione nazionale.

**Art. 18**

Fatta salva la necessità di apprendere la lingua ufficiale di un determinato Stato, ogni membro di una minoranza nazionale avrà il diritto di apprendere la propria lingua e di ricevere un'istruzione nella stessa. Gli Stati si adopereranno per assicurare adeguati tipi e livelli di istruzione pubblica che siano in conformità con la legislazione nazionale, laddove in un'area il numero di individui appartenenti a una minoranza nazionale, in base all'ultimo censimento o ad altri metodi di rilevazione, raggiunga un livello significativo. Nel contesto dell'insegnamento della storia e della cultura in tale istituto pubblico di istruzione, andrà assicurato un adeguato insegnamento di storia e cultura delle minoranze nazionali.

**Art. 19**

Gli Stati garantiscono il diritto delle persone appartenenti ad una minoranza nazionale di avvalersi dei mezzi di comunicazione di massa nella propria lingua, in conformità con pertinente normativa dello Stato interessato e con l'assistenza finanziaria possibile. In caso di reti radiotelevisive pubbliche gli Stati assicureranno, per quanto possibile ed appropriato, agli individui appartenenti a minoranze nazionali il diritto al libero accesso a tali reti, ivi inclusa la produzione di programmi nella propria lingua.

**Art. 20**

Gli Stati garantiranno agli individui appartenenti a minoranze nazionali il diritto di partecipare senza discriminazioni, alla vita politica, economica, sociale e culturale della società dello Stato di cui sono cittadini e favoriranno le condizioni per l'esercizio di tali diritti.

**Art. 21**

Gli Stati consentiranno agli individui appartenenti a minoranze nazionali di creare partiti politici.

**Art. 22**

In conformità con le politiche degli Stati interessati, gli Stati rispetteranno il diritto degli individui appartenenti a una minoranza nazionale a partecipare in modo effettivo alla vita pubblica, in particolare nel processo decisionale sulle questioni che li riguardano direttamente. Gli Stati pertanto riconoscono gli sforzi intrapresi per tutelare e creare le condizioni per la promozione dell'identità etnica, culturale, religiosa e linguistica di alcune minoranze nazionali tramite l'adozione di misure adeguate corrispondenti alle circostanze specifiche di tali minoranze come previsto nei documenti della CSCE.

**Art. 23**

Ogni persona appartenente a una minoranza nazionale, nel dovuto rispetto dell'integrità territoriale dello Stato, avrà il diritto di avere contatti liberi e senza restrizioni con i cittadini di un altro paese aventi comuni identità etniche, religiose o linguistiche. Gli Stati non dovranno impedire indebitamente il libero esercizio di tali diritti. Gli Stati incoraggeranno, inoltre, accordi transfrontalieri a livello nazionale, regionale e locale.

**Art. 24**

Ogni persona appartenente a una minoranza nazionale dovrà disporre di un effettivo diritto al ricorso dinanzi a un'autorità giudiziaria nazionale contro qualunque forma di violazione dei diritti stabiliti nella presente Convenzione, purché tali diritti siano previsti nel sistema legislativo nazionale.

**Art. 25**

Nelle aree in cui il numero delle persone appartenenti a minoranze nazionali rappresenti la maggioranza della popolazione, gli Stati adotteranno le necessarie misure affinché le persone non appartenenti a tale minoranza non subiscano discriminazioni, incluse quelle che potrebbero derivare dall'attuazione di misure di tutela previste dalla presente Convenzione.

**Art. 26**

Nessun di questi impegni sarà interpretato come implicante un qualsiasi diritto ad intraprendere qualsivoglia attività contraria ai principi fondamentali del diritto internazionale e in particolare all'eguaglianza sovrana, all'integrità territoriale ed alla indipendenza politica degli Stati. Nulla

nella presente Convenzione pregiudicherà i doveri dei cittadini appartenenti alle minoranze nazionali in quanto cittadini degli Stati interessati.

Le persone appartenenti ad una minoranza nazionale, nell'esercitare i propri diritti, dovranno rispettare i diritti delle altre persone, inclusi i diritti delle persone appartenenti alla popolazione di maggioranza del rispettivo Stato o delle altre minoranze nazionali.

#### **Art. 27**

Questa Convenzione non pregiudica le disposizioni della legislazione nazionale o di accordi internazionali che prevedano una tutela più ampia delle minoranze nazionali e delle persone ad esse appartenenti.

*Fatto in una copia a Torino il 19 Novembre 1994 in lingua inglese.*

**Macedonian version**

## I INSTRUMENT NA CEI ZA ZAŠTITA NA PRAVATA NA MALCINŠTVA

Državite --l enki na Centralnata evropska i ni cija ti va potpisni -ki na ovoj dokument,

- pri znavajji deka pračaweto povrzano so nacionalni te malcinštva mo`at edinstveno da bi de rečeno na zadovolitel en na-in vo edna vištinska demokratska politi-ka ramka koja se zasnovuva vrz vladeeweto na pravoto i vrz garancii te za celosno po-ituvawe na -ovekovi te prava i fundamentalni te slobodi, ednakvi prava i status za si te grajani,

- povtoruvajji deka zaštita na nacionalni te malcinštva gi zaseguva samo grajani te na doti -ni te državi, koj e gi u`ivaati sti te prava i e gi imaati sti te dol`nosti na državjanstvo kako i ostatekot od naseleni eto,

- uvereni deka nacionalni te malcinštva so-inuvat integralen del od opčetstvoto na državite vo koj tie `iveati deka tie se faktor na z bogatuvawe na sekoja predmetna država i opčetstvo,

- imajji predvid deka mnogu efikasni lek za postignuvawe na stabilnost vo regionot se dobri te odnosi pomeju sosedi te i celosno svesni za potrebata da se izbegnuva sekakvo pottiknuvawe na separatisti-ki te tendencii na nacionalni te malcinštva vo regiot,

- potvrduvajji deka pračawata { to se odnesuvaat na pravata na licata pri padnici na nacionalni te malcinštva se pračawa na legitimna mejunarodna zagri`enost i posledovatelno ne so-inuvaat ekskluzivna mejunarodna rabota na predmetnata država,

- imajji predvid deka po-ituvaweto na -ovekovi te prava na licata { to pripa|aat na nacionalni te malcinštva, kako del od univerzalno priznati te -ovekovi prava, e neophoden faktor za mir, pravda, stabilnost i demokracija vo državite, uvereni deka mejunarodnata zaštita na pravata na licata pri padnici na nacionalni te malcinštva, kako { to e otelotvoreno vo ovoj instrument, ne dozvoluva bilo kakva aktivnost { to e vo sprotnost na fundamentalni te principi na mejunarodnoto pravo, a posebno na suverenosta, teritorijalni otintegriteti i politiki -kata nezavisnost na državite,

- pri znavajji ja posebnata va`nost od zgolemuvawe na konstruktiivnata sorabotka pomeju sebe po pračawa povrzani so nacionalni te malcinštva i deka takvata sorabotka bara promovirawe na me|usebnoto razbirawe i doverba, prijatel ski i dobrososedski odnosi, mejunaroden mir, bezbednost i pravda,

- izrazuvajji nivno osuduvawe na agresivni ot nacionalizam, rasna i etni-ka omraza, anti-semi tizam, ksenofobija i diskriminacija protiv bilo koje lice ili grupa i na progonuvaweto vrz religiozni i ideološki osnovi,

se dogovori ja za sl ednovu:

#### ^I en 1

Dr`avi te go pri znavaat postoeweto na naci onal ni te mal ci nstva kako takvi , zemaj}i gi isti te kako integral ni delovi na op{ testvoto vo koe tie `iveat i gi garanti raat soodvetni usl ovi za promov i rawe nani vni ot i denti tet.

Za cel na ovoj I nstrument, i zrazot "naci onal no mal ci nsto" }e ozna- uva grupa koja e po broj pomal a od ostatokot na nasel eni eto vo edna dr`ava, -i i pi padni ci se dr`avjani na taa dr`ava, i maat etni -ki , rel i gi ozni ili jazi -ni karakteri stiki { to se razli -ni od oni e na ostatokot na nasel eni eto, a se rakovodat spored voljata i `el bata da ja za{ ti tat svojata kul tura, tradi ci i , rel i gi ja ili jazi k.

#### ^I en 2

Pripadnosta kon edno naci onal no mal ci nstvo e pra{ awe na sloboden izbor na poedi necot i ni kakvi negati vnosti nema da proi zlezat od izvr{ uvaweto ili od nei zvr{ uvaweto na takvi ot i zbor.

#### ^I en 3

Dr`avi te pri znavaat deka I l i cata { to pri pa}aat na naci onal ni te mal ci nstva i maat pravo da gi u`ivaat, cel osno i efektivno, svoi te -ovekovi prava i fundamental ni sl obodi , poedi ne-no ili zaedno so drugi te, bez ni kakva di skri mi naci ja i vo cel osna ednakvost pred zakonot. Ti e I l i ca }e bi dat vo mo`nost da gi u`ivaat pravata predvi deni so ovoj I nstrument, poedi ne-no ili zaedno so drugi te, i da gi kori stat oni e merki so koi se obezbeduvaat ti e prava.

#### ^I en 4

Dr`avi te go garanti raat pravoto na I l i cata pri padni ci na naci onal ni te mal ci nstva da go i zrazuvaat, za- uvaat i razvi vaat svojot etni -ki , kul turen, jazi -en ili rel i gi ozen i denti tet i da ja odr` uvaat i razvi vaat svojata kul tura vo si te nejzi ni aspekti .

#### ^I en 5

Usvoj uvaweto na specij al ni merki vo kori st na I l i cata { to pri pa}aat na naci onal ni te mal ci nstva usmereni kon promov i rawe na ednakvosta pome}u niv i ostatokot od nasel eni eto ili kon soodvetno zemawe vo predvi d na ni vni te speci fi -ni usl ovi nema da se smeta kako akt na di skri mi naci ja.

#### ^I en 6

Dr`avi te }e prezemat ef i kasni merki za da obezbedat za{ tita protiv si te akti koi so- i nuvaat pottiknuvawe na nasi lstvo protiv I l i ca ili protiv grupi vrz osnova na

nacionalna, rasna, etnička ili religiozna diskriminacija, neprijateljstvo ili omraza, uključujući govor mržnje i semitičnost.

#### Član 7

Države koje prepoznaju posebne probleme Roma (cigani). Ti se obvezuju da usvoje sva potrebna pravna, administrativna ili obrazovna sredstva kako bi se predviđeno ovom Instrumentom za daljnje razvijanje identiteta Roma, da je očuvat, posebno fizička sredstva, socijalna integracija nacionalna pripadnika Roma (cigani) i da je eliminiirati forme netolerancije protiv njih.

#### Član 8

Bez da se naštetiti na demokratskim principima, Države, zemlje koje se suglasnost s navedenom generalnom politikom integracije, ne se odriču od negovane ili potpuno navedene na politiku usmerenu na asimiliranu nacionalna pripadnika nacionalni te malicijske protiv navedene volje i je govoriti tuče tjeleca od bilo kakvo dejstvo usmereno na takva asimilacija.

#### Član 9

Vo slučaju na modifikacija na administrativne, sudske ili izbornim pododjelima, države treba da zamat predviđena takve modifikacije, pomeđu drugim kriterijima, je govoriti tuče postojeće prava nacionalna pripadnika na nacionalni malicijske i uvođenja na tjeleca prava. Vo sekoj slučaju, tjeleca treba da se konsultirati, spored nacionalno zakonodavstvo, so naseljenjaka direktno zasegnati pred usvojavanje na bilo kakva predmetna modifikacija.

#### Član 10

Stiče li ca koji pripadaju na jedno nacionalno malicijske je i maat pravo da govoriti stat svojot jazik slobodno, javno i privatno, usmeno ili pisano.

#### Član 11

Stiče li ca koji pripadaju na jedno nacionalno malicijske je i maat pravo da govoriti stat svoeto ime i prezime na svojot jazik i pravo na oficijalno pisanje i registrirawe na takve teme i prezimena.

#### Član 12

Sekoga koga vo jedno podrazje brojot nacionalna pripadnici na jedno nacionalno malicijske dostignuwa, spored poslednjot popis ili drugi metodi na potvrđavanje na negovot sastav, značitelno niže, tjeleca je i maat pravo, sekoga koga emono, da govoriti stat, vo suglasnost so vadećata nacionalna legislativa, svojot sopstven jazik vo



usmena ili pismena forma vo nivni te kontakti so javni te organi na toa podra-je. Tie organi mo`e da odgovaraat, kolku { to e mo`no pove}e, na isti ot jazi k.

#### ^I en 13

Vo soglasnost so svoeto nacionalno zakonodavstvo, dr`avi te mo`e da dozvolat, koga e potrebno preku bilateralni dogovori so drugi zainteresirani dr`avi, posebno so sosedni te dr`avi, prika`uvawe na dvojazi-ni ili pove}ejazi-ni lokalni imi wa, imi wa na ulici i na drugi topografski indikatori vo podra-ja kade brojot na licata { to pripajaat na edno nacionalno malcinstvo dostignuva, spored posledni ot cenzus ili drugi metodi na potvrduvawe na negovi ot sostav, zna-itelno ni vo. Prika`uvaweto na znacite, natpisi te ili drugi sli-ni informacii od privatna priroda isto taka na jazi kot na malcinstvoto ne treba da bidat predmet na specifi-ni restrikcii, osven oni e generalno { to se pri menuvaat vo ova obl ast.

#### ^I en 14

Sekoe lice koe pripaja na nacionalno malcinstvo, koe praktikuva religiozni sl obodi, }e go ima pravoto da go koristi svojot jazi k vo propovedi te, u-eweto, religioznata praktika i po-i tuvawe.

#### ^I en 15

Sekoga { koga vo odredeno mesto brojot na lica koi pripajaat na nekoje nacionalno malcinstvo }e dostigne, spored posledni ot popis ili drugi metodi za odreduvawe na konsistentnost, mnozinstvo na naseleni eto vo obl asta, dr`avata }e promovira poznavawe na jazi kot na malcinstvoto meju slu`beni ci te na lokalni te, decentralizirani dr`avni admistrativni kancelari i. Treba da se napravat obi di za regrutirawe, dokolku e mo`no, na slu`beni ci koi osven { to go poznavaat slu`beni ot jazi k, i maat zadovol itelno poznavawe na jazi kot na malcinstvoto.

#### ^I en 16

Dr`avata go priznava pravoto na licata koi pripajaat na nacionalni te malcinstva da gi formiraat i odr`uvaat svoi te kulturni i religiozni institucii, koi imaat pravo da baraat dobrovol en finansiski i drug pril og kako i javna pomo {, vo soglasnost so nacionalno zakonodavstvo.

#### ^I en 17

Dr`avata go priznava pravoto na licata koi pripajaat na nacionalni te malcinstva da otvoraat i odr`uvaat sopstveni privatni gradnki, u-ili { ta i obrazovni institucii i po mo`nost da se steknat so priznanie vo soglasnost so relevantnoto nacionalno zakonodavstvo. Takvite institucii mo`e da baraat javno finansirawe ili drug pri dones.

**^I en 18**

Bez ogl ed na potrebata za u-ewe na sl u`beni ot jazik na dr`avata, sekoe lice koe pripaja na nacionalno malci nstvo }e ima pravo da go i zu-uva svojot jazik i da se stekne so obrazovani e na sopstveni ot jazik. Dr`avata }e se trudi da obezbedi soodvetni vi dovi i stepeni na javno obrazovani e vo sogl asnost so nacionalno noto zakonodavstvo, sekoga{ koga brojot na licata koi pripajaat na nacionalno malci nstvo na odredena teri torija, spored posledni ot popis ili drug metod na odreduvawe na konsistentnosta, e na zna-itelno nivo. Vo toj kontekst na u-ewe na istorijata i kul turata vo takvi javni obrazovni i nsti tuci i, adekvatno i zu-uvawe na istorijata i kul turata na nacionalni te malci nstva treba da bi de obezbedeno.

**^I en 19**

Dr`avata go garanti ra pravoto na licata koi pripajaat na nacionalni malci nstva da i maat mo`nost da sledat medi umi na sopstveni ot jazik, vo sogl asnost so relevantni te dr`avni propisi i so mo`nost za finansi ska pomo{. Vo sl u-aj na sopstvenosta na televizi ski i radio stanci, dr`avata }e obezbedi, sekoga{ koga e mo`no i soodvetno, licata koi pripajaat na nacionalni te malci nstva da i maat pravo na sl oboden pristap do takvi te medi umi vkl u-uvaj}i i proi zvodstvo na programa na sopstveni ot jazik.

**^I en 20**

Dr`avata }e go garanti ra pravoto na licata koi pripajaat na nacionalni te malci nstva da u-estvuvaat bez diskriminacija vo politi -ki ot, ekonomski ot, soci jalni ot i kulturni ot `ivot na zaednicata vo dr`avata -i i dr`avjani se tie i }e promoviraat uslovi za u`i vawe na pravata.

**^I en 21**

Dr`avata }e ovozmo`i na licata koi pripajaat na nacionalno noto malci nstvo da formiraat politi -ki partii.

**^I en 22**

Vo sogl asnost so politi kata na spomenatata dr`ava, dr`avata }e go po-ituva pravoto na licata koi pripajaat na nacionalni te malci nstva za efikasno u-estvo vo javni te pra{awa, osobeno vo procesot na donesuvawe na odl uki po pra{awa koi se odnesuvaat na niv. Zatoa, dr`avite gi zabele`uvaat naporite koi se vlo`eni vo za{titata i sozdavawe na uslovi za promovirawe na etni -ki ot, kulturni ot i religi ozni ot i denti tet na odredeni nacionalni malci nstva preku usvojuvawe na soodvetni merki koi korespondiraat so specifi -ni te uslovi na takvi te malci nstva, kako {to e predvideno vo dokumenti te na Komisijata za bezbednost i sorabotka vo Evropa.

**^I en 23**

Sekoe lice koe pripaja na nacionalno malci nstvo, so celosno po-ituvawe na teri torijalni ot i integri tet na dr`avata, }e ima pravo na sl obodni i nepre-eni kontakti so dr`avjani te na drugi zemji so koi malci nstvoto deli i sti etni -ki, religi ozni ili

jazi -ni karakteristiki ili kul turen identitet. Dr`avite nema bespotrebno da go ograni -uvaat slobodnoto u`i vawe na tie prava. Osven toa, dr`avite je gi ohrabruvaat prekugrani -ni te dogovori na naci onal no, regi onal no i lokal no ni vo.

#### **^I en 24**

Sekoe l i ce koe pri pa|a na naci onal no mal ci nstvo }e dobi e ef ekti ven praven l ek pred naci onal ni te sudski vl asti protiv naru|uvawata na -ovekovi te prava, daden vo ovoj l nstrument, pod usl ov ti e prava da se obezbedeni vo naci onal noto zakonodavstvo.

#### **^I en 25**

Vo sekoja obl ast kade oni e koi pri pa|aat na naci onal no mal ci nstvo pretstavuvaat mnozi nstvo od naseleni eto, dr`avite }e gi prezemat neophodni te merki za obezbeduvawe deka oni e koi ne pri pa|aat na ova mal ci nstvo nema da trpat obespravuvawe, vkl u-uvaj}i i takvo koe rezul ti ra od i mpl ementaci jata na merki te za za{ ti ta predvi deni vo ovoj l nstrument.

#### **^I en 26**

Ni tu edna od zal o` bi te nema da bi de i nterpreti rana kako i mpl i kaci ja na pravoto za vr{ ewe na akti vnosti koi se vo sprotnost so osnovni te pri nci pi na me|unardni ot zakon i, osobeno, na suverenata ednakvost, teri tori jal en integri tet i poli ti -ka nezavi snost na dr`avata. Ni { to vo dadeni ot i nstrument nema da vl i jae vrz dol `nosti te vo vrska so l i cata koi pri pa|aat na naci onal no mal ci nstvo kako gra|ani na spomenatata dr`ava.

Licata koi pri pa|aat na naci onal no mal ci nstvo }e gi po-i tuvaat, vo smi sol na u`i vaweto na svoi te prava, pravata na drugi te koi pri pa|aat na mnozi nstvoto na naseleni e na spomenatata dr`ava i drugi te naci onal ni mal ci nstva.

#### **^I en 27**

Ovoj i nstrument nema da gi prejuci ra odredbite na doma{ ni te zakoni ili me|unardni te dogovori koi obezbeduvaat pogol ema za{ ti ta za naci onal ni te mal ci nstva ili l i ca koi i m pri pa|aat na ni v.

Sostaveno vo eden pri merok vo Tori no na 19 noemvri 1994g. na angl i ski jazi k.

*Polish Version*

## INSTRUMENT INICJATYWY ŚRODKOWO– EUROPEJSKIEJ OCHRONA PRAW MNIEJSZOSCI

Panstwa Członkowskie Inicjatywy Środkowo–Europejskiej będą sygnatariuszami niniejszego Instrumentu,

- uznając, że kwestie dotyczące mniejszości narodowych można zadawalająco rozwiązać tylko w prawdziwie demokratycznych strukturach politycznych opartych na rządach prawa i gwarancjach pełnego poszanowania praw człowieka i podstawowych wolności, równych praw i równego statusu wszystkich obywateli,
- potwierdzając, iż ochrona mniejszości narodowych dotyczy tylko obywateli danego państwa, którym przysługują te same prawa i te same obowiązki, jak i pozostałej ludności,
- przekonane, że mniejszości narodowe stanowią integralną część społeczeństwa w Państwach, które zamieszkują i są czynnikiem wzbogacającym dane Państwo i społeczeństwo,
- mając na względzie, iż prawdziwie skutecznym środkiem do osiągnięcia stabilizacji w regionie są dobre stosunki pomiędzy sąsiadami, a jednocześnie świadome potrzeby unikania popierania tendencji separatystycznych przejawianych przez mniejszości narodowe w regionie,
- potwierdzając, że sprawy dotyczące praw osób należących do mniejszości narodowych są przedmiotem uzasadnionej troski międzynarodowej, a w związku z tym nie stanowią jedynie wewnętrznego problemu danego Państwa,
- uważając, iż poszanowanie praw osób należących do mniejszości narodowych jako części powszechnie uznanych praw człowieka, jest niezbędnym czynnikiem sprzyjającym pokojowi, sprawiedliwości, stabilizacji i demokracji w tych Państwach,
- przekonanie, że międzynarodowa ochrona praw osób należących do mniejszości narodowych, jak zostało to ujęte w niniejszym dokumencie, nie pozwala na żadne działania sprzeczne z podstawowymi zasadami prawa międzynarodowego, a w szczególności suwerenności, integralności terytorialnej i politycznej niezawisłości Państw,
- uznając szczególnie wagę wzrastającej konstruktywnej współpracy pomiędzy nimi w kwestiach mniejszości narodowych oraz faktu, że taka współpraca zmierza do wzmocnienia wzajemnego zrozumienia i zaufania, przyjaznych i dobrosąsiedzkich stosunków, pokoju międzynarodowego, bezpieczeństwa i sprawiedliwości,
- wyrażając swoje potępienie agresywnego nacjonalizmu, nienawiści rasowej i etnicznej, antysemityzmu, ksenofobii i dyskryminacji wszelkich osób i grup, oraz prześladowan z przyczyn religijnych i ideologicznych,

uzgodniły, co następuje:

### Art. 1.

Panstwa uznają istnienie mniejszości narodowych jako takich, uważając je za integralną część społeczeństwa, w którym żyją oraz gwarantują właściwe warunki dla popierania ich tożsamości. W rozumieniu niniejszego Instrumentu termin „mniejszość narodowa” oznacza grupę mniejszą liczebnie od pozostałej ludności w danym Państwie, której członkowie, będący obywatelami

danego Państwa, mają etniczne, religijne lub językowe cechy odróżniające je od pozostałej części ludności i kierują się wola zachowania własnej kultury, tradycji, religii lub języka.

#### **Art. 2.**

Przynależność do mniejszości narodowej jest kwestią wolnego indywidualnego wyboru i z faktu dokonania lub niedokonania takiego wyboru nie może wynikać żadne uposzczenia.

#### **Art. 3.**

Państwa uznają, że osoby należące do mniejszości narodowych mają prawo do pełnego i skutecznego korzystania z praw człowieka i podstawowych wolności, indywidualnie lub wspólnie z innymi osobami, bez żadnej dyskryminacji i w pełnej równości wobec prawa. Osoby te mogą korzystać, indywidualnie lub wspólnie z innymi osobami, z praw przewidzianych w niniejszym Instrumencie oraz korzystać ze środków zapewniających te prawa.

#### **Art. 4.**

Państwa gwarantują prawo osób należących do mniejszości narodowych do wyrażania, zachowania i rozwijania własnej tożsamości etnicznej, kulturowej, językowej lub religijnej oraz zachowania i rozwoju ich własnej kultury w jej wszelkich aspektach.

#### **Art. 5.**

Przyjęcie środków specjalnych na rzecz osób należących do mniejszości narodowych mających na celu popieranie równości pomiędzy nimi a resztą ludności lub należycie uwzględniających ich szczególną sytuację, nie jest traktowane jako akt dyskryminacji.

#### **Art. 6.**

Państwa podejmują skuteczne kroki w kierunku zapewnienia ochrony przed aktami ładacymi podleganiem do przemocy wobec osób lub grup, wynikającymi z dyskryminacji narodowościowej, etnicznej i religijnej, wrogości i nienawiści, w tym antysemityzmu.

#### **Art. 7.**

Państwa uznają szczególne problemy Romów (Cyganów). Zobowiązują się przyjąć wszelkie środki prawno-administracyjne i edukacyjne przewidziane w niniejszym instrumencie w celu zachowania i rozwoju tożsamości Romów, ułatwić za pomocą określonych środków społeczną integrację osób należących do społeczności Romów (Cyganów) i eliminować wszelkie formy nietolerancji wobec tych osób.

#### **Art. 8.**

Bez uszczerbku dla zasad demokratycznych, Państwa, podejmując środki zgodne z ich ogólną polityką integracyjną, powstrzymają się od prowadzenia lub popierania polityki zmierzającej do asymilacji osób należących do mniejszości narodowych wbrew ich woli oraz chronić takie osoby przed jakimikolwiek działaniami zmierzającymi do takiej asymilacji.

**Art. 9.**

W przypadku modyfikacji okręgów administracyjnych, sądowych lub wyborczych, Państwa powinny – oprócz innych kryteriów – wziąć pod uwagę istniejące prawa osób należących do mniejszości narodowych oraz wykonywanie tych praw. W każdym przypadku powinny konsultować się, zgodnie z ustawodawstwem krajowym, ze społecznościami bezpośrednio zainteresowanymi przed dokonaniem takiej modyfikacji w tej dziedzinie.

**Art. 10.**

Każda osoba należąca do mniejszości narodowej ma prawo do swobodnego używania swojego języka publicznie i prywatnie, w mowie i piśmie.

**Art. 11.**

Każda osoba należąca do mniejszości narodowej ma prawo do z jego/jej nazwiska i imion w swoim własnym języku oraz prawo do oficjalnego uznania i rejestracji takiego nazwiska i imion.

**Art. 12.**

Kiedykolwiek na pewnym obszarze ilość osób należących do mniejszości narodowej osiąga, zgodnie z najnowszym spisem ludności lub innymi wiarygodnymi metodami badawczymi, znaczący poziom liczebny, osoby te będą miały prawo używania, tam gdzie to tylko możliwe, zgodnie z odpowiednim ustawodawstwem krajowym, swojego własnego języka w mowie i piśmie w kontaktach z władzami publicznymi wspomnianego obszaru. Władze te mogą odpowiadać, o ile to możliwe, w tym samym języku.

**Art. 13.**

Zgodnie ze swoim ustawodawstwem krajowym, Państwa mogą zezwolic, tam gdzie to konieczne, poprzez porozumienia dwustronne z innymi zainteresowanymi Państwami sąsiadującymi, na umieszczanie dwujęzycznych lub wielojęzycznych nazw miejscowości, nazw ulic i innych nazw topograficznych na tych obszarach, na których ilość osób należących do mniejszości narodowej osiąga, zgodnie z najnowszym spisem ludności lub innymi wiarygodnymi metodami badawczymi, znaczący poziom liczebny. Umieszczanie znaków, napisów i innych informacji tego typu o charakterze prywatnym również w języku mniejszości narodowej nie powinno podlegać żadnym szczególnym ograniczeniom, innym niż te ogólnie stosowane w tej dziedzinie.

**Art. 14.**

Każda osoba należąca do mniejszości narodowej, korzystając z wolności religijnej, ma prawo do używania swojego własnego języka w modlitwie, nauczaniu religii, praktykach i obrzędach religijnych.

**Art. 15.**

Kiedykolwiek ilość osób należących do mniejszości narodowej staje się, zgodnie z najnowszym spisem ludności lub innymi wiarygodnymi metodami badawczymi, większością populacji na pewnym obszarze, Państwa będą popierać znajomość języka mniejszości wśród pracowników

urzędów państwowych na szczeblu lokalnym. Powinny zostać podjęte starania w celu zatrudnienia, jeżeli to możliwe, urzędników, którzy obok znajomości języka urzędowego, wykaza się wystarczającą znajomością języka mniejszości.

#### **Art. 16.**

Panstwa uznają prawo osób należących do mniejszości narodowych do zakładania i utrzymywania własnych instytucji kulturalnych i religijnych, organizacji lub stowarzyszeń, które są uprawnione do ubiegania się o dobrowolne wsparcie finansowe i innego rodzaju, jak również o pomoc publiczną, zgodnie z ustawodawstwem krajowym.

#### **Art. 17.**

Panstwa uznają prawo osób należących do mniejszości narodowych do zakładania i utrzymywania własnych prywatnych przedszkoli, szkół i placówek edukacyjnych, oraz, jeżeli to możliwe, do ich uznania zgodnie z odpowiednim ustawodawstwem krajowym. Placówki te mogą się ubiegać o publiczne finansowanie i o inne wsparcie.

#### **Art. 18.**

Bez względu na potrzeby uczenia się języka urzędowego danego Państwa, każda osoba należąca do mniejszości narodowej ma prawo do uczenia się jego/jej własnego języka i otrzymania wykształcenia w jego/jej własnym języku. Państwa podejmą wysiłki w celu zapewnienia oświaty publicznej w odpowiednich rodzajach i na odpowiednich poziomach, zgodnie z ustawodawstwem krajowym wszędzie tam, gdzie ilość osób należących do mniejszości narodowej osiąga, zgodnie z najnowszym spisem ludności lub innymi wiarygodnymi metodami badawczymi, znaczący poziom. W kontekście nauczania historii i kultury w takich placówkach oświaty publicznej, powinno być zapewnione odpowiednie nauczanie historii i kultury mniejszości narodowych.

#### **Art. 19.**

Panstwa gwarantują prawo osób należących do mniejszości narodowych do korzystania we własnym języku ze środków masowego przekazu, zgodnie z odpowiednimi przepisami Państwa oraz z możliwością uzyskania pomocy finansowej. W przypadku telewizji i radia publicznego, Państwa zapewniają osobom należącym do mniejszości narodowych, gdzie to właściwe i możliwe, prawo do wolnego dostępu do tych mediów, łącznie z produkcją programów w ich własnym języku.

#### **Art. 20.**

Panstwa gwarantują prawo osób należących do mniejszości narodowych do uczestniczenia bez dyskryminacji w życiu politycznym, gospodarczym, społecznym i kulturalnym Państwa, którego są obywatelami, oraz będą popierać warunki do wykonywania tych praw.

**Art. 21.**

Panstwa zezwalaja osobom nalezacych do mniejszosci narodowej na tworzenie partii politycznych.

**Art. 22.**

Zgodnie z polityka zainteresowanych Panstwa, Panstwa te beda respektowac prawo osob nalezacych do mniejszosci narodowych do rzeczywistego uczestnictwa w zyciu publicznym, w szczegolnosci w procesach podejmowania decyzji w sprawach ich dotyczacych. W tym kontekście Panstwa odnotowuja wysilki podejmowane w celu ochrony i tworzenia warunków dla rozwoju tozsamosci etnicznej, kulturowej, jezykowej i religijnej danych mniejszosci narodowych poprzez podejmowanie wlasciwych srodków, odpowiadajacych specyficznej sytuacji takich mniejszosci, przewidzianych w dokumentach KBWE.

**Art. 23.**

Kazda osoba nalezaca do mniejszosci narodowej, nalezycie respektujac nienaruszalnosc terytorialna Panstwa, ma prawo do swobodnych i niezaklconych kontaktów z obywatelami innego kraju, z którymi lacza te same cechy etniczne, religijne czy jezykowe lub tozsamosc kulturowa. Panstwa nie beda bezpodstawnie ograniczac swobodnego korzystania z tych praw. Ponadto, Panstwa beda popierac porozumienia transgraniczne na szczeblu panstwowym, regionalnym i lokalnym.

**Art. 24.**

Kazda osoba nalezaca do mniejszosci narodowej bedzie miala mozliwosc skuteczných srodków odwoławczych przed krajowymi organami sadowymi w przypadku jakiegokolwiek naruszenia praw okreslonych w niniejszym Instrumentcie, pod warunkiem, ze prawa te zostaly wlaczone do ustawodawstwa krajowego.

**Art. 25.**

Na kazdym obszarze, na którym osoby nalezace do mniejszosci narodowej stanowią wiekszosc populacji, Panstwa podejma niezbedne srodki w celu zapewnienia tym, którzy nie naleza do takiej mniejszosci, iz nie beda narazeni na zadne przejawy dyskryminacji, w tym również takie, które mogą być wynikiem realizacji srodków ochronnych przewidzianych w niniejszym Instrumentcie.

**Art. 26.**

Zadne z niniejszym postanowien nie bedzie interpretowane w sposób sugerujacy prawo do dzialan sprzecznych z podstawowymi zasadami prawa miedzynarodowego, a w szczegolnosci zasadami suwerennosci, integralnosc terytorialnej i politycznej niezawislosci Panstw. Zadne z postanowien niniejszego Instrumentu nie bedzie mialo wpływu na obowiązki odnoszace sie do osob nalezacych do mniejszosci narodowych jako obywateli zainteresowanych Panstw. Osoby nalezace do mniejszosci narodowych beda również, korzystajac ze swoich praw, szanowac prawa innych, w tym także prawa osob nalezacych do wiekszosci populacji w danym Panstwie oraz prawa innych mniejszosci narodowych.



**Art. 27.**

Niniejszy Instrument nie będzie naruszać przepisów prawa krajowego lub jakiegokolwiek porozumienia międzynarodowego, które w większym stopniu zapewniają ochronę mniejszości narodowych lub osób do nich należących.

Sporządzono w Turynie dnia 19 listopada 1994 r. w jednym egzemplarzu w języku angielskim.

**Romanian Version****INSTRUMENTUL I.C.E.<sup>662</sup> PENTRU PROTECTIA  
DREPTURILOR MINORITATILOR**

Statele membre ale Initiativei Central Europene mai jos semnatare,

- recunoscand ca problemele legate de minoritatile nationale pot fi rezolvate satisfactor numai intr-un cadru politic democratic care are la baza statul de drept si garanteaza respectarea deplina a drepturilor si libertatilor fundamentale ale omului, drepturi si statut egale pentru toti cetatenii,
- reafirmand ca protectia minoritatilor nationale ii priveste numai pe cetatenii statului respectiv, care se vor bucura de aceleasi drepturi si vor avea aceleasi indatoriri ce decurg din cetatenie ca si restul populatiei,
- convinse ca minoritatile nationale fac parte integranta din societatea statelor in care traiesc si ca ele sunt un factor ce da un plus de bogatie fiecarui stat in parte si respectiv fiecarei societati in parte,
- neuitand ca un remediu foarte eficient pentru realizarea stabilitatii in regiune il reprezinta bunele relatii intre vecini, si fiind constiente de nevoia de a se evita orice incurajare a tendintelor separatiste ale minoritatilor nationale din regiune,
- confirmand ca problemele privitoare la drepturile persoanelor apartinand minoritatilor nationale sunt chestiuni de legitima preocupare internationala si ca prin umare ele nu constituie treburi interne ale statului respectiv,
- considerand ca respectarea drepturilor persoanelor apartinand minoritatilor nationale, ca parte a drepturilor omului universal recunoscute, este un factor esential pentru pacea, justitia, stabilitatea si democratia statelor,
- convinse ca protectia internationala a drepturilor persoanelor apartinand minoritatilor nationale, asa cum sunt ele consfintite in prezentul Instrument, nu permitc nici un fel de activitate care sa contravina principiilor fundamentale ale dreptului international si indeosebi suveranitatii, integritatii teritoriale si independentei politice a statelor,
- recunoscand importanta deosebita a sporirii cooperarii dintre ele in problemele legate de minoritatile nationale, si ca o astfel de cooperare cauta sa promoveze intelegerea si increderea reciproca, relatiile de prietenie si buna vecinatate, pacea internationala, securitatea si dreptatea,
- dand expresie condamnarii nationalismului agresiv, urii rasiale si etnice, antisemitismului, xenofobiei si discriminarii impotriva oricarei persoane sau grup si persecutiei pe motive religioase sau ideologice,

au convenit asupra urmatoarelor:

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<sup>662</sup> Central European Initiative -Initiativa Central Europeana.

**Art. 1**

Statele recunosc existenta minoritatilor nationale ce atere, considerandu-le parte integranta a societatii in care traiesc si garanteaza conditii adecvate pentru promovarea identitatii acestora.

Pentru scopul acestui Instrument, termenul "minoritate nationala" va avea intelesul de grup care este mai putin numeros decat restul populatiei unui stat, ai carui membri, cetateni ai acelui stat, au caracteristici etnice, religioase sau lingvistice diferite de ale restului populatiei, si care sunt animati de vointa de a-si s alvgarda cultura, traditiile, religia sau limba.

**Art. 2**

A apartine unei minoritati nationale este o chestiune de libera alegere individuala si nici un dezavantaj nu va decurge din exercitarea sau neexercitarea unei asemenea optiuni.

**Art. 3**

Statele recunosc ca persoanele apartinand minoritatilor nationale au dreptul de asi exercita deplin si efectiv drepturile si libertatile fundamentale ale omului, individual sau in comun cu altii, fara nici un fel de discriminare si in deplina egalitate in fata legii. Acele persoane trebuie sa poata sa se bucure de drepturile prevazute de prezentul Instrument individual sau in comun cu altii si sa beneficieze de masurile care asigura acele drepturi.

**Art. 4**

Statele garanteaza dreptul persoanelor apartinand minoritatilor nationale de a-si exprima, pastra si dezvolta identitatea etnica, culturala, lingvistica sau religioasa si de a-si mentine si dezvolta cultura in toate aspectele ei.

**Art. 5**

Adoptarea de masuri speciale in favoarea persoanelor apartinand minoritatilor nationale menite sa promoveze egalitatea intre acestea si restul populatiei sau sa tina cont in mod corespunzator de conditiile lor specifice nu vor fi considerate drept un act de discriminare.

**Art. 6**

Statele vor lua masuri eficiente pentru a asigura protectia impotriva oricaror acte ce constituie incitare la violenta impotriva persoanelor sau grupurilor pe baza discriminarii nationale, rasiale, etnice sau religioase, a ostilitatii sau a urii, inclusiv pe baza antisemitismului.

**Art. 7**

Statele recunosc problemele deosebite ale romilor (tiganilor). Ele se angajeaza sa adopte toate masurile legale din punct de vedere administrativ si al educatiei prevazute in prezentul Instrument in vederea pastrarii si dezvoltarii identitatii romilor, sa inlesneasca prin masuri specifice integrarea sociala a persoanelor apartinand romilor (tiganilor) si sa elimine toate formele de intoleranta impotriva acestor persoane.

**Art. 8**

Fara a aduce prejudicii principiilor democratice, statele, luand masuri pe linia politicii lor de integrare generala, se vor abtine sa urmeze sau sa incurajeze politici care urmaresc asimilarea

persoanelor aparținând minorităților naționale împotriva voinței acestora și vor proteja aceste persoane împotriva oricărei acțiuni menite să ducă la o astfel de asimilare.

#### **Art. 9**

În cazul modificării împărțirii administrative, juridice sau electorale, statele trebuie să țină cont ca asemenea modificări, printre altele criterii, vor respecta drepturile persoanelor aparținând minorităților naționale și exercitarea acestor drepturi. În orice caz, ele trebuie să se consulte, în conformitate cu legislația națională, cu populațiile direct afectate înainte de a adopta orice modificare de acest gen.

#### **Art. 10**

Orice persoană care aparține unei minorități naționale va avea dreptul de a-și folosi limba în mod liber atât în public cât și privat, oral și în scris.

#### **Art. 11**

Orice persoană care aparține unei minorități naționale va avea dreptul de a-și folosi numele de familie și prenumele în limba proprie și dreptul de a-și accepta și înregistra oficial aceste nume de familie și prenume.

#### **Art. 12**

Ori de câte ori într-o zonă numărul de persoane aparținând unei minorități naționale ajunge, conform celui mai recent recensământ sau altor metode de stabilire a acestui număr, la un nivel semnificativ, acele persoane vor avea dreptul, acolo unde este posibil, să-și folosească, în conformitate cu legislația națională respectivă, limba proprie în forma orală și scrisă, în contactele lor cu autoritățile publice ale zonei sus menționate. Aceste autorități pot da răspunsul, pe cât posibil, în aceeași limbă.

#### **Art. 13**

În conformitate cu legislația lor națională, statele pot permite, la nevoie prin acorduri bilaterale cu alte state interesate, în special cu statele vecine, inscripționarea bilingvă sau în mai multe limbi a numelor de localități, a numelor de străzi și a altor indicații topografice în zonele în care numărul persoanelor aparținând unei minorități naționale ajunge, conform celui mai recent recensământ sau altor metode de stabilire a acestui număr, la un nivel semnificativ. Afisarea de semne, inscripții sau alte asemenea informații de natură privată și în limba minorității nu trebuie să fie supusă unor restricții specifice, altele decât cele aplicate în general în acest domeniu.

#### **Art. 14**

Orice persoană aparținând unei minorități naționale, care-și exercită libertatea religioasă, va avea dreptul de a-și folosi limba proprie atunci când își spune rugăciunea, când predă, când practică sau când își respectă credința religioasă.

#### **Art. 15**

Ori de câte ori numărul persoanelor aparținând unei minorități naționale, conform celui mai recent recensământ sau altor metode de stabilire a acestui număr, ajunge la nivelul majorității

populatiei dintr-o zona, statele vor promova cunoasterea limbii minoritare de catre functionarii administratiei locale si descentralizate. Se vor depune eforturi pentru recrutarea, daca este posibil, a unor functionari care, pe langa cunoasterea limbii oficiale, cunosc in suficienta masura si limba minoritara.

#### **Art. 16**

Statele recunosc dreptul persoanelor apartinand minoritatilor nationale de a-si infiinta si mentine propriile institutii, organizatii sau asociatii culturale si religioase, care au dreptul sa caute sprijin financiar voluntar si alte contributii precum si dreptul la asistenta publica, in conformitate cu legislatia nationala.

#### **Art. 17**

Statele recunosc dreptul persoanelor apartinand minoritatilor nationale de a-si infiinta si mentine propriile unitati prescolare, scoli si institutii de invatamant private si eventual de a obtine recunoasterea lor in conformitate cu legislatia nationala in materie. Asemenea institutii pot cauta sprijin financiar public sau alte contributii.

#### **Art. 18**

Cu toata nevoia de a invata limba oficiala a statului respectiv, fiecare persoana apartinand unei minoritati nationale va avea dreptul de a-si invata limba proprie si de a fi instruita in limba proprie. Statele se vor stradui sa asigure tipuri si niveluri corespunzatoare de invatamant public in conformitate cu legislatia nationala, ori de cate ori intr-o zona numarul persoanelor apartinand unei minoritati nationale, conform celui mai recent recensamant sau altor metode de stabilire a acestui numar, atinge un nivel semnificativ. In contextul predarii istoriei si culturii in astfel de institutii de invatamant public, trebuie sa se asigure predarea adecvata a istoriei si culturii minoritatilor nationale.

#### **Art. 19**

Statele garanteaza dreptul persoanelor apartinand unei minoritati nationale de a se folosi de mijloacele de comunicare in propria lor limba, in conformitate cu reglementarile in materie din statul respectiv si cu o eventuala asistenta financiara. In cazul televiziunii si radioului publice, statele vor avea grija, ori de cate ori este cazul si este posibil, ca persoanele apartinand minoritatilor nationale sa aiba dreptul la acces liber la aceste mijloace de comunicare, inclusiv la producerea de astfel de programe in limbile proprii.

#### **Art. 20**

Statele vor garanta dreptul persoanelor apartinand minoritatilor nationale de a participa fara discriminare la viata politica, economica, sociala si culturala a societatii statului al carui cetateni sunt si vor promova conditiile pentru exercitarea acelor drepturi.

#### **Art. 21**

Statele vor permite persoanelor apartinand unei minoritati nationale sa infiinteze partide politice.

#### **Art. 22**

In conformitate cu politicile statelor in chestiune, statele vor respecta dreptul persoanelor apartinand minoritatilor nationale la participare efectiva in treburile publice, indeosebi la

procesul de luare a deciziilor in probleme care le afecteaza. Prin urmare, statele iau nota de eforturile depuse in vederea protejarii si creerii conditiilor pentru promovarea identitatii etnice, culturale, lingvistice si religioase a anumitor minoritati prin adoptarea de masuri adecvate care sa corespunda conditiilor specifice ale unor astfel de minoritati asa cum se prevede in documentele CSCE.

#### **Art. 23**

Fiecare persoana apartinand unei minoritati nationale, respectand cum se cuvine integritatea teritoriala a statului, va avea dreptul de a avea contacte libere si nestanjenite cu cetatenii unei alte tari, de aceeaasi identitate etnica, religioasa sau lingvistica cu aceasta minoritate. Statele nu vor restrictiona pe nedrept exercitiul liber al acelor drepturi. Mai mult, statele vor incuraja aranjamentele transfrontaliere pe plan national, regional si local.

#### **Art. 24**

Orice persoana care apartine unei minoritati nationale va beneficia de un remediu efectiv in fata unei autoritati judiciare nationale impotriva oricarei incalcarii a drepturilor enuntate in prezentul Instrument, cu conditia ca acele drepturi sa fie legiferate in legislatia nationala.

#### **Art. 25**

In orice zona in care cei ce apartin unei minoritati nationale reprezinta majoritatea populatiei, statele vor lua masurile necesare pentru ca cei care nu apartin acestei minoritati sa nu fie dezavantajati in nici un fel, inclusiv prin implementarea masurilor de protectie prevazute de prezentul Instrument.

#### **Art. 26**

Nici unul dintre aceste angajamente nu trebuie interpretat ca implicand vreun drept de angrenare in orice fel de activitate care sa contravina principiilor fundamentale ale dreptului international si, indeosebi, egalitatii suverane, integritatii teritoriale si independentei politice a statelor. Nimic din prezentul Instrument nu va afecta indatoririle ce revin persoanelor apartinand minoritatilor nationale ca cetateni ai statelor respective. Persoanele care apartin minoritatilor nationale vor respecta de asemenea, in exercitarea drepturilor lor, drepturile altora, inclusiv pe cele ale persoanelor apartinand majoritatii populatiei statului respectiv sau ale altor minoritati nationale.

#### **Art. 27**

Acest Instrument nu va aduce prejudicii prevederilor dreptului intern sau al oricarui acord international care prevede o protectie mai mare pentru minoritatile nationale sau pentru persoanele apartinand acestora.

Intocmit intr-un exemplar la Torino in aceasta a 19-a zi a lui noiembrie 1994 in limba engleza.

**Romani/Roma version**

## O INSTRUMENTO C.E.I.<sup>663</sup> ANDAR I PROTEKCIJA LE MINORITATJENGE CACIMATENGI

E thema save si membrurja ande Centralno Evropaki Iniciativa maj tele xramosarne,

- žanindos ke e probleme save si phangle ke nacionalo minoritete šaj te oven lacharde lošales numaj ande jekh demokratikano politikano kadro savo si les ke baza le cacimasko stato thaj garantisarel o sasto respekto vaš e fundamentalo cacimata thaj slobodimata le manušeske , cacimata thaj statuto save si sajekh andar savore themutne (manuša),

- phenindos ke i protekcija le nacionalo minoritatjengi dikhel numaj le manušen kodole themeske, save ovena lošale andar sa kodola cacimata thaj ovela len sa kodola dutja themutnimaske sar savore manuša,

- paťjandos ke e nacionalo minoritete si kotor andar i societeta le themengi kaj živen thaj ke von si jekh faktoro savo anel jekh maj baro barvalipen svake themeske thaj vi svake societatjake,

- nabisterindoj ke jekh but lacho remedjo andar o inkeripen le stabilitatjako ando regiono si e lache relacie maskar e perutne thaj žanindos ke trebal te arakhel pes orsavi tendencija separacijaki le nacionalo minoritatjengi andar o regiono,

- konfirmisarindos ke e probleme so dikhen e chacimata le manušenge save si kotor andar e nacionalo minoritete si legitima butja lile godjate ko internacionalo nivelu thaj palutnes von na si andrutne butja kodole statoske,

- lindos godjate ke o respekto vaš e cacimata le manušenge, save si kotor andar e nacionalo minoritete, sar kotor andar e manušilkane cacimata universalu prinžarde, si jekh vašno faktoro vaš i pacja, i žusticija, i stabiliteta thaj i demokracija le themengi,

- pacjandos ke i internacionalo protekcija le cachimatengi le manušenge save si kotor andar e nacionalo minoritete, kadja sar si von phende ande kado Instrumento, na putrel drom nijekhe aktivitetake kaj te ovel kontra vaš e fundamentalo principurja le internacionalo cacimaske thaj maj but, kontra e suveraniteta, e teritorialo integriteta thaj e themengi politikani independenca,

- prinžarindos e partikularo importance so dikhel o barjaripen le konstruktivo kooperacijako maškar lende ande probleme so si phangle ke nacionalo minoritete thaj ke jekh kasavi

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<sup>663</sup> Centralo Evropaki Iniciativa

kooperacija rodel te vazdel o xatjaripen thaj e pakiv andar savore riga, e amalikane relatije thaj o lacho perutnipen, i internacionalo pacja, i sekuriteta thaj i žusticija,

- sikavindos pengi kondamnacija vaš o agresivo nacionalismo, o rasialo thaj etnikano bimangipen, o antisemitismo, i ksenofobija thaj i diskriminacija kontra orsavo manuš vaj grupo thaj vaš i persekucija pe religijake vaj ideologijake motivurja,

xacjarde pen palal kadala:

#### **Art. 1**

E thema prinžaren o isipen le nacionalo minoritatjengo kadja sar si, dikhindos len sasto kotor andar i societeta kaj von živen thaj garantisaren lache kondicie vaš o vazdipen lenge identitatjako.

#### **Art. 2**

Andar o skopo kadale Instrumentosko, o alav „nacionalo minoriteta“ si te ovel les o xacjaripen jekhe gruposko kaj si maj tikno ando gin de sar i populacija jekhe themeski, saveske membrurja, manuša kodole themeske, si len etnikane karakteristike, religikane vaj chibake, verver katar akalaver manuša thaj si phirabde katar o mangipen te inkeren žibdi pengi kultura, tradicija, religija vaj chib.

#### **Art 3.**

E thema prinžaren kaj e manuša save si nacionalo minoritete si len o cacipen te phiraven pherdeste thaj efektivno penge manuškane cacimata thaj e fundamentalo slobodimata, individualo vaj jekhe thaneste averenca, bi te ovel nijekh felo diskriminacijako thaj ande jekh pherdo sajekhipen anglal e legija. Kodola manuša trebal te šaj te oven lošale katar e cacimata dikhle katar kado Instrumento individualo vaj jekhetaneste averenca thaj te ovel len benefito andar e masure kaj den len kodola cacimata.

#### **Art. 4**

E thema garantisaren o cacipen le manušengo save si andar e nacionalo minoritete te sikaven, te garaven thaj te barjaren pengi etnikani, kulturalo, chibaki vaj religikani identiteta thaj te inkeren, te barjaren pengi kultura ande savore riga.

#### **Art. 5**

I adopcija le specialo masurengi kaj favorizisaren le manušen save si nacionalo minoritete kaj kamen te vazden o sajekhipen maškar kadala thaj o resto le populacijako vaj te len godjate lenge specificno kondicie na-i te ovel lile samate sar diskriminacijako akto.

#### **Art. 6**

E thema trebal te len lache masure te keren protekcija kontra orsave akturja kaj gelen ko vazdipen le violencako karing e manuša vaj e grupurja ande baza le nacionalo, rasialo, etnikani vaj religikani diskriminaciaki, le biamalimaski vaj bikamimaski thaj vi le antisemitismoski.



**Art. 7**

E thema prinžaren e partikularo probleme le romenge. Von den pengo alav te len savore legalo administrativo vaj edukacionalo masure, sar si sikavdo vi ande kado Instrumeto, te dašti garavel pes thaj te barjarel pes i romani identiteta, te lokjaren specifiko masurenca i socialo integracija le manušengi save si roma thaj te den avri savore bitolerancake forme kaj si kontra kasave manuša.

**Art. 8**

Bi te anel pes bilachimata ke demokratikane principurja, e thema, lindos masure opre lengo politikako drom vaš i generalo integracija, našti te žan palal vaj te vazden politike kaj dikhen i asimilacija e manušengi kaj si nacionalo minoritete kontra lengo mangipen thaj trebal te del protekcija kadale manušenge katar orsave akcije kaj gelen karing kasavi asimilacija.

**Art. 9**

Ando kazo le paruimasko le administrativo, žuridikano vaj elektoralo ulavimasko, e thema trebal te len samate ke kasave paruimata, maškar aver kriterija, si te respektisaren e cacimata le manušenge kaj si andar e nacionalo minoritete thaj o eksersiso kodole cacimatengo. Ande orsavo kazo, von trebal te konsultisaren pen, ando akordo le nacionalo legislacijasa, le manušenca kaj si direkto dukhavde anglal te adoptisaren orsavo paruipen kadalestar.

**Art. 10**

Orsavo manuš kaj si andar jekh nacionalo minoriteta si les o cacipen te del duma slobodo ande peski chib vi ando publiko thaj vi privato, vi oralo thaj vi xramosardes.

**Art. 11**

Orsavo manuš kaj si andar jekh nacionalo minoriteta si les o cacipen te thol peske anav caco ande peski chib thaj vi o cacipen te ovel akceptisardo thaj oficialo registrisardo kado caco anav.

**Art. 12**

Orkana ande jekh zona kana o gin le manušengo kaj si andar e nacionalo minoritete aresele jekh semnifikativo nivelo, palal o maj nevo ginipen le manušengo vaj palal aver metode kaj arakhen kado gin, kodola manuša si len o cacipen, othe kaj si šaipen, te uzisaren, palal e nacionalo legislacija, pengi chib ande oralo thaj xramosardi forma, ande lenge kontakturja le publikane autoritetenca le zonake savi si phendi maj opre. Kadala autoritete šaj te den alav parpale, kana si šajpen, sa ande kodoja chib.

**Art. 13**

Palal lengi nacionalo legislacija, e thema dašti te muken, kana trebal pes maškar bilateralo xacjarimata avere themenca kaj si len intereso, specialo le perutne themenca, o xramosaripen ande duj chiba vaj ande maj but chiba le gavenge vaj forurjenge anavenge, le dromenge anavenge thaj avere topografikane indikatorjenge, ande thana kaj o gin le manušengo kaj si andar jekh nacionalo minoriteta aresele, palal o maj palutno ginipen le manušengo, vaj palal aver metode kaj arakhen kado gin, ke jekh semnifikativo nivelo. O sikavipen le semnurjengo, e

inskrIPCie thaj aver similarno informacija kaj si lan privato natura vi ande chib jekhe minoritatjaki, na trebal te ovel subiekto palal specifiko restriKCie, aver de sar kodola kaj si generalo thode ande kado domeno.

#### **Art. 14**

Orsavo manuš kaj si andar jekh nacionalo minoriteta, kaj sikavel pesko religikano slobodipen, si les o cacipen te vakjarel ande peski chib kana rugisarel pes, kana sikavel, kana kerel praktika vaj respektisarel pesko religikano patjabe.

#### **Art. 15**

Orkana o gin le manušengo kaj si andar e nacionalo minoritete, palal o maj nevo ginipen le manušengo vaj palal aver metode kaj arakhen kado gin, aresel ko nivelu le maj bare populacijako ande jekh than, e thema si te vazden o prinžaripen le minoritatjake chibako katar e manuša so keren buti ande lokalo thaj bicentralo administracija. Kerena pes eforturja te arakhen pes, kana si posibilo, butjarne kaj, pašal o prinžaripen le oficialo chibako, žanen mišto vi e minoritatjaki chib.

#### **Art. 16**

E thema prinžaren o cacipen le manušengo kaj si andar e nacionalo minoritete te keren thaj te inkeren penge institucie, organizacie vaj kulturalo thaj religikane asociacie, saven si len cacipen te roden volontaro lovengo ažutimos thaj aver kontribucie sar si o cacipen ke publikani asistenca, palal i nacionalo legislacia.

#### **Art. 17**

E thema prinžaren o cacipen le manušengo kaj si andar e nacionalo minoritete te keren thaj te inkeren penge privatno anglašcole, škole thaj sikavimaske institucie thaj te dašti oven prinžarde palal i relevanto nacionalo legislacia. Kadala institucie šaj te roden publikano lovengo ažutimos vaj aver kontribucie.

#### **Art. 18**

Pašal i oficialo chib kodole themeski kaj trebal te sikljon lan, svako manuš kaj si andar jekh nacionalo minoriteta si te ovel les o cacipen te sikljol peski chib thaj te ovel sikavdo ande peski chib. E thema kerena eforturja te putaren tipurja thaj nivelurja lache andar o publikano siklipen palal i nacionalo legislacija, kozom drom ande jekh than o gin le manušengo kaj si andar e nacionalo minoritete, palal o maj nevo ginipen le manušengo vaj palal aver metode kaj arakhen kado gin, aresel ke jekh uco nivelu. Ando konteksto kaj sikljol pes istoria thaj kultura, ande kasave publikane siklimaske institucie, trebal te oven lache kondicie te šaj sikljol pes i istoria thaj i kultura le nacionalo minoritetengi.

#### **Art. 19**

E thema garantisaren o cacipen le manušengo kaj si andar e nacionalo minoritete te šaj te uzisaren i media ande pengi chib, palal e relevanto themeske regulacie thaj jekhe šajutne lovenge asistencasa. Ando kazo le publikane televizijako thaj le radiosko, e thema si te ovel len griža, kozom drom si o kazo thaj si šajpen, le manušen kaj si andar e nacionalo minoritete te

ovel len o cacipen ko slobodo (putardo) akceso ke kadaja media thaj vi ko keripen kasave programurengo ande penge chiba.

#### **Art. 20**

E thema garantisarena o cacipen le manuŝengo kaj si andar e nacionalo minoriete te participisaren bi te oven diskriminisarde ando politikano, ekonomikano, socialo thaj kulturalo živipen le themeske societajtjako saveske themutne si thaj vazdena e kondicie andar o ekzercico kodole cacimatengo

#### **Art. 21**

E thema meken le manuŝen kaj si andar jekh nacionalo minoriteta te putaren politikane partidurja.

#### **Art. 22**

Ando akordo le žangle themenge politikenca, e thema respektisarena o cacipen le manuŝengo kaj si andar e nacionalo minoritete te participisaren efektivo ande publikane butja, specialo k-o proceso kaj len pen o decizie ando probleme kaj keren lenge bilachipen. Palal sar avel, e thema len godjate e eforturja kaj kerde pes te šaj arakhel pes thaj te keren kondicie te vazdel pes o etnikano, kulturalo, chibako thaj religikano identiteto varesave nacionalo minoritatengo vaš o liben le lacheASUREngo kaj si len korespondento ando specifiko kondicie kasave minoritajtjenge, kadja sar si phendo ande dokumenturja CSCE.

#### **Art. 23**

Svako manuŝ kaj si andar jekh nacionalo minoriteta, kaj respektisarel sar trebal pes i teritorialo integriteta le statoski, ovela les o cacipen te ovel les slobodo thaj putarde kontakturja le manuŝenca andar aver thema kaj si len sajekh etnikani, religikani vaj chibaki identiteta kadale minoritajtjasa. E thema naj te phanden bicacimasa o putardo eksercico kodole cacimatengo. Maj but, e thema vazdena e transfrontiero lacharimata ko nacionalo, regionalo thaj lokalo niveli.

#### **Art. 24**

Svako manuŝ kaj si andar jekh nacionalo minoriteta si te ovel les jekh efektivo remedjo anglal i nacionalo žudiciaro autoriteta kontra orsavo ustjavipen le cacimatengo phende ande kado Instrumento, le kondicijasa kaj kodola cacimata te oven thode ande nacionalo legislacija.

#### **Art. 25**

Ande orsavo than kaj kodola manuŝa kaj si andar jekh nacionalo minoriteta reprezentisaren i mažoriteta le manuŝengi, e thema lena e trebutneASURE soske kodola kaj na-i andar kadaja minoriteta te na ovel len biloŝalimata ande nijekh felo, vi maŝkar i implementacija le protekcijakeASUREngi xramosarde ande kado Instrumento.

#### **Art.26**

Nijekh andar kadala angažamenturja na trebal dikhlo sar kana thol andre jekh cacipen kaj te ovel les implikacija ande orsavi aktiviteta kaj si kontra e fundamentalo principurja le internacionalo cacimaske thaj specialno, le suverano sajekhimaske, le teritorialo integritajtjake thaj le politikane

independencaki le themengi. Khancik andar kado Instrumento na-i te kerel nasul vaš e dutja save si le manušen kaj si andar e nacionalo minoritete sar themutne kodole themenge.

E manuša kaj si andar e nacionalo minoritete respektisarena sakadja, ando eksercico penge cacimatengo, vi e cacimata e averenge, sar si e manuša kaj si andar e mažoriteta le populacijaki kodole themeski vaj andar aver nacionalo minoritete.

#### **Art. 27**

Kado instrumento na-i te anel bilachimata vaš o andrutno cacipen vaj orsave internacionalo xacjarimaske kaj dikhel jekh maj bari protekcija andar e nacionalo minoritete vaj andar e manuša kaj si kotor andar lende.

Kerdo ande jekh kopija ko Torino ando 19-to dives le novembrako, 1994, ande anglikani chib.

**Slovak Version**

# INŠTRUMENT SEI NA OCHRANU PRÁV NÁRODNOSTNÝCH MENŠÍN

Podpísané členské štáty Stredoeurópskej iniciatívy,

- s vedomím, že otázky týkajúce sa národnostných menšín možno uspokojivo riešiť len v skutočne demokratickom politickom rámci založenom na právnom štáte, ktorý je zárukou plného rešpektovania ľudských práv a základných slobôd, rovnosti práv a postavenia všetkých občanov,
- znova potvrdzujúc, že ochrana národnostných menšín sa týka výlučne občanov príslušného štátu, ktorí majú rovnaké práva a rovnaké povinnosti občana ako ostatné obyvateľstvo,
- v presvedčení, že národnostné menšiny sú integrálnou súčasťou spoločnosti štátu, v ktorom žijú, a sú činiteľom obohacovania každého štátu a spoločnosti,
- majú na pamäti, že účinným prostriedkom na dosiahnutie stability v regióne sú dobré vzťahy medzi susednými krajinami a uvedomujúc si nutnosť vyhnúť sa akejkoľvek podpore separatistických snáh národnostných menšín v tomto regióne,
- potvrdzujúc, že otázky súvisiace správami osôb patriacich k národnostným menšinám sú predmetom oprávneného medzinárodného záujmu a z toho dôvodu nie sú výlučne vnútornou záležitosťou príslušného štátu,
- majú na zreteli, že rešpektovanie práv osôb patriacich k národnostným menšinám ako súčasť všeobecne uznávaných ľudských práv je základným činiteľom mieru, spravodlivosti, stability a demokracie v týchto štátoch,
- v presvedčení, že medzinárodná ochrana práv osôb patriacich k národnostným menšinám, ako ju zakotvuje tento Inštrument, neumožňuje konanie v rozpore so základnými zásadami medzinárodného práva, so zvrchovanou rovnosťou, územnou celistvosťou a politickou nezávislosťou štátov,
- uznávajú osobitný význam rozširujúcej sa konštruktívnej vzájomnej spolupráce v otázkach súvisiacich s národnostnými menšinami, a že cieľom takejto spolupráce je podporovať vzájomné porozumenie a dôveru, priateľské a dobré susedské vzťahy, medzinárodný mier, bezpečnosť a spravodlivosť,
- vyjadrujú odsúdenie agresívneho nacionalizmu, rasovej a etnickej nenávisť, antisemitizmu, xenofóbie a diskriminácie proti všetkým osobám alebo skupinám, ako aj prenasledovanie založené na náboženskom alebo ideologickom základe

sa dohodli na nasledujúcom:

## Článok 1

Štáty uznávajú existenciu národnostných menšín ako takých pokladajúc ich za integrálnu súčasť spoločnosti, v ktorej žijú, a zaručujú primerané podmienky na podporu ich identity.

Pre účely tohto Inštrumentu označuje výraz „národnostná menšina“ skupinu počtom menšiu ako zvyšok obyvateľstva štátu, ktorej príslušníci sú zároveň štátnymi občanmi a majú etnické, náboženské alebo jazykové znaky, ktorými sa líšia od zvyšku obyvateľstva, a sú vedení snahou zachovať si svoju kultúru, tradície, náboženstvo alebo jazyk.

## **Clánok 2**

Príslušnosť k národnostnej menšine je otázkou slobodnej individuálnej voľby a s uplatnením alebo neuplatnením tejto voľby sa nesmú spájať žiadne nevýhody.

## **Clánok 3**

Štáty uznávajú, že osoby patriace k národnostným menšinám majú právo úplne a efektívne uplatňovať ich ľudské práva a základné slobody, individuálne alebo spoločne s inými, bez akejkoľvek diskriminácie a v úplnej rovnosti pred zákonom. Dotknutým osobám sa umožní individuálne alebo spoločne s inými uplatňovať práva stanovené v tomto Inštrumente a ťažiť z opatrení na zabezpečenie týchto práv.

## **Clánok 4**

Štáty zaručujú práva osôb patriacich k národnostným menšinám vyjadrovať, zachovávať a rozvíjať ich etnickú, kultúrnu, jazykovú alebo náboženskú identitu a udržiavať a rozvíjať ich kultúru vo všetkých spomenutých aspektoch.

## **Clánok 5**

Prijímanie špeciálnych opatrení v prospech osôb patriacich k národnostným menšinám zameraných na podporu rovnosti medzi nimi a ostatným obyvateľstvom, alebo na zohľadnenie ich špecifických podmienok, sa nebude pokladať za akt diskriminácie.

## **Clánok 6**

Štáty musia prijímať účinné opatrenia na poskytnutie ochrany pred akýmkoľvek činmi podnecujúcimi násilie proti osobám alebo skupinám na základe národnej, rasovej, etnickej alebo náboženskej diskriminácie, nepriateľstva alebo nenávisťi, vrátane antisemitizmu.

## **Clánok 7**

Štáty uznávajú osobitné problémy Rómov (Cigánov). Zaväzujú sa prijať všetky právne administratívne opatrenia alebo opatrenia v oblasti školstva, ktoré predpokladá tento Inštrument v záujme zachovávať a rozvíjať identitu, zlepšovať sociálnu integráciu Rómov (Cigánov) prostredníctvom špecifických opatrení a odstrániť všetky formy intolerancie proti týmto osobám.

## **Clánok 8**

Štáty sa musia zdržať pri prijímaní opatrení v rámci ich všeobecnej integracnej politiky, bez porušenia demokratických princípov, vykonávania alebo podpory politiky zameranej na asimiláciu príslušníkov národnostných menšín proti ich vôli a musia tieto osoby chrániť pred čímkoľvek, čo smeruje k takejto asimilácii.

### **Clánok 9**

Pri zmene správneho, súdneho alebo volebného rozdelenia by štáty mali zohľadniť, aby zmeny okrem iných kritérií rešpektovali existujúce práva príslušníkov národnostných menšín a uplatňovanie týchto práv. V každom prípade by štáty mali podľa ich národných zákonov pred prijatím zmien v tejto oblasti vziať do úvahy názor tej časti obyvateľstva, ktorej sa zmeny priamo týkajú.

### **Clánok 10**

Každá osoba patriaca k národnostnej menšine má právo slobodne používať svoj jazyk v súkromí aj na verejnosti, slovom aj písmom.

### **Clánok 11**

Každá osoba patriaca k národnostnej menšine má právo používať svoje priezvisko a meno v jazyku menšiny a právo na jeho oficiálne uznanie a zápis tohto priezviska.

### **Clánok 12**

Ak v danej oblasti dosiahne počet osôb patriacich k národnostným menšinám podľa posledného sčítania ľudu alebo inej metódy na určenie jeho štruktúry významnú úroveň, majú dotknuté osoby, všade, kde je to možné, právo používať v styku s úradmi v danej oblasti svoj menšinový jazyk slovom aj písmom v súlade s právnym poriadkom štátu. Úrady môžu v rámci možnosti odpovedať v tom istom jazyku.

### **Clánok 13**

V súlade s ich právnym poriadkom môžu štáty umožniť, ak je to potrebné, prostredníctvom bilaterálnych dohôd s inými zainteresovanými štátmi, predovšetkým so susednými štátmi, uvádzanie dvojazyčných alebo niekoľkojazyčných miestnych názvov, názvov ulíc a ďalších miestopisných údajov v oblastiach, v ktorých dosiahol počet osôb patriacich k národnostným menšinám podľa posledného sčítania ľudu alebo pomocou iných metód určovania jeho štruktúry významnú úroveň. Uvádzanie nápisov, označení alebo iných podobných informácií súkromnej povahy aj v jazyku menšiny by nemalo podliehať špecifickým obmedzeniam líšiacim sa od všeobecne uplatňovaných obmedzení v danej oblasti.

### **Clánok 14**

Každá osoba patriaca k národnostnej menšine má pri uplatňovaní náboženskej slobody právo používať svoj jazyk pri liturgii, výučbe, praktizovaní svojho náboženstva alebo náboženských obradoch.

### **Clánok 15**

Všade, kde dosiahne počet osôb patriacich k národnostným menšinám podľa posledného sčítania ľudu alebo inej metódy na určenie jeho štruktúry väčšinu obyvateľstva danej oblasti, budú štáty podporovať ovládanie menšinového jazyka úradníkmi miestnej samosprávy a štátnej správy. Mali by byť uskutočnené snahy získať, ak je to možné, úradníkov, ktorí okrem znalostí oficiálneho jazyka dostatočne ovládajú jazyk menšiny.

### **Clánok 16**

Štáty uznávajú právo osôb patriacich knárodnostným menšinám zriaďovať a udržiavať ich vlastné kultúrne a náboženské inštitúcie, organizácie alebo asociácie, ktoré sú oprávnené v súlade s právnym poriadkom štátu uchádzať sa o dobrovoľné finančné a iné príspevky ako aj verejnú pomoc.

### **Clánok 17**

Štáty uznávajú právo osôb patriacich knárodným menšinám zriaďovať a udržiavať ich menšinové súkromné predškolské zariadenia, školy a vzdelávacie inštitúcie a prípadne dosiahnuť ich uznanie v súlade s relevantnými národnými zákonmi. Tieto zariadenia sa môžu uchádzať o verejné financovanie alebo iné príspevky.

### **Clánok 18**

Napriek potrebe naučiť sa oficiálny jazyk príslušného štátu má každá osoba patriaca k národnostným menšinám právo naučiť sa jazyk svojej menšiny a vzdelávať sa v tomto jazyku. Štáty sa musia snažiť zabezpečiť v súlade s právnym poriadkom štátne školy primeraného typu a stupňa všade tam, kde podľa posledného sčítania ľudu alebo pomocou inej metódy na určovanie jeho štruktúry dosiahol počet osôb patriacich knárodnostným menšinám významnú úroveň. V kontexte výučby dejín a kultúry by sa v takýchto štátnych vzdelávacích inštitúciách mala zabezpečiť primeraná výučba dejín a kultúry národnostných menšín.

### **Clánok 19**

Štáty zaručujú osobám patriacim k národnostným menšinám právo na využívanie médií v ich menšinovom jazyku v súlade spríslušnými právnymi predpismi a s prípadnou finančnou pomocou. V prípade verejnoprávnej televízie a rozhlasu sa štáty zabezpečia, všade, kde je to primerané a možné, osobám patriacim k národnostným menšinám právo na slobodný prístup k týmto médiám, vrátane výroby programov v ich vlastnom jazyku.

### **Clánok 20**

Štáty musia osobám patriacim knárodnostným menšinám zaručiť právo zúčastňovať sa bez diskriminácie na politickom, ekonomickom, spoločenskom a kultúrnom živote štátu, ktorého sú občanmi a podporovať podmienky na uplatňovanie týchto práv.

### **Clánok 21**

Štáty musia osobám patriacim k národnostným menšinám umožniť zakladať svoje politické strany.

### **Clánok 22**

Štáty musia rešpektovať v súlade s ich politikou právo osôb patriacich knárodnostným menšinám na efektívnu účasť na verejnom živote, predovšetkým na procese rozhodovania v záležitostiach, ktoré sa ich týkajú. Z tohto dôvodu štáty berú do úvahy snahu podniknúť s cieľom chrániť a vytvárať podmienky na podporu etnickej, kultúrnej, jazykovej a náboženskej



identity niektorých národnostných menšín prijímaním primeraných opatrení zodpovedajúcich špecifickému postaveniu týchto menšín ako sa predpokladaná v dokumentoch KBSE.

### **Clánok 23**

Každá osoba patriaca k národnostnej menšine má právo s rešpektovaním územnej celistvosti štátu, na voľné a pokojné kontakty s občanmi iného štátu, s ktorými táto menšina má spoločné etnické, náboženské alebo jazykové znaky alebo kultúrnu identitu. Štáty nesmú neprimerane obmedzovať slobodné uplatňovanie týchto práv. Okrem toho budú štáty podporovať cezhraničné kontakty na štátnej, regionálnej a miestnej úrovni.

### **Clánok 24**

Každá osoba patriaca k národnostnej menšine má právo pri porušení práv stanovených v tomto Inštrumente na účinný opravný prostriedok pred štátnym súdnym orgánom pod podmienkou, že tieto práva sú uzákonené v právnom poriadku štátu.

### **Clánok 25**

Ak osoby patriace k národnostnej menšine reprezentujú v danej oblasti väčšinu obyvateľstva, štáty vykonajú potrebné opatrenia zabezpečujúce, aby osoby nepatriace k tejto menšine netrpeli žiadnou nevýhodou, vrátane nevýhody vyplývajúcej z implementácie ochranných opatrení zakotvených v tomto Inštrumente.

### **Clánok 26**

Žiaden zo záväzkov sa nesmie vykladať ako implikujúci právo zapájať sa do akejkoľvek činnosti, ktorá porušuje základné princípy medzinárodného práva a predovšetkým princípy zvrchovanosti, územnej celistvosti a politickej nezávislosti štátov. Tento Inštrument sa netýka povinností vzťahujúcich sa na osoby patriace k národnostným menšinám ako občanov dotknutých štátov. Pri uplatňovaní svojich práv musia osoby patriace k národnostným menšinám rešpektovať práva ostatných osôb vrátane práv osôb patriacich k väčšinovému obyvateľstvu alebo k iným národnostným menšinám príslušného štátu.

### **Clánok 27**

Tento Inštrument nepredstavuje ujmu na ustanoveniach domáceho právneho poriadku alebo ktorejkoľvek inej medzinárodnej dohody, ktoré zabezpečujú širšiu ochranu národnostných menšín alebo osôb patriacich k národnostným menšinám.

*Dané v Turíne 19. novembra 1994 v anglickom jazyku.*

**Slovenian Version****INSTRUMENT SEP ZA ZAŠCITO PRAVIC MANJŠIN**

Države članice Srednjeevropske pobude, podpisnice tega dokumenta, so,

- priznavajoc, da je vprašanja, ki zadevajo narodne manjšine, mogoče zadovoljivo rešiti le v demokraticnem političnem okvirju, ki temelji na vladavini prava in zagotavlja polno spoštovanje človekovih pravic in temeljnih svoboščin, enakih pravic in položaja vseh državljanov,
- ponovno poudarjajoc, da zaščita narodnih manjšin zadeva le državljane določene države, ki bodo imeli enake državljanske pravice in dolžnosti kot ostalo prebivalstvo,
- v prepričanju, da so narodne manjšine sestavni del družbe in države, v kateri živijo, in bogatijo vsako državo in družbo,
- ob upoštevanju dejstva, da dobri odnosi med sosedi učinkovito prispevajo k trdnosti v regiji in zavedajoc se potrebe, da ne spodbujamo k separatističnim težnjam narodnih manjšin v regiji,
- potrjujoc, da imajo vprašanja, ki zadevajo pravice pripadnikov narodnih manjšin, legitimni mednarodni pomen in zato niso izključno notranja zadeva določene države,
- v prepričanju, da spoštovanje pravic pripadnikov narodnih manjšin kot del univerzalne priznanih človekovih pravi predstavlja bistven dejavnik miru, pravčnosti, stabilnosti in demokracije v državah,
- v prepričanju, da mednarodno varstvo pravic pripadnikov narodnih manjšin, kot ga določa ta dokument, ne dovoljujejo nikakršne dejavnosti, ki bi bila v nasprotju s temeljnimi načeli mednarodnega prava, ki govorijo o suverenosti, ozemeljski celovitosti in politični neodvisnosti držav,
- priznavajoc poseben pomen ustvarjalnega sodelovanja med državami članicami pri vprašanjih, ki zadevajo narodne manjšine, in priznavajoc dejstvo, da tako sodelovanje teži k pospeševanju medsebojnega razumevanja in zaupanja, prijateljskih in dobrososedskih odnosov, mednarodnega miru, varnosti in pravčnosti,
- obsojajoc agresivni nacionalizem, rasno in etnično sovraštvo, antisemitizem, sovraštvo do tujcev in diskriminacijo katere koli osebe ali skupine in obsojajoc preganjanja iz verskih in ideoloških razlogov

se dogovorile o naslednjem:

**1. člen**

Države priznavajo obstoj narodnih manjšin kot takih, pri čemer jih obravnavajo kot sestavne dele družbe, v kateri živijo in zagotavljajo ustrezne pogoje za uveljavljanje njihove identitete. Za namene tega instrumenta bo izraz "narodna manjšina" označeval skupino, ki je številčno manjša od ostalega prebivalstva države, katere pripadniki so državljani te države in se po etnicnih, verskih ali jezikovnih značilnostih ločijo od značilnosti ostalega prebivalstva; vodi jih volja po varovanju njihove kulture, tradicij, religije in jezika.

## **2. clen**

Pripadnost narodni manjšini je odvisna od svobodne izbire posameznika; izvrševanje ali neizvrševanje takšne izbire zanj nima nobenih negativnih posledic.

## **3. clen**

Države priznavajo, da imajo pripadniki narodnih manjšin pravico polno in učinkovito uresničevati svoje človekove pravice in temeljne svoboščine, in sicer posamezno ali skupno z drugimi, brez diskriminacije in v popolni enakosti pred zakonom. Te osebe bodo uživale pravico, ki jih predvideva ta instrument, posamezno ali skupaj z drugimi, in bodo koristile ugodnosti, ki izvirajo iz ukrepov, ki jih zagotavljajo te pravice.

## **4. clen**

Države zagotavljajo pravico pripadnikov narodnih manjšin, da izražajo, ohranjajo in razvijajo svojo etnico, kulturno, jezikovno ali versko identiteto in ohranjajo in razvijajo svojo kulturo v vseh pogledih.

## **5. clen**

Sprejetje posebnih ukrepov v korist pripadnikov narodnih manjšin, ki težijo k pospeševanju enakosti med njimi in ostalim prebivalstvom ali k ustreznemu upoštevanju njihovih posebnih pogojev, se ne obravnava kot dejanje diskriminacije.

## **6. clen**

Države bodo sprejele učinkovite ukrepe za zagotavljanje zaščite pred dejanji, ki podžigajo k nasilju proti osebam ali skupinam na osnovi narodne, rasne, etnicne ali verske diskriminacije, sovražnosti ali sovraštva, vključno z antisemitizmom.

## **7. clen**

Države priznavajo poseben problem Romov. Obvezujejo se, da bodo sprejele vse pravne, administrativne ali izobraževalne ukrepe, kot jih predvideva ta instrument, da bi chranile in razvijale identiteto Romov, s posebnimi ukrepi olajšale socialno integracijo oseb pripadnikov romske skupnosti in odpravile vse oblike netolerantnosti proti osebam.

## **8. clen**

Brez škode za demokratična načela se bodo države ob sprejemanju ukrepov v skladu z njihovo splošno integracijsko politiko odpovedale izvajanju ali spodbujanju politike, ki bi težila k asimilaciji pripadnikov narodnih manjšin proti njihovi volji; te osebe bodo zavarovale pred kakršnimkoli dejanjem, ki bi težilo k takšni asimilaciji.

### **9. člen**

V primeru spremembe administrativnih, sodnih ali volilnih okrožij, bi države morale upoštevati, da bodo takšne spremembe med drugim merili upoštevale tudi obstoječe pravice oseb, ki pripadajo narodnim manjšinam, in uresničevanje teh pravic. V vsakem primeru se morajo v skladu z državno zakonodajo pred sprejetjem tovrstnih sprememb posvetovati s prebivalstvom, ki ga te spremembe neposredno zadevajo.

### **10. člen**

Vsak pripadnik ali pripadnica narodne manjšine bo imel-a pravico svobodno uporabljati svoj jezik tako v javnosti kot v zasebnem življenju, ustno in pisno.

### **11. člen**

Vsak pripadnik ali pripadnica narodne manjšine bo imel-a pravico uporabljati svoj priimek in osebna imena v svojem jeziku, kot tudi pravico, da se tak priimek in ime uradno sprejmeta in registrirata.

### **12. člen**

Kadarkoli doseže - po zadnjem štetju ali kaki drugi zanesljivi metodi ugotavljanja - število oseb, ki pripadajo narodni manjšini, na določenem področju pomembno raven, bodo imele te osebe v stikih z javnimi organi na tem področju pravico, kjer koli bo to mogoče, uporabljati v skladu z ustrezno notranjo zakonodajo svoj lasten jezik v ustni in pisni obliki. Ti organi lahko odgovarjajo, kolikor je to mogoče, v istem jeziku.

### **13. člen**

V skladu s svojo notranjo zakonodajo lahko države, po potrebi tudi z dvostranskimi sporazumi z drugimi zainteresiranimi državami, predvsem s sosednjimi državami, dovolijo dvojezicne ali večjezicne oznake krajevnih imen, imen ulic in drugih topografskih znakov na področjih, kjer število oseb, ki pripadajo narodni manjšini, po zadnjem štetju ali drugi zanesljivi metodi ugotavljanja doseže pomembno raven. Za namestitev znakov, napisov ali drugih podobnih informacij zasebne vrste tudi v jeziku manjšine naj ne bi veljale posebne omejitve, razen tistih, ki se splošno uporabljajo na tem področju.

### **14. člen**

Vsaka oseba, ki pripada narodni manjšini in ki uresničuje versko svobodo, ima pravico uporabljati svoj jezik pri caščenju, ucenju ali verskih obredih.

### **15. člen**

Kadarkoli število oseb, ki pripadajo narodni manjšini, po zadnjem štetju ali drugih zanesljivih metodah ugotavljanja doseže vecino prebivalstva na določenem področju, bodo države spodbujale znanje jezika manjšine med uradniki lokalnih in decentraliziranih državnih upravnih služb. Posebno pozornost bi bilo potrebno nameniti kadrovanju uradnikov, ki imajo poleg znanja uradnega jezika zadostno znanje jezika manjšine.

### **16. člen**

Države priznavajo pravice oseb, ki pripadajo narodnim manjšinam, da ustanavljajo in vzdržujejo svoje lastne kulturne in verske ustanove, organizacije ali združenja, ki so v skladu z notranjo zakonodajo upravičene do zbiranja prostovoljnih finančnih in drugih prispevkov kot tudi do javne pomoči.

### **17. člen**

Države priznavajo pravico oseb, ki pripadajo narodnim manjšinam, da ustanavljajo in vzdržujejo svoje lastne zasebne vrtce in male šole, šole in izobraževalne ustanove in da, ce je to mogoče, pridobijo priznanje teh ustanov v skladu z ustrezno notranjo zakonodajo. Take ustanove se lahko financirajo iz javnih sredstev ali drugih prispevkov.

### **18. člen**

Ne glede na potrebo po učenju uradnega jezika zadevne države bo vsaka oseba, ki pripada narodni manjšini, imela pravico, da se uci svoj jezik in da se izobražuje v svojem jeziku. Države si bodo prizadevale za zagotovitev ustreznih vrst in stopenj javnega izobraževanja v skladu z notranjo zakonodajo, kadarkoli na določenem področju število oseb, ki pripadajo narodni manjšini, doseže pomembno raven v skladu z zadnjim štetjem ali drugimi ustreznimi metodami za njihovo ugotavljanje. V kontekstu poučevanja zgodovine in kulture v takšnih javnih izobraževalnih ustanovah bi bilo potrebno zagotoviti ustrezno poučevanje zgodovine in kulture narodnih manjšin.

### **19. člen**

Države zagotavljajo pravico oseb, ki pripadajo narodnim manjšinam, da imajo na razpolago občila v svojem lastnem jeziku, v skladu z ustreznimi državnimi predpisi in ob možni finančni pomoči. Ce sta radio in TV v javni lasti, bodo države zagotovile, kadar koli bo to primerno in mogoče, da imajo osebe, ki pripadajo narodnim manjšinam, pravico do prostega dostopa do takih občil, vključno s produkcijo programov v lastnem jeziku.

### **20. člen**

Države bodo zagotavljale pravico oseb, ki pripadajo narodnim manjšinam, da brez diskriminacije sodelujejo v političnem, ekonomskem, družbenem in kulturnem življenju družbe države, katerih državljani so, in bodo izboljševale pogoje za uresničevanje teh pravic.

### **21. člen**

Države bodo dovolile osebam, ki pripadajo narodnim manjšinam, da ustanavljajo politične stranke.

### **22. člen**

V skladu s politiko zadevnih držav bodo države spoštovale pravico oseb, ki pripadajo narodnim manjšinam, da učinkovito sodelujejo v javnih zadevah, predvsem pri procesu odločanja o stvareh, ki jih zadevajo. Zato države potrjujejo svojo pripravljenost, da sprejemajo ukrepe, ki bodo krepili

etnicno, kulturno, jezikovno in versko identiteto določenih narodnih manjšin in bodo ustrezali specifičnim razmeram teh manjšin, kot to predvidevajo dokumenti KVSE.

### **23. člen**

Vsaka oseba, ki pripada narodni manjšini, bo ob spoštovanju ozemeljske celovitosti države imela pravico do svobodnih in neoviranih stikov z državljani druge države, s katerimi ta manjšina deli etnicne, verske in jezikovne lastnosti ali kulturno identiteto. Države ne bodo neupravičeno omejevale svobodnega uresničevanja teh pravic. Poleg tega bodo države pospeševale cezmejno dogovarjanje na narodni, regionalni in lokalni ravni.

### **24. člen**

Vsaka oseba, ki pripada narodni manjšini, bo imela možnost učinkovitega pravnega varstva pri državnih sodnih oblasteh v primeru kršitve pravic, ki so zapisane v tem instrumentu, pod pogojem, da so te pravice uzakonjene v državni zakonodaji.

### **25. člen**

Na vsakem območju, kjer osebe, ki pripadajo narodni manjšini, predstavljajo večino prebivalstva, bodo države sprejele potrebne ukrepe, da bi zagotovile, da se tisti, ki ne pripadajo tej narodni manjšini, zaradi izvajanja zaščitnih ukrepov, predvidenih s tem Instrumentom, ne bodo znašli v slabšem položaju.

### **26. člen**

Nobene od teh obveznosti ni dovoljeno razlagati na način, da ima kdorkoli pravico do delovanja, ki je v nasprotju s temeljnimi načeli mednarodnega prava in uperjeno zoper suverenost, ozemeljsko celovitost in politično neodvisnost držav. Nobeno določilo v tem Instrumentu ne sme vplivati na izpolnjevanje dolžnosti, ki jih imajo osebe, ki pripadajo narodnim manjšinam, kot državljani zadevnih držav. Osebe, ki pripadajo narodnim manjšinam, bodo ob uresničevanju svojih pravic spoštovale tudi pravice drugih, vključno s pravicami oseb, ki pripadajo vecinskemu prebivalstvu določene države ali drugih narodnim manjšinam.

### **27. člen**

Ta Instrument se sme biti v škodo določilom notranjega prava ali kateregakoli mednarodnega sporazuma, s katerim je zagotovljeno večje varstvo narodnih manjšin ali oseb, ki jim pripadajo.

*Napisano v enem izvodu v Torinu, 19. novembra 1994, v angleškem jeziku.*

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