

How Can Minorities Benefit from Minority Laws in Europe?

National laws on minorities as an instrument for securing social equality

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Outline

- 1. European instruments for minorities' accommodation: brief overview
- 2. National instruments for minorities' accommodation: the case of ex-Yugoslavia countries
- 3. Activities of regional networks and CSOs for ensuring equality



1.

Council of Europe

- European Convention on Human Rights (ECHR)

- Interpreted and applied by the European Court of Human Rights and the European Commission of Human Rights
- Had very limited relevance for the protection of the rights of persons belonging to national minorities.
- Approved in 1950 and entered into force in 1953.
- Article 14 – Prohibition of discrimination
*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, **association with a national minority**, property, birth or other status.*



1.

Council of Europe

- Framework Convention for the Protection of National Minorities (FCNM).

FCNM, Art. 4

- *The Parties undertake to guarantee to persons belonging to national minorities the **right of equality before the law and of equal protection of the law**. In this respect, any discrimination based on belonging to a national minority shall be prohibited.*
- *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.*

Three Council of Europe member states have omitted to sign or ratify the convention – France, Andorra and Turkey.



1.

Council of Europe • European Charter for Regional or Minority Languages (ECRML)

- It entered into force on 1 March 1998. It has been **ratified by twenty-five states**. Another **eight states have signed it**, some of which are expected to ratify soon (Azerbaijan, France, Iceland, Italy, Malta, Moldova, Russia, Macedonia) and **thirteen has not signed nor ratified** (Albania, Andorra, Belgium, Bulgaria, Estonia, Georgia, Greece, Ireland, Latvia, Lithuania, Monaco, San Marino, Turkey)
- The charter refrains from defining the concept of linguistic minorities, since its aim is not to stipulate the rights of ethnic and/or cultural minority groups, but to protect and promote regional or minority languages as such.
- Part II (Objectives and principles pursued in accordance) and Part III (Measures to promote the use of regional or minority languages in public life)
- Countries undertakes to apply the provisions of Part II to all the regional or minority languages spoken within its territory and which comply with the given definition, and in respect of each language specified at the time of ratification, acceptance or approval, they undertake to apply a minimum of thirty-five paragraphs or sub-paragraphs chosen from among the provisions of Part III of the Charter.



1.

European Union

- Treaty on European Union
- Charter of Fundamental Rights of the European Union (CFREU)
- Racial Equality Directive (2000/43/EC of 29 June 2000)

- Consensus politics.
- Addresses discrimination and social inclusion, cultural diversity, Roma issues, and other issues relevant to minorities; however the commitment to initiatives on minorities as such is proven to be unsuccessful.
- In the Charter membership to a national minority is mentioned only as a ground for prohibited discrimination
- Minority protection can be viewed as an outcome of anti-discrimination policies
- The Directive provides a comprehensive legal base from which to address negative discrimination, and facilitates positive discrimination, however, go into detail on the ways to adopt specific measures.
- European Union has never developed a ‘self-conscious minority protection policy’ or adopted a legal instrument expressly aimed at protecting minority rights.
- Protection of minorities is essentially a political criteria.



1.

European Union

- EU Conditionality and national minority laws and policies

- The formulation dates back to the European Summit in Copenhagen in 1993: criteria to be met by the states of Central and Eastern Europe in order to be admitted to the EU.
- ‘*Respect for and protection of minorities*’ is outlined significantly in the Copenhagen political criteria, however in EU laws are not directly translatable into the *acquis communautaire*.
- Progress monitored through Progress Reports
- Monitoring under the section ‘Political criteria’, often referring to the ratification process of the FCNM (expecting from candidate to ratify it prior to EU accession).
- The main issues raised in what concerns the protection of minorities in the PRs are:
 - 1) overall situation;
 - 2) institutional capacity and legal framework;
 - 3) cultural rights (linguistic rights, education); and
 - 4) political participation and representation in public administration.



2.

- Bilateral Agreements

- UN, OSCE and Council of Europe, serve essentially as a basis for the drafting of provisions concerning minorities in bilateral agreements
- *Limits:*
 - ✓ certain minorities may benefit more than other groups from their provisions, because usually state parties are interested in protecting certain kin-groups and not others.
- *Advantages:*
 - ✓ advantage of having the possibility to adapt the general instruments to the needs of their minorities.



2.

• State models

There are at least four fundamental ideological (abstract) models that determine the overall attitude towards arrangements of differences (Roberto Toniatti, 1994; Josef Marko, 1997)

- ❑ nationalistic repressive model:
 - National identity and unity of the population homogeneity
 - In normative terms, official denial of minorities existence
- ❑ 'agnostic' liberal model:
 - "pure" and "orthodox" (Kymlicka, 1995)
 - exclusive attention to individual rights
 - coincidence between nationality and citizenship, diverse groups of citizens cannot exist
 - explicit prohibition of all forms of discrimination
- ❑ 'promotional' model:
 - presence of a dominant national group (the majority) alongside with one or more minority groups
 - recognizes the right to be different
 - include special rights (numerical thresholds, territoriality)
- ❑ multinational model:
 - reflect the diversity of institutionally constituent groups in the organizational structure of the state
 - Territorial division of power; power-sharing
 - Equal, proportional, territorial principles; veto rights



2.

Minorities in the EU Member States

- the case of Italy

- Italy, as a founding EU member represents a particular model for minority rights' protection.
- Around 2.5 million (almost 4.5% of the population), divided into at least 12 different language groups.
- The question of minority was raised only after World War II, following the annexation of South Tyrol by Italy
- *linguistic criteria* as a distinctive feature when defining the term 'minority'
- For a long time, the special provisions laid down by Const. Art. 6 came to fruition only in the statutes of certain special regions – in particular, Trentino-Alto Adige/South Tyrol, Valle d'Aosta and Friuli Venezia Giulia (FVG), and their respective implementing rules - and in the few regional laws approved since the seventies of last century
- Law 15/12/1999 – protection of historical minorities: languages and cultures living in Italy: "...Albanian, Catalan, Germanic Greek, Slovenian and Croatian peoples, and those speaking French, Franco-Provençal, Friulian, Ladin, Occitan and Sardinian".
- In doctrine, three types of protection (differentiation)



2.

- Minorities in the countries of former Yugoslavia

- With the dissolution of Yugoslavia and the newly formed independent states in the Balkan Peninsula the previously settled ethnic communities (nationalities) rise up not as 'new' minority groups but as autochthonous minority groups distinct from each other by language, religion and culture.
- The obligations to respect the signed declarations, conventions and treaties as a consequence of their membership in international governmental organizations (IGOs) such as the UN and CoE, forced these countries to introduce legal measures for human rights protection and in specific to form corpus of minority rights' protection.
- Their aspirations to become part of the EU family put them even more in a position to reform their legal frameworks and adjust them in accordance with the Copenhagen criteria.
- The constant monitoring and evaluation has created a 'peer pressure' for these countries, and in order to be treated equally they are encouraged to change their norms in order to conform to the norms of the IGOs.

2.

Minorities in the countries of former Yugoslavia

- Slovenia:

- General

- In Slovenia, the data on nationality / ethnicity and religion will no longer be collected with the censuses (as of 2011 census)
- Collection of data on ethnic affiliation is defined by Article 7 of the Residence Registration Act: it stipulates that nationality is one of the data that might be declared at the registration or deregistration of residence and change of address.
- Data are collected with the form "Registration/deregistration of permanent residence"

Ethnic affiliation	Proportion
Declared	
Slovenes	83,06
Italians	0,11
Hungarians	0,32
Roma	0,17
Albanians	0,31
Austrians	0,01
Bulgarians	0,01
Bosniacs	1,10
Czechs	0,01
Montenegrins	0,14
Greeks	0,00
Croats	1,81
Jews	0,00
Macedonians	0,20
Muslims	0,53
Germans	0,03
Poles	0,01
Romanians	0,01
Russians	0,02
Russinians	0,00
Slovaks	0,01
Serbs	1,98
Turks	0,01
Ukrainians	0,02
Vlachs	0,00
Others	0,08



2.

Minorities in the countries of former Yugoslavia

- Slovenia:
 - General
 - Linguistic rights

- Special protection for the Italian minority historically established
- The Italian and Hungarian minorities constitutionally recognized
- General constitutional provisions for the protection of the Roma community, complemented with provisions in legislation and specific policies (e.g. regarding education, culture, local government, etc.);
- principle of territoriality (municipality level)
- Article 11 of the Constitution foresees that “[t]he official language in Slovenia is Slovene. In those municipalities where Italian or Hungarian national communities reside, Italian or Hungarian shall also be official language.”
- Salary for those positions for which knowledge of the language of the national community is foreseen increases of 6% in case of active knowledge and of 3% in case of passive knowledge of the language of the national community.
- Minority language (Italian) spoken and understood
- Possibility to have bilingual personal documents
- Use of minority language in public services
- Bilingualism in the toponyms



2.

Minorities in the countries of former Yugoslavia

- Slovenia:
 - Culture
 - Political participation

- “the right to establish organizations [and] to foster ... cultural, scientific and research activities”
- Public institutions founded by Italian and Hungarian minorities in order to meet their needs in the field of culture, can be financed by the state budget within the framework of the funds for the Italian and Hungarian national minorities (under The Exercising of the Public Interest in Culture Act, Art. 31).
- guaranteed representation of the Italian and Hungarian minority in the National Assembly
- *double voting right*: one vote they cast for the election of representatives equally to all other Slovene citizens, and one for the election of the representative of their community.
- The Constitution gives the Italian and Hungarian ethnic communities the right to establish, in the areas in which they live, “autonomous organizations in order to give effect to their rights.”
- Financial means for the activity of self-governing ethnic communities are provided by municipal budget for municipal self-governing ethnic communities and from the state budget for the Hungarian and Italian self-governing ethnic communities



2.

Minorities in the countries of former Yugoslavia

- Slovenia: concerns

- Dispersion of the norms regarding the protection through too many laws.
- Lack of implementation has been noticed also in terms of bilingualism in the administration, legislation and signs (toponyms, different official insignia) and lacking or poorly translated advertising posters.
- The territorial area in which the protection law applies is too narrow
- Low level of satisfaction expressed by the minority associations on the use of the minority language in public services
- Official information issued by the public authorities are not available in the minority language
- Lack of implementation has been noticed also in terms of bilingualism in the administration, legislation and signs (toponyms, different official insignia) and lacking or poorly translated advertising posters
- Public funds for cultural events and activities are sometimes insufficient or sufficient but should be used better
- Not adequate consideration of minorities' interests at national level
- Not adequate representation among the employees in administrative services

2.

Minorities in the countries of former Yugoslavia

- Croatia:
- General

POPULATION BY ETHNICITY, 2011 CENSUS	%
Croats	90,42
Albanians	0,41
Austrians	0,01
Bosniacs	0,73
Bulgarians	0,01
Montenegrins	0,11
Czechs	0,22
Hungarians	0,33
Macedonians	0,10
Germans	0,07
Poles	0,02
Roma	0,40
Romanians	0,01
Russians	0,03
Ruthenians	0,05
Slovaks	0,11
Slovenians	0,25
Serbs	4,36
Italians	0,42
Turks	0,01
Ukrainians	0,04
Vlachs	0,00 (29) 16
Jews	0,01



2.

Minorities in the countries of former Yugoslavia

- Croatia:
 - General

- Croatia is established as the nation state of the Croatian nation and the state of the members of its national minorities
- Supra-national protection directly applicable in the national legislation following a ratification of international conventions and charters; bilateral agreements bilateral agreements signed between the Croatia and Italy, Hungary, Montenegro, Serbia and Macedonia; the Constitution and the Constitutional law on the rights of national minorities in Croatia and other relevant laws concerning the rights of the minority groups living in the country.
- II seasons: before (bilateral agreement between Italy and Croatia from 1996) and after 2000 (reform of Constitutional law)
- term 'national minority' as a group of Croatian citizens *traditionally* settled on the territory of Croatia having ethnic, linguistic, cultural and/or religious characteristic different from the rest of the citizens in Croatia and have a wish to maintain those characteristics



2.

Minorities in the countries of former Yugoslavia

- Croatia:

- Linguistic rights and culture
- Political participation

- Minorities specific rights: 1) to use their family and first names in the language they use; 2) to have the forms for their ID cards printed and completed in their language; 3) to use freely their language and script privately and in public; 4) to be educated in their mother language.
- A threshold of 1/3 of the population in the territory of a local self-government unit is established (under Art. 12(1) of the Const. Law) for an official use of a minority language.
- Reserved seats in legislative and other bodies of government and local and self-government units. The number depends on the percentage of a national minority in the total population.
- Minorities accounting less than 1.5% have the right to vote for five deputies within their own special constituencies (more than 1,5% min 1 max 3 seats) = 8 reserved seats for minorities.
- Right to representation in the representative bodies of local and regional self-government units
- In self-government units election of min. 1 member of minority is guaranteed if the minority accounts for more than 5% and less than 15% of the population (in that unit). The n. of members of a representative body is achieved following the proportional representation principle.



2.

Minorities in the countries of former Yugoslavia

- Croatia:

- Minorities self-governments

- Concerns

- Minority self-governments can be elected in self-government units where members of a national minority have at least 1.5% share in the total population, or where more than 200 members of a national minority are resident, or in the area of a regional self-government unit where more than 500 members of a national minority are resident.
- Gaps have been identified in the daily implementation of actual bilingualism, in state administrations, including public services
- Insufficient funds for cultural activities for some minorities: Italian and Albanian associations

2.

Minorities in the countries of former Yugoslavia

- Serbia:
- General

POPULATION BY ETHNICITY, 2011 CENSUS	%
Serbs	83,32
Albanians	0,08
Bosniaks	2,02
Bulgarian	0,26
Bunjevci	0,23
Vlachs	0,49
Goranci	0,11
Yugoslavs	0,32
Hungarians	3,53
Macedonians	0,32
Muslims	0,31
Germans	0,06
Roma	2,05
Romanians	0,41
Russians	0,05
Ruthenians	0,20
Slovaks	0,73
Slovenians	0,06
Ukrainians	0,07
Croats	0,81
Montenegrins	0,54
Other	0,24
Did not declare	2,32



2.

Minorities in the countries of former Yugoslavia

- Serbia:
 - General
 - Linguistic rights

- Serbia rests on the principles of liberal civic democracy and multiculturalism
- A catalogue of minority rights contained in the Constitution.
- bilateral agreements signed with four neighboring countries: Croatia, Macedonia, Hungary and Romania.
- Serbia guided by the desire to meet all requirements set by the international community
- defines a national minority by using descriptive definition, without explicitly specifying minorities that are entitled to legal protection
- right to public expression of national affiliation and rests on the principle of voluntary self-identification as the key criterion for affiliation of individuals with a national minority
- Const. Art. 79, guarantees to persons belonging to national minorities the right to preserve and develop national, ethnic, cultural and religious distinctive features...
- If the n. of persons belonging to national minorities reaches 15 % of the total population in the city / municipality, the assembly has to harmonize its statute with statutory provisions and introduce the language and script of the minority into official use. 21



2.

Minorities in the countries of former Yugoslavia

- Serbia:

- Culture

- Political participation

- cultural autonomy to national minorities and enables them to elect their **national councils**
- national councils of national minorities as the form of cultural autonomy body
- Their role: represent minorities in respect of official use of language, education, public information in the language of the minority, culture, and participate in decision-making or decide on issues in these fields, as well as establish institutions in these fields.
- The main activities in areas inhabited by minority ethnic groups are taking place across cultural - artistic associations, and rarely through the institutions established by local government authorities
- Council for National Minorities (advisory body to the Government): representatives of national councils of national minorities are members
- At local level: Council for Interethnic Relations
- national minority party may be founded by a thousand adult, citizens of Serbia, while the "national" parties require ten thousand.
- list needs to win 0.4% of the total votes in order to secure 1st MP



2.

Minorities in the countries of former Yugoslavia

- Serbia: concerns

- appropriate mechanisms for ensuring the implementation of adopted standards are missing
- difference in the level of implementation of minority rights throughout the country
- local government assembly does not want to amend its charter so that a minority language can be introduced in official use.
- Minorities do not recognize diversity in their own communities (Croats and Bunjevci, animosity between Roma, Egyptian and Ashkali, and conflicts within the Bosniak and Vlach national minorities).
- insufficient organization and limited technical and financial capacity of national councils of certain ethnic minorities, especially those less numerous
- national councils are neither direct nor indirect budget users, which prevents budgetary control over their work
- problems in achieving legally regulated procedure of election of national councils
- requirements for nominating candidates' list; minority parties must provide ten thousand signatures for their list to be established
- Mandates are distributed by use of method of highest quotients (the so-called D' Hondt system);

2.

Minorities in the countries of former Yugoslavia

- Macedonia
- General

- Constitutionally recognized different groups (1991 – as nationalities; after 2001: peoples)

	1994	2002
Macedonians	66.6%	64.18%
Albanians	22.7%	25.17%
Turks	4.0%	3.85%
Roma	2.2%	2.66%
Serbs	2.1%	1.78%
Muslims	0.8%	/
Vlachs	0.4%	0.48%
Boshniaks	/	0.84%
Other	1.20%	1.04%



2.

Minorities in the countries of former Yugoslavia

- Macedonia
- General
- Linguistic rights
- Culture

- International instruments partly ratified
- EU Conditionality as pressure
- 1993-2001: NGO involvement (Europeanization)
- Partly implemented power-sharing model (3 out of 4 elements of the original Lijphart's consociationalism are visible)
- Direct relationship between majority (and the state) and the biggest minority group
- Ohrid Framework Agreement and subsequent constitutional amendments and laws
- Threshold for use of minority language at state and local level (20%)
- Bilingualism at state level; public administration; juridical institutions; in certain self-government units
- Equitable representation in public administration



2.

Minorities in the countries of former Yugoslavia

- Macedonia

- Political Participation

- Since 1992, governments have been created by Macedonian-Albanian party coalitions, including at least one party of Albanians.
- The other ethnic groups are not deemed “significant” segment (10 % in total). They do not participate in the power sharing arrangements, although they do find their place in the over-size government coalitions frequently
- Smaller minorities enter in the parliament either as members (leaders) of ethnic parties placed on a list of established pre-electoral coalitions with Macedonian parties or on the lists of basically Macedonian parties as party-members.
- No guaranteed representation of the smaller communities in the parliament
- This “voluntary” executive power-sharing is perceived as a feature of integrationist theories and it could be accepted as such in Macedonia until 2001.
- Double-majority voting for laws which concern minorities
- Committee for Interethnic relations (Parliament); all minorities represented
- Commission for relations between communities (at local level)



2.

Minorities in the countries of former Yugoslavia

- Macedonia: concerns

- Equality guaranteed differentially (Roma discriminated in different areas)
- Instead of promotion goes to bi-nationalism
- Smaller minorities not adequately included in decision-making process
- Inter-ethnic antagonism
- Discrepancy between programs and action during pre-electoral and government coalition-building (political bargaining not favorable for minorities)
- Segregation of the electorate, along ethnic lines
- Current political crises not favorable for minorities



3.

Activities of regional networks

- IPA Adriatic project

Objective:

- joint strategies and approaches in the Adriatic Countries for the promotion of the equality and non-discrimination culture, as a basic value for the peaceful coexistence of all citizens, without distinction of race, religion and ethnic origin.

- SIMPLE (Strengthening the Identity of Minority People Leads to Equality) was financed by the IPA Adriatic CBC Programme 2007-2013 under the Priority 1 - Economic, social and institutional cooperation (Measure 1.4 - Institutional Cooperation) with duration: March 2011-February 2014.
- Thematic areas:
 1. The multilingualism as a tool for the accessibility and fairness of public services;
 2. Ethnic identity as a resource for the local development;
 3. The cultural identity of minorities for a multi-cultural education system;
 4. Multicultural information and media for an intercultural society;
 5. Preventing and combating the social discrimination and violence against women of minorities groups.
 6. The project applied a "multilevel governance" approach to face all the aspects linked to the strengthening of a multiethnic society based on the principle of the diversity coexistence.



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Activities of regional networks

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Objective:

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- *Project Steps:*

1. Survey; Analysis, Action Plan
2. joint strategies for the definition of governance systems on specific areas (multilinguism, local development, education, information and media, violence and discrimination against women)
3. preparation of thematic Guidelines describing the concrete organization of the services in the different Adriatic Countries

- *Project Pilot Actions (Results):*

1. Multilingual Supporting Agency (Region of Istria, Croatia);
2. Multiethnic Economic Development Agency (Municipality of Durres, Albania);
3. Intercultural Education Supporting Agency (Ministry of Human and Minority Rights of Montenegro);
4. Adriatic Multicultural Information & Media Agency (Italian Union of Capodistria/Koper, Slovenia);
5. Minority Women Protection and Non-Discrimination Agency (Region of Abruzzo, Italy).
6. Joint training for professionals of public and private organizations in all project Countries



3.

Activities of CSOs

- examples from Macedonia

- number of NGOs oriented toward the protection of the rights of the Albanians and Roma.
- Most NGOs in Macedonia operate within the different ethnic communities, and not on an inter-ethnic basis.
- Albanian NGOs mostly focus on: education, election monitoring, human rights and legal assistance, and the promotion of inter-ethnic peace.
- Roma NGOs mostly focus on: education, cultural dialogue, cultural events and human rights (discrimination cases)
- NGOs are divided along ethnic lines, which can hinder efforts to promote inter-ethnic dialogue.
- High concentration of NGOs in the capital city and urban areas, with NGOs being almost absent in the rural areas
- NGOs have insufficient financial resources to achieve their goals.
- The lack of diversification of financial sources and the strong dependence on international or foreign sources is especially problematic.



3.

Activities of CSOs

- examples from Macedonia:
 - Roma minority

- Face often discrimination according to their ethnic belonging
- Law for prevention and protection against discrimination in 2010
- Discrimination and Freedom of Movement
- EU pressure vs. state protection
- European Commission's Visa Liberalization Roadmap:
 - *Republic of Macedonia should guarantee its citizens freedom of movement, which should not be burdened with unjustified restrictions and discriminatory practices, and that the Republic of Macedonia should duly investigate all cases of ethnically motivated incidents caused by police officers in regard to freedom of movement, including practices targeting members of minority communities in Macedonia.*
- In practice: border profiling, severe discrimination and breach of law.
- Civil Society actions: Project "Combating discrimination through strategic litigation - Strengthening the role of civil society organizations"



3.

Activities of CSOs

- examples from Macedonia:
 - Roma minority
 - First court decision establishing discrimination (2014)

- Civil Society actions: Project "Combating discrimination through strategic litigation - Strengthening the role of civil society organizations" (European Roma Right Centre and Macedonian Young Lawyers Association)
- Breach of Art. 8 of the Law on border control (crossing state borders) and Art. 9 and Art. 27 of the Constitution "right of free movement" and the right to "equality"
- Important ruling for the rule of law in the RM for two reasons:
 1. First court decision that establishes discrimination based on the Law on Prevention and Protection against Discrimination
 2. Judicial process is determined for the pervasive unfair practice of border officials to restrict freedom of movement of a whole group of citizens with unjustified assumption to abuse the visa regime and will seek asylum in one of the EU Member States.
- Two initiatives to the Constitutional Court : 1) to assess the constitutionality of the new amendments to the Law on Travel Documents; and 2) protection of freedoms and rights under Article 110 paragraph 3 of the Constitution.



3.

Question:

Can civil society contribute to the efficiency of minority-related legislation?

- Protecting group rights?
- Protecting individual rights?
- NGOs as catalysts:
 1. stimulate discussion on minority issues
 2. advocacy - influencing domestic processes to change legislation, policy and practices
 3. Monitoring implementation (involved in preparation of the State Report for their country; through the participation of civil society in human rights reporting
 4. Cooperation with official State Report process (some negative consequence are possible)
 5. Submission of information and preparation of alternative reports
 6. forming a coalition to prepare an alternative report about the implementation international and national instruments
- NGOs with sufficient resources can have longer-term, complementary strategy