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Linguistic Rights of Minorities.
A comparative Analysis of the Existing Instruments for
the Protection of the Linguistic Rights of Minorities at
International and European Levels

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ABSTRACT

Realization of linguistic rights is a matter of concern for minorities. Language is a fundamental part of minorities' identity. Minorities regard language not only as a medium of communication. On the contrary, it enshrines their values and views of the world. Denial of linguistic right not only contributes to a process of linguistic assimilation and languages loss, but also to the loss of the collective identity of members belonging to a minority. It follows from this that the right to express oneself and to communicate with others in one's own language, both in private and in public, is fundamental for minorities.

Given the centrality of language to minorities' identity, this paper attempts to understand the present state of minority linguistic rights in international law and European law. Nowadays many international and European documents contain provisions for the protection of linguistic rights. More often than not, however, international instruments, although legally binding, produce little practical effects.

A comparative analysis of the practice at the international, i.e. within the framework of the United Nations, Council of Europe and Organization for Security and Co-operation in Europe, and European levels reveals different approaches. The European Union devotes particular attention to minority rights. During the pre-accession process, candidate states are indeed required to implement the rights of minorities effectively, in order to become eligible to join the Union. Differently to international practices, the Union has the power to push states to adopt appropriate measures to protect and promote the linguistic identity of minorities. The experience of Latvia's accession process towards the EU is offered as a model for demonstrating that the Union is the only organization that is able to accommodate minorities' demands to protect their linguistic rights and, indirectly, their separate identity.

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INTRODUCTION

The presence of national minorities in almost all states is a reality of modern time. Members belonging to a national minority share ethnic, religious and linguistic characteristics, which distinguish them from the rest of the population of a state. These characteristics are fundamental to the maintenance of their identity. Language, in particular, is an essential component of collective and individual identity.

Language is not just a tool for communication: it occupies an important place in a person's life. The use of one's own language represents one of the principal means by which a person can preserve her/ his identity. When a person uses her/ his language, she/ he is expressing her/ his identity. With the languages loss, minorities may lose their identity and eventually disappear. For a minority, its language is also important to transmit its culture and values. Better still, language is an essential component of culture.

For this reasons, on the part of minorities have emerged claims asking for the protection of their languages. Linguistic rights are therefore particularly significant to minorities, willing to maintain their distinct cultural identities. The knowledge and the possibility of employing minority languages in everyday life is crucial to prevent languages loss.

Awareness of the importance of languages to minority has emerged also among states. So much so that during the preparation of the draft of what in 1948 became the *Convention on the Prevention and Punishment of the Crime of Genocide*, the United Nations discussed about linguistic and cultural genocide, and were regarded as crimes against humanity. Unfortunately, in the General Assembly, Article 3 on linguistic and cultural genocide was not approved by some states and it was thus not included in the final text of the convention. However, it remains a definition of linguistic genocide; it is defined as “prohibiting the use of the language of the group in daily intercourse or in schools, or the printing and circulation of publications in the language of the group.” It is striking to note that, however, some other states were prepared to accept Article 3.

Limiting or prohibiting an individual's right to use her/ his language is a policy of linguistic genocide. The alternative to linguistic genocide is granting linguistic rights. An adequate language policy should aim at maintaining and promoting linguistic diversity and, at the same time, preventing linguistic assimilation. Acknowledging linguistic diversity does not imply the recognition of linguistic rights to the speakers of the minority

languages concerned, but an adequate system of language protection is needed. It is now generally admitted that a mere regime of tolerance is not enough. It is as well widely accepted that minority languages need special rights.

Nowadays, the international community is increasingly aware of the linguistic differences and concerned with the setting of standards in this field. The main international institutions, namely the United Nations, the Council of Europe, the Organization for Security and Co-operation in Europe and the European Union, have developed minority languages protection provisions in response to the demands of minorities. Many are the provisions covering the language issues in both international and European instruments. Unfortunately, more often than not, those provisions do not produce any practical effect. This is true, especially for international provisions, which often put a mere moral pressure on states to adopt special measures. It is within the framework of the European Union that those provisions produce significant effects. The Union has indeed based the accession to the European community on the respect for minorities and their rights, thus the threat of non-membership is crucial to push states to adopt special measures to accommodate minority rights protection.

The aim of this paper is to prove that only the European Union is able to push state to translate provisions contained in international treaties and covenants into state policy and effectively improve minorities' life. To support this thesis it will be outlined Latvia's process towards accession to the European Union. In fact, Latvia harmonized its domestic legislation to international standards in the field of minority protection to join the Union.

Building on these premises, this paper is organized as follows. The first part relates the theoretical background of minority linguistic rights. Chapter one focuses on the concept of "minority." Any discussion on the current status of minority linguistic rights must be preceded by a general understanding of this term. The controversy of the definition of a minority has been the subject of a number of studies. However, up until now there is no universally accepted, legally binding definition of the term. The efforts made, in any case, have contributed to an understanding of the term. First, the elements that describe a group as a minority will be examined. Then the chapter deals with the issue on identification of minorities as understood by international law and European law. An overview of the proposed definition within the framework of the United Nations, the Council of Europe, the Organization for Security and Co-operation in Europe and the

European Union shows that the distinguishing characteristics are the essential component of any attempt of to define the term. At times, a difference is made between ethnic, linguistic and religious minorities, as if there exist three different categories of minorities; at other times, it is assumed that the classification “national minority” equates with any minority that has ethnic, religious or linguistic differences. For the purpose of this paper, minorities are referred to as national minorities, that is a group whose members possess all of the identifying characteristics of minorities, namely ethnicity, culture and language, which distinguish them from the majority population.

To provide a better understanding of linguistic rights, chapter two focuses on their content. International standards, formulated by international organizations, specify in detail the contents of these rights related to the use of minority languages in private and in public spheres, orally and in writing. A difference is made between linguistic human rights and promotion oriented linguistic rights: while the former are granted to anyone, the latter are specifically formulated for the benefit of minorities, in order to preserve their languages. All situations related to language issues will be exterminated: access to media, administrative authorities and provision of public services, judicial authorities, economic and social life. Particular emphasis will be put on education and the role of minority languages in the educational curriculum, as education is fundamental to maintenance of individual identity. Education systems play a major role in protecting minority languages: if a language is not taught, it is in jeopardy. Schools are, in fact, the place where linguistic assimilation occurs, and this is what states should prevent. This chapter will also define the concept of language and highlight the importance and significance of their languages for minorities and their identity. In this regard, it will also be highlighted the importance of the right to use one's own name.

The second part contains an overview of the existing international and European instruments for the protection of minority linguistic rights. Chapter three presents the instruments adopted by the United Nations, the Council of Europe, the Organization for Security and Co-operation in Europe and the European Union. The United Nations legal instruments generally refer to the human rights, but some of them contain provisions for the protection of linguistic rights. In particular, the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights* and the *Convention on the Rights of the Child* will be analyzed. The only UN instruments

entirely devoted to minorities is the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*. Although it is not a legally binding instrument, it contains important rights covering language use.

The Council of Europe has played a major role in setting standards for language protection. Particular emphasis will be put on the *European Charter for Regional or Minority Languages*; even though its aim is to safeguard minority languages, it is indirectly an important instrument that provides minorities with advanced rights related to language use in the public sphere. *The Framework Convention for the Protection of National Minorities* also contains some provisions for the benefit of minority languages.

Similarly, the Organization for Security and Co-operation in Europe has set important standards in this field. It will be shown that, given the OSCE's nature, most of its documents refer to languages as an important tool to guarantee stability in the territories of a state. OSCE's documents' aim is to provide guidance to states on how best to ensure the linguistic rights of national minorities on their territories: they do not impose obligations on state. Particular emphasis will be put on the *Oslo Recommendations regarding the Linguistic Rights of National Minorities* and the *Hague Recommendations Regarding the Education Rights of National Minorities*.

The European Union's approach towards minority languages is particularly important. Differently from international organizations, the European Union has made respect for and protection of minorities an unavoidable prerequisite for states willing to join the Union. The granting of minority rights is one of the Copenhagen criteria, which any state willing to become an EU member state must comply with. The chapter will show that although United Nations' and Council of Europe's covenant and conventions oblige signatory states to adopt special measures, states rarely create specific language policy for minorities. On the contrary, the threat of non-membership is a persuasive tool, which is able to influence states' policies.

Part three address the case study, to support the thesis of this paper. Chapter four concentrates on Latvia's accession process to the Union to show how the European Commission put pressure on states to ensure that minority rights are accommodated. This chapter concentrates in detail on the European Commission's activities to guide and monitor states' compliance with the Copenhagen criteria. The chapter will also look into

the status of Latvia's Russian minority and examine the protection of its languages rights under the Latvian domestic regimes.

The conclusion aims at highlighting the reasons why more often than not provisions concerning minorities remain without effects. It, once again, stresses the fact that if a language is not safeguarded and taught, the linguistic heritage of a minority is in jeopardy.

PART I – THEORETICAL FRAMEWORK

CHAPTER ONE

IDENTIFICATION OF MINORITIES

SUMMARY: 1.1 Definition of concept minority; 1.1.2 The objective and subjective components of the definition of minority; 1.2 Definition of the concept minority on the international level; 1.2.1 The United Nations; 1.2.2 The Council of Europe; 1.2.3 The Organization for Security and Co-operation in Europe; 1.3 Definition of the concept minority on the European level; 1.3.1 The European Union.

1.1 Definition of concept minority

Despite the growing number of minority groups, there is no single, widely accepted definition of the concept of “minority,” neither at the international level, nor at the European level. This is because the term “minority” is interpreted differently in different societies and, consequently, there is not a consensual approach to the concept itself. All attempts to adopt a universally acceptable definition have failed and, therefore, the notion of “minority” remains blurred. In general, the term refers to a group of people with specific characteristics that distinguish them from the rest of society they live in, but the problem lies in the complexity of determining which these characteristics are.

There are two important reasons for the difficulty to arrive at a universally accepted definition of minority: the complexity of the minority phenomenon and the fear of states concerning the consequences of the recognition of minorities and the ensuing rights.

Many states impede the process of defining the term “minority” because the lack of an established definition gives them an excuse to refuse the existence of minorities in their own territories. States are reluctant to recognize the existence of minorities because they want to avoid granting them special rights: states fear that the acknowledgment of

minority rights will lead to an escalation of nationalistic movements and finally to the disintegration of the state integrity.

Regarding this issue, there are two schools of thought. There are those who emphasize that the lack of a universally accepted definition “is an impediment which appears insurmountable”¹ and that a precise definition is essential to identifying the persons who are entitled to minority protection. In opposition, there are those who claim that it is not necessary to formulate a precise minority definition,² since the instruments to protect minorities “function perfectly well without precisely defining the term”³ as it is clear “from its classical meaning”⁴ to which groups the term refers in concrete cases. On this matter, it has to be said that it is often stressed that the existence minorities “is a matter of fact”⁵ and not of law, definitions⁶ or any decision by the state.⁷

The controversy on the definition of minorities has induced some scholars to question the relevance of a precise definition. According to them, the definition should be sufficiently precise but, at the same time, sufficiently flexible. It should be precise to prevent states from avoiding their obligations and flexible to avoid the exclusion of some individuals from the minority status. On the other hand, some states prefer the definition “to be restrictive so that large trenches of their population do not fall within the definition.”⁸

The difficulty lies also in the fact that the concept is inherently vague and ambiguous, and this is because the term is intrinsically relative. It could be argued that minorities as such do not exist, but rather there exist social groups which, on the basis of a shared identity, establish relations with another group, which comes to constitute the

¹ B. Uddin Khan and M. M. Rahman, *Protection of Minorities: Regimes, Norms and Issues in South Asia*, Cambridge Scholars Publishing, 2012, p.7.

² European Commission for Democracy through Law (Venice Commission), *Report on Non-Citizens and Minority Rights*, Venice, 15-16 December 2006, p.5.

³ UN, Report of the Working Group on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities, 1991, p.3.

⁴ Ibid.

⁵ High Commissioner on National Minorities, Keynote Address of Mr Max van der Stoep CSCE High Commissioner on National Minorities at the CSCE Human Dimension Seminar on “Case Studies on National Minority Issues: Positive Results,” Warsaw, 24 May 1993.

⁶ Permanent Court of International Justice, *The Greco/Bulgarian Communities*, Series B, Advisory Opinion No. 17, 31 July 1930.

⁷ UN, Human Rights Committee, *General Comment 23 on Article 27 (Rights of Minorities)*, 8 April 1994. Paragraph 5.2 states: “the existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria.”

⁸ Uddin Khan and Rahman, *Supra* note 1, p.1.

majority.⁹ Furthermore, the phenomenon is so complex that the variety of situations makes this concept even more muddy to the point that, arguably, no definition “would ever be able to provide for the innumerable minority groups that could possibly exist.”¹⁰

It is understandable that this complex situation does not facilitate the outlining of an unequivocal definition but a review of several proposals of definition does reveal that there are certain elements that recur, some of which are objective, others subjective and which any definition has to include.¹¹ The following paragraphs will focus on the objective and subjective criteria that have been proposed as possible constitutive elements in the definition of a minority.

1.1.2 The objective and subjective components of the definition of minority

The objective and subjective factors that will be described in this paragraph cover most possible situations of minorities. The objective factors refer to the existence of a shared ethnicity, culture, language or religion; in this sense, these factors can be regarded as distinguishing features. These factors include also to the numerical inferiority of the group, its non-dominant position and the citizenship requirement. The subjective factors imply that individuals identify themselves as members of a minority group, and have the intention to preserve their distinguishing characteristics and their identity. According to some scholars, also the recognition by state has to be considered as an essential feature of the concept.

The first marker is the numerical inferiority,¹² since almost every attempt to conceptualize the notion of 'minority' is based on a presupposition that a minority is numerically smaller. Indeed, a group has to be less numerous than the rest of the population of a state in order to qualify as a minority. However, it would not be reasonable to consider a group that consists of two persons as a minority and grant them the

⁹ R. Toniatti, *Minoranze e minoranze protette: modelli costituzionali comparati*, in Bonazzi and Dunne (eds.), *Cittadinanza e diritti nelle società multiculturali*, Bologna, il Mulino, 1994, p.283.

¹⁰ J. Rehman, "The Weaknesses in the International Protection of Minority Rights", *Kluwer Law International*, Hague, 2000, p.14.

¹¹ UN, Office of the High Commissioner for Human Rights, *Promoting and Protecting Minority Rights. A Guide for Advocates*, Geneva and New York, 2012, p.7.

¹² Some scholar claim that the term “inferior” has a negative connotation, although used to indicate the numerical minority position of a group. For instance, Capotorti in its definition of “minority” uses the word “smaller” instead of “inferior.”

concomitant minority rights.¹³ Consequently, a numerical threshold of this numerical inferiority has to be formulated. However, it is complicated to determine a numerical threshold or a minimum percentage because “each specific situation should indeed be judged on all its concrete characteristics.”¹⁴ In this respect, it is now well established that a minority must include a sufficient number of persons to be recognized as a distinct part of the society.¹⁵ It is relevant to say that neither on the international level, nor on the European level the reference “the rest of population of the state” is allowed at a sub-national level. This means that the state is the exclusive point of reference and minorities cannot be determined in comparison with the population at sub-national level within a state.¹⁶ If there is no clear majority, for instance in multi-ethnic states, the expression “the rest of the people” can be used to refer to the aggregate of all minority groups of the population of the state.¹⁷

The next criterion is that the group has to be in a non-dominant position in the society. Minorities are a political and sociological reality and their situation is based on the degree of political participation and social inclusion. Non-dominance, indeed, should not be interpreted only as a reference to control of political powers. Some scholars contend that a group, to be a minority, should have a weaker position also in its economic, social and cultural status. This criterion can be found in most definitional proposals because it is generally considered to be a fundamental defining feature of a minority.

The essential defining feature of a minority, however, are specific distinctive characteristics, not possessed by the majority of the population, that constitute its identity. These differing characteristics mark the members of group as a minority and distinguish them from the rest of the society they live in. According to most definitions, the features that differentiate a group from the others can be ethnic, religious or linguistic characteristics. It is important to note that there are different type of minorities. A

¹³ K. Henrard, "The Interrelationship between Individual Human Rights, Minority Rights and the Right to Self-determination and its Importance for the Adequate Protection of Linguistic Minorities", *The Global Review of Ethnopolitics*, Vol. 1, No. 1 (2001), p.41.

¹⁴ *Ibid.*

¹⁵ UN, Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, 1953, cited in Uddin Khan and Rahman, *Supra* note 1, p.4.

¹⁶ The only exception is the definition provided in Recommendation 1201 by Parliamentary Assembly of the Council of Europe.

¹⁷ Uddin Khan and Rahman, *Supra* note 1.

minority can be classified as belonging to the ethnic, religious and linguistic category but it is not always that simple, since these categories tend to overlap each other.

The citizenship requirement as a precondition for enjoying minority rights has been a long-debated issue and there is still no general consensus on whether it is a necessary element of minority definition. The definitions of minorities as offered by some scholars require citizenship in the state concerned as part of the definition.¹⁸ The requirement of citizenship for the enjoyment of special rights also features in the constitution of many states. It means that persons need to have citizenship in order to enjoy minority rights. Thus, all non-citizen residing on the territory of a given state, namely refugees, immigrants and foreign citizens, who may arguably be regarded as minorities, are excluded. However, “a group can constitute a minority even if its members have not (yet) obtained citizenship”¹⁹ and its members should have access to minority rights.

In this regard, the United Nations Human Rights Committee, in its *General Comment No. 23* on Article 27 of the *International Covenant on Civil and Political Rights*,²⁰ stresses that minority protection may not be restricted to citizens alone. The Committee spelled out in paragraph 5.1:

[...] the persons designed to be protected are those who belong to a group and who share in common a culture, a religion and/or a language. Those terms also indicate that the individuals designed to be protected need not be citizens of the State party. [...] A State party may not, therefore, restrict the rights under article 27 to its citizens alone.'

Paragraph 5.2 states:

'Article 27 confers rights on persons belonging to minorities which "exist" in a State party. [...] it is not relevant to determine the degree of permanence that the term "exist" connotes. Those rights simply are that individuals belonging to those minorities should not be denied the right, in community with members of their group, to enjoy their own culture, to practice their religion and speak their language. Just as they need not be nationals or citizens, they need not be permanent residents. Thus, migrant workers or even visitors in a State party constituting such minorities are entitled not to be denied the exercise of those rights.'

¹⁸ See the definitions forwarded by Francesco Capotorti and Jules Deschênes.

¹⁹ Supra note 2, p.25.

²⁰ Supra note 7.

It is even more true because Article 27 confers rights on persons belonging to minorities that “exist” in a state.²¹ Not only, but in its *General Comment No. 15* on the position of aliens the Human Rights Committee asserted that they should be included in the definition:

'In those cases where aliens constitute a minority within the meaning of Article 27, they shall not be denied the right, in community with other member of their group, to enjoy their own culture, to profess and practice their own religion and to use their own language.'²²

This means that the definition “minority” should not require members of a minority to be citizens of the state of residence but rather include also aliens. In this regard, it is contended that “the distinction should not be between citizens, but between those who have been settled for a long time and those who are very recent arrivals, whether or not they have obtained citizenship.”²³ Long-standing residents, who are gainfully employed and pay their taxes, should be entitled to no lesser minority right than members of the same minority group who already have become citizens.²⁴ However, the relevance of the requirement of having lasting ties with the country of residence for the identification of a minority is also questioned. In this connection, the Human Rights Committee, in the above-mentioned paragraph 5.2, stated that the degree of permanence is not relevant.

As regards the temporal duration of settlement in a state, a distinction is made between “old minorities” and “new minorities.” According to this classification, “old minorities” consist of minorities historically settled in a given state. They are described also as “traditional,” “historical,” or “autochthonous” minorities. While on the other hand, “new minorities” consist of recent refugees, migrants and asylum seekers, with a shared cultural, ethnic and linguistic background. Another difference is that traditional minorities wish to preserve their separate identity and refuse assimilation with the majority, whereas new minorities desire such assimilation and wish measures aimed at facilitating this

²¹ Uddin Khan and Rahman, *Supra* note 1, p.12.

²² UN, Human Rights Committee, CCPR General Comment No. 15: The Position of Aliens Under the Covenant, 11 April 1986, para. 7.

²³ UN, Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, Protection of minorities. Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities, Report submitted by Asbjørn Eide, 10 August 1993, p.10.

²⁴ *Ibid.*

process.²⁵ However, from a review of several proposals of definition emerges the tendency towards the understanding of minorities as “traditional” minorities.

All members of a minority shall be granted minority rights, no matter whether they possess the citizenship of the state or not, otherwise the limiting criterion of citizenship is likely to have a discriminatory effect by excluding certain groups that would otherwise qualify as minority, from their rights as minorities.²⁶ Citizenship should, therefore, not be regarded as an element of the definition of the term “minority.”

As listed above, other than the objective markers, there must be some subjective markers and these include the self-identification, the collective will to preserve the differing characteristics and the recognition.

The belonging to a minority is often a question of self-identification. This means that it is not competence of a state to identify a minority, nor to decide whether someone belongs to a minority or not. The concept of “self-identification” implies that a group cannot be treated as a minority if it does not want to be identified as a minority. It also implies that the individual person has the possibility to decide whether wants to belong to a minority or not. Paragraph 1 of Article 3 of the *Framework Convention on National Minorities* guarantees individuals to choose,²⁷ declaring that: “every person belonging to a national minority shall have the right to freely choose to be treated or not treated as such.” This does not imply, however, “a right for an individual to choose arbitrarily to belong to any national minority. The individual’s subjective choice is inseparably linked to objective criteria”²⁸ connected with the identity of that individual. Some scholars, however, affirm that the membership in a minority group is rarely voluntary because it is usually determined by descent. According to these scholars, individual person becomes a member of a minority because of involuntary factors. Moreover, it must be said that some

²⁵ F. Palermo and J. Woelke, *Diritto costituzionale comparato dei gruppi e delle minoranze*, Cedam, Padova 2008, p.120.

²⁶ A. Tesfaye and Z. Kebu, “The Protection of Linguistic Minorities: an Appraisal on the Role of Multination Federalism”, in *Beijing Law Review*, Vol. 7, Scientific Research Publishing Inc., 2016, p.318.

²⁷ Similarly, Article 2 of the Additional protocol on the rights of minorities to the European Convention on Human Rights, from Recommendation 1201 (1993) of the Parliamentary Assembly of the Council of Europe states that: “membership of a national minority shall be a matter of free personal choice.”

²⁸ Council of Europe, *Explanatory Report to the Framework Convention for the Protection of National Minorities*, Strasbourg, 1995, para. 35.

persons belonging to minorities refuse to be identified as belonging to a minority for fear of the possible consequences, even if “no disadvantage shall result from this choice.”²⁹

The next subjective element to qualify a group as a minority is the will to preserve its differing characteristics.³⁰ In other words, the group must have a sense of solidarity aimed at preserving its culture, traditions, religion or language. If a minority shows this wish, wants to transmit its identity to succeeding generations and refuses assimilation with the majority, it is defined a minority “by will;” on the contrary, if a minority desires such assimilation with the majority, but is barred, it is a minority “by force.”³¹ It has to be said that a state may deny that a group resident in its territories desires to preserve its identity, or compel minorities not to advocate their solidarity. Some scholars³² contend that this element should not be required to be expressed because if a group has preserved its differing characteristics over time it can be said that it desires to preserve those characteristics. Thus, a state's refusal to acknowledge this desire should not be taken into account.

According to some scholar, an important element is the recognition by the state. Since a precise definition has not been reached yet, it is argued that it is up to each state to recognize a certain group of their citizens as minority.³³ The official recognition by the state “is the first step in claiming rights under international law”³⁴ because if the state denies the status as a minority to a group, it cannot enjoy the status of minority in international law and, consequently, “no internationally guaranteed minority rights are applicable.”³⁵ In this view, the state “bears the responsibility of minority rights realization”³⁶ because a minority, intended as a social group with distinctive features, has not *per se* legal importance, but it acquires it only when the minority is officially

²⁹ Council of Europe, Framework Convention for the Protection of National Minorities, Strasbourg, 1995, art. 3.1.

³⁰ It was established by the Permanent Court of International Justice in the Greco-Bulgarian Communities Case (31 July 1930).

³¹ J. A. Laponce, *The Protection of Minorities*, Berkeley, University of California Press, 1960, p.12, cited in Uddin Khan and Rahman, *Supra* note 1, p.10.

³² Francesco Capotorti and Jules Deschênes in their definitions of “minority” both added the phrase “if only implicitly.”

³³ A. Petričušić, “The Rights of Minorities in International Law: Tracing Developments in Normative Arrangements of International Organizations”, *Croatian International Relations Review*, Vol. 11, No. 38/39 (2005), p.48.

³⁴ U. Barten, “What's in a Name? Peoples, Minorities, Indigenous Peoples, Tribal Groups and Nations”, *Jemie – Journal on Ethnopolitics and Minority Issues in Europe*, 1, 2015, ECMI, Flensburg 2015, p.21.

³⁵ *Ibid.*

³⁶ Petričušić, *Supra* note 33, p.48.

recognized and, accordingly, it is granted minority rights. On the contrary, according to the Human Rights Committee, “the existence of an ethnic, religious or linguistic minority in a given state party does not depend upon a decision by that state party but requires to be established by objective criteria.”³⁷ Otherwise, the protection of minorities would be dependent on the goodwill of states. Hence, “the enjoyment of minority rights requires no formal legal recognition of a group by the state”³⁸ because minority status does not depend on the acceptance of the state, but it is objectively verifiable³⁹ (it is true, however, that such recognition significantly improves the situation of the individuals in a minority).

1.2 Definition of the concept minority on the international level

Until today, on the international level, no legally binding document has formulated a proper definition of the term “minority.” Defining minorities has historically been a complex task. Nevertheless, there have been some attempts over the years, notably by the United Nations, the Council of Europe and the Organization for Security and Co-operation in Europe, to identify the constitutive elements of the minority concept. Furthermore, different categories are covered by this term. In the United Nations system, the term refers, at times, to ethnic, religious or linguistic minorities, while on other times, to national minorities. In the Council of Europe and Organization for Security and Co-operation in Europe systems, the term “national minority” is preferred.

1.2.1 The United Nations

One of the first official attempts to define a minority was undertaken in 1930 by the Permanent Court of International Justice⁴⁰ in its *Advisory Opinion No. 17*, connected with the immigration of the Greco-Bulgarian Communities. The definition by the Permanent Court of International Justice defines minorities as:

³⁷ Supra note 7.

³⁸ UN, Office of the High Commissioner for Human Rights. *United Nations Guide for Minorities*, Pamphlet No. 9, The High Commissioner on National Minorities of the Organization for Security and Co-operation in Europe, p.5.

³⁹ T. Skutnabb-Kangas and R. Phillipson, *Linguistic human rights, past and present*, in Skutnabb-Kangas and Phillipson (eds), *Language Rights*, Vol. 1, Routledge, London/ New York 2016, p.66.

⁴⁰ The Permanent Court of International Justice was an international court attached to the League of Nations. In 1946, the court and the League of Nations both ceased to exist and were replaced by the International Court of Justice and the United Nations.

'a group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by this identity of race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, ensuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and mutual assistance to each other.'⁴¹

Therefore, according to this definition, members of a minority are inhabitants of a state who differ from the rest of population in race, religion and language. It links objective and subjective criteria together. However, it contains only one of the objective definitional elements for minorities: the reference to the differing characteristics criteria. It does not contain a single reference to the nationality requirement. It includes neither the numerical inferiority criteria, nor the non-dominance criteria. Concerning the subjective criteria, it includes the will to preserve the distinctive identity. Notwithstanding, this definition has contributed to the understanding of the term.

When the League of Nations ceased to exist, the United Nations organization took its place. The issue of minorities, however, remained excluded from the main agenda of the United Nations until 1947, when the United Nations Commission on Human Rights⁴² decided to establish a Sub-Commission on Prevention of Discrimination and Protection of Minorities.⁴³ So much so that, neither the *United Nations Charter* nor the *Universal Declaration of Human Rights* make any reference to minority rights. However, the Sub-Commission in 1947 proposed to insert a minority protection provision in the *Universal Declaration of Human Rights*. Unfortunately, this proposal was rejected by the Commission on Human Rights. It is still important as enshrines a definition of “minority.” The proposal had the following wording: “in States inhabited by well-defined ethnic, linguistic or other groups which are clearly distinguished from the rest of the population, and which want to be accorded differential treatment [...]”⁴⁴

In 1948, the General Assembly, mindful of the complexity of the minority protection issue, transferred the matter to the Commission on Human Rights and the Sub-

⁴¹ Supra note 6, p.21.

⁴² In 2006 the United Nations Commission on Human Rights was replaced by the United Nations Human Rights Council.

⁴³ In 1999, it has changed its title to “Sub-Commission on the Promotion and Protection of Human Rights.”

⁴⁴ Sub-Commission on the Prevention of Discrimination and Protection of Minorities, *Definition and Classification of Minorities: Memorandum Submitted by the Secretary-General*, 27 December 1949, p.28.

Commission on the Prevention of Discrimination and the Protection of Minorities, requesting to make a “thorough study of the problem of minorities.”⁴⁵

In 1949, the Secretary-General submitted the memorandum *Definition and Classification of Minorities* to the Sub-Commission. This memorandum, attempting to present, “in organized fashion,”⁴⁶ the principal elements which must be taken into account in any attempt to define a minority, defines minorities as “groups whose members share a common ethnic origin, language, culture, or religion, and are interested in preserving either their existence as a national community or their particular distinguishing characteristics.”⁴⁷

In 1950, after serious studies, the Sub-Commission formulated a draft resolution concerning the legal definition of the term “minority.” From the point of view of law, it should include:

'only those non-dominant groups in a population which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population; should properly include a number of persons sufficient in themselves to develop such characteristic; and the members of such minorities must be loyal to the state of which they are nationals.'⁴⁸

This proposal was not adopted when it was submitted to the Commission on Human Rights.

In mid-1960s, the Sub-Commission finally got a provision on minority protection inserted in the draft of the *International Covenant on Civil and Political Rights* and it became its Article 27. Though it is not defining the concept minority, Article 27 is important because deals explicitly with minority groups. It states:

'in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.'⁴⁹

⁴⁵ UN, General Assembly, Resolution 217 (III) on International Bill of Human Rights, 10 December 1948.

⁴⁶ Supra note 44, p.3.

⁴⁷ Supra note 44, p.14

⁴⁸ UN, Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, *Report to the Commission on Human Rights*, 3rd session, 30 January 1950, p.16.

⁴⁹ UN, International Covenant on Civil and Political Rights, 1966.

According to Article 27, therefore, a minority is merely a group of individuals who share certain ethnic, religious or linguistic characteristics.

Later, the Commission on Human Rights established an open working group to draft a United Nations declaration for the protection of the rights of persons belonging to ethnic, religious and linguistic minorities and to formulate a definition of “minority.” Thus, the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities requested its Special Rapporteur Francesco Capotorti to develop a definition of the concept “minority.” The definition forwarded in 1979 by Capotorti is the result of part of his study in relation to the rights of persons belonging to ethnic, religious or linguistic minorities.⁵⁰ At the time, Capotorti specified that his definition was for the purpose of his study and that the aim of his work was to provide an insight for the further developments of the principles included in the Article 27 of the *International Covenant on Civil and Political Rights*. This means that his definition is directed toward the application of Article 27. In that context, he defined a minority group as:

'a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.'⁵¹

In the Sub-Commission there were many objections concerning the definition because it included the citizenship requirement. Ultimately, the Sub-Commission decided to not accept it. At a later time, the United Nations Human Rights Committee, which monitors the implementation of the *International Covenant on Civil and Political Rights*, in its *General Comment No. 23* on Article 27, will interpret the concept minority neglecting citizenship and prolonged residence within a state as a binding requirement to be entitled for minority protection.⁵²

Thus, in 1984 the Commission of Human Rights requested the Sub-Commission to examine once again the issue of defining a minority and the task was assigned to the

⁵⁰ F. Capotorti, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, United Nations Centre for Human Rights, New York, 1991.

⁵¹ Capotorti, *Supra* note 50, para. 568.

⁵² *Supra* note 7, para. 5.1.

Special Rapporteur Jules Deschênes. The definition forwarded in 1985 by Deschênes was not limited to Article 27. According to his definition, a minority is:

'a group of citizens of a State, constituting a numerical minority and in a non-dominant position in that State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and law.'⁵³

However, his suggested definition was not accepted because it emphasized the importance of citizenship.

The definitions forwarded by both Special Rapporteurs share many similarities and both have limitations. Although there is some measure of agreement regarding essential elements of both definitions, other elements are criticized for being “vague, misleading and inadequate for the diversified minority situations.”⁵⁴ Both definitions emphasize objective factors, such as observable differences in ethnicity, religion and language, and subjective factors, such as consciousness of these differences and the will to preserve these differences. Both are well known and contribute to an understanding of the concept of minorities.

In 1989, after years of unsuccessful discussions on the concept of minority, the working group decided to suspend the question about the definition. So much so that, despite the title, “no definition is contained”⁵⁵ in the United Nations *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, adopted by consensus at the General Assembly’s session in 1992.⁵⁶ This declaration differentiates itself from other United Nations documents treating the rights of minorities because instead of speaking about ethnic, religious or linguistic minorities, it talks about “national” and ethnic, religious and linguistic minorities. In its Article 1, for the first time in a United Nations documents, the declaration refers to minorities as based on national identity. However, the addition of the term “national” does not extend “the overall scope

⁵³ J. Deschênes, *Proposal concerning a definition of the term ‘Minority’*, 1985, para. 181, p.30, cited in Uddin Khan and Rahman, *Supra* note 1, p. 2.

⁵⁴ Uddin Khan and Rahman, *Supra* note 1, p.2

⁵⁵ *Supra* note 23, p.6.

⁵⁶ UN General Assembly, Resolution 47/135 on the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 18 December 1992.

of application beyond the groups already covered by Article 27. There is hardly any national minority, however defined, that is not also an ethnic or linguistic minority.”⁵⁷

In 1989, the former Chairperson-Rapporteur of the Sub-Commission on Prevention of Discrimination and Protections of Minorities Asbjørn Eide was entrusted by the Sub-Commission with the preparation of a report on national experience regarding constructive solutions of problems involving minorities. In 1993, Eide presented the final report, which contained a definition of 'minority.' Eide described minorities as:

[...] any group of persons resident within a sovereign State which constitutes less than half the population of the national society and whose members share common characteristics of an ethnic, religious or linguistic nature that distinguish them from the rest of the population.⁵⁸

The proposed definition, in Eide's words, is “very open and general [...] to make it possible to examine all minority situations of practical importance.”⁵⁹

The above discussion clarifies that despite attempts from different scholars, the UN has failed to agree upon a definition of what constitutes a minority. A generally accepted definition is still eluding. In any case, for the purpose of this paper, it may be concluded that the United Nations refer to different categories of minority: ethnic, religious and linguistic.

1.2.2 The Council of Europe

Efforts to define the concept of minority have been unsuccessfully undertaken also within the Council of Europe. The Council of Europe and its Parliamentary Assembly are, since the beginning of the 1990s, playing a leading role in minority protection but, despite the documents treating the rights of minorities, no consensus has been reached on the issue of defining a minority.

⁵⁷ Working Group on Minorities of the Sub-Commission on the Promotion and Protection of Human Rights, Final text of the Commentary to the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities by Asbjørn Eide, 2001, para. 6.

⁵⁸ Supra note 31, p.7.

⁵⁹ Ibid.

While in the United Nations system the term “minority” usually refers to ethnic, religious or linguistic minorities, in the Council of Europe system the focus is on “national minorities,” which share all the typical distinguishing characteristics.

In the 1950 *Convention for the Protection of Human Rights and Fundamental Freedoms* (also known as the *European Convention on Human Rights*) minorities are referred to as national minorities, but there is no definition of national minority.⁶⁰

The first step toward the understanding of the concept minority is witnessed in *Recommendation 1134* on the rights of minorities given in 1990 by the Parliamentary Assembly. Minorities are stated as a:

'separate or distinct groups, well defined and established on the territory of a state, the members of which are nationals of the state and have certain religious, linguistic or other characteristics which distinguish them from the majority of the population.'

In that recommendation, Parliamentary Assembly also recommended to draw up “a Protocol to the European Convention on Human Rights or a special Council of Europe convention to protect the rights of minorities.” This proposal was reiterated in *Recommendation 1177* given in 1992.

In 1993, the Parliamentary Assembly proposed a definition of “national minority” in its *Recommendation 1201* on an additional protocol on the rights of minorities to the *European Convention on Human Rights*. The recommendation included the proposal of a concrete text for an additional protocol to the ECHR. Article 1 stipulates that:

For the purposes of this Convention [European Convention on Human Rights], the expression “national minority” refers to a group of persons in a state who :

- a. reside on the territory of that state and are citizens thereof;
- b. maintain longstanding, firm and lasting ties with that state;
- c. display distinctive ethnic, cultural, religious or linguistic characteristics;
- d. are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state;

⁶⁰ The only provision, which explicitly refers to national minorities, is Article 14, which mentions the “association with a national minority” as a non-admissible ground for discrimination.

e. are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language.'

In addition, Article 2 states that “membership of a national minority shall be a matter of free personal choice” and “no disadvantage shall result from the choice or the renunciation of such membership.”

This definition focuses on ethnic, religious or linguistic minorities, but Article 2 refers to “national minority,” thus the two expressions are equated. This definition contains several unusual features: it lacks any reference to a requirement of non-dominant position and adds as conditions a numerical threshold and a certain degree of permanence. Furthermore, according to this definition, a minority can also be determined at regional level and not only at state level. Unfortunately, this recommendation has never been adopted and therefore the suggested definition has no binding effect. Nonetheless, it is considered by several experts as a major source of reference and the subsequent texts adopted by the Parliamentary Assembly on the rights of minorities make reference to the definition contained in this document. *Recommendation 1201* and its definition therein.

This definition was confirmed in *Recommendation 1255* on the protection of the rights of minorities given in 1995⁶¹ and in *Recommendation 1492* on rights of national minorities given in 2001.⁶²

Even the *Framework Convention for the Protection of National Minorities*, the first actual legally binding international instrument devoted to the protection of minorities, “does not contain a definition of “national minority” as there is no general definition agreed upon by all Council of Europe member states.”⁶³ Since definitions of “national minority” differ among different countries and mindful of the difficulty to come up with a working definition, the Advisory Committee “decided to adopt a pragmatic approach and deal with personal scope-related issues on a case-by-case basis as they

⁶¹ Council of Europe, Parliamentary Assembly, Recommendation 1255, *Protection of the rights of national minorities*, 31 January 1995. Paragraph 2: “The Assembly now confirms the principles listed in its Recommendation 1201 (1993) and the additional protocol it then proposed, in particular the definition of a 'national minority [...].”

⁶² Council of Europe, Parliamentary Assembly, Recommendation 1492, *Rights of national minorities*, 23 January 2001. Paragraph 12.11: “[...] endeavouring to include therein [a protocol to the European Convention on Human Rights on the rights of national minorities] the definition of national minority adopted in the same recommendation [Recommendation 1201 (1993)].”

⁶³ Council of Europe, *The Framework Convention for the Protection of National Minorities and Explanatory Report Leaflet*, 2015, p.3.

occurred.”⁶⁴ Paragraph 12 of the explanatory report of the Framework Convention explains the omission of a definition in these terms:

'it should also be pointed out that the Framework Convention contains no definition of the notion of 'national minority'. It was decided to adopt a pragmatic approach, based on the recognition that at this stage, it is impossible to arrive at a definition capable of mustering the general support of all Council of Europe member States.'

Consequently, each state provides its own interpretation of the concept of “national minority” and assesses which groups are to be covered by the convention within their territory,⁶⁵ although this selection “must be made in good faith”⁶⁶ and in accordance with the principles set out in Article 3, namely individuals may decide themselves whether or not they wish to be treated as belonging to a national minority.

However, Article 5 of the Framework Convention indirectly provides a definition. It refers to signatory states’ obligation to “promote the conditions necessary” to preserve the essential elements of national minorities’ identity, “namely their religion, language, traditions and cultural heritage.” Arguably, in the Council of Europe’s eyes, a national minority is a minority that possesses all of the identifying features of minorities: religion, language, ethnicity and culture.

As regards the citizenship criterion, an overview of the declarations submitted by the states upon signature or ratification of the Framework Convention shows that there is a great variety of approaches by the different signatory states. Some member states, explicitly mentioning the citizenship of the state of residence as a prerequisite, restrict solely to those who have acquired the citizenship the protection of the framework convention, whereas some others do not make any reference to the citizenship requirement, granting minority rights to all citizens.⁶⁷

It needs to be stressed, however, that at the Council of Europe level “non-citizens can also benefit from specific minority rights.”⁶⁸ The *Framework Convention for the*

⁶⁴ Supra note 2, p.10.

⁶⁵ The Advisory Committee, a group of independent experts that monitors the implementation of the FCNM, assess whether states are not arbitrarily excluding certain minority groups. The Advisory Committee was set up in 1998.

⁶⁶ Supra note 63, p.3.

⁶⁷ Supra note 2, pp.9-10.

⁶⁸ E. Lannon, A. Van Bossoyt and P. Van Elsuwege, *Minorities in the Euro-Mediterranean Area: the*

Protection of National Minorities does not contain any reference to citizenship and this can be interpreted as a confirmation that the requirement of citizenship is not among necessary requirements to be treated as a minority.⁶⁹

Within the Council of Europe, the European Commission for Democracy Through Law (also known as the Venice Commission)⁷⁰ tried to formulate a definition as well. In 1993, the Commission proposed a European convention for the protection of minorities, which contained a definition of the term “minority.” Article 2 of this text, indeed, sets out a definition of minority:

[...] the term 'minority' shall mean a group which is smaller in number than the rest of the population of a State, whose members, who are 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.⁷¹

However, this document was not accepted by member States of the Council of Europe.

Though it is not defining the concept minority, Article 2(a)(i) of the *European Charter for Regional or Minority Languages* is important because deals with minority groups. Indeed, it speaks about “nationals of that State who form a group numerically smaller than the rest of the State's population.”

The above discussion clarifies that, despite all the attempts, no legally binding definition of “minority” can be found either at the Council of Europe level.

1.2.3 The Organization for Security and Co-operation in Europe

The Organization for Security and Co-operation in Europe was established in 1975, during the Conference on Security and Co-operation in Europe held in Helsinki. The issue of minority protection was on the OSCE's agenda from the beginning of its

Prerequisites for Launching a Fruitful Intercultural Dialogue, in L. Bekemans et al. (eds.), *Intercultural Dialogue and Citizenship. Translating Values into Actions: a Common Project for Europeans and their Partners*, Marsilio, Venezia 2007, p.351.

⁶⁹ E. Lannon, Van Bossoyt and Van Elsuwege, *Supra* note 68, p.350.

⁷⁰ For information on all opinions and reports concerning the protection of minorities made by the Venice Commission, please refer to: European Commission for Democracy through Law (Venice Commission), *Compilation of Venice Commission Opinions and Reports Concerning the Protection of National Minorities*, Strasbourg, 6 June 2011.

⁷¹ *Supra* note 2, p.20.

existence. The OSCE has been trying to draft a definition of “minority,” but unsuccessfully. Within its documents, minorities are usually referred to as “national minorities.” For instance, the 1975 *Helsinki Final Act* ordered the participating states to respect the rights of persons belonging to national minorities.⁷²

In 1990, the *Charter of Paris for a New Europe* was adopted. In the text a link has been established between the notion of “ethnic, cultural, linguistic and religious identity” and “national minorities.” Indeed, it is affirmed that: “[...] the ethnic, cultural, linguistic and religious identity of national minorities will be protected [...]”⁷³ This linkage is found also in the 1990 *Document of the Copenhagen Meeting of the Conference on the Human Dimension* of the Conference on Security and Co-operation in Europe, whose paragraphs 30 to 40 are devoted to questions relating to national minorities. Paragraph 32 states that “persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity [...]”; paragraph 33 states that “the participating States will protect the ethnic, cultural, linguistic and religious identity of national minorities on their territory”; similarly, paragraph 35 reads as follows: “[...] to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities [...]”

Correspondingly, other documents by the Organization for Security and Co-operation in Europe, concerning minority protection, namely the *Hague Recommendations Regarding the Education Rights of National Minorities*, the *Oslo Recommendations Regarding the Linguistic Rights of National Minorities* and the *Lund Recommendations on the Effective Participation of National Minorities in Public Life* refer to minorities as “national minorities,” without defining them.

As shown above, the documents of the Organization for Security and Co-operation in Europe contain no definition of minority. The only exception is the statement contained in the above-mentioned *Document of the Copenhagen Meeting of the Conference on the Human Dimension*, which reads as follows: “to belong to a national minority is a matter of a person’s individual choice and no disadvantage may arise from the exercise of such choice.”⁷⁴

⁷² The Conference on Security and Co-operation in Europe, *Helsinki Final Act*, 1975, *Principle VII of Declaration on Principles Guiding Relations between Participating States*.

⁷³ OSCE, *The Charter of Paris for a New Europe*, 1990, p.4.

⁷⁴ OSCE, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, 1990, para. 32.

It is worth mentioning the High Commissioner on National Minorities, created in 1992 to prevent conflicts involving issues related to national minority issues. It played a major role in the evolution of the understanding of the concept of minority. At the opening of the CSCE Human Dimension Seminar on *Case Studies on National Minority Issues: Positive Results*, held in Warsaw in 1993, the former High Commissioner Max van der Stoel, in his keynote address, clarified a minority as:

'a group with linguistic, ethnic or cultural characteristics, which distinguish it from the majority. Secondly, a minority is a group which usually not only seeks to maintain its identity but also tries to give stronger expression of that identity'.⁷⁵

The High Commissioner confirmed his view in 2000, stating that a minority is:

'a collection of individuals, who share linguistic, ethnic or cultural characteristics, which distinguish them from the majority. These individuals, acting alone or together, usually not only seek to maintain their identity, but also try to give stronger expression to those ethno-cultural and linguistic characteristics that give them a sense of individual and collective identity'.⁷⁶

The High Commissioner places the identity at the center of the constitutive elements of a national minority and stresses the link between the ethnic, cultural, linguistic and religious identity and national minorities.

As regards citizenship, it may be concluded that at the level of the Organization for Security and Co-operation in Europe, "citizenship is not a meaningful criterion for entitlement to minority rights."⁷⁷ Evidence of this is the fact that paragraph 30 of the Copenhagen document grants minority rights to "all citizens."⁷⁸

The OSCE has also been trying to draft a definition of the term "minority" but run into difficulties in defining it. In sum, it can be said that, in the OSCE opinion, a group to be defined as a minority has to have ethnic, cultural, religious and linguistic characteristics.

⁷⁵ Supra note 5.

⁷⁶ High Commissioner on National Minorities, *The Relevance of International Standards for Minority Protection*, by Max van der Stoel, Amsterdam 20 September 2000, p.3.

⁷⁷ Supra note 2, p.23.

⁷⁸ Supra note 74, para. 30.

1.3 Definition of the concept minority on the European level

1.3.1 The European Union

The European Union has been less engaged in the issue of minority protection, compared with the international organizations. The protection of minorities attained meaning following the collapse of communism in Central and Eastern Europe, in the context in the context of enlargements, that is when new member states were being incorporated into the Union.

At the Union level, the concept of “minority” is deeply disputed and consequently there is no consensus among the member states regarding a generally accepted definition of the term. Indeed, notwithstanding all the documents concerning minorities, no legally binding definition of “minority” can be found in the European Union framework. In 2005, the European Parliament stated that “there is no standard for minority rights in Community policy nor is there a Community understanding of who can be considered a member of a minority.”⁷⁹

This is because, taken as whole, the Union boasts numerous minorities, “which make it impossible to come up with any tenable idea of a majority”⁸⁰ and of a minority for the Union. Indeed, “anyone in the Union certainly belongs to a minority of some kind”⁸¹ and this is even more true as far as European Union citizens who changed their member state of residence are concerned. The situation is even more complicated by the fact that, according to some scholars, the third-country individuals should be treated as “new minorities,” differently to migrant Union citizens who move to another member states, considered as “old minorities.”⁸² The obligation lying on the Union to respect the identities of the member states puts European citizen moving across the internal borders within the Union in a special position. Since they are “entitled to live anywhere in the Union without being forced to relinquish their cultural, political and socio-economic ties with the Member State of nationality,”⁸³ they are protected from the possible attempts of

⁷⁹ European Parliament, Resolution on the protection of minorities and anti-discrimination policies in an enlarged Europe, 2005.

⁸⁰ D. Kochenov, “EU minority protection: a modest case for synergetic approach”, *Amsterdam Law Forum*, Vol. 3, No. 4, 2011, p.38.

⁸¹ *Ibid.*

⁸² D. Kochenov and T. Agarin, “Expecting too much: European Union's minority protection hide-and-seek”, *Anti-Discrimination Law Review*, 1 (1), 2017, pp.18-20.

⁸³ Kochenov and Agarin, *Supra* note 82, p.25.

the authorities of their new member state of residence to “integrate them into their society by repressive means.”⁸⁴ As a result, all this has important consequences for the definition of minorities.

Looking at the early documents dealing with the situation of minorities, the concept of “minority” seems to be always linked to the notion of ethnic, cultural, linguistic and religious identity. For instance, in the 1981 *Resolution on a Community Charter of Regional Languages and Cultures and on a Charter of Rights of Ethnic Minorities*, based on the report prepared by the Rapporteur Gaetano Arfé and adopted by the European Parliament, minorities are referred to as “ethnic minorities.”⁸⁵ Similarly, the 1987 European Parliament *Resolution on the Languages and Cultures of the Regional and Ethnic in the European Community*, whose draft was prepared by the Rapporteur Willy Kuijpers, refers to minorities as “ethnic, linguistic and cultural minorities.”

Other examples of this approach are the 1998 *Resolution on racism, xenophobia and anti-Semitism and on further steps to combat racial discrimination*, by which the Parliament states that “it attaches great importance to the participation of *cultural, racial and ethnic minorities* in both social and political decision-making processes (my emphasis)”⁸⁶ and the 1995 *Resolution on respect for human rights in the European Union*, where minorities are “ethnic or linguistic.” Similarly, in the *Resolution on human rights in the world in 1997 and 1998 and European Union human rights policy* the Parliament calls for efforts to end discrimination against “religious, national, linguistic or ethnic minorities.”⁸⁷

It is noteworthy that, differently to all the other international and European organizations, within the Union, and specifically within the European Parliament, the interest is focused on the linguistic heritage of minorities and, in other words, in linguistic minorities. Evidence of this is the 1994 *Resolution on Linguistic Minorities in the European Community*, based on the report prepared by the Rapporteur Mark Killilea.

⁸⁴ Kochenov and Agarin, *Supra* note 82, p.23.

⁸⁵ One has to bear in mind that the resolutions here described are non-binding and therefore lack practical effect.

⁸⁶ European Parliament, *Resolution on racism, xenophobia and anti-Semitism and on further steps to combat racial discrimination*, 1999, para. N.

⁸⁷ European Parliament, *Resolution on human rights in the world in 1997 and 1998 and European Union human rights policy*, 1999, cited in Toggenburg, “A Rough Orientation Through a Delicate Relationship: The European Union's Endeavours for (its) Minorities”, *European Integration online Papers (EioP)*, Vol. 4, No. 16, 2000, p.7.

As has already been said, minorities are not always been on top of the Union's agenda. A turning point was marked in 1993, at the Copenhagen European Council meeting. In that context, the political conditions of the European Union membership were established. Among these conditions, there is respect for and protection of minorities, but a definition of “minority” is nowhere to be found in the Copenhagen–related documents, proving the difficulty to define what a minority is and who belongs to it. It follows that it is up to applicant states to formulate a definition of term and determine which minority groups are entitled to minorities rights.

Having made this observation, it is clear why the Union has largely relied on the standard set by the Council of Europe and the Organization for Security and Co-operation in Europe. Following the example of the Council of Europe, in its 1997 *Opinions* on the applicant Central and Eastern European countries, the European Commission adopted a definition of “minority” that dispensed the citizenship requirement. In other words, individuals not having the citizenship of the state of residence are considered as members of a minority as well.⁸⁸

Furthermore, in 2005, the European Parliament stated that a “definition should be based on the definition, laid down in Council of Europe Recommendation 1201 (1993), of a 'national minority'.”⁸⁹ Therefore, it may be concluded that, at the Union level, minorities can be referred to also as national minorities, although there is no explicit provision confirming this understanding. Nevertheless, support can be found in the 2000 *Charter of Fundamental Rights*, which, even if it does not provide for minorities rights, in Article 21, prohibits discrimination based on “membership of a national minority.”

In sum, at the European Union level, the focus is on national minorities, but all efforts to come up with a generally agreed definition of the term meet with difficulties. It could be said, however, that since the Union's standards only recognize national minorities, who are mostly “old minorities,” the “new minorities” are not recognized.

⁸⁸ K. Henrard, “The Impact of the Enlargement Process on the Developments of a Minority Protection Policy within the EU: Another Aspect of Responsibility/ Burden Sharing?”, *Maastricht Journal of European and Comparative Law*, 2002, pp.379-380.

⁸⁹ Supra note 79.

CHAPTER TWO

DEFINING LINGUISTIC RIGHTS

SUMMARY: 2.1 *The importance of language*; 2.2 *Linguistic human rights*; 2.3 *Promotion oriented linguistic rights*; 2.4 *Areas of application of linguistic rights*; 2.4.1 *Names and geographic names*; 2.4.2 *The media*; 2.4.3 *Administration and public services*; 2.4.4 *Economic life*; 2.4.5 *Private activities*; 2.4.6 *Juridical proceeding*; 2.4.7 *Education*.

2.1 The importance of language

As above mentioned, language is one of the several factors that contribute to distinguish a minority, or rather “the symbolic presentation of a nation or a specific community.”⁹⁰ A language is not merely the use of sounds or written symbols for communication and self-expression. The language is perceived as “an essential marker of identity which is intrinsically related to culture”⁹¹ and is considered “vital for the survival of the minority as a cultural group.”⁹² It constructs and maintains distinctive human identities by providing an important boundary-marking function between groups.⁹³ Through it, people “experience their sense of individual and community identity.”⁹⁴

It can be said that a language acts as “a repository of a particular culture’s history, traditions, arts and ideas”⁹⁵ The use of a specific language expresses an individual’s

⁹⁰ T. S. T. Mahadi and S. M. Jafari, “Language and Culture”, *International Journal of Humanities and Social Science*, Vol. 2, No. 17, 2012, p.234.

⁹¹ A. Aftab, “Minority Rights under International Law”, *Journal of the Indian Law Institute*, Vol. 57 (2015), p.396.

⁹² *Ibid.*

⁹³ S. Romaine, *Language, culture and identity issues across nations*, in Banks (eds.), *Routledge International Companion to Multicultural Education*, Routledge, London 2009, p.373.

⁹⁴ UNESCO, *Why Language Matters for the Millennium Development Goals?*, Asia and Pacific Regional Bureau for Education, Bangkok, 2012, p.4.

⁹⁵ A. Patten and W. Kymlicka, Introduction: Language Rights and Political Theory: Context, Issues, and Approaches, in Kymlicka and Patten, *Language Rights and Political Theory*, Oxford University Press, Oxford 2003, p.45.

cultural identity as well as the cultural heritage developed by the previous speakers of the language. The cultural knowledge is reliant on language to be passed on from generation to generation. In this regard, the language is the element that keep the speakers connected to their culture.

Certainly, the language is not just important culturally, but it is also an instrument for communication and a social phenomenon. Individuals speak a particular language because historically their families have also spoken it. The knowledge of one's native language is culturally transmitted because it is acquired "by virtue of one's membership of a particular society."⁹⁶ As a result, to communicate in an individual's mother tongue connects the person to the group that speak that specific language. Thus, individuals "take pleasure in using the language and encountering others who are willing to use it."⁹⁷

The fundamental link between individuals, their language and their identity can be explained by the fact that each language has its own distinct way of conceptualizing the world. In order to clarify the linkage between language and identity, it is necessary to mention the hypothesis of linguistic relativity by the anthropological linguists Edward Sapir and Benjamin Lee Whorf. The main idea in this hypothesis is that every person views the world by her/his own native language. This hypothesis suggests that there exist a relationship between language and thought. Moreover, it suggests that the language "determines and resolves the thought and perception of its speakers."⁹⁸ Consequently, the languages, which are entirely different in their vocabulary and structure, "convey different cultural significances and meanings."⁹⁹ Therefore, it may be concluded that "the way people view the world is determined wholly or partly by the structure of their native language"¹⁰⁰ and that a language is manifestation of the minority's "spirit or mind."¹⁰¹

This point is supported also by Ferdinand de Saussure's theory of the sign. For him, a language is a system of linguistic signs that organize the mass of confused thoughts that fill the speaker's mind. Each sign is composed of two parts, namely a sound-image and a concept, respectively called the "signifier" and the "signified." The combination of the "signifier" and the "signified" is arbitrary and is dependent on the community that uses

⁹⁶ T. Mahadi and Jafari, *Supra* note 90, p.233.

⁹⁷ Patten and Kymlicka, *Supra* note 95.

⁹⁸ T. Mahadi and Jafari, *Supra* note 90, p.232

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ T. Mahadi and Jafari, *Supra* note 90, p.233.

that language. “If words stood for pre-existing concepts, they would all have exact equivalents in meaning from one language to the next; but this is not true.”¹⁰² The signifier has different meaning in different languages because it depends on the community's choice.

Hence, respect for a person's identity is intimately connected with respect for the person's language. In this regard, Article 5 of *the Framework Convention on National Minorities* established a linkage between a person's identity and its language, stating that:

[...] to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, *language*, traditions and cultural heritage (my emphasis).'

The same linkage can also be found in Article 1 of the *United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*.

Clearly, “people's languages are vitally important to them”¹⁰³ because languages are “at the center of human activity.”¹⁰⁴ Thus, restraining linguistic rights imply restraining the development of a distinct identity.

2.2 Linguistic human rights

Before looking at the linguistic rights in international and European instruments, it seems appropriate to define the notion of “linguistic rights.” The purpose of these rights is to enable speakers of the minorities to use their language rather than the language of the majority. The fact that minorities’ rights form an integral part of the international protection of human rights¹⁰⁵ and the fact that linguistic rights are part of minorities’ rights raise the question about whether linguistic rights can be considered as an integral part of human rights. The recognition of linguistic rights as human rights is based on some

¹⁰² De Saussure Ferdinand, *Course in general linguistics*, Philosophical Library, New York, 1959, p.116.

¹⁰³ Supra note 94, p.4.

¹⁰⁴ Supra note 94, p.1.

¹⁰⁵ One can read, for instance, in Article 1 of the Council of Europe’s Framework Convention for the Protection of National Minorities the following: “the protection of national minorities and of rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international cooperation.”

of the international legal obligations found in international and European human rights treaties, such as the right to anti-discrimination, the right to freedom of expression and the right to a fair trial.¹⁰⁶

The right to anti-discrimination raises when speakers of a given language are discriminated because of their language preferences. The prohibition of discrimination prevents states from “unreasonably disadvantaging or excluding individuals through language preferences in the provision of any of their activities, services, support or privileges.”¹⁰⁷ In many human rights instruments language is mentioned as one of the characteristics on the basis of which discrimination is forbidden, together with race, colour, sex, religion, political or other opinion, national or social origin, property, birth, disability, age or sexual orientation. For instance, Articles 2 and 7 of the *Universal Declaration of Human Rights*, Article 1.3 of the *Charter of the United Nations*, Article 2.2 of the *International Covenants on Economic, Social and Cultural Rights*, Articles 2.1 and 26 of the *International Covenant on Civil and Political Rights*, Article 2 of the *Convention on the Rights of the Child*, Article 1.1 of *Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms*,¹⁰⁸ Article 21 of the *Charter of Fundamental Rights of the European Union* and Article II-81 of the *Treaty Establishing a Constitution for Europe* protect the right not to be discriminated against on the basis of one's language. Analogous commitments appear in non-binding documents, such as paragraphs 5.9 and 25.4 of the *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*.

The right to freedom of expression includes the right to freely choose the language of speech. It is the right to use one's own language both in speech and writing, and to be “free of interference in one's linguistic affairs and identity.”¹⁰⁹ The freedom of language is “one of the most basic and immutable human rights that each individual should be able

¹⁰⁶ Giovanni Poggeschi refers to these rights as “diritti linguistici di prima specie.” For further information, please refer to: Poggeschi Giovanni, *I diritti linguistici. Un'analisi comparata*, Carocci editore, Roma 2010.

¹⁰⁷ UN, Special Rapporteur on Minority Issues, *Language Rights of Linguistic Minorities: a Practical Guide for Implementation*, Geneva, 2017, p.6.

¹⁰⁸ In 2000, the Council of Europe promulgated Protocol No.12 to the European Convention on Human Rights, which provides right to non-discrimination separate from Article 14, which is not a freestanding right to non-discrimination, and may be raised only in connection with the alleged violation of another right of ECHR. It came into force in 2005. The protocol thus created a general prohibition against discrimination in the application of any rights guaranteed by law or by any public authority.

¹⁰⁹ X. Arzoz, “The Nature of Language Rights”, *Jemie – Journal on Ethnopolitics and Minority Issues in Europe*, 2/2007, ECMI, Flensburg 2007, p.7.

to possess, exercise and defend.”¹¹⁰ This right implies the possibility for the members of a linguistic minority to use their language with other members of their community. Similarly, the right to respect for private and family life includes respect for “cultural practices and language spoken with and within the family, in the household and, more generally, in the private sphere.”¹¹¹ Indirectly, it can be seen as the right to preserve one’s linguistic identity. The right to freedom of expression is conferred by Article 19.2 of the *International Covenant on Civil and Political Rights*, Article 19 of the *Universal Declaration of Human Rights*, Article 10.1 of the *European Convention on Human Rights* and Article 11.1 of the *Charter of Fundamental Rights of the European Union*. Albeit also Article 7 of the *Framework Convention for the Protection of National Minorities* protects the right to freedom of expression, in the explanatory report it is specified that it is of a universal nature and applies to all persons.¹¹²

The right to a fair trial includes, during criminal proceedings, the right to be informed promptly and in detail of the reasons of the arrest and of the nature and cause of any accusation brought against her/him in a language she/he understands. It also includes the right of the accused person lacking proficiency in the language of the court to be assisted, free of charge, by a translator or interpreter if she/he cannot understand or speak the language used in court. The right to express themselves in one’s own language is recognized by Articles 14.3 (a) and 14.3 (f) of the *International Covenant on Civil and Political Rights*, Article 47 of the *Charter of Fundamental Rights of the European Union* and Articles 5.2 and 6.3 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*. This right is neither a tolerance-oriented right nor a promotion-oriented right. The objective of this right is not to afford tolerance or promotion for any language, but to guarantee effective communication. Its rationale lies in securing trial fairness. This is proved by the fact that if the accused person can understand and be understood by using the court’s language, even if it is not her/ his mother tongue, she/he has not the right to use her/ his native language in criminal proceedings, and this also applies to members of linguistic minorities.

¹¹⁰ E. M. Vallenilla, *Language as a human right*, in F. Mayor and R. Droit, *Taking action for human rights in the twenty-first century*, UNESCO Publishing, Paris 1998, p.156.

¹¹¹ Arzo, *Supra* note 109, p.25.

¹¹² *Supra* note 28, para. 51.

Those rights are fundamental human rights and are granted to any individual, whether she/he is a member of a minority or not. Human rights apply to all human beings because their aim is to bestow equality among all individuals. Accordingly, everyone, without being a member of a minority, enjoys general human rights with a linguistic dimension. As shown above, human rights instruments provide just a basic regime of linguistic tolerance, since they are not granted through specific linguistic rights. Therefore, to answer the question raised above, it could be said that, basically, only the linguistic rights that apply to the private sphere and the right to an interpreter in criminal proceedings are an integral part of human rights.

Relevant here is the question of whether linguistic rights apply to the individual or to the minority group. Human rights with a linguistic dimension apply to the individual, as the language is merely the medium through which individuals enjoy their rights. On the other hand, linguistic rights as such imply a notion of collectivity since are exercised with other members of a minority; in this sense, they should be regarded as group rights, that is rights which apply to a community. However, states fear that granting group rights could strengthen the identity of minorities and, consequently, increase moves for separatism. This is the reason why, in international instruments devoted to minority rights, these rights are granted to persons belonging to a minority by virtue of their membership, rather than the group. Nonetheless, these rights are exercised by their holders in community with the other members of the minority.

2.3 Promotion oriented linguistic rights

Linguistic rights have a completely distinct nature and role; they are not universal, but “a socio-political construct”¹¹³ of states, and are recognized to the exclusive benefit of minorities. Those rights are concerned with the rules that public institutions adopt with respect to the use of the particular language of a given minority in a variety of different domains. Whereas the freedom of language is immediately applicable and does not require state intervention to be effectively enjoyed, granting linguistic rights implies assuming duties on the part of the state. This is even more true, considering that the use of a language is not limited to the private sphere but extends to the public sphere.

¹¹³ Arzoz, *Supra* note 109, p.30.

A mere regime of linguistic tolerance, namely the rights that protect the speakers of a minority from discrimination and assimilation, is not enough. What has to be granted by law is a regime of linguistic promotion, which includes positive rights. Positive measures by states are necessary to protect the identity of a minority and the rights of its members to enjoy and develop their language.¹¹⁴ Moreover, protecting minority identity prevent the loss of cultures and languages. Promotion oriented linguistic rights are necessary also to protect minorities from cultural and linguistic assimilation.

It has been often asserted, in international law, that the protection of linguistic rights is based on two basic principles, the prohibition of discrimination on the one hand and measures intended to protect and promote the separate identity of the minority groups on the other hand. The former are defined “tolerance rights” and are needed to ensure that a minority is placed on a footing of perfect equality with the majority; while the latter are defined “promotion rights” and are needed to respect the cultural and linguistic diversity of the minority. On this matter, case law is particularly important.

In 1953, the Permanent Court of International Justice in its *Advisory Opinion No. 64 regarding the minority schools of Albania* expounded this double approach to minority protection for the first. The Court stated that minority protection consists of these two main components, these words:

[...] the first is to ensure that nationals belonging to racial, religious or linguistic minorities shall be placed in every respect on a footing of perfect equality with the other nationals of the State. The second is to ensure for the minority elements suitable means for the preservation of their racial peculiarities, their traditions and their national characteristics. These two requirements are indeed closely interlocked [...].¹¹⁵

The first principle requires that minorities be granted all rights set forth by legislation without regard to the language they use. However, the application of the non-discrimination measures merely guarantees formal equality, which is not sufficient to achieve real equality. To realize real equality states are required to take special measures so that minorities are in an equal footing with majority. According to the principle of

¹¹⁴ Supra note 7.

¹¹⁵ Permanent Court of International Justice, *Greece vs. Albania*, Advisory Opinion No. 64 regarding minority schools in Albania, Series A/B, 6 April 1935.

equality, indeed, different situations must be treated differently. It may also be regarded as discrimination against the minority to treat a minority and a majority alike.¹¹⁶ Promotion oriented rights are not intended to confer a privileged status on minorities; they should rather be considered as special rights aimed at guaranteeing equal conditions.

2.4 Areas of application of linguistic rights

This paragraph deals with the promotion-oriented rights, that is the rights that minorities should be able to possess and exercise in order to use a particular language in community life and within the framework of public institutions, economic life and social activities. This paragraph also addresses the linguistic rights, which contribute to the protection and promotion of the distinctive identity of minorities, namely the right to one's own name and to education in one's language.

All the information presented in this paragraph are taken from the following documents: the *Oslo Recommendations on the Linguistic Rights of National Minorities*, the *Hague Recommendations on the Education Rights of National Minorities*, the guidelines *Language Rights of Linguistic Minorities: a Practical Guide for Implementation* by the United Nations, the thematic commentary *The Language Rights of Persons Belonging to National Minorities under the Framework Convention* by the Council of Europe's Advisory Committee, the *Ljubljana Guidelines on Integration of Diversity Societies*, the *Report on the Use of Vernacular Languages in Education* by UNESCO, the *International Report on Education Rights and Minorities* by the Minority Rights Group and UNICEF and the *Explanatory Report to the European Charter for Regional or Minority Languages*. To the purpose of this paper, these documents serve as a tool to provide a better understanding of linguistic rights.

2.4.1 Names and geographic names

One of the most important makers of identity for a person is being called by the own name in the own language. To persons belonging to a minority is fundamental to possess the right to use their personal names, first names and family names, in their language, according to their traditions and linguistic systems. This right implies that

¹¹⁶ European Court of Human Rights, *Thlimmenos v. Greece*, Application no. 34369/97, Judgment of 6 April 2000.

names and surnames, written in languages that use a script that differs from the one used by the state, must be transliterated. It also implies that in case where names and surnames are written in a different language but share the same script as the official language, the state must reproduce the name literally without alteration or translation.

To guarantee this right, official recognition of minority personal names in birth registration or other official documents and their utilization in public documents and activities is required.

A person's own identity, in the form of one's own name or surname in a minority language, must be respected. Thus, persons who have been forced to give up their original names, or whose names has been changed by force, should be entitled to revert to it.¹¹⁷

An inclusive and effective approach to minorities' language issues means also the use of geographic names, such as locality names, street names, road signs and other topographical designations, in minority's language where the minority is concentrated. These designations have to be written in the correct form, according to linguistic systems concerned. In particular, the names of territories are a link to tradition, culture and history, which can be deeply significant. In addition, these topographical designations have a "significant symbolic value for integration,"¹¹⁸ as they affirm that "the minority belongs to the given region as an appreciated and welcome part of society."¹¹⁹

Of course, this right does not exclude the use of the official language, as it must be ensured also the right of other members of the community who do not belong to the minority. Bilingual signs demonstrate inclusiveness, and that various population groups share a locality in harmony and mutual respect. A good approach would be to allow bilingual or even trilingual signs, following the proportionality principle where there is a sufficient concentration of persons belonging to a minority or demand for such signs in minority's language. The low threshold where it is considered reasonable to provide such signs varies between 5 per cent and 20 per cent of the local population.

¹¹⁷ Supra note 28, para. 68.

¹¹⁸ Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Latvia. Second Cycle, adopted on 18 June 2013, p.31.

¹¹⁹ Ibid.

2.4.2 The media

The right to media in the languages of minorities consists in the possibility for minorities to receive and impart information and ideas in their own languages, both in public and private broadcast, printed and electronic media. The access to media provides an opportunity to ensure the inclusion of minorities and to develop majority's interest in their cultures. Moreover, it is essential so that minorities can preserve and transmit their culture and identity. Minorities should have the opportunity to be provided with sufficient space in publicly funded printed media as well as with the access to broadcast time, on radio and television, in their own language.

States should provide a meaningful access to minority language broadcasting. The amount of time allocated to broadcasting in the language of a given minority should be commensurate with the numerical size and concentration of the minority and appropriate to its situation and needs. Obviously, the quantity of the time allotted to minorities programming is an issue that needs to be approached in a non-discriminatory manner, in order to implement effective equality of access. The time-slots allotted to minority's language programming should be such as to ensure that persons belonging to a minority can enjoy programming in their language in a meaningful way. Hence, public authorities should ensure that this programming is transmitted at reasonable times of the day.

The access and use of their language in broadcast also includes the private broadcasting media. Therefore, minorities must also be allowed to establish, use and maintain their own media, without being bounded by discriminatory licensing regimes. Regulation of the broadcast media, including licensing, must be prescribed by states based on non-discriminatory criteria and shall not aim to restrict broadcasting in minority languages. Broadcasting frequencies must be allocated in a non-discriminatory manner.

Moreover, minority language broadcasting, both public and private, should not be subject to the imposition of undue requirements for translation, dubbing, post-synchronization or subtitling.

States should create favorable conditions, including the provision of financial resources, to encourage private minority language broadcasting. The lack of resources should not be an insuperable limitation. Although states are not obliged to provide financial resources for minority media, wherever the law provides for financial assistance for the media, in line with the principle of non-discrimination, minority languages media

also have to benefit from economic incentives in order to increase their access to and presence in the media; and this also applies to technical assistance.

Governments should not restrict or censor the content of minority programming because of the language used: they can impose restrictions on the content if it harms the public order.

The right to media also includes the guarantee for minorities to receive tv and radio broadcasts and web-based information originating from abroad in the minority's language, particularly from their kin states or neighboring countries where the language is the same. This shall not constitute a substitution of locally produced programs in minority languages or a diminution of broadcast time allocated to the minority in the publicly funded media. Access to media originating from abroad shall not be unduly restricted as it is important for the maintenance of identity for minorities to have access to the more developed and fuller programming available from the kin states.

With regard to printed media, states should ensure that the rules relating to press subsidies, which often contain conditions such as a minimum print run or nationwide distribution, should not be applied to minority language printed media, which are unlikely ever to meet these conditions.

Ultimately, access to public media in persons' own languages is a communication and integration tool between state authorities and minorities. It gives governments a tool to prevent the isolation of minorities in public life, establishes a direct communication link between the state and minorities, and provides an effective tool for ensuring their inclusion while promoting tolerance, cultural diversity, mutual respect and understanding.

2.4.3 Administration and public services

Persons belonging to minorities should be able to possess the right to use their language in oral and written communications with public authorities, particularly with administrative bodies and authorities, especially in areas where persons belonging to minorities are present in substantial number or where they have expressed a desire for it. That is to say, minorities should have the right to acquire documents, certificates and attestations both in the official language of the state and in their language from local public institutions.

Similarly, government of states should ensure that public services are provided also in the language of the minority, where the need is expressed and the numbers are significant. The use of the minority language is particularly important in the areas of health and social services, which affect the quality of persons' lives in an immediate and fundamental manner. In these areas, individuals must be able to express themselves clearly and fully and not specifically request such services in their language when the need arises.

To ensure that minorities can benefit from administrative and social assistance, it is necessary that the public authorities have the ability to transmit, receive and deliver information in minority languages. In this regard, it is convenient that persons belonging to minorities are employed in administrative offices and in offices where public services are provided since they can offer them to the persons belonging to minorities in their own language. This facilitates the communication between services providers and users. It also has been suggested to train members of administration and public offices to consider the needs of persons belonging to minorities.

The ability of minorities to engage administrative bodies and offices providing public service in minority languages is necessary to avoid that persons belonging to these groups are placed at a disadvantage conditions.

2.4.4 Economic life

Persons belonging to minorities have the right to participate fully in the economic life of the state. Members of minorities should have the right to operate private enterprises and other self-employment opportunities and the right to run their business in the language of their choice, including in communication with their clients and in the managing of internal documents.

Persons belonging to a minority who run an enterprise should enjoy the right to display inscriptions, signs and other information of a private nature visible to the public in the minority language.

However, the protection of the rights of others may well justify specific prescriptions for the additional use of the state language. Indeed, a state may require the additional use of the official language in cases where a legitimate public interest can be demonstrate, such as in those sectors of economic activity which affect the enjoyment of

the rights of persons not belonging to a minority or require communication with public bodies. States may also require that public commercial signage and labeling be displayed in the state language as well. Otherwise, a state should not impose any restrictions on the choice of language in the administration of private business enterprises.

2.4.5 Private activities

The use of the minority's language in all private activities must be guaranteed, whether social, cultural, religious or sports related, including when this occurs in public view or locations.

Private activities include information-related activities, civil society and organizations, cultural associations, staging a private theater play in the language of the minority, participatory activities or events, sport events.

As freedom of expression is a basic human rights and language is a form of expression, persons belonging to a minority should be allowed to use their minority language among themselves, including when visible or audible by others in public spaces. It follows that the ability to use the minority's language for private activities must be guaranteed. In line with the right to have one's name in one's minority language, persons belonging to minorities have the right to adopt the name of their choice, in their minority language, for their private entities.

2.4.6 Juridical authorities

Ensuring, during criminal proceedings, that persons belonging to a minority who are arrested, or accused, of a criminal act are informed of the charges against them in a language they understand does not relate to the linguistic rights of national minorities as such.

To be regarded as a minority linguistic right, the accused person should be allowed to choose the language to be used during the proceeding. In other words, the person concerned should have the right to request the court to conduct the proceedings in the minority language or, alternatively, to use her/ his language, even if she/ he is able to speak the language of the court.

The right to conduct the proceedings in the minority languages or, at least, to use these languages with the court should as well be guaranteed by states during civil proceedings and proceedings before courts concerning administrative matters.

On request, the accused persons should have the right to receive the documents connected with proceedings in the minority language. Minorities should also have the right to draw up legal documents in their minority languages and have their validity recognized.

To guarantee an effective communication between authorities and persons belonging to minorities, the convenience of employing personnel with command of minority languages in judicial institutions has been recognized.

Obviously, the right to use minority languages in criminal, civil and administrative proceedings is limited to the areas in which the number of residents using the minority languages justifies the measures.

Providing for the use of minority languages in judicial proceedings goes beyond the human rights standards regarding criminal procedures: it guarantees real equality of treatment. In addition, the availability of judicial proceedings functioning in the language of a minority renders access to justice easier for its members.

2.4.7 Education

The right to education in their own language is among the most important rights for any minority. They demand this right because it is an extremely important tool for the preservation of their language. Education in the minorities' vernacular language is also crucial for a minority because it serves as a tool of preserving its culture, identity and history.¹²⁰ Education in the mother tongue "is a central means of forming and transmitting identity within a cultural group."¹²¹ Without attending education through mother tongue, it is difficult to develop and maintain the language and the culture.

In this regard, Article 29.1 (c) of the *United Nations Convention on the Rights of the Child* suggest that education should be directed to:

¹²⁰ Supra note 7.

¹²¹ W. Kemp (eds.), *Quiet Diplomacy in Action: The OSCE High Commissioner on National Minorities*, Martinus Nijhoff Publishers, 2001, p.123.

'the development of respect for the child's parents, his or her 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 originate, and for civilizations different from his or her own.'

The text seems to balance “respect for intrinsic minority values and those of the national community as a whole,”¹²² but then reaffirms that “due regard shall be paid to the [...] child's [...] cultural and linguistic background.”¹²³

It is useful to distinguish the right to be educated in one's own language and the right to learn one's own language. The right to learn in one's mother tongue is the minimum standard; the further right is the right to receive instruction in one's mother tongue, ideally at all levels, but especially at pre-school and kindergarten level and primary and secondary level. It should also be noted that learning through a language other than one's own presents “a double burden”¹²⁴ since not only new knowledge must be mastered, but another language as well. In addition, children may not understand what the teacher and the majority students are saying, whereas learning through one's vernacular language helps more the learners to easily understand the lesson than learning through non vernacular language.

It is important to draw attention to the fact that the right to education is regarded as a fundamental human right, while the right to be educated in one's own languages is not. For instance, Article 26 of the *Universal Declaration of Human Rights* provides that “everyone has the right to education,” but “no linguistic medium of education is specified.”¹²⁵ In the same manner, Article 14 of the *Charter of Fundamental Rights of the European Union* only ensures the right to education.¹²⁶ Similarly, Article 13 of the *International Covenant on Economic, Social and Cultural Rights*¹²⁷ and Article 2 of

¹²² UNICEF and Minority Rights Group, *International Report on Education Rights and Minorities*, 1994, p.11.

¹²³ UN, *Convention on the Rights of the Child*, 1989, art. 20.3.

¹²⁴ Romaine, *Supra* note 93, p.381.

¹²⁵ *Supra* note 122, p.10.

¹²⁶ EU, *The Charter of Fundamental Rights of the European Union*, 2000. Article 14.1: “everyone has the right to education and to have access to vocational and continuing training.”

¹²⁷ UN, *International Covenant on Economic, Social and Cultural Rights*, 1966. Article 13: “the States Parties to the present Covenant recognize the right of everyone to education.”

*Protocol 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms*¹²⁸ omit any reference to language.

However, often, the rights to education also provide that parents have a prior right to choose the kind of education that should be given to their children. This means that parents can choose schools, other than those established by the public authorities, which ensure their children the education in accordance with their own convictions.

It is often asserted that public education services should be provided in a minority language where there is a sufficiently high numerical demand. That is to say, that public education in minority languages should be provided following a proportional approach, namely taking into account the number and concentration of speakers of the language, the level of demand and the availability of resources. Education in the mother tongue should “be extended to as late a stage in education as possible,”¹²⁹ from kindergarten up to and including public university education. Ideally, the instruction through the medium of the child’s first language should last for a minimum of between six to eight years, since it is “the best medium for teaching a child,”¹³⁰ especially in the early years of education. This is even more essential because literacy in the first language precede literacy in the second, that is in the state language.¹³¹

The curriculum should ideally be taught in the child's language not only at pre-school and kindergarten levels, but also at primary school level. Using the minority's vernacular language as the medium for instruction just for a few years at primary level, and then switching over completely to state language should be avoided as this may lead to high failure rates or even dropouts.

Throughout secondary school, although “a substantial part of the curriculum should be taught through the medium of the minority language [...] the number of subjects taught in the state language, should gradually be increased.”¹³²

Obviously, the minority language should be taught as a subject on a regular basis, so that children can acquire a full command of their language.

¹²⁸ Council of Europe, Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1952. Article 2: “no person shall be denied the right to education.”

¹²⁹ UNESCO, Report on the Use of Vernacular Languages in Education, 1953, p.35.

¹³⁰ Supra note 129, p.11.

¹³¹ Supra note 122, p.19.

¹³² OSCE, The Hague Recommendations on the Education Rights of National Minorities, 1996, para. 13.

It is essential that minorities' children be entitled to education through the medium of their own languages because teaching through the medium of the majority language forces them to assimilate to the majority, thus losing "not only their language but part of their identity, and also their links with other members of their group."¹³³

At the same time, it is necessary to provide bilingual education by teaching the state language, especially at primary and secondary levels, in order to achieve that minorities children become proficient also in the majority language from an early age. The state language should be taught as a subject and preferably by bilingual teachers who have a good understanding of the child's cultural and linguistic background. Minority children must be given an opportunity to learn the official language of the state, since schools are often the first point of contact children have with groups outside their own community and with the state language.

As regards vocational training, it should be made accessible in the minority language, in specific subjects, if persons belonging to a minority have expressed a desire for it and if their numerical strength justifies it. States should also ensure that, upon completion of the vocational training, students are able to practice their occupation in both the minority and the state language.

Similarly, as regards education at tertiary level, minorities should have access to tertiary education in their own language when the need for it is demonstrated and when their numerical strength justifies it.

Where minorities' languages are used as the medium of instruction throughout education in public schools, the final exams must also be in that language. Similarly, admission exams to public universities and other public educational institutions should take account of the use of minorities' languages as a medium of test administration. Exams in minority languages or other arrangement should be put in place to accommodate minorities, so that they are not disadvantaged from access to higher education.

If demand, the minority is numerically too small or the excessive costs make public education not doable in a minority language, states should at least provide for the teaching of the minority's language.

¹³³ Supra note 122, p.18.

Minorities also enjoy the right to establish and maintain private schools and other training and educational institutions, with teaching through the medium of their own languages, and with control over the curriculum. In this regard, Article 2 of the 1960 *UNESCO Convention against Discrimination in Education* is important for minorities. Article 2 (b) implies that states can allow separate educational institutions in certain circumstances, in these words:

'the establishment or maintenance, for religious or *linguistic reasons*, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil's parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level (my emphasis).'

It is necessary for minorities to set up private educational institutions to meet their linguistic needs because they are often pressured to assimilate or abandon their own language. No restriction should be placed on the use of the minority's language, as either the medium of instruction or the language of administration of such educational institutions. At the same time, however, states may require that all students be given the right to learn the official language, to ensure that minorities' children are not isolated from the rest of the society. In this regard, Article 5 (c) (i) of the *UNESCO Convention against Discrimination in Education* states that the right to establish and administer private educational institutions cannot be "exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole." Moreover, this article highlights the linkage between education and language: "it is essential to recognize the right of members of national minorities to [...] the use or the teaching of their own language [...]"¹³⁴

States should also ensure that minorities children are not penalized for being taught in their own language in private schools, for instance, ensuring that their diplomas are automatically recognized.

Although states are not obligated to financially support such educational institutions, financial and/ or other forms of official support may be reasonable. Wherever

¹³⁴ UNESCO, *Convention against Discrimination in Education*, 1960, art. 5 (c) (i).

the law provides for financial assistance for the educational institutions, minority schools also have to benefit from economic incentives. States may support private minority schools by “assisting in the production and printing of teaching material in minority languages, or facilitating the import of such material from other countries.”¹³⁵

The right to learn its own language is important to minorities because not only it is absolutely vital for the maintenance of the language, but it also prevents language loss. Indeed, “a language that is not taught is a language that will ultimately vanish.”¹³⁶ It is crucial also because teaching minority languages prevents the forced linguistic and cultural assimilation of minority groups. It is often asserted that schools are “the key instrument for imposing assimilation into both the dominant language and the dominant culture.”¹³⁷ If minority children are forced to accept instruction through the medium of the majority language, in classes where other children are native speakers of the language of instruction, the majority language constitutes a threat to minority children’s mother tongue.

On the other hand, from the point of view of the state, the function of the education system is to ensure that all young people are taught to be literate in the state language, and teaching minority languages is believed to prevent minority children from acquiring the state language. In addition, states endorse that social unity of a state can be achieved only if everyone is educated in the state language; and, actually, minority children need to be taught the state language, order to participate fully in the society in which they live and to access to employment.

¹³⁵ Supra note 107, p.22.

¹³⁶ Supra note 107, p.16.

¹³⁷ Skutnabb-Kangas and Phillipson, Supra note 39, p.28.

PART II – PROTECTION OF MINORITY LINGUISTIC RIGHTS

CHAPTER THREE

EXISTING INSTRUMENTS FOR THE PROTECTION OF MINORITY LINGUISTIC RIGHTS

SUMMARY: 3.1 Introduction; 3.2 The United Nations; 3.2.1 International Covenant on Civil and Political Rights; 3.2.2 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; 3.2.3 Other instruments; 3.3 The Council of Europe; 3.3.1 The Framework Convention for the Protection of National Minorities; 3.3.2 The European Charter for Regional or Minority Languages; 3.4 The Organization for Security and Co-operation in Europe; 3.5 The European Union; 3.6 Respect for minorities: a challenge for membership conditionality.

3.1 Introduction

The linguistic rights of persons belonging to national minorities are the subject of a variety of international and European instruments. However, awareness of the importance of linguistic rights developed only in the past century. Given the centrality of language to one's identity, it is striking to note that concerns with linguistic rights have taken so long to emerge.

The history of linguistic rights goes back to 1815, when the first provision concerning language use was introduced in the *Final Act* of the Congress of Vienna. For the first time in history, a minority group was granted the right to use its language in public: the Polish minority who lived in Poznan was granted the right to use Polish for official business, jointly with German.

During the 19th century, some multilateral instruments appeared to safeguard national linguistic minorities, but no international treaty addressed the linguistic rights issue.

With the introduction of the concept of nation-state as ethnically homogeneous state, the dominant language was seen as a tool of securing internal conformity. Imposing a single language on all the persons living within the borders of the state was as seen as an instrument of government policy. The principle was “one state, one nation, one language”¹³⁸ and belonging to a homogeneous ethnic group and sharing the same language was fundamental. Anyone who did not share the same language was considered as a danger to the unity of the state. The option of preserving their language was not contemplated: nation-states did not grant any linguistic rights as minorities were expected to assimilate into the titular nation.

After World War I, with the establishment of the League of Nations, the first system of international protection of the rights of national minorities was created.¹³⁹ This system was built on a web of multilateral and bilateral treaties made by states to guarantee the protection of the communities, which, because of the war, became minorities within newly created states. This system provided for the protection of minority rights, including linguistic rights. Among linguistic rights, there were the right to use one’s own language in public and private and the right of minorities to establish their own educational institutions.¹⁴⁰ Although minority rights were not universally applicable, their significance should not be underestimated: it was the first time that the protection of minorities had been given to an international organization.

On the eve of the World War II, states' resentment led them to ignore their duties and this led to the demise of the League of Nations. In 1945, the United Nations succeeded the League of Nations as a new world organization, but it took a completely different approach to the issue of the minority rights. The UN, instead of further developing and strengthening the existing system of protection of minorities, preferred to develop a universal system of protection of human rights for all. According to the then prevailing attitude, a broad system of human rights supported by prohibition on discrimination based on any ground, including language, sufficed to protect the interests of minorities. Thus, special measures were unnecessary. Therefore, in the post-1945 conventions and

¹³⁸ Skutnabb-Kangas and Phillipson, *Supra* note 39, p.23.

¹³⁹ The Treaty of Versailles of 1919, which is the peace agreement that formally ended World War I, gave birth of the League of Nations.

¹⁴⁰ Skutnabb-Kangas and Phillipson, *Supra* note 39, p.24.

covenants on human rights clauses on the rights of minorities were not included and, as a result, neither linguistic rights were guaranteed.

On the international level, this approach changed considerably in the 1966, when the *International Covenant on Civil and Political Rights*, or rather its Article 27 was adopted. It placed minority rights within the context of human rights entitlements. This article is the first universal norm concerning minorities. It is generally considered the most relevant provision on the protection of the rights of speakers of minority languages on the universal level. Since the adoption of Article 27, a good number of provisions concerned with minority languages emerged.

With respect to Europe, the United Nations renewed interest in the field of minority rights resulted into a surge in efforts in the field of minority protection. Europe came to understand that special measures were needed. Consequently, both the Conference on Security and Co-operation in Europe¹⁴¹ and the Council of Europe, as the two most relevant international organizations in the human rights field in Europe, have since the early 1990s been actively engaged in promoting linguistic rights.

The European Union's efforts in promoting linguistic rights are a matter of particular interest. Since the Union has not yet elaborated its own provisions concerning linguistic rights, it cooperates with the Council of Europe to ensure minorities, living within the boundaries of its member states, linguistic rights.

The United Nations, the Council of Europe and the Organization for Security and Co-operation in Europe adopted documents containing rights to protect and promote the use of minorities' languages. However, some of these instruments merely contain the vague provisions, which each state must translate into its legislation. Thus, these organizations also elaborated a variety of guiding documents and standards to help states implementing linguistic rights principles, thus meeting their duties involving language.

It is important to distinguish between legally binding and non-legally binding instruments. Legally binding instruments are convention and covenant, while non-legally binding are declarations and recommendations. The former are also called "hard law instruments," while the latter "soft law instruments." Hard law instruments create binding legal obligations upon states, thus states are obliged to take positive measure; on the other

¹⁴¹ Today it is known as the Organization for Security and Co-operation in Europe.

hand, soft law instruments merely provide guidance to states on how to implement their commitments related to minority rights.

The following paragraphs are intended to refer to the international and European instruments, addressed to the protection of minority linguistic rights.

3.2 The United Nation

For a long time since its creation, the United Nations showed little attention to linguistic diversity. Or rather, the UN paid little attention to develop a system for the protection of minorities. In fact, the 1948 *Universal Declaration of Human Rights*, the first international document that set up human rights standards, does not refer to minorities in any of its provisions. However, in the same year the UN General Assembly stated that “the UN cannot remain indifferent to the fate of minorities.”¹⁴²

It is worth mentioning the 1949 *Memorandum* by the Secretary-General, which recommended some linguistic rights that were advanced at the time of its issue. The Secretary-General recommended “adequate primary and secondary education for the minority in its own language and its cultural traditions”¹⁴³ and “adequate facilities to the minority for the use of its language, either orally or in writing, in the legislature, before the courts and in administration, and the granting of the right to use that language in private intercourse.”¹⁴⁴

The General Assembly achieved its goal in 1966 with the dedicated provisions on minority protection of Article 27 of the *International Covenant on Civil and Political Rights*. The entry into force of the ICCPR in 1976, with its provision on the rights of persons belonging to minorities to use their language, marked the beginning of a new era.

Besides the *International Covenant on Civil and Political Rights*, the main instruments that enshrine linguistic rights for minorities are the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, the *International Covenant on Economic, Social and Cultural Rights* and the *Convention on the Rights of the Child*.

¹⁴² Supra note 45.

¹⁴³ Supra note 44, para. 8 (1).

¹⁴⁴ Supra note 44, para. 8 (3).

3.2.1 International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights was a landmark in establishing normative standards for the protection of persons belonging to minorities. The ICCPR was adopted by the General Assembly on 16 December 1966 and entered into force on 23 March 1976. This covenant is the only global legally binding instrument that includes a provision that specifically refers to minority rights, including their linguistic rights, that is Article 27. This article also served as starting point for all subsequent changes in the international regime of minority rights. In addition, Article 27 of this instrument is the first international norm that has universalized the concept of minority rights.

This article protects the rights of persons belonging to minorities to enjoy their ethnic, religious or linguistic identity, and to preserve the characteristics, which they wish to maintain and develop. However, for the purposes of this paper, the attention will be drawn on issues related to the ability of minorities to use their languages. Article 27 is of great importance in protecting the linguistic rights of minorities, and it reads as follows:

'in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.'

It provides that persons belonging to a linguistic minority may use their language among themselves. However, it is not clear whether the article entails positive obligations on states to protect and promote the use of minority languages or merely a negative obligation to refrain from interfering with language use in the private sphere. The only thing that is clear is that states must not attempt to interfere in the life of persons belonging to a minority because of their status as a linguistic minority: the affairs of minorities involving use of their language remain protected even if a state may have no obligation to recognize minority languages.

In the opinion of some scholars this article has to be seen as a regime of “linguistic tolerance rather than obliging states to undertake positive measures”¹⁴⁵ in favor of the

¹⁴⁵ Aftab, *Supra* note 91, p.397.

members of minorities. On the other hand, other scholars interpret the provision as imposing on states the obligation to take positive measures. However, even authors who support this interpretation, acknowledge that states are not obliged to give effect to any specific measure. This means that, even though it may impose positive obligations on a state, the article leaves a wide discretion to the given state on the modalities of its applications. The fact that the article does not specify any specific measure leaves it up to states to specify the measures necessary to comply with it, as usual in international law. It identifies the priority, namely the respect for the minority languages, but it requires signatory states to articulate a policy to fulfill this obligation.

The controversy arises from the negative terms used to express this article. The wording “shall not be denied” gives the impression that the states merely have to abstain from certain actions rather than being obliged to adopt positive measures to assist minorities in exercising their linguistic rights. In this regard, it is useful to refer to the Human Rights Committee¹⁴⁶ and its General Comment No. 23. The Human Rights Committee observed that:

'although article 27 is expressed in negative terms, that article, nevertheless, does recognize the existence of a “right” and requires that it shall not be denied. Consequently, a State party is under an obligation to ensure that the existence and the exercise of this right [...]. Positive measures of protection are, therefore, required [...].'¹⁴⁷

Moreover, paragraph 6.2 states that:

'positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language [...] in community with the other members of the group.'

From this interpretation one could say that the Human Rights Committee strongly support the position that Article 27 calls for special measures to be adopted by states, together with the need to protect the exercise of this right against denial.

¹⁴⁶ The Human Rights Committee is the treaty body assigned with the monitoring of the state parties' compliance with the International Covenant on Civil and Political Rights.

¹⁴⁷ Supra note 7, para. 6.1.

It also could be concluded that, in the Committee opinion, the mere protection enshrined in Articles 2.1 or in Article 26, on non-discrimination, is not enough for this right to be enjoyed on the part on minorities.

The Human Rights Committee also specifies that the rights protected under Article 27 should be distinguished from other linguistic rights enshrined in the Covenant:

'the right of individuals belonging to a linguistic minority to use their language among themselves, in private or in public, is distinct from other language rights protected under the Covenant. In particular, it should be distinguished from the general right to freedom of expression protected under article 19. The latter right is available to all persons, irrespective of whether they belong to minorities or not.'¹⁴⁸

Article 19, as formulated in the Covenant, could be considered as a right to freely access and use the media. At paragraph 2, it is formulated as follows:

'everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.'

Article 27 should also be distinguished from Articles 14.3 (a) and 14.3 (f) on the right, during criminal proceedings, to use one's vehicular language or to be assisted by an interpreter, since the aim of these article is not to protect the minority language, but to guarantee to all persons, whether or not they belong to a minority a fair trial. These articles, together with the above-mentioned Article 19 on the freedom of expression and Article 26 on non-discrimination on the ground, inter alia, of language, are distinct from Article 27 since anyone, as individual, is entitled to enjoy from them. As already said, this article only applies to minorities and thus only has a direct bearing on the linguistic rights of minorities. Article 27 gives minorities a much wider protection: it confers them the ability to use their languages in all situations, even though issues of relevance for minorities concerning language like, for instance, language use in education or in communication with public authorities are not explicitly dealt with.

¹⁴⁸ Supra note 7, para. 5.3.

The text of Article 27 suggests that minority rights, including linguistic rights, are individual rights. In its literal wording, indeed, it confers rights only on individuals, but the expression “in community with the other members of their group” suggest that it is the individual as a member of a minority, and not just any individual, who is entitled to benefit from Article 27. In practice, it allows the exercise of collective rights.

Although the provision enshrined in this article is rather vague, Article 27 is regarded as one of the most important international articles for the protection of linguistic minorities.

3.2.2 The Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities

The *Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities*, adopted on 18 December 1992, is the first international instrument exclusively devoted to the protection of minority rights. Although the declaration is in se not legally binding for United Nations member states, it “carries considerable moral authority”¹⁴⁹ as it was solemnly adopted by resolutions in the General Assembly.

The contents of the Minorities Declaration were “inspired by the provisions of article 27.”¹⁵⁰ However, it not only elaborates the rights under Article 27, but it provides for additional minority rights.

Due to the widespread violation of Article 2 the *Universal Declaration of Human Rights*, which prohibits discrimination against individuals based on any ground, including language, the international community called for a more incisive document. Thus, this declaration can be seen as a follow-up to the *Universal Declaration of Human Rights*. Article 2.1 expressly prohibits active or explicit discrimination against members of minorities:

'persons belonging to national or ethnic, religious and linguistic minorities [...] have the right to enjoy their own culture, to profess and practise their own religion, and *to use their*

¹⁴⁹ Supra note 1, p.27.

¹⁵⁰ UN, *The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, 1992, preamble.

own language, in private and in public, freely and without interference or any form of discrimination (my emphasis).¹⁵¹

This provisions gives a better approach than Article 27 of the *International Covenant on Civil and Political Rights* as demonstrated by its strongly positive formulation: “shall not be denied” has been replaced by “have the right,” and the right is to apply “in private and in public, freely and without any form of discrimination.” In other words, it is affirmatively stated that persons belonging to minorities have the right to use their own language, thus leaving no doubt as to the existence of obligations on states.

The Minorities Declaration does not focus on simply prohibiting unfair actions and policies devoted to minorities, but also impose specific duties upon states:

'states shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, *language*, religion, traditions and customs [...] (my emphasis).¹⁵¹

Moreover, states shall “protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories”¹⁵² and not only “encourage conditions for the promotion of that identity,”¹⁵³ but also “adopt appropriate legislative and other measures to achieve those ends.”¹⁵⁴ Linking the meaning of “existence” to “identity” implies expanding the meaning of “existence” to include a “cultural existence.”¹⁵⁵ Since language is among “the most important carriers of group identity,”¹⁵⁶ it follows that educational policies are crucial. In this regard, the Working Group on Minorities¹⁵⁷ in its commentary asserts that:

'denying minorities the possibility of learning their own language and of receiving instruction in their own language, or excluding from their education the transmission of

¹⁵¹ Supra note 150, art. 4.2.

¹⁵² Supra note 150, art. 1.1.

¹⁵³ Ibid.

¹⁵⁴ Supra note 150, art. 1.2.

¹⁵⁵ Supra note 57, para. 28.

¹⁵⁶ Supra note 57, para. 59.

¹⁵⁷ The Working Group on Minorities was established in 1995 as a subsidiary organ of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. Its mandate was to monitor the implementation of the Minorities Declaration by states and to recommend measures for protecting the rights of minorities.

knowledge about their own culture, history, tradition and language, would be a violation of the obligation to protect their identity.¹⁵⁸

It is in this perspective that one needs to look at Articles 4.3 and 4.4.

To remedy the failure of Article 27 to specify state measures aimed at the promotion of minority rights, the Minorities Declaration specifies what positive linguistic rights are:

'states should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.'¹⁵⁹

This article expressly guarantees the possibility for national minorities of learning their mother tongue or learning in their mother tongue. It is important to point out that this provision offers study of the minority language and study in the language as alternatives.

In this regard, it should be mentioned also Article 4.4, which reads as follows:

'states should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, *language* and culture of the minorities existing within their territory (my emphasis).'

It should be acknowledged that although it is true that the Minorities Declaration contains more elaborated provisions in comparison to Article 27, that give more guidance, these are still vague. They give a “broad sense of direction without indicating concrete requirements.”¹⁶⁰ Formulations like “wherever possible,” “where appropriate,” “favourable conditions” or “appropriate measures” inevitably concede a wide margin of appreciation to states. These formulations can easily be abused by governments to provide minimalist protection and argue that they comply with these provisions. As in Article 27,

¹⁵⁸ Working Group on Minorities of the Sub-Commission on the Promotion and Protection of Human Rights, *Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities*, 4 April 2005, para. 28.

¹⁵⁹ *Supra* note 150, art. 4.3.

¹⁶⁰ *Supra* note 13, p.54.

the majority of the rights enshrined in the Minorities Declaration are individual rights held by persons belonging to minorities by virtue of their membership.

Although not legally binding, the Minorities Declaration is one of the most comprehensive international instruments setting forth both the rights of minorities, including linguistic rights, and the duties of states.

3.2.3 Other instruments

There exist two more UN human rights treaties containing provisions that are relevant for minority linguistic rights. These are the *International Covenant on Economic, Social and Cultural Rights*, adopted in 1966 and entered into force in 1976, and the *Convention on the Rights of the Child*, adopted in 1989 and entered into force in 1990.

The articles of the *International Covenant on Economic, Social and Cultural Rights* that are of particular relevance to minorities are Articles 13 and 14. Article 13 sets forth the right of everyone to education, while Article 14 provides for the right to establish and direct educational institutions.

Moreover, paragraph 3 of Article 13 stipulates that states shall allow parents or legal guardians “to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards.”

Although Article 13 omits any reference to language, the Committee on Economic, Social and Cultural Rights,¹⁶¹ in its *General Comment No. 13* on the right to education, stresses the need of culturally appropriate educational programs for minorities.¹⁶² Similarly, in its *General Comment No. 21* on the right of everyone to take part in cultural life, the Committee reaffirms that “educational programmes of States parties should respect the cultural specificities of national or ethnic, linguistic and religious minorities”¹⁶³ and that states shall ensure that “educational programmes for minorities [...] are conducted on or in their own language.”¹⁶⁴

¹⁶¹ The Committee on Economic, Social and Cultural Rights was founded to monitor the state parties' compliance with the International Covenant on Economic, Social and Cultural Rights.

¹⁶² Committee on Economic, Social and Cultural Rights, *General Comment No. 13 (The Right to Education)*, 8 December 1999, para. 50.

¹⁶³ Committee on Economic, Social and Cultural Rights, *General Comment No. 21 (The Right of Everyone to take part in Cultural Life)*, 21 December 2009, para. 27.

¹⁶⁴ *Ibid.*

The articles of the *Convention on the Rights of the Child* that are of particular relevance to children belonging to a minority are Articles 17, 29 and 30. Article 17 prescribes that the child has “access to information and material from a diversity of national and international sources.” The article aims at encouraging the mass media to have “particular regard to the linguistic needs of the child who belongs to a minority group.” Article 29 states that a child’s education shall be directed to developing “respect for the child's parents, his or her own cultural identity, language and values.” The *Convention on the Rights of the Child* contains a provision specifically addressing the rights of the children belonging to minorities, that is Article 30. It reads as follows:

'in those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.'

Article 30 protects the right, contained also in the provisions of Article 27 of the *International Covenant on Civil and Political Rights*, to not be denied the right to use one’s own language. Like its counterpart in Article 27, it is not straight clear whether the right entails positive obligations on states. However, according to the Committee on the Rights of the Child¹⁶⁵ states are “under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation. The Committee concurs with the Human Rights Committee that positive measures of protection are required.”¹⁶⁶

3.3 The Council of Europe

The Council of Europe is an intergovernmental organization that works to promote awareness and encouragement of states’ cultural and linguistic identity. The Council of Europe’s action in the field of minority is based on the principle that the minority protection is part of the universal protection of human rights.

¹⁶⁵ The Committee on the Rights of the Child is the responsible body to monitor the progress made by states in achieving the realization of the obligations undertaken in the Convention on the Rights of the Child.

¹⁶⁶ Committee on the Rights of the Child, General Comment No. 11 (Indigenous Children and their Rights under the Convention), 2009, para. 17.

Protection of national minorities has always been on the Council of Europe's agenda, but the issue acquired more importance with the development of international interest in minorities and the collapse of European communist regimes. The Council of Europe followed the same approach as the United Nations in its early years. So much that the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, adopted in 1950 and entered into force in 1953, is a human rights instrument that does not contain any specific provisions on minority protection and, consequently, any particular provision concerning minority linguistic rights.

The Council of Europe's most important instruments for the protection of linguistic rights of minorities to be taken into account are the *Framework Convention for the Protection of National Minorities* and the *European Charter for Regional or Minority Languages*. These two documents are the most advanced instruments for linguistic rights of minorities.

Although the above-mentioned *Recommendation 1201* of 1993 has never been adopted by the Parliamentary Assembly, some of its provisions are worth being mentioned. It is worth being mentioned not only because it marked the change in the Council's approach towards minorities and their linguistic rights, but also because it shows the Council's concern for language issues.

The recommendation provides that person belonging to a national minority shall have the right “freely to use his/her mother tongue in private and in public, both orally and in writing;”¹⁶⁷ “the right to use his/her surname and first names in his/her mother tongue;”¹⁶⁸ “the right to use their mother tongue in their contacts with the administrative authorities and in proceedings before the courts and legal authorities”¹⁶⁹ and “the right to display in their language local names, signs, inscriptions and other similar information visible to the public”¹⁷⁰ in areas in which a substantial numbers of persons are settled; the right to use “his/her language in publications and in the audiovisual sector.”¹⁷¹ With regard to education, person belonging to a national minority shall have “the right to learn

¹⁶⁷ Parliamentary Assembly, Recommendation 1201, *Additional protocol on the rights of minorities to the European Convention on Human Rights*, 1 February 1993, art. 7, para. 19.

¹⁶⁸ Supra note 167, art. 7, para. 20.

¹⁶⁹ Supra note 167, art. 7, para. 21.

¹⁷⁰ Supra note 167, art. 7, para. 22.

¹⁷¹ Supra note 167, art. 7, para. 19.

his/ her mother tongue and to receive an education in his/her mother tongue”¹⁷² and “the right to set up and manage their own schools and educational and training establishments.”¹⁷³

The recommendation is important because shows that there is sensitivity among states to positive measures.

3.3.1 The Framework Convention for the Protection of National Minorities

The *Framework Convention for the Protection of National Minorities* is of particular significance in the evolution of the protection of minority rights. It is regarded as providing the most comprehensive international minimum standards in the field of minority rights to date. It is the first legally binding multilateral instrument explicitly designated to protect the rights of persons belonging to national minorities within Council of Europe member states. It was adopted by the Committee of Ministers of the Council of Europe on 10 November 1994 and entered into force on 1 February 1998. The Framework Convention was opened for signature on 1 February 1995 and, as of December 2006, it had been ratified by 39 states.¹⁷⁴

It was called “framework” convention because it is not directly applicable in the domestic legal orders of a state but requires implementation by the state concerned; whilst the word “convention” indicates that it is a legally binding instrument. The Framework Convention, indeed, sets out provisions to be implemented by the states, but states have the possibility to translate these provisions to their specific country situation through national legislation and appropriate governmental policies.

The aim of the Framework Convention is to specify the principles which states undertake to respect in order to ensure the protection of minorities. Parties to this convention undertake to promote the full and effective equality of persons belonging to minorities in all areas of social, economic, political and cultural life together with the

¹⁷² Supra note 167, art. 8, para. 23.

¹⁷³ Supra note 167, art. 8, para. 24.

¹⁷⁴ The Framework Convention for the Protection of National Minorities has been ratified by all Council of Europe member states, except Belgium, Greece, Iceland and Luxembourg. Andorra, France, Monaco and Turkey have neither signed nor ratified it. Non member states may join the Framework Convention at the invitation of the Committee of Ministers. The charter of signatures and ratifications of the FCNM is available at: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/157/signatures?p_auth=pUC6YiJY.

conditions that will allow them to express, preserve and develop their identity, culture, language and religion.

The Framework Convention contains a number of provisions relating to the protection of linguistic rights of minorities. These provisions cover the use of the minority language in the public and private spheres, and cover a wide range of fields, including personal names, geographic names, the display of information of private nature, contacts with administrative and public authorities, access to and use of media, learning of and instruction in the minority language.¹⁷⁵

This instrument recognizes the right of persons belonging to a minority to use their language among themselves, in private as well as in public. Article 10 stipulates that:

'the Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing.'

The recognition of this right is particularly important, not only because enables minorities to exercise their freedom of expression, but also because the use of the minority language represents "one of the principal means by which such persons can assert and preserve their identity."¹⁷⁶ However, "in public" means "in a public place, outside, or in the presence of other persons but is not concerned in any circumstances with relations with public authorities."¹⁷⁷

Communication with public and administrative authorities is the subject of paragraph 2 of the same article, which acknowledges the importance of this type of right:

'in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.'

¹⁷⁵ For further information, please refer to: Council of Europe, *The Framework Convention: a key tool to managing diversity through minority rights. Thematic commentary No. 4. The scope of application of the Framework Convention for the Protection of National Minorities*, adopted on 27 May 2016.

¹⁷⁶ *Supra* note 28, para. 64.

¹⁷⁷ *Ibid.*

Article 9 provides minorities with the ability to access to media: “parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media.” In addition, “parties shall not hinder the creation and the use of printed media by persons belonging to national minorities.” According to Article 9.1, “without interference by public authorities” minorities have the right to access to media originating from abroad. It can be said that this article contains “more detailed rules for the protection of the freedom of expression.”¹⁷⁸

According to the Framework Convention, certain rights that aim to preserve one's identity should be granted. In particular, under the terms of Article 11.1 states must recognize the right to use one's own name and surnames in the minority language and the right to official recognition of them. Similarly, under the terms of Article 11.3 states must recognize, in areas traditionally inhabited by substantial numbers of persons belonging to a minority, the right to display traditional local names, street names and other topographical indications in the minority language as well. It further adds the right to display minority language “signs, inscriptions and other information of a private nature visible to the public.”¹⁷⁹

The Framework Convention also contains important provisions on minority languages, which deal with education. For instance, states must guarantee the teaching of the minority language, as provided by Articles 12.1 and 14.1, or the teaching of other subjects in the minority language. The right to receive instruction in a minority language is stipulated by Article 14.2:

'In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.'

¹⁷⁸ Supra note 28, para. 55.

¹⁷⁹ Supra note 29, art. 14.2

Minorities are provided also with the right to set up and administer their own private educational and training institutions, without any financial obligation on the part of the state.¹⁸⁰

More generally, one can say that contracting states must:

'promote the condition necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, *language*, traditions, and cultural heritage (my emphasis).'¹⁸¹

The Framework Convention also grants some fundamental rights, such as the right to expression and the right to use one's language during criminal proceedings. As already mentioned above, these rights can be considered as fundamental universal human rights, since are applicable to all persons, whether belonging to a minority or not. In other words, states are obliged to respect the use of these rights also for persons not belonging to a minority. Specifically, the right to be informed of the reasons of the arrest and of the nature and cause of any accusation brought against her/ him in a minority language, together with the right to be assisted by an interpreter is granted by Article 10.3; while the right to enjoy the freedom of expression is provided by Articles 7 and 9.1.

The evaluation of the implementation of the Framework Convention by the states parties is carried out by the Committee of Ministers,¹⁸² with the assistance of the Advisory Committee.¹⁸³ The monitoring procedure requires each state to submit a report containing information on measures taken to comply with the principles of the Framework Convention within one year of the entry into force. Further reports have to be made on a periodical basis, or upon a specific request of the Committee of Ministers. If the Advisory Committee requires specific additional information, it sends states written questionnaires. These reports are examined by the Advisory Committee. Following its examination of the situation in the state, the Advisory Committee adopts an "Opinion" that is transmitted to the authorities concerned, which have an opportunity to comment on this opinion. This

¹⁸⁰ Supra note 29, art. 13.

¹⁸¹ Supra note 29, art. 5.1.

¹⁸² The Council of Europe Committee of Ministers consists of the Ministers of Foreign Affairs of the Council of Europe member states.

¹⁸³ The Advisory Committee, set up in 1998, is composed of 18 independent expert appointed by the Committee of Ministers.

“Opinion” is the fruit of an analysis of the national laws. Based on the Advisory Committee's remarks, the Committee of Ministers adopts a resolution with recommendations for the state to improve its legislation devoted to the protection of minorities.

It should be reminded that the Frameworks Convention contains no definition of “minority.” It follows that a state has essentially the possibility to designate its own concept of minority and which minorities it believe to be deserving the rights of protection. States have followed different approaches with regard to the definition of “minority:” from a restrictive approach to an open approach, including even non-citizens.¹⁸⁴ It is not surprising that on a number of occasions, the Advisory Committee commented with some criticism on the exclusion from the scope of application of the Framework Convention certain minority group.

In addition, upon signature or ratification states have the opportunity to make declarations concerning the application of the Convention.¹⁸⁵

The Framework Convention must nevertheless be considered as the instrument giving the strongest protection. Even if the Framework Convention consists of minimum standards, which in addition are weakened by phrases like “a real need,” “where appropriate” and “as far as possible,” thus granting states a wide margin of appreciation, this flexibility does not release them from their legal obligation to implement the convention's provisions. States are bound to adopt special measures that take into account the specific conditions of minorities. The monitoring mechanisms as well has prompted states to conform states' legislation to the requirements and adopt new laws devoted to the effective implementation of minority rights.

3.3.2 The European Charter for Regional or Minority Languages

The European Charter for Regional or Minority Languages, adopted on 25 June 1992 by the Council of Europe Committee of Ministers, is the only legally binding

¹⁸⁴ Supra note 2.

¹⁸⁵ All the reservations and declarations made by states for the Framework Convention for the Protection of National Minorities are available at: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/157/declarations?p_auth=pUC6YiJY.

existing instrument, containing standards for linguistic rights. The Charter was opened for signature on 5 November 1992¹⁸⁶ and entered into force on 1 March 1998.

The charter has significantly raised the standards of linguistic protection, especially in areas where international instruments are very deficient. It is the most comprehensive international document in the field. This instrument is intended to protect and promote national and regional languages as an endangered component of the European cultural heritage, in order to maintain and develop “Europe's cultural wealth and traditions.”¹⁸⁷ It attempts to safeguard “the value of interculturalism and multilingualism”¹⁸⁸ as “an important contribution to the building of a Europe based on the principles of democracy and cultural diversity.”¹⁸⁹

Despite the Charter has “minority” in the title and despite the claim in the preamble that the use of “a regional or minority language in private and public life is an inalienable right,” the Charter is not *per se* an instrument for the protection of minorities’ rights. It focuses on protecting regional and minority languages, not linguistic minorities. Furthermore, 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.”¹⁹⁰

The Charter does not enshrine any individual or collective rights for the speakers of regional and minority languages but lists principles and objectives with regard to the use of these languages. Nevertheless, bearing in mind that language is one of the most important aspects of minorities’ identity,

‘the obligations of the parties with regard to the status of these languages and the domestic legislation which will have to be introduced in compliance with the charter will have an obvious effect on the situation of the communities concerned and their individual members.’¹⁹¹

¹⁸⁶ It is worth noting that the European Charter of Regional or Minority Languages has not been ratified by all the Council of Europe member states, while some other member states neither signed it. The charter of signatures and ratifications of the ECRML is available at https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/148/signatures?p_auth=pUC6YiJY.

¹⁸⁷ Council of Europe, *The European Charter for Regional of Minority Languages*, 1992, preamble.

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*

¹⁹⁰ *Supra* note 28, para. 17.

¹⁹¹ *Supra* note 28, para. 11.

Only in an indirect way, it can be considered as a legal instrument to protect linguistic minorities as such: the adoption of special measures in favor of these languages aims at “promoting equality between the users these languages and the rest of the population.”¹⁹²

The Charter contains a series of specific provisions concerning practical measure for the use of regional and minority languages in specific public domains: education, judicial authorities, administrative authorities and public services, access to media, cultural activities and facilities, economic and social activities.

Further aim of the Charter is to “eliminate [...] any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and intended to discourage or endanger the maintenance or development of it.”¹⁹³

Article 1 of the Charter contains a definition of minority or regional language. According to the definition set out in the article, the expression “regional or minority languages” means languages that are:

'traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population; and different from the official language(s) of that State.'

The article specify that the definition “does not include either dialects of the official language(s) of the State or the languages of migrants.” In the explanatory report to the Charter, it is explicitly specified that:

'the purpose of the charter is not to resolve the problems arising out of recent immigration phenomena, resulting in the existence of groups speaking a foreign language in the country of immigration [...].'¹⁹⁴

The Charter, indeed, does not deal with the situation of new languages, which “may have appeared in the signatory States as a result of recent migration flows.”¹⁹⁵

¹⁹² Supra note 29, art. 7.2.

¹⁹³ Ibid.

¹⁹⁴ Supra note 28, para. 31.

¹⁹⁵ Supra note 28, para. 15.

Thus, one can say that the Charter covers only historical languages, that is to say languages that have been spoken over a long period in a given state. Moreover, it is clearly stated in the preamble: “historical regional or minority languages of Europe.”

The Charter further distinguish between “territorial” and “non territorial” languages. The expression “territory in which the regional or minority language is used” means the:

'geographical area in which the said language is the mode of expression of a number of people justifying the adoption of the various protective and promotional measures provided for in this Charter.'¹⁹⁶

Even though it is not that clear, a language may be defined as a “regional language” even if the language is spoken by the majority of the citizens in the region.¹⁹⁷

On the other hand, the expression “non-territorial languages” means:

'languages used by nationals of the State which differ from the language or languages used by the rest of the State's population but which, although traditionally used within the territory of the State, cannot be identified with a particular area thereof.'¹⁹⁸

Thus, the term “minority language” refers to situations in which:

'either the language is spoken by persons who are not concentrated on a specific part of the territory of a State or it is spoken by a group of persons, which, though concentrated on part of the territory of the State, is numerically smaller than the population in this region which speaks the majority language of the State.'¹⁹⁹

Both adjectives “regional” and “minority” refer to “factual criteria and not to legal notions and in any case relate to the situation in a given State,”²⁰⁰ This is essential since, for example, a minority language in one state may be a majority language in another state.

¹⁹⁶ Supra note 29, art.1.

¹⁹⁷ Supra note 28, para.

¹⁹⁸ Supra note 29, art.1.

¹⁹⁹ Supra note 28, para. 18.

²⁰⁰ Ibid.

The Charter is designed to be used as “à la carte” instrument, allowing each state party to the Charter to choose from this menu a certain number of provision that will be transposed to its domestic legislation and practices. The introduced flexibility of the Charter makes available its adoption as closely as possible to the specific situation of each regional or minority language. However, there exist limitations to it, as provided by Article 2.2:

'[...] each Party undertakes to apply a minimum of thirty-five paragraphs or sub-paragraphs chosen from among the provisions of Part III of the Charter, including at least three chosen from each of the Articles 8 and 12 and one from each of the Articles 9, 10, 11 and 13.'

This does not exclude that, at any subsequent time, a state can accept “the obligations arising out of the provisions of any other paragraph of the Charter not already specified in its instrument of ratification, acceptance or approval [...]”²⁰¹

Furthermore, signatory states can specify to which regional or minority languages spoken within their jurisdiction it wishes the rights of the Charter to apply:²⁰²

'each Contracting State shall specify in its instrument of ratification, acceptance or approval, each regional or minority language, or official language which is less widely used on the whole or part of its territory, to which the paragraphs chosen in accordance with Article 2, paragraph 2, shall apply.'²⁰³

At any subsequent time, states are free to apply obligations arising out of the provisions of the Charter “to other regional or minority languages, or to other official languages which are less widely used on the whole or part of its territory,”²⁰⁴ not already specified upon ratification.

Part III of the Charter introduces the measures to promote the use of regional or minority languages in public life. For each subject matter, the Charter contains several degree of implementation, ranging from very weak to rather strong ones. Most of

²⁰¹ Supra note 29, art.3.2.

²⁰² The reservations and declarations made by the signatory states for the ECRML are available at: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/148/declarations?p_auth=pUC6YiJY.

²⁰³ Supra note 29, art.3.1.

²⁰⁴ Supra note 29, art.3.2.

obligations include a range of modifications like “as far as possible,” “relevant,” “appropriate,” “where necessary,” “if the number of users of a regional or minority language justifies it,” thus allowing states a considerable margin of appreciation. In particular the expression “number of people justifying the adoption of” the various measures has been repeatedly used to avoid “establishing a fixed percentage of speakers of a regional or minority language at or above which the measures laid down in the charter should apply.”²⁰⁵ Authors of the Charter preferred “to leave it up to the State to assess [...], according to the nature of each of the measures provided for, the appropriate number of speakers”²⁰⁶ for the adoption of the measure in question. Thus, reluctant states can meet the requirements in a minimalist way, claiming that a provision was not “possible” or numbers were not “sufficient” or did not “justify” a provision. The Charter does not require states to exceed the limits of their capabilities while applying Charter’s provisions into domestic legislation. The approach adopted in the Charter enables signatory state to apply only those provisions, which it is capable of applying.

Article 8 deals with education, and includes all stages of the education system: pre-school, primary, secondary, university and other higher education. It is also concerned with technical and vocational education and adult and continuing education courses. According to the situation of each of these languages, states shall encourage or provide teaching in or of the regional or minority languages.

As regards the teaching in the regional or minority language, the degree of implementation range from making available the entire teaching in the relevant regional or minority languages,²⁰⁷ to “make available a substantial part”²⁰⁸ up to “at least to those pupils whose families so request and whose number is considered sufficient.”²⁰⁹

If teaching in the regional or minority language is not possible, the teaching of these languages should at least be guaranteed. Article 8 also provides, at primary and secondary education, and within technical and vocational education, for “the teaching of the relevant regional or minority languages as an integral part of the curriculum”²¹⁰ The

²⁰⁵ Supra note 28, para. 35.

²⁰⁶ Ibid.

²⁰⁷ Supra note 29, art.8.1 (a) (i); art. 8.1 (b) (i); art. 8.1 (c) (i); art.8.1 (d) (i); art. 8.1 (e) (i); art. 8.1 (f) (i).

²⁰⁸ Supra note 29, art.8.1 (a) (ii); art. 8.1 (b) (ii); art. 8.1 (c) (ii); art.8.1 (d) (ii).

²⁰⁹ Supra note 29, art.8.1 (a) (iii); art. 8.1 (b) (iv); art. 8.1 (c) (iv); art.8.1 (d) (iv).

²¹⁰ Supra note 29, art.8.1 (b) (iii); art. 8.1 (c) (iii); art.8.1 (d) (iii).

teaching of these languages shall be provided as education subject also at university and other higher education level²¹¹ and within adult and continuing education courses.²¹²

The contacts with the judicial authorities are the subject of Article 9. The Charter further distinguish between criminal proceedings, civil proceedings and proceedings before courts concerning administrative matters. Paragraph 1 (a) stipulates that, during criminal proceeding, at the request of one of the parties, the court “shall conduct the proceedings in the regional or minority languages,” or “guarantee the accused the right to use his/her regional or minority language.”²¹³ This provision goes beyond the right to have the free assistance of an interpreter if the person concerned does not understand or speak the language used in court, as provided the international instrument for the protection of human rights. The ability to conduct the proceedings in the regional or minority languages or to use these languages without thereby incurring additional expense shall as well be guaranteed by states during civil proceedings and proceedings before courts concerning administrative matters.²¹⁴ This provision is based on the consideration that even if a speaker of a regional or minority language is able to speak the language of the court, when it comes to justifying oneself before the court, she/ he may feel the need to express itself in the language which is emotionally closest to her/ him or in which she/ he has greater fluency.²¹⁵

Article 10 deals with the contacts with administrative authorities and public services. With regard to administrative authorities, in areas in which the number of residents who are users of regional or minority languages justifies it and as far as this is reasonably possible, the states shall ensure that the administrative authorities use these languages;²¹⁶ or ensure that speakers of these have the opportunity to submit oral or written applications and receive a reply in these languages;²¹⁷ or, at least, ensure that the users have the ability to submit oral or written applications in these languages.²¹⁸ With regard to public services provided by the administrative authorities, within the territory in which regional or minority languages are used and as far as this is reasonably possible,

²¹¹ Supra note 29, art.8.1 (e) (ii).

²¹² Supra note 29, art.8.1 (f) (ii).

²¹³ Supra note 29, art.9.1 (a) (ii).

²¹⁴ Supra note 29, art.9.1 (b) (i) and (b) (ii); art. 9.1 (c) (i) and (c) (ii).

²¹⁵ Supra note 28, para. 95.

²¹⁶ Supra note 29, art.10.1 (a) (i).

²¹⁷ Supra note 29, art.10.1 (a) (iii).

²¹⁸ Supra note 29, art.10.1 (a) (iv).

states shall ensure that the languages are used in the provision of the service;²¹⁹ or allow users of these languages to submit a request and receive a reply in these languages;²²⁰ or, at least, allow users to submit a request in these languages.²²¹ In order to put into effect these provisions, states undertake to take the necessary measure, including translation or interpretation,²²² and recruitment and, if necessary, training of the public service employees.²²³

The access to media is the topic of Article 11. With regard to radio and television, within the territories in which regional or minority languages are spoken, states undertake to “ensure the creation of at least one radio station and one television channel in the regional or minority languages,”²²⁴ or “make adequate provision so that broadcasters offer programmes in the regional or minority languages.”²²⁵ If it is not possible, states shall at least “encourage and/or facilitate” their creation,²²⁶ the broadcasting of radio programmes²²⁷ and television programmes in these languages.²²⁸ States also undertake to encourage and facilitate “the production and distribution of audio and audiovisual works in the regional or minority languages,”²²⁹ “the publication of newspaper articles”²³⁰ and “the creation and/or maintenance of at least one newspaper”²³¹ in these languages.

Under the terms of Article 12, with regard to cultural activities and facilities, a state must encourage the use of regional or minority languages. The provisions contained in this article refer to use of these languages in libraries, video libraries, museums, cultural centers, academies, archives, theatres and cinemas, as well as in literary work and film production, vernacular forms of cultural expression and festivals, including the use of new technologies.

With regard to economic and social activities, Article 13 oblige states to eliminate the provisions “prohibiting or limiting without justifiable reasons the use of regional or

²¹⁹ Supra note 29, art.10.3 (a).

²²⁰ Supra note 29, art.10.3 (b).

²²¹ Supra note 29, art.10.3 (c).

²²² Supra note 29, art.10.4 (a).

²²³ Supra note 29, art.10.4 (b).

²²⁴ Supra note 29, art.11.1 (a) (i); art.11.1 (b) (i); art.11.1 (c) (i).

²²⁵ Supra note 29, art.11.1 (a) (iii).

²²⁶ Supra note 29, art.11.1 (a) (ii).

²²⁷ Supra note 29, art.11.1 (b) (ii).

²²⁸ Supra note 29, art.11.1 (c) (ii).

²²⁹ Supra note 29, art.11.1 (d).

²³⁰ Supra note 29, art.11.1 (e) (ii).

²³¹ Supra note 29, art.11.1 (e) (i).

minority languages in documents relating to economic or social life,” such as contracts of employment or technical documents;²³² to not exclude the use of these language in internal regulations of companies and private documents.²³³ As far as it is possible, states shall allow the use of regional or minority languages in financial documents²³⁴ and in safety instructions.²³⁵ Signatory states shall also allow persons who are in need of care on grounds of ill health or for other reasons to use their own regional or minority language in social care facilities such as hospitals and hostels.²³⁶

As regards the maintenance of one's identity, Article 10.5 obliges states “to allow the use or adoption of family names in the regional or minority languages, at the request of those concerned.” Similarly, Article 10.2 (g) obliges states to allow the use “of traditional and correct forms of place-names in regional or minority languages,” and if necessary in conjunction with the name in the state language.

Even though states are given a great deal of discretion, the Charter is in any case a binding instrument that places obligations on states that accede to it. In fact, in each state, the implementation of the Charter is monitored by a committee of experts that examines how the state is complying with the obligations selected under this instrument. This committee also makes recommendations for the improvement of the state's legislation and policy.

One should not underestimate the value of the Charter in promoting awareness of good practice in linguistic rights field. Even if it covers only indirectly the rights of minorities, the Charter considerably advances the standards of minorities' linguistic rights protection.

3.4 The Organization for Security and Co-operation in Europe

The Organization for Security and Co-operation in Europe is the only European organization that attempt to deal with minority rights, including linguistic rights, from a conflict prevention and security perspective. It is primarily a security organization, whose aim is to achieve security and stability for all its member states through a process of

²³² Supra note 29, art.13.1 (a).

²³³ Supra note 29, art.13.1 (b).

²³⁴ Supra note 29, art.13.2 (a).

²³⁵ Supra note 29, art.13.2 (d).

²³⁶ Supra note 29, art.13.2 (c).

cooperation. Even though it is an instrument for early warning, conflict prevention, and crisis management, the OSCE has played an important role in the development of normative and institutional instruments for the promotion and protection of minority linguistic rights. The protection of the rights of persons belonging to minorities, including their linguistic rights, constitutes a key element within the scope of its approach of “comprehensive security,” which recognizes three main dimensions of security: politico-military, economic and environmental, and human.

The issue of minority protection was on the OSCE's agenda from the beginning of its existence, since it was known as the Conference on Security and Co-operation in Europe (CSCE) and was an intergovernmental diplomatic conference (it became the Organization on Security and Co-operation in Europe in January 1995). However, before the end of the Cold War the only provision in OSCE for national minorities was the 1975 *Helsinki Final Act*, whose Principle VII of *Declaration on Principles Guiding Relations between Participating States* contains the following obligation:

'the participating States on whose territory national minorities exist will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere.'

A change in outlook came between 1989 and 1991, with the collapse of communism in Eastern Europe. In the post-Cold War period, the creation of new states, or the restoration of their sovereignty has been accompanied in many areas by national and ethnic revivals. Thus, the OSCE has had to pay special attention to problems of diversity, particularly linguistic diversity. The objective promoted by the OSCE was, and is, one of “integrating diversity,” that is the simultaneous maintenance of different identities and the promotion of social integration.²³⁷

In this context, the OSCE took qualitative steps towards norm setting in minority rights. The *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, adopted on 29 June 1990, was a landmark in establishing

²³⁷ S. Holt and J. Packer, “OSCE Developments and Linguistic Minorities”, *International Journal on Multicultural Societies (IJMS)* “The Human Rights of Linguistic Minorities and Language Policies”, Vol. 3, No. 2, 2001, p.102.

normative standards for the protection of persons belonging to minorities, which also involves linguistic rights. It contains one of the most comprehensive sets of international minority rights standards, that goes further than any of the other international documents presented earlier in specifying how minorities should be protected.

The document not only reaffirms “that respect for the rights of persons belonging to national minorities [...] is an essential factor for peace, justice, stability and democracy,”²³⁸ but also argues for positive rights, thus going beyond mere anti-discrimination and equal treatment provisions.²³⁹ Article 33 reads as follows: “the participating States will protect the ethnic, cultural, linguistic and religious identity of national minorities on their territory and create conditions for the promotion of that identity.”

The Copenhagen document addresses a number of issues devoted to minorities, including important commitments on the linguistic protection of the minorities. Minorities have the right “freely to express, preserve and develop their ethnic, cultural, *linguistic* or religious identity and to maintain and develop their culture in all its aspects [...] (my emphasis),”²⁴⁰ and, in particular, the right “to use freely their mother tongue in private as well as in public;”²⁴¹ “to establish and maintain their own *educational*, cultural and religious institutions, organizations or associations [...] (my emphasis),”²⁴² “[...] to conduct religious educational activities in their *mother tongue* (my emphasis);”²⁴³ “to disseminate, have access to and exchange information in their mother tongue.”²⁴⁴

The most important provisions is enshrined in paragraph 34, that guarantees the possibility for national minorities of learning their mother tongue or learning in their mother tongue, and using their mother tongue before the public authorities. It is formulated as follows:

‘the participating States will endeavour to ensure that persons belonging to national minorities, notwithstanding the need to learn the official language or languages of the State

²³⁸ Supra note 74, para. 30.

²³⁹ Supra note 74, Paragraph 31: “persons belonging to national minorities have the right to exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law.”

²⁴⁰ Supra note 74, para. 32.

²⁴¹ Supra note 74, para. 32.1.

²⁴² Supra note 74, para. 32.2.

²⁴³ Supra note 74, para. 32.3.

²⁴⁴ Supra note 74, para. 32.5.

concerned, have adequate opportunities for instruction of their mother tongue or in their mother tongue, as well as, wherever possible and necessary, for its use before public authorities, in conformity with applicable national legislation.'

Although the Copenhagen document is a declaration and not a legally binding instrument, it has both political and legal significance due to its adoption by consensus by the OSCE participating states. The political significance lies in the willingness of OSCE states to accept that the protections afforded to minorities, including those pertaining to linguistic rights, are worthy policy that contribute to the goals of the organization in the human dimension.²⁴⁵ This document also served as an important basis for the further development of minority-related issues in Europe.

The approach towards positive measures was further stressed in the 1990 *Paris Charter for a New Europe*, which stated that “peace, justice, stability and democracy, require that the ethnic, cultural, *linguistic* and religious identity of national minorities be protected and conditions for the promotion of that identity be created (my emphasis).”²⁴⁶ The states' commitment, however, seems stronger:

'we *affirm* that the ethnic, cultural, linguistic and religious identity of national minorities will be protected and that persons belonging to national minorities have the right freely to express, preserve and develop that identity without any discrimination and in full equality before the law (my emphasis).'²⁴⁷

At the Geneva Meeting of experts on national minorities, held on 19 July 1991, the focus was on some language-related issue. In particular, the participating states acknowledged the importance of education in one's mother tongue and free access to media, without discrimination. States also acknowledged the importance to minorities of the right to establish and maintain their own educational institutions.²⁴⁸

An even more important step was taken in 1992, at the Helsinki Summit when the OSCE established the position of High Commissioner on National Minorities. It was established as “an instrument of conflict prevention at the earliest possible stage.”²⁴⁹ The

²⁴⁵ Supra note 74, p.11.

²⁴⁶ Supra note 7, p.7.

²⁴⁷ Supra note 7, p.4.

²⁴⁸ CSCE, *Report of the CSCE Meeting of Experts on National Minorities*, Geneva, 1991

²⁴⁹ CSCE, *The Document of the Helsinki Summit “The Challenges of Change”*, 1992, p.8.

High Commissioner is the most advanced instrument for dealing with national minority issues, and has a significant role in the dismantling of the minority problem, even though it is a non-binding mechanism. The HCNM provides “early warning”²⁵⁰ and seeks resolutions at the earliest possible stage in regard to “tensions involving national minority issues that have the potential to develop into a conflict [...] affecting peace, stability [...].”²⁵¹ It follows that the HCNM is not focused on safeguarding minority rights: minority rights issues are only paid attention when they have the potential to develop into conflict.

The High Commissioner employs the international and European standards to which each state has agreed as his principal framework of analysis in order to formulate his recommendations.

Because language is a defining element of a national minority, it is not surprising that language issues figured in a number of situations in which the High Commissioner was engaged. In particular, most language disputes that requires the intervention of the High Commissioner dealt with the right to use the minority language in the public sphere.

A possible reason why the linguistic rights of persons belonging to minorities have emerged as among the most common sources of dispute in many states can be found in the centrality of language to identity: disputes arise when this element, connected to the sense of identity, feels threatened. Any threat to the use of language is interpreted “as tantamount to a threat to the very identity of those involved, thus provoking understandably strong and defensive reactions.”²⁵² In addition, language also functions as a tool of social organization and, in this sense, problems may arise when minority groups feel that they are being excluded from certain opportunities in the public sphere like, for instance, access to public services and facilities.

Because language issues were recurrent in a number of countries in which it was involved, the High Commissioner, requested the Foundation on Inter-Ethnic Relations²⁵³ to consult a group of independent internationally recognized experts, hoping to receive recommendations on the linguistic rights of national minorities. The result was the *Oslo Recommendations Regarding the Linguistic Rights of National Minorities*, issued in 1998.

²⁵⁰ Supra note 249, p.7.

²⁵¹ Supra note 249, p.8.

²⁵² Holt and Packer, Supra note 237, p.101.

²⁵³ The Foundation on Inter-Ethnic Relations is a non-governmental organization established in 1993 to carry out specialized activities in support of the HCNM.

The recommendations attempt to clarify the content of linguistic rights of minorities in detail, and the situations in which they are involved: names and geographical name, the media, administrative authorities and public services, judicial authorities, economic and community life. Based on the experience of the HCNM and the advice of internationally recognized experts, these recommendations seek to:

'provide a useful reference for the development of State policies and laws which will contribute to an effective implementation of the language rights of persons belonging to national minorities, especially in the public sphere.'²⁵⁴

These Recommendations express reference to the relevant international standards where the linguistic rights are to be found.

A similar request from the High Commissioner had previously resulted in the elaboration of *The Hague Recommendations Regarding the Education Rights of National Minorities*, issued in 1996. Analogously, the High Commissioner requested the Foundation on Inter-Ethnic Relations to consult a group of experts of international repute in the fields of both human rights and education, hoping to receive their recommendations on an appropriate application of minority education rights in the OSCE area. These Recommendations comprehensively address the use of languages of minorities in the field of education. They cover both public and private institutions, minority education at primary and secondary levels, minority education in vocational schools and minority education at the tertiary level. The right to learn one's language is essential, since "the right of persons belonging to national minorities to maintain their identity can only be fully realized if they acquire a proper knowledge of their mother tongue during the educational process."²⁵⁵

These Recommendations attempt to provide guidance to the OSCE participating states on how best to ensure the education rights of minorities within their borders. According to the experts in the field, states "should approach minority education rights in a proactive manner."²⁵⁶ This means that "where required, special measures should be

²⁵⁴ OSCE, High Commissioner on National Minorities, *The Oslo Recommendations regarding the Linguistic Rights of National Minorities*, Oslo, 1998, p.4.

²⁵⁵ Supra note 132, p.5.

²⁵⁶ Ibid.

adopted [...] to actively implement minority language education rights to the maximum of their available resources [...].”²⁵⁷

Similarly, the High Commissioner commissioned a group of experts to develop guidelines on the use of minority languages in the media; the result are the *Guidelines on the use of Minority Languages in the Broadcast Media*, issued in 2003. These guidelines describe the standards that a state should meet, based on general principles of freedom of expression, in the field of the media.

It was in order to assist policy-makers in developing and implementing good policies in the areas of linguistic rights that the HCNM required the elaboration of these sets of general recommendations. Their aim is to provide states with a framework within which they can develop policy and law purposely to their own specific cultural and linguistic context.

Two more documents are worth mentioning, namely the *Lund Recommendations on the Effective Participation of National Minorities in Public Life* and the *Ljubljana Guidelines on Integration of Diversity Societies*.

The *Lund Recommendations on the Effective Participation of National Minorities in Public Life*, issued in 1999, aim to encourage the OSCE states to adopt particular measures to reduce tensions related to effective participation of national minorities in public life. Even though these recommendations do not expressly deal with linguistic rights, some of them are concerned with minority languages use. In particular, with regard to public life, it is stressed the need for “provision of public services in the language of the national minority.”²⁵⁸ Another recommendation is worth mentioning, and it reads as follows: “individuals and groups have the right to choose to use their names in the minority language and obtain official recognition of their names.”²⁵⁹

The *Ljubljana Guidelines on Integration of Diversity Societies* issued in 2012, like the Oslo Recommendations, aims at clarifying the content of minority linguistic rights and the situations in which they are involved.

All OSCE participating states have bound themselves to respect OSCE commitments. In addition, all OSCE decisions, resolutions, declarations and similar acts

²⁵⁷ Ibid.

²⁵⁸ OSCE, *The Lund Recommendations on the Effective Participation of National Minorities in Public Life*, 1999, para. A 6.

²⁵⁹ *Supra* note 258, para. A 18.

are not imposed, but are made by consensus. Thus, they are expected to respect them. Moreover, OSCE documents explicitly include the need for effective implementation of OSCE commitments by states, which can benefit from the assistance on the part of the organization in developing good practice regarding the linguistic rights of their minorities. The Organization for Security and Co-Operation in Europe also encourages its participating states to respect international standards:

'we reaffirm our commitment to ensure that laws and policies fully respect the rights of persons belonging to national minorities, in particular in relation to issues affecting cultural identity. Specifically, we emphasize the requirement that laws and policies regarding the *educational, linguistic* and participatory rights of persons belonging to national minorities conform to applicable international standards and conventions (my emphasis).'²⁶⁰

Although OSCE documents are not legally binding and are merely built on states' moral commitment to protect linguistic rights of minorities, they are important for the development of the international protection of these rights.

3.5 The European Union

The issue of minority rights, including linguistic rights, has not always been a matter of major relevance for the policies of the European Union. However, "linguistic diversity is one of the European Union's defining features. Respect for the diversity of the Union's languages is a founding principle of the European Union."²⁶¹ Respect for linguistic diversity, indeed, is embedded in various EU's treaties.

At the EU level, linguistic rights only have been mentioned in political documents. The most explicit attention to the minority languages comes from the European Parliament. The Parliament, in its own words, "represent[s] the cultural diversity of Europe."²⁶²

The European Parliament is considered to be the key player in the field of minority linguistic rights. Several of its resolutions, indeed, are focused on linguistic minorities.

²⁶⁰ OSCE, *The Istanbul Document*, 1999, para. 30.

²⁶¹ European Commission, *Promoting Language Learning and Linguistic Diversity: an Action Plan 2004 – 2006*, Communication to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions, Brussels, 2003.

²⁶² *Supra* note 86, para. N.

Unfortunately, these resolutions are of not legally binding nature and, therefore, have no effect.

The 1981 *Resolution on a Community Charter of Regional Languages and Cultures and on a Charter of Rights of Ethnic Minorities*, adopted on the basis of the report prepared by the Rapporteur Gaetano Arfé, requests “national, regional and local authorities” to take some measures for the benefit of minorities in the fields of education, mass communications and public life and social affairs. With regard to education, the Parliament request authorities to “allow and promote the teaching of regional languages and cultures in official curricula right through from nursery school to university” so as to ensure that “the child is able to speak its mother tongue.” In the field of mass communications, the Parliament request authorities to “allow and take steps to ensure access to local radio and television.” The last request is to ensure that “individuals are allowed to use their own language in the field of public life and social affairs in their dealings with official bodies and in the courts.” Finally, the Parliament calls on the Commission “to review all Community legislation or practices which discriminate against minority languages.”

The 1983 *Resolution in favour of Minority Languages and Cultures*, prepared by Gaetano Arfé, reaffirms the importance of language and calls on the Commission “to continue and intensify its efforts in this area.”

The *Resolution on the Languages and Cultures of Regional and Ethnic minorities in the European Community*, prepared by Rapporteur Willy Kuyjpers and adopted in 1987, regrets the lack of any progress in this matter and once again points out the need to recognize linguistic minorities and create condition for the preservation of minority languages. The Parliament provides recommendations to the member states in the field of education,²⁶³ administration and jurisdiction,²⁶⁴ the mass media,²⁶⁵ cultural infrastructure,²⁶⁶ social and economic life.²⁶⁷ Parliament also recommends the recognition

²⁶³ European Parliament, *Resolution on the Languages and Cultures of Regional and Ethnic minorities in the European Community* by Willy Kuyjpers, 1987, para. 5.

²⁶⁴ Supra note 263, para. 6.

²⁶⁵ Supra note 263, para. 7.

²⁶⁶ Supra note 263, para. 8.

²⁶⁷ Supra note 263, para. 9.

of surnames and place names²⁶⁸ and also of road names and other public signs²⁶⁹ expressed in a regional or minority language.

In 1994, the Parliament adopted a *Resolution on Linguistic and Cultural Minorities in the European Community*, prepared by Mark Killilea, which again encourages states to take measures to allow minority language use “in the spheres of education, justice and public administration, the media, toponymics and other sectors of public and cultural life.”

It is striking to note that the Parliament took responsibility to address minority linguistic rights already in the 1980s. Although all these resolutions are not legally binding, in any case, they are important as they encourage authorities to take positive measures to protect minority languages, even before the *Treaty of Maastricht* was signed.

These documents recognize the importance of languages for minorities, but they enshrine no right of use of languages. In other words, specific instruments are needed to defend linguistic diversity.

On the initiative of the European Parliament, the European Bureau for Lesser Used Languages was founded in 1982. This Organization sought to promote and defend minority languages and the linguistic rights of persons who speak these languages, but with little effect on minorities. Similarly, efforts by the European Commission had little effect. The Commission tried to promote linguistic diversity by funding programmes aiming at improving the quality of learning of minority languages and studies with a view to better understanding the situation of linguistic minorities.

The Union gave minority languages and, more generally, minority groups a political and legal dimension during the EU enlargement towards East. Interest in minority issues has never been on top on the European Union's agenda. The main reasons for this are the difficulty in reaching consensus among the member states upon what constitutes a minority and the difficulty in establishing generally agreed standards of minority protection. Thus, minority issues first appeared on the Union's agenda in the context of enlargements, that is when the former socialist states of Central and Eastern Europe were being incorporated into the Union.

²⁶⁸ Supra note 263, para. 6.

²⁶⁹ Supra note 263, para. 9.

In that context, the Union acknowledged the potential threat to the stability of the continent coming from minority related issues. Thus, the promotion of minority protection was seen as a means to reduce instability and promote stability in Europe. Consequently, the protection of minority languages became a political commitment in order to respect the diversity of cultural identities.

To ensure stability throughout the future territory of the Union in Central and Eastern Europe, the European Council decided that the candidate countries must comply with the Copenhagen criteria for admission to the EU. These criteria specifically highlight the protection of minorities, as they require candidate countries to demonstrate respect for and protection of minorities. The Union's demand for a demonstration of the protection of minority rights resulted in adjustments in candidate countries' legislation regarding minorities.

The 2004 *Treaty Establishing a Constitution for Europe* “drawing inspiration from the cultural, religious and humanist inheritance of Europe”²⁷⁰ states explicitly that “the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, *including the rights of persons belonging to minorities* (my emphasis).”²⁷¹

The 2007 *Treaty of Lisbon amending the Treaty on European Union and the Treaty Establishing the European Community*, in Article I, and the 2012 *Consolidated Version of the Treaty on European Union*, in Article I-2, reaffirm that the rights of persons belonging to minorities are among the values upon which the Union is founded.

It is necessary to point out that the minority protection was not included in the previous versions of the treaty of the Union. In particular, the *Treaty of Amsterdam* gives the first Copenhagen criterion legal quality and lists the values of this political criterion, but does not refer to minority protection. Consequently, minority protection seems to not to be considered as a founding principles of the EU. Article 6 (1) only refers to “liberty, democracy, respect for human rights and fundamental freedoms and the rule of law.” Article 49 specifies that if a state respects the principles set out in Article 6 (1), it can apply for EU membership. Similarly, the 2002 *Treaty of Nice amending the Treaty on European Union and the Treaty Establishing the European Community* does not consider

²⁷⁰ EU, The Treaty establishing a Constitution for Europe, 2004, preamble.

²⁷¹ Supra note 270, art. I-2.

minority protection as a fundamental principle. As a result, until 2004, the EU did not provide for a legal basis on which to encourage the protection of minorities in new member states.

Respecting minorities involves respecting linguistic rights, thus several EU's documents had to include respect for minority languages. Both the *Treaty Establishing a Constitution for Europe* and the *Consolidated Version of the Treaty on European Union*, at Article I-3.3, provide that the Union “shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.”

Even the draft version of the *Treaty Establishing a Constitution for Europe proposed* in 2003, at Article II-22, stipulated that: “the *Union* shall respect cultural, religious and linguistic diversity.”

It follows that respect of minorities involves respect for linguistic rights and both minority rights and linguistic rights are principles of Community law.

The *Treaty of Maastricht* gave birth, for the first time in the history of the EU, to the concept of cultural and linguistic diversity as value of the European Union. Article 128 of the 1992 *Treaty on European Union* states that:

'the Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.'

Even though it does not directly refer to language, one can assume that this article refers to language indirectly, as language is part of culture. The same commitment is enshrined in Article XIII-167 on culture of the 2012 *Consolidated Version of the Treaty on the Functioning of the European Union*.

Paragraph 4 of Article 128 of the *Treaty of Maastricht*, aiming at encouraging the promotion of minority cultures and languages, states that “the Community shall take cultural aspects into account.” After the Amsterdam amendments a statement was added: “in particular in order to respect and to promote the diversity of its cultures.”

The current paragraph 4 of Article III-280 of the *Treaty Establishing a Constitution for Europe* reaffirms this commitment on the part of the Union. Moreover, this treaty, at Article III-282, touches the matter from the viewpoint of education: “the Union shall

contribute to the development of quality education.” It further adds that the responsibility “for the content of teaching and the organization of education systems and their cultural and linguistic diversity” lies upon member states.²⁷²

Similarly, Article 22 of the 2000 *Charter of Fundamental Rights of the European Union* states that “the Union shall respect cultural, religious and linguistic diversity.” It should be pointed out that the *Charter of Fundamental Rights*, albeit non legally binding, does not include specific clauses devoted to minority rights. Article 22 was included also in the 2000 *Draft Charter of Fundamental Rights of the European Union*.

Although minority protection is one of the key EU accession criteria, the Union has failed to create a legal basis for the protection of minority languages. These documents recognize linguistic diversity as an aim of the Union, but no right to use minority languages is configured. Due to the lack of normative competence in the field of protection of minority languages, it was not possible to create binding normative acts. The EU still does not have a legal basis with which to deal with minorities. The EU, thus, decided to rely on standards set out by the Council of Europe and the OSCE as it considered them good examples of best practices in this field. Guarantees for minority linguistic rights are primarily found in the Council of Europe's *Framework Convention for the Protection of National Minorities* and *European Charter for Regional or Minority Languages*. EU encourages all its member states as well as aspiring members to ratify these two instruments.

The protection of minority rights is widely accepted as an important aspect of the European integration process, but the minority issue is not properly addressed at the EU internal level. Due to the absence of legal competences, the protection of minorities is an internal matter for member states. As a result, member states, not having to meet the Copenhagen criteria, can decide to not grant minority rights, including linguistic rights or not to sign legally binding *international conventions related to minority protection*. This is the result of a lack of legally binding provisions and consensus among the member states on the issue of minority protection.

On the other hand, conditioning membership in the EU on protection of minorities in candidate states gives rise to discussions about the existence of double standards between existing and new members.

²⁷² The same article was enshrined in Article 126 of the 1992 Treaty on European Union.

The lack of legally binding provisions is a matter of concern especially because upon the completion of the process towards membership, the EU lose the possibility to influence the policy in the field of minority protection in the new member states.

3.6 Respect for minorities: a challenge for membership conditionality

Here we arrive at the key issue, on which all this paper is based. The main difference between the protection of the linguistic minorities right at international and European levels is the compulsory implementation of these rights. In support of this statement, in the following chapter, it will be outlined the accession process to the EU of the Republic of Latvia, to show how the EU forced some changes in the minorities protection policies of the state.

The European Union plays an important role in influencing domestic minority rights policies, including language policies. The strength of the Union's influence lies in its use of the strategy of "membership conditionality," which directly links minority protection with EU membership. The term "membership conditionality" refers to the attempts the Union makes since 1993 to induce legislative reforms in the applicant states by making entry to the EU dependent on compliance with a number of demands, including respect for minorities' identity.

At the base of the membership conditionality policy lie the Copenhagen criteria that act as an entry barrier. The criteria for membership were established by the European Council in Copenhagen in 1993. From the paragraph *Relations with the countries of Central and Eastern Europe of Presidency Conclusions of the European Council* one can read:

'Accession will take place as soon as an associated country is able to assume the obligations of membership by satisfying the economic and political conditions required. Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. *Membership presupposes the candidate's ability to take on the obligations of membership* including adherence to the aims of political, economic and monetary union (my emphasis).²⁷³

²⁷³ European Council, *Conclusions of the Presidency*, Copenhagen, 21-22 June 1993, para. 7 (A) (iii).

These criteria provide the requirements candidate states are expected to fulfill in order to be allowed to join the European Union. In particular, a country must meet the first criterion in order to become eligible for membership, submit its candidacy and start the negotiations. These criteria are referred to as the political criterion, the economic criterion and the criterion of the *acquis communautaire*.

The first criterion spells out the political conditions of membership and enshrines “the respect for and protection of national minorities” as a condition for accession. Thus, the EU has the leverage to enforce commitments to respect and protect minorities.

The pressure exerted by the EU during the pre-accession process induces candidate countries to reform or adopt new measures for the benefit of minorities. It is clear that the threat of non-membership in the Union is absolutely critical in convincing states to make progress in their protection of national minorities. Non-compliant applications, indeed, are not considered.

The Copenhagen European Council allocated to the European Commission the task to handle the negotiations and to monitor and report on the fulfillment of the accession conditions. The Commission’s *Regular Reports* are the EU’s key instrument to monitor a country’s commitment to membership and evaluate its progress towards accession. The annual reports are a compendium of results compiled from a variety of EU sources and drawing on information provided not only by the candidate countries, but also by the Council of Europe and the OSCE, especially in the political sphere. The Reports track the adoption and/ or amendment of laws that are critical for minority protection, notably laws on citizenship and naturalization, language, elections, and other law related to minority issues. Progresses are evaluated by numerical benchmarks, such as the number of minority members obtaining citizenship, the number of requests for naturalization, the pass rate for language tests, the number of classes taught in the state or minority languages and the extent of media broadcasting in minority languages. On the basis of those reports, the Commission recommends measures the candidate states can take to improve the status of minorities.

Given the fact that there are no European standards in the field of minority protection that the Union can promote, the Commission's monitoring exercise is based on values elaborated at international level. There is no special legal basis for minority protection in Europe. The *Reports* make frequent references to international standards in

the field and documents of the Council of Europe and the OSCE; in particular, the Union views Council of Europe's standards as “sufficient in order to meet the Union’s dubious minority protection test instead of providing minimal requirements.”²⁷⁴ Among the Council of Europe's instruments, over time, the *Framework Convention for the Protection of National Minorities* became the Union’s primary instrument for putting the minority criterion into practice.

The Copenhagen criteria are rather general and offer candidate countries little in terms of substantive guidance as to what exactly must be done to achieve compliance. Consequently, it is not surprising that the Union encourage states to ratify the *Framework Convention for the Protection of National Minorities* and the *European Charter on Regional and Minority Languages*.

The inclusion of minority rights in the political criteria and the *acquis*, making minority protection a non-negotiable condition, results in making membership contingent on the fulfilling of this condition. EU uses a “merit based system and candidates move closer to membership on the basis of the progress achieved in meeting the membership criteria.”²⁷⁵ A candidate state can join the European Union only following fulfillment of all the Copenhagen criteria. The membership conditionality is widely viewed as constituting the most potent instrument in influencing the domestic policies of the candidate states, especially in those states which were willing to join the Union but reluctant to engage with their minority issues. No other organization has the same “transformative power”²⁷⁶ as the European Union.

Conversely, international treaty obligations and, in particular, recommendations often remain without consequences.

With regard to the OSCE, it encourages its member state to take necessary measures for the benefit of minorities, but it is not compulsory for states. The peculiarity of the OSCE lies in the fact that all declarations and similar acts are not imposed, but are made by consensus: it means that member states are expected to take special measures for minorities. More generally, while the European Union exercises political pressure on states, OSCE policy is based on quiet diplomacy. In particular, the High Commissioner

²⁷⁴ Kochenov, *Supra* note 80, p.46.

²⁷⁵ B. Choudhary, “EU and protection of minority rights in central and eastern Europe”, *International Journal of Applied Social Science*, Vol. 4 (1-4), 2017, p.39.

²⁷⁶ Choudhary, *Supra* note 275, p.21.

on National Minorities elaborates recommendations and communicates through formal exchanges of letters with governments, with a view to helping states to adopt laws in line with international standards.

Similarly, the Council of Europe's member states are not obliged to shape their legislation to a particular standard. The Council of Europe has elaborated two of the most relevant instruments for minority protection, namely the *Framework Convention for the Protection of National Minorities* and the *European Charter on Regional and Minority Languages*. It is, however, not mandatory for member state to sign and ratify them; and even though a state signs one of these instruments, they merely put a moral pressure on the state to adopt the necessary measures to promote minorities' identities. Even the establishment of a committee monitoring states' compliance with obligations deriving from these instruments, has little impact on states' linguistic policy.

With regard to the United Nations, the only instrument inertly devoted to minorities, namely the *Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities*, is not binding, since it is a declaration. Article 27 of the *International Covenant on Civil and Political Rights*, which contains the most relevant binding provisions within the framework of the United Nations, is formulated in a way that allows states a considerable margin of appreciation. This provision is an extremely weak legal base upon which to build linguistic rights, as it is vague about what the right of to use their own language means in practice. However, it should be pointed out that for each UN treaty there exists a dedicated committee, composed of human rights experts, which monitors the way in which a state is fulfilling its obligations under the respective treaty. The binding character of UN treaties bound states to respect their contents and, if a states does not comply with its obligations, the committee examines the complains and makes recommendations.

In general, member states of one or all of these international organizations are not obliged to sign their instruments related to minority rights. Thus, international instruments are binding only upon the states that have ratified them.

The motivations for granting linguistic rights to minorities are different: magnanimity, justice or obligations imposed on a state. As regards the EU it is the membership conditionality that brings minority rights on top of states' political agendas. The fact that candidate countries in Central and Eastern Europe have ensured a certain

standard of minority protection confirms the importance of the EU for affecting such policy changes. It is the threat to withdraw the offer of Union membership that pushes state to embark on policy reforms to not jeopardize their membership aspirations. The pre-accession condition of respect for and protection of minorities provides the European Union with a fundamental instrument to influence the minority situation in applicant states. Moreover, it should be pointed out that, prior to the introduction of the Copenhagen criteria, international treaty obligations or recommendations often remained without consequences: it is the EU that has added weight to the United Nations, Council of Europe and OSCE treaties and recommendations.²⁷⁷

²⁷⁷ B. Rechel, *Introduction*, in B. Rechel (eds.), *Minority Rights in Central and Eastern Europe*, Routledge, London/ New York, 2009, pp.10-11.

PART III – CASE STUDY

CHAPTER FOUR

RUSSIAN MINORITY IN LATVIA

SUMMARY: *4.1 Introduction; 4.2 The Copenhagen minority protection criterion applied; 4.3 Language policy in Latvia.*

4.1 Introduction

After the independence, Latvia, in order to be admitted to the European Union had to accept conditions in terms of respect of minority rights. This meant that the country had to harmonize its domestic legal order with the European standards. This meant that Latvia had to significantly reduce the number of stateless persons and introduce measures to protect its minorities, especially the large Russian minority.

After all the historical and political upheavals the state has been through in the last century, in particular the long period of Russian domination, it is not surprising that Latvia was reluctant to take measure for the benefit of the Russian minority.

From the 1990s until 2004, when Latvia became an EU member state, the country lived in “permanent tension”²⁷⁸ between international commitments and nationalistic attitudes. Latvia’s reluctance to protect Russian minority illustrates its will to overcome Russification. Faced with the collapse of communism, Latvia had to reorient itself and the European Community offered the former communist country the possibility of transforming itself into a democratic state with a free market economy. This represented an attractive opportunity to overcome Russification.

Following the collapse of the Soviet Union 1990, Latvians feared that they would have become a minority in their own country. During the Soviet domination, Latvians

²⁷⁸ F. Palermo, *Judicial Adjudication of Language Rights in Central, Eastern, and South-Eastern Europe. Principles and Criteria*, European Diversity and Autonomy Papers- EDAP, 2011, p.26.

were a small minority in their own country. Matter of concern was also the domination by the Russian language. The proportion of people in Latvia who spoke Latvian was less than those who spoke Russian. Moreover, Russian was the working language in official communications. In other words, Russian was the dominant language. Thus, after the restoration of independence, the development of a new linguistic legislation became Latvia's major concern. It was matter of importance to strengthen the state language and reaffirm its primacy in order to redress the effects of the forced Russification. Restrictive language policies were seen as a tool for protecting the state language. The primacy of the state language was perceived as one attribute of sovereignty. Promotion of the state language was also linked with another purpose, that is the eradication of Russian, which was seen as the language of oppressors; more generally, the promotion of Latvian is seen as the symbol of the eradication of Russian domination. Thus, Latvia inverted the hierarchy imposed under the previous regime. In the case of Latvia this need was aggravated by the fact that during the Soviet period Latvian language was excluded from some important fields. The language legislation of the state reveals that “the higher the proportion of speakers of Russian [...], the more rigorous the linguistic containment policy.”²⁷⁹ The efforts aimed at protecting and promoting Latvian must be linked to the legitimate concerns related to the sizable Russian-speaking minority as Russian was seen as the main threat to the development of the state language.

When Latvia had to meet the Copenhagen criterion concerning minority protection in order to be considered as valid candidate states, it was not keen to implement changes to its domestic policies. Often international organizations contended that, although exclusive linguistic rights accorded only to Latvians as well the measures taken to reinforce the status of the Latvian language were legitimate, the state should not deprive persons belonging to a national minority of the exercise of linguistic rights.

The reluctance to implement policies in order to respect the identity and the linguistic needs of the Russian minority is proved by the fact Russians were not listed in the category of national minorities entitled to enjoy from the rights deriving from the ratification of the *Framework Convention for the Protection of National Minorities*.²⁸⁰

²⁷⁹ B. Tsilevich, “Development of the Language Legislation in the Baltic States”, International Journal on Multicultural Societies (IJMS) “The Human Rights of Linguistic Minorities and Language Policies”, Vol. 3, No. 2, 2001, p.150.

²⁸⁰ Even though Latvia denied Russians the symbolic gratification of recognition as minorities, it does

The fact that Latvia had signed the Framework Convention in 1995, but did not ratify it for more than ten years, despite repeated appeals by international organizations, gives further evidence of its strong internal reluctance.²⁸¹ Moreover, Latvia has not signed yet the *European Charter for Regional or Minority Languages*, thus it is not compelled to protect and promote the development of the Russian language.

The paper will focus on Latvia to show that two different standards were employed by the Union in the course of the applicant states' pre-accession process. The Union's influence on Latvia, compared to the influence placed on other states, revealed a lack of consistency in the EU's approach. Indeed, the Copenhagen-related documents dealing with Latvia's minority protection adopted a structure, different from that contained in the Copenhagen-related documents dealing with other countries. In other words, the demands addressed by the European Commission to Latvia were different from the demands to other candidate countries.

Adopting different approaches to minority protection depending on the country where the assessment was conducted and on a particular minority is contradiction with the pre-accession principle of conditionality,²⁸² which is built on the opposite assumption: "the candidates have to meet the minimal standard common to all in order to accede."²⁸³ The Union failed to apply similar standards of minority protection to all the candidate countries. Moreover, a comparative study of the *Regular Reports* by the Commission reveals a hierarchy of minority issues, that it the Commission privileged certain minority groups over others.²⁸⁴ Although many different minorities lived, and live, in Latvia, the Commission drew its attention only to the Russian-speaking minority. This hierarchy of minorities reflects the EU's interest in good relations with its most powerful neighbor Russia. This approach is expressly stated in the *Agenda 200. For a stronger and wider Union* by the European Commission:

extend them the protection of the FCNM.

²⁸¹ Latvia ratified the FCNM after accession to the European Union.

²⁸² For further information, please refer to: Kochenov Dimitry, *Commission's Approach to Minority Protection during the Preparation of the EU's Eastern Enlargement: Is 2 Better than the Promised 1?*, European Diversity and Autonomy Papers – EDAP, 02/2007.

²⁸³ Kochenov, *Supra* note 282, p.32.

²⁸⁴ For further information, please refer to: Hughes James and Sasse Gwendolyn, "Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs", *Jemie – Journal on Ethnopolitics and Minority Issues in Europe*, 1/2003, ECMI, Flensburg 2003.

'minority problems, if unresolved, could affect democratic stability or lead to disputes with neighbouring countries. It is therefore in the interest of the Union and of the applicant countries that satisfactory progress in integrating minority populations be achieved before the accession process is completed.'²⁸⁵

Minorities can actually play a positive role in international relations. When the rights of persons belonging to national minority who constitute the numerical majority in one state but the numerical minority in another, usually neighboring, state are guaranteed and respected, the minority can serve as a link between states and thus help promote friendly relations between the countries concerned.

The first point on which the Commission drew its attention was the definition of "minority." Latvia considered persons without citizenship as not being part of the minority population. Consequently, according to Latvia, the Copenhagen criterion of "respect for and protection of minorities" was not applicable to these people. On the contrary, in its approach to Latvia, the Commission applied an inclusive vision of minorities. In other words, while dealing with Latvia, the Commission did not allow such a narrow understanding of the term "minority" and imposed the state to apply the Copenhagen minority protection criterion to both citizens and stateless persons. One may conclude that the reason why the Commission decided to include non-citizen in the definition of minority is that a large share of Latvia's Russian population is stateless.

What is more relevant is the fact that talking about the minorities in Latvia the Commission used the term "Russian-speaking minority." The term "Russian-speaking minority" is clearly narrower in meaning than the term "Russian minority." The latter term includes an emphasis on identity, based on common culture, values and history, and is not limited to the linguistic factor. The denomination of what kind of minority is dealt with in the Commission's Reports is important because can repercussions on the practice of minority protection, since the scope of rights of a linguistic minority is different from that of a national or ethnic minority.

The Commission not only focused on linguistic minorities, instead of drawing its attention on national or ethnic minorities, but also limited its area of interest to the Russian-speaking minority. However, a number of other national minorities lives in Latvia. The reason why the Union focused on a linguistic minority may be found in the

²⁸⁵ European Commission, *Agenda 200. For a stronger and wider Union*, 1997, p.42.

fact that a numerous part of Latvians, as well as numerous ethnic minority groups in Latvia, uses Russian as vehicular language, even if it is not their native language. Another reason may be found in the fact that the situation of Russians living in Latvia could destabilize the situation in the country and affect adversely the development of the relations with Russia.

As it will be shown in the following paragraph, the remarkable development of minority rights, including linguistic rights, is to be seen as a “concession to the international community,”²⁸⁶ rather than a sincere commitment.

4.2 The Copenhagen minority protection criterion applied

The determination to achieve membership in the EU was often expressed by Latvia. Latvia submitted its application for membership of the European Union on 13 October 1995 and as early as in 1997, when the Commission’s Opinion was released, Latvia was announced to have met the Copenhagen political criteria. In 1997 the accession process formally begun and in 2002, during the Copenhagen European Council, accession negotiations were closed. In that context, Latvia was scheduled to become member of the European Union on 1 May 2004 and from that date it is one of the Union’s member states.²⁸⁷

To reach its objective of becoming an EU member states, Latvia had to satisfy the political criterion for accession as identified by the 1993 Copenhagen European Council; and the need of respect for and protection of minorities was one of the prerequisite imposed. Thus, issues related to minorities, minority languages and citizenship were questions, which Latvia could not ignore as it sought accession to the European Union.

In the context of the Latvian application for accession, the European Commission relied heavily on the findings of the Council of Europe and OSCE. Particularly, the OSCE and the High Commissioner on National Minorities played a key role in judging whether the state had done enough in terms of minority rights.²⁸⁸ In practice, representatives of all

²⁸⁶ Supra note 278, p.5.

²⁸⁷ The chronology of relations between Latvia and the European Union is available at: <https://www.mfa.gov.lv/en/policy/european-union/history/latvia-and-the-eu-chronology-of-relations#1999>.

²⁸⁸ Kochenov, Supra note 282, p.14.

three organizations worked side-by-side, monitoring the status of minorities and providing advice on legislation in conformity with international standards.

Conditionality operated primarily through the threat of non-membership, first in the Council of Europe, and then in the EU. Membership in the Council of Europe was viewed by Latvian eyes as a “necessary intermediate station on the road to EU membership.”²⁸⁹ However, international involvement began soon after the restoration of Latvian independence and continued until Latvia’s accession to the EU in 2004.²⁹⁰

It is about the minority protection criterion and, in particular, about ensuring the rights of the Russian minority, that a number of concerns have been raised concerning the applications for EU membership from Latvia. In particular, Russians were regarded as a category of minority that “urgently requires greater protection and integration.”²⁹¹

Matters of concern were (and are) statelessness and harsh language policies, which result in the exclusion of many non-citizens from the rights of minorities.

In Latvia there is a large number of stateless persons. The Union played a key role in ensuring that these issues did not strain the relations between Latvians and Russians: such a situation could have sparked “tensions and discontent.”²⁹² In the sphere of citizenship, international political pressure started when Latvia adopted a very restrictive law on citizenship, which did not take into account the state's ethnic composition, including Russian ethnicity. Indeed, Russians are, and have always been, a huge share of Latvia's total population; and this is strictly bind to the state's history.

The first large groups of Russians arrived on Latvian territory in the 18th century as part of Russia’s growing influence during the Northern War. In the 1920s and 1930s, Russians made up a relevant part of Latvia’s population. However, a large number of Russians arrived during the Soviet period. As a result, of the secret Molotov-Ribbentrop Pact between Nazi Germany and the Soviet Union, in June 1940 Latvia was occupied by

²⁸⁹ D. J. Galbreath and N. Muižnieks, *Latvia: managing post-imperial minorities*, in B. Rechel (eds.), *Minority Rights in Central and Eastern Europe*, Routledge, London/ New York, 2009, p.138.

²⁹⁰ Prior to the 1993 Copenhagen criteria, the EU requested candidate states to be parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Since the ECHR was open only to members of the Council of Europe, an indirect link was established between EU membership and membership of the Council of Europe. In other words, applicant states to the EU must be members of the Council of Europe. Thus, the Council of Europe verifies its members’ laws on minorities thereby performing a prior screening for EU candidates.

²⁹¹ Council of Europe, Commissioner on Human Rights, *4th Annual report January to December 2003 to the Committee of Ministers and Parliamentary Assembly*, 2004, p.27.

²⁹² Supra note 291, p.28.

the Red Army, and it was incorporated into the Soviet Union. Between 1941 and 1944 Latvia was occupied by Nazi Germany but at the end of the Second World War, in 1944-1945, the Soviet Army for the second time occupied Latvia and it became again part of the Soviet Union, giving up its sovereignty and submitting to Soviet power. Once Latvia had lost its independence, Soviet authorities carried out a policy of Russification, which resulted in the influx of some 1.5 million Soviet citizens into Latvia, both voluntarily and forcibly.²⁹³ As a result of the occupation, the ethnic composition of the Latvia's population underwent significant changes; in particular, the number of Russians had increased. In 1989, the share of Latvians had decreased to 52% in comparison to 77% in 1935.²⁹⁴ In other words, prior to the Soviet annexation of the state, Russians constituted approximately 11% of the population, while by the end of the Soviet period, the percentage of Russian constituted 34%.²⁹⁵

The Soviet government dominated the country until 1991, when, after the collapse of the USSR, Latvia regained its independence. In the same year, the *Latvian Independence and Democracy Referendum* was held and it supported the state independence. In August 1991, after a half-century long Soviet annexation, the Latvian state authority was restored. Upon the restoration of Latvia's statehood, Russian migrants found themselves to be trapped within the new independent Republic of Latvia.

With the adoption of the 1991 *Citizen Act*, the state restored the citizenship of persons who were citizens of Latvia in 1940 and to their descendants,²⁹⁶ in accordance with the so-called concept of “legal continuity,” between the independent inter-war republic and the state that arose out of the disintegrated Soviet Union.²⁹⁷ It follows that the Soviet immigrants and their Latvia-born descendants were excluded from the Latvian citizenship and, thus, became stateless. There was no “zero-option,” which would have granted citizenship to all residents of Latvia.²⁹⁸ Latvia followed the “theory of

²⁹³ Report submitted by Latvia pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities. State Report, First Cycle, received on 11 October 2006, p.10.

²⁹⁴ Second Report submitted by Latvia pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities. State Report, Second Cycle, received on 3 September 2012, p.5.

²⁹⁵ For further information, please refer to: Mežs Ilmars, *The Ethnic Geography of Latvia*, in *Geographica Slovenica*, No. 24, 1993, pp.153-160.

²⁹⁶ Latvia follows the principle of the “right of blood.” This means that citizenship is determined by the citizenship of the parents, not by the place of birth.

²⁹⁷ P. Van Elsuwege, ‘Russian-speaking’ Minorities in Estonia and Latvia: Problems of Integration at the Threshold of the EU, ECMI Working Paper, 20, Flensburg 2004. pp.2-5.

²⁹⁸ Van Elsuwege, *Supra* note 297, p.3.

occupation.” Russians had illegally occupied Latvia, thus were not considered as a minority, but as settlers who moved into the country during the illegal Soviet occupation.²⁹⁹ Latvia used the citizenship legislation as a tool to exclude unwanted minorities, even if those had been long-term residents of the state: the implicit aim was to encourage emigration of members of Russian minority. It was introduced an entirely new legal status: that of “non-citizen.” Latvia adopted such a law, to ensure the political domination by the ethnic Latvians. Despite the state's hostile policy many Russian stayed. For the Soviet immigrants who stayed, Latvia introduced a very restrictive law of naturalization and integration into the Latvian society. They had to pass a process of naturalization to become citizens. The procedure implied *inter alia* that the applicants have to pass an examination testing proficiency in the state language.

New provisions on the acquisition of citizenship were laid down in 1994, with the adoption of the *Law on Citizenship*. The law introduced a drawn-out naturalization schedule, allowing stateless persons of Latvia to qualify for citizenship through naturalization between 1996 and 2003. In accordance with this “windows system,” non-citizens had to wait for an appropriate “window” to apply for citizenship, on the basis of age criteria, beginning with individuals who were born in Latvia and were 16 to 20 years of age from 1 January 1996, extended to 25, 30 and 40 years of age between 1997 and 1999.³⁰⁰ This system, however, limited until 2003 the numbers of applicants for citizenship. This provision did not grant citizenship automatically to the children of non-citizens born in Latvia. Furthermore, many requirements had to be fulfilled to obtain citizenship; these included, among others, renunciation of previous citizenship, command of the Latvian language and knowledge of Latvia’s history and constitution. It is not surprising that, up to 31 August 1998 of the 148,000 people eligible only 10,260 have been naturalized.³⁰¹

As naturalization process was quite slow, the Union and other international organizations, specifically the OSCE High Commissioner on National Minorities, pressured Latvia to amend the *Law on Citizenship*. The focus was on the need to rescind the naturalization “windows,” thereby allowing all non-citizens to apply, and granting

²⁹⁹ Van Elsuwege, *Supra* note 297, pp.46-47.

³⁰⁰ R. Zaagman, *Conflict Prevention in the Baltic States: The OSCE High Commissioner on National Minorities in Estonia, Latvia and Lithuania*, ECMI, Monograph 1, Flensburg, 1999, pp.38-39.

³⁰¹ Briefing No 42. The Russian minority in the Baltic States and EU Enlargement, 1999.

citizenship automatically to stateless children born in Latvia since independence. In 1997, in its opinion on Latvia's application for membership, the European Commission expressed its concerns regarding this law:

'there are no major problems over respect for fundamental rights. But Latvia needs to take measures to accelerate naturalisation procedures to enable the Russian speaking non-citizens to become better integrated into Latvian society.'³⁰²

Due to this criticism from the international community, the *Law on Citizenship* underwent significant changes.³⁰³ In June 1998 the Latvian Parliament adopted amendments to the law, and these amendments were the subject of a referendum, held in the same year. The amendments were adopted with 53% support. The Commission welcomed this result, considering it as an important step on the road to Latvian integration in the European Union. "Confirmation by referendum of the parliament's decision to end certain restrictions on citizenship brings Latvia into conformity with international standards and should facilitate the naturalisation process."³⁰⁴ The new law, by which the "windows system" has been rescinded, makes it easier for post-war immigrants of the Russian minority to acquire Latvian citizenship. Now all who desired to take naturalization exams are allowed to apply, and citizenship is granted, upon request of the parents, to stateless children born in Latvia after 21 August 1991.³⁰⁵ Individuals who, during the period 1941-45, were forcibly transferred to Latvia and stayed there after the end of the Soviet occupation regime can naturalize on an extraordinary basis, in accordance with the law.³⁰⁶ Applicants are still required to prove knowledge of the Latvian language, but the language exam has been simplified.³⁰⁷ Those who have

³⁰² European Commission, *Agenda 200. Commission Opinion on Latvia's Application for Membership of the European Union*, 1997.

³⁰³ For further information on the complex process of reduction of statelessness in Latvia, please refer to: Kemp Walter (eds.), *Quiet Diplomacy in Action: The OSCE High Commissioner on National Minorities*, Martinus Nijhoff Publishers, 2001, pp.153-165.

³⁰⁴ European Commission, *Regular Report from the Commission on Latvia's Progress towards Accession*, 1999, p.11.

³⁰⁵ *Law on Citizenship*, art. 3.

³⁰⁶ *Law on Citizenship*, art. 13.

³⁰⁷ The language exam consists of demonstrating a good level of proficiency in Latvian. In particular, applicants have to be able to understand information of an everyday and official nature, and able to carry out a conversation and answer questions on topics of an everyday nature. They are also required to read and understand any types of texts of an everyday nature, and write an essay on a topic from everyday life.

acquired a primary, secondary and higher education in Latvian language are exempt from taking the language test.

The number of new citizens per year increased drastically after the amendments to the citizenship law. At 1 January 2008, according to the data supplied by the Bureau for Citizenship and Migration, out of 2,276,282 persons making up the population of Latvia, there were 372,421 non-citizens, including 245,000 Russians.³⁰⁸ Naturalization applications further increased following Latvia's accession to the EU in 2004.

However, notwithstanding the efforts made in this regard, the number of non-citizens remains particularly high. Consequently, the lack of citizenship continues to have a negative impact on the enjoyment of effective equality and social integration.

The legal status of members of the Russian minority who arrived in Latvia before July 1992 and who do not hold Latvian or any other citizenship is determined by the 1995 *Law on the Status of Former USSR Citizens who are not Citizens of Latvia or any other State*.

Statelessness is a matter of concern for the EU because for those living with the status of "non-citizen", the participation in public life and certain public sector employment and is limited. Non-citizens are, indeed, not allowed to vote, nor are entitled to join political organizations. Furthermore, they do not have the right to submit their candidacy for public office.

Statelessness is a matter of concern for the Union also because there are no specific legal acts regulating the status of non-citizens in the EU. Consequently, non-citizens are treated as third country nationals. An important development with respect to the non-citizens' rights within the EU has been achieved in December 2006³⁰⁹ when the Council of the European Union has amended the *Council Regulation (EC) No 539/2001*, thus exempting Latvian non-citizens from visa requirement when traveling in the EU.³¹⁰

The international community was an active participant also in shaping Latvian policy pertaining to language. This involvement took the form of official visits, monitoring reports, evaluations of draft legislation, and recommendations by officials

³⁰⁸ Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Latvia. First Cycle, adopted on 9 October 2008, p.15.

³⁰⁹ *Council Regulation (EC) No 1932/2006* of 21 December 2006.

³¹⁰ For further information, please refer to: European Parliament, Committee on Civil Liberties, Justice and Home Affairs, *Protection of stateless persons in Latvia* by Inga Reine, Seminar on Prevention of Statelessness and Protection of Stateless Persons within the European Union, 26 June 2007.

from the EU, the OSCE and the Council of Europe. The attention was drawn on the obligatory proficiency in the state language for employees in certain fields. In 1998, the representatives of these three organizations focused on a draft of a new state language law. In analyzing the draft law it was noted that it was not compatible with the international legal standards. The draft law required the use of the Latvian language also in the private sphere; particularly, it extended the application of the language requirements to include employees working in the private sector. The international community coordinated its efforts at persuading Latvia not to adopt this law. The threat of non-membership in the EU led Latvian government to amend this law.³¹¹ The new *Official Language Law* was adopted in December 1999.

A compromise was achieved in the sense that, although employees of private institutions or organizations “shall use the official language”, this provision is limited to the case in which “their activities affect the lawful interests of the public;”³¹² in accordance with Article 6.3 the language requirement is needed “to the extent necessary for performance of the relevant functions.” It can be said that Latvian legislation was influenced by the international organizations, since it incorporated the principle of proportionality into the clauses contained in the law to broaden as much as possible the scope of professional language requirements.

The influence of the international organizations has also led to relevant amendments concerning the language requirements for candidates running in parliamentary and municipal elections. Latvia's law requested candidates the highest level of proficiency in the state language to stand for elections. Persons were not eligible to run in elections if they had not “mastered the national language to the highest (third) level of competence.”³¹³ The OSCE commitments led Latvia to delete both paragraphs in 2002: the 5 October 2002 election to the 8th Saeima of Latvia was “well administered and overall conducted in accordance with [...] international standards for democratic elections.”³¹⁴

³¹¹ For further information, please refer to: Kemp Walter (eds.), *Quiet Diplomacy in Action: The OSCE High Commissioner on National Minorities*, Martinus Nijhoff Publishers, 2001, pp.152-155.

³¹² *Official Language Law*, art. 6.2.

³¹³ *Saeima Election Law*, 1995, art. 5,7; *Election Law on City and Town Councils, District Councils and Pagasts Councils*, 1994, art. 9.7. Both laws are cited in B. Tsilevich, *Supra* note 297, p.143.

³¹⁴ Office for Democratic Institutions and Human Rights, Republic of Latvia: Saeima Elections of 5 October 2002, OSCE/ODIHR Final Report, 2002, p.1.

There exist, however, some language regulations that prescribe proficiency in Latvian language to apply to some job positions. These regulations stipulate the degree of proficiency in the state language required and the lists of the professions in which the specified level of language proficiency is required. Obviously, all medium-ranking and high-ranking officials and state servants are required to have the highest level of language proficiency. It means that a career in any area of public service, state sector or in the legal professions presupposes perfect knowledge of Latvian. These regulations include also language requirements for teachers employed in state or municipal educational institutions, who must have the highest level of command of the Latvian language.³¹⁵ These regulations prevent many potential teachers from being employed and create a shortage of qualified staff.

Consequently, these language requirements have impacted heavily on shaping the representation of Latvian and Russian speakers in the state and private sectors: today Latvian speakers are employed mostly in the state sector, while Russian speakers are employed mostly in the private sphere.³¹⁶ The legislative provisions imposing the exclusive use of Latvian in the public sphere and in an increasing number of occupations in the private sector still represents a matter for concern to international organizations.

Given that both minorities and majorities have the right to participate in the public life and that the state language constitutes the basis for the functioning of a society, it is convenient that persons belonging to minorities acquire adequate knowledge of Latvian. International organizations stressed the need for adequate educational opportunities for minorities to improve command of Latvian language for a successful social, civic and political integration into society. In particular, the High Commissioner on National Minorities supported the improvement of teaching of Latvian in minority-language schools. Obviously, language regulation in education has been a source of tension in the country.

In 2004, the 1998 *Education Law* underwent a reform, aimed at reducing, at the secondary education level, the amount of time of the teaching in a minority language while increasing the amount of time designated to the teaching of Latvian. Although this decision may be seen as a way to assimilate minorities, “neither the Language Law itself

³¹⁵ *Education Law*, art. 50.3.

³¹⁶ Tsilevich, *Supra* note 279, p.146.

nor the implementing regulations contain provisions that are manifestly incompatible with Latvia's obligations"³¹⁷ to protect the identity of persons belonging to national minorities. The European Commission's position on the issue was controversial, especially if one considers that the Commission approved Latvia's original intention, that is to ban minority languages from schools; in the end, Latvia's government opted for a reduction of the special education programmes' time devoted to teaching in minority languages. The Commission's approval of the original Latvian policy is clearly contrary to the minority protection guidelines adopted for other EU applicant countries, where education in the minority language is supported.³¹⁸ It may be concluded that international organizations, aware of the historical experiences of past Soviet (basically Russian) domination, aim at promoting the use of the state language not only with a view to integrating Russians into society and promoting non-discrimination, but with a view to creating intra-state cohesion.

The EU pre-accession conditionality, together with the efforts of the Council of Europe and the OSCE, has resulted in a significant number of amendments to laws on language, education and the status of non-citizens. In particular, the intense monitoring by the Union made Latvia adhere to Copenhagen Criteria and implement the *acquis*. It would be, however, an exaggeration to argue that Latvia's accession to the Union automatically solved all problems of integration of the Russian-speaking minority. Notwithstanding the measures adopted to facilitate the naturalization process, a considerable part of Latvia's population is still stateless, and those who do not fluently speak Latvian are still away from effectively enjoying life in society. In sum, in any case, one can affirm that the impact of the international organizations' pressure on Latvia's domestic legislation was significant.

4.3 Language policy in Latvia

This paragraph aims at describing the main features of the linguistic legislation developed in Latvia since late 1990s, and analyzing the main features of the minority languages policies.

³¹⁷ European Commission, Regular Report from the Commission on Latvia's Progress towards Accession, 2001, p.25.

³¹⁸ Kochenov, *Supra* note 282.

Article 4 of the *Constitution of the Republic of Latvia*, adopted in 1922 and amended in 1998 and in 2014, states that “the Latvian language is the official language in the Republic of Latvia.” The long preamble to the constitution, which was introduced in June 2014, asserts the fundamental principles on which the state is founded. It attributes particular importance to the concepts of Latvian nation and Latvian language. It reads as follows:

'The State of Latvia, proclaimed on 18 November 1918, has been established by uniting historical Latvian lands and on the basis of the unwavering will of the Latvian nation to have its own State and its inalienable right of self-determination in order to guarantee the existence and development of the Latvian nation, its language and culture throughout the centuries, to ensure freedom and promote welfare of the people of Latvia and each individual'

It is of particular interest the fact that this preamble was introduced after a failed constitutional referendum to recognize Russian as a second official language.³¹⁹ Obviously, it was introduced to reaffirm Latvian as the sole state language.

It is interesting to note that members of the Parliament have to solemnly promise “to be loyal to [...] the Latvian language as the only official language.”³²⁰

The 1999 *Official Language Law*, once again, reaffirms that the state language in Latvia is the Latvian language.³²¹ Furthermore, it reaffirms the importance of Latvian language, stating that the purpose of this law is to ensure:

'the maintenance, protection and development of the Latvian language; the maintenance of the cultural and historic heritage of the Latvian nation; the right to freely use the Latvian language in any sphere of life within the whole territory of Latvia; [...] the increased influence of the Latvian language in the cultural environment of Latvia, to promote a more rapid integration of society.'³²²

³¹⁹ In 2012, a referendum was held in order to decide whether or not making Russian Latvia's second official language. The referendum was initiated by a Russian speakers' movement. Three-quarters of votes were against the proposal.

³²⁰ Constitution of the Republic of Latvia, art. 18.

³²¹ *Official Language Law*, art. 3.

³²² *Official Language Law*, art. 1.

Moreover, the *Official Language Law* prescribes that it is the duty of the state “to ensure the provision of material resources for research, cultivation and development of the Latvian language,”³²³ and to ensure:

‘the development of an official language policy, incorporating in it scientific research, protection and teaching of the Latvian language, promoting enlargement of the role of the Latvian language in the national economy, and cultivating individual and public understanding of the language as a national value.’³²⁴

The will to redress the effects of the forced Russification and reaffirm the primacy of the Latvian language is particularly evident. Latvia had, in any case, to find a balance between the protection of the official state language and the language related rights of persons belonging to minorities.

As regards minorities, Article 114 of the constitution states that “persons belonging to ethnic minorities have the right to preserve and develop their language and their ethnic and cultural identity.” According to this statement, citizenship is not required in order to enjoy this right. The respect for minorities’ rights is ensured also by the preamble:

‘Latvia as democratic, socially responsible and national state is based on the rule of law and on respect for human dignity and freedom; it recognises and protects fundamental human rights and respects ethnic minorities.’

It should be mentioned that the 1922 version of the constitution did not contain this right. The current version of the constitution does not spell out any specific linguistic rights beyond the broad statements cited above. Minority linguistic rights are explicitly referred to in other pieces of Latvian legislation. The most relevant to the use of minority language clauses are incorporated into special laws.

Matter of importance is the 1991 *Law about the unrestricted Development and Right to Cultural Autonomy of Latvia’s Nationalities and Ethnic Groups*, adopted “to guarantee to all nationalities and ethnic groups in the Republic of Latvia the rights to

³²³ *Official Language Law*, art. 24.1.

³²⁴ *Official Language Law*, art. 24.2.

cultural autonomy and self-administration of their culture.” Additionally, the state promotes:

'the creation of material conditions for the development of the education, language and culture of the nationalities and ethnic groups residing within Latvia's territory, foreseeing defined sums from the government's budget for such purposes.'³²⁵

According to this law, “within the Republic of Latvia live the Latvian nation, the ancient indigenous nationality, the Livs, as well as other nationalities and ethnic groups.” Additionally, Article 4 states that:

'the Republic of Latvia government and administration institutions are responsible for the preservation of the national identity and historical cultural environment of Latvia's ancient indigenous nationality, the Lives and for the renewal and development of the socio-economic infrastructure of their inhabited territories.'

It seems that the Livs³²⁶ are the only relevant minority in Latvia. However, according to 2006 Latvia's population census,³²⁷ of 2,288,923 residents of Latvia, 58.9% are Latvians and 28.4% Russians.³²⁸ In addition, if one considers that the Livs were less than 100 by the 1990s and, presumably, nowadays they are just a few and almost all elderly, and that all live on the Baltic shores of the Talsi and Ventspils districts (denominated Livöd Randa, the Liv Coast), it is reasonable to assume that Latvians perceive “the Russian population to be a reminder of their unhappy past”³²⁹ and want to rid their past of Russian control.

The Latvian state adopted a similar approach to minority languages protection, in the *Official Language Law*, which does not mention minority languages, except for the Liv language. Article 5 of the state language law states that “any other language used in

³²⁵ Law about the unrestricted Development and Right to Cultural Autonomy of Latvia' Nationalities and Ethnic Groups, art.10.

³²⁶ The Livs, or Livonians, are the small autochthonous Finnic group indigenous to the Northwestern part of Latvia. Livs belongs to the Finno-Ugric family of languages.

³²⁷ Supra note 293, p.4.

³²⁸ Other minorities are Belorussians (3.8%), Ukrainians (2.5%), Poles (2.4%), Lithuanians (1.4%) and Estonians (0.1%).

³²⁹ M. Best, “The Ethnic Russian Minority: a Problematic Issue in the Baltic States”, *Verges: Germanic and Slavic studies in review*, Vol. 2, No. 1, 2013, p.34.

the Republic of Latvia, except the Liv language, shall be regarded, within the meaning of this law, as a foreign language.” Similarly, Article 4 states that “the state shall ensure the maintenance, protection and development of the Liv language as the language of the indigenous (autochton) population” and Article 3.4 states that “the state shall ensure the maintenance, protection and development of the Latgalian written language as a historic variant of the Latvian language.”

As can be seen, Latvia regards Russian language as a foreign language; and it is odd, considering that Russian language is used not only by Russians, but also by Latvians and most Ukrainians and Belarussians. In fact, according to the census data Latvian is spoken by 62.1% of Latvian population, while Russian is the second most popular language, spoken by 37.2% of population.³³⁰ This is even more odd if one considers that nowadays only a small number of Livs still speak their native language³³¹ and that Latgalian is used by 8.8% of population.³³²

As regard linguistic rights, the *Official Language Law* is to ensure “the integration of members of ethnic minorities into the society of Latvia, while observing their rights to use their native language or other languages.”³³³ This law regulates the use of languages other than Latvian in private institutions, organizations, undertakings and in the educational sphere, if “their activities affect the lawful interests of the public.”³³⁴

As regards the right to use one's first name and family name, Article 19 of the *Official Language Law* provides that:

'Names of persons shall be presented in accordance with the traditions of the Latvian language and written in accordance with the existing norms of the literary language, observing the provisions of Paragraph two of this Section.'

Paragraph 2 states that:

³³⁰ According to the 2011 data of Population and Housing Census conducted by the Central Statistical Bureau of Latvia.

³³¹ G. Poggeschi, *I diritti linguistici. Un'analisi comparata*, Carocci editore, Roma 2010, p.107.

³³² Supra note 330.

³³³ *Official Language Law*, art. 1.4.

³³⁴ *Official Language Law*, art. 2.2.

'There shall be set out in a passport or birth certificate, in addition to the name and surname of the person presented in accordance with the existing norms of the Latvian language, the historic family name of the person, or the original form of the personal name in a different language, transliterated in the Roman alphabet, if the person or the parents of a minor person so wish and can verify such by documents.'

In other words, in personal identification documents the form of personal names and surnames must be done according to the rules of Latvian grammar and the original form, in Latin transliteration, can be added if the person so request.

The possibility of having local names, street names and other topographical indications in minority languages, alongside the official language, is limited. Under the terms of Article 18.1 of the *Official Language Law* “place names shall be created and use thereof shall be in the official language.” The only exception is the Liv language:

Names of places, institutions, public organisations and undertakings (companies) in the Liv coastal territory, and names of events taking place in this territory, shall also be created and use thereof shall be in the Liv language.³³⁵

It means that, with the exception of the Livs, no other minorities can benefit from the right to use their language in local topographical indications. It is necessary to point out that when Latvia ratified the *Framework Convention for the Protection of National Minorities*, the government declared that the requirements of Article 11.3 of the Convention “are binding insofar as they are not in conflict with the Satversme and other legislative provisions in force in Latvia concerning the use of the state language.”³³⁶

As regards the right to access audio-visual media in their minority language, Article 16 of the *Official Language Law* states “the language of mass media broadcasts shall be determined by the Radio and Television Law,” and in fact the 1995 *Radio and Television Law*, amended in 1997, regulates the language of media broadcasting. Under the terms of Article 62.3 of this law, public television and radio stations can allocate up to 20% of annual broadcasting time to programmes in the languages of the minorities; including also film and theatrical performances sub-titled in Latvian. As regards private radio and television channels in languages other than Latvian, Article 19.5 provides that

³³⁵ *Official Language Law*, art. 18.4.

³³⁶ *Supra* note 293, p.4.

the amount of broadcasting time in foreign languages shall not exceed 25% of the total volume of the broadcasting time in a twenty-four period. Moreover, “television broadcasts in foreign languages, except live broadcasts, re-transmissions, broadcasts to foreign countries, news and language teaching broadcasts shall have sub-titles in the Latvian language.”³³⁷ As regards films, they “shall be recorded or dubbed in the official language or supplied, concurrently with the original sound recording, with subtitles in the official language.”³³⁸ In addition, if the case requires it, subtitles in a foreign language are allowed, concurrently with the official language, but “the subtitles in the official language shall be placed in the primary position, and they may not, in their form or content, be smaller or narrower than the subtitles in the foreign language.”³³⁹ Films intended for children “shall be dubbed or with voice-over in the official language.”³⁴⁰

The *Radio and Television Law* was superseded by the *Electronic Mass Media Law*, adopted in 2010. “To promote the integration of society on the basis of the Latvian language”³⁴¹ this law requires that 65% of all national and regional electronic mass media be in Latvian language, except for the advertising, teleshopping and teleshopping windows.³⁴²

It can be said that persons belonging to minorities benefit from opportunities to have access to the audiovisual media and receive and impart information in their minority language, both in the public and private sectors. In practice, the media environment overall is divided into Latvian and Russian language media.

As far as the press is concerned, the 1990 *Law on the Press and other Mass Media*, amended in 1997, guarantees the freedom of press and does not foresee any language restrictions, with respect to the minority press. Under the terms of Article 1 of this law, any group of persons has:

'the right of freedom to express their views, to distribute information in the press and other mass media and to receive information on any subject of interest or social life. Censorship of the press or any other means of mass media is prohibited.'

³³⁷ Radio and Television Law, art. 19.4.

³³⁸ Radio and Television Law, art. 19.3; *Official Language Law*, art. 17.1.

³³⁹ *Official Language Law*, art. 17.2.

³⁴⁰ Radio and Television Law, art. 19.3.

³⁴¹ Electronic Mass Media Law, art. 2.4.

³⁴² Electronic Mass Media Law, art. 32.3.

In practice, most of minorities in Latvia have their own publications, published in either their minority language or in a bilingual format. In particular, the Russian language press is stronger, and Russians have access to several daily and weekly newspapers.³⁴³

The use of minority languages in relations with administrative authorities and public offices is very restricted. Persons belonging to minorities cannot benefit, except in few cases, from the right to use their language in dealings with administrative and public authorities, which prevent a considerable number of persons from effectively participating in public life and from adequately accessing public services. The constitution, in Article 104, stipulates that “everyone has the right to address submissions to State or local government institutions and to receive a materially responsive reply. Everyone has the right to receive a reply in the Latvian language.” It should be mentioned that prior to the 2014 amendments, the constitution did not include the latter statement. Article 10 of the *Official Language Law* prescribes the use of minority languages in this field. It stipulates that state institutions “shall accept from persons and examine only documents as are in the official language.” In accordance with paragraph 3, documents submitted in other languages should be accepted only “attached thereto is a translation into the official language, certified in accordance with the procedures prescribed by the Cabinet, or notarially certified.” This means that if a person belonging to a minority does not have funds to pay for the required translation, her/ his application will not be accepted by public institutions.

However, there exist several exceptions to this provision: it does not apply to documents submitted to police and medical institutions, rescue services and other institutions in cases of urgent calls for medical aid, commission of crimes or other violations of law, or calls for assistance in emergency situations.³⁴⁴ In sum, Latvia’s minorities cannot freely enjoy the use of their languages, in dealings with the administrative authorities, notwithstanding the existing real need. It has to be said that, upon ratification of the Framework Convention, Latvia announced that the requirements of Article 10.2 are binding insofar as they are not in conflict with the Parliament and other legislative provisions concerning the use of the state language.³⁴⁵ In this way Latvia limits the ability of minority groups to use their languages with the authorities.

³⁴³ Supra note 118, p.25.

³⁴⁴ *Official Language Law*, art. 10.2.

³⁴⁵ Supra note 293, p.4.

Similarly, in all official communication “the Latvian language shall be used.”³⁴⁶ Consequently, “everyone has the right to present submissions and communicate in the official language.”³⁴⁷ There are no provisions that allow the use of minority languages at the State or local level.

With regard to juridical authorities, the Latvian law is quite restrictive. In Article 13, the language state law stipulates that “court proceedings in the Republic of Latvia shall take place in the official language.” Moreover, courts and institutions constituting the judicial system shall be fluent in and use the official language.³⁴⁸ The right to use a foreign language in court is determined by laws regulating the judicial system,³⁴⁹ namely the 2001 *Law on administrative procedure*, the 1998 *Law on civil procedure* and the 2005 *Law on criminal procedure*. In accordance with these laws, administrative, civil and criminal proceedings shall take place in the state language.³⁵⁰ However, participants in a civil or administrative process have the right to submit documents in a foreign language by attaching thereto translations into the state language.³⁵¹ In criminal proceedings, if a person does not speak the Latvian language she/ he has the right to submit complaints in the language she/ he understands.³⁵² In administrative and civil proceedings, a court may also permit certain procedural activities in another language, if a participant in the proceedings so requests and all other participants therein agree to it.³⁵³ The participants of an administrative or civil proceeding, except the representatives of the legal persons, who lack fluency in the state language, have the right to examine the case file and participate in procedural activities with the assistance of an interpreter.³⁵⁴ In criminal proceedings, if an accused, a victim or her/ his representative, a witness, a specialist, an expert, an auditor or any other persons involved in the proceedings does not speak the official language, such person has the right to use the language she/ he understands during the performance of procedural actions, and to use the assistance of an interpreter provided

³⁴⁶ *Official Language Law*, art. 23.1.

³⁴⁷ *Official Language Law*, art. 3.2.

³⁴⁸ *Official Language Law*, art. 6.1.

³⁴⁹ *Official Language Law*, art. 13.

³⁵⁰ *Law on criminal procedure*, art. 11.1; *Law on administrative procedure*, sec. 110, para.1; *Law on civil procedure*, sec. 13, para. 1.

³⁵¹ *Law on administrative procedure*, sec. 110, para.2; *Law on civil procedure*, sec. 13, para. 2.

³⁵² *Law on criminal procedure*, art. 11.5.

³⁵³ *Law on administrative procedure*, sec. 110, para. 3; *Law on civil procedure*, sec. 13, para. 3.

³⁵⁴ *Law on administrative procedure*, sec. 110, para. 4; *Law on civil procedure*, sec. 13, para. 4.

free of charge by the official in charge of the criminal case.³⁵⁵ In addition, a person involved in a criminal proceedings who does not understand the Latvian language has the right to be provided with a translation of procedural documents in a language she/ he understands.³⁵⁶

With regard to the use of minority languages in economic life, the law prescribes that employees of private institutions, organizations and undertakings, and self-employed persons whose “activities affect the lawful interests of the public”³⁵⁷ shall “be fluent in and use the official language to the extent necessary”³⁵⁸ for the performance of their functions. Moreover, the law prescribes the use of the official language in record-keeping and documents that are related to the performance of their functions.³⁵⁹ It is also prescribed that statistical summaries, annual accounts and accounting documents shall be drawn up in the Latvian language.³⁶⁰

To protect the consumer's rights the information contained in the labels and marking of goods, instructions for use, and statements on the manufactured product, its packaging or container shall be in Latvian language.³⁶¹ Otherwise, if a foreign language is used, the text shall be written also in Latvian languages, and “the text in the official language shall be placed in primary position, and it may not, in its form or contents, be smaller or narrower than the text in the foreign language.”³⁶²

As regards private activities, the *Official Language Law* prescribes that it does not apply to the use of language in internal communication of minorities and, in general, in any kind of unofficial communications of the inhabitants of Latvia.³⁶³ However, information included in placards, posters, signs or other notices if it concerns “the lawful interests of the public and is intended for public awareness in places accessible to the public,” shall be provided in Latvian.³⁶⁴ The law defines those “cases where a foreign language may be used concurrently with the official language” to deliver information that

³⁵⁵ *Law on criminal procedure*, art. 11.2.

³⁵⁶ *Law on criminal procedure*, art. 11.3.

³⁵⁷ *Official Language Law*, art. 6.2.

³⁵⁸ *Official Language Law*, art. 6.3.

³⁵⁹ *Official Language Law*, art. 8.2 and art. 8.3.

³⁶⁰ *Official Language Law*, art. 8.4.

³⁶¹ *Official Language Law*, art. 21.2.

³⁶² *Ibid.*

³⁶³ *Official Language Law*, art. 2.3.

³⁶⁴ *Official Language Law*, art. 21.4.

is “intended for public awareness in places accessible to the public.”³⁶⁵ Such exceptions are listed in the 2005 Cabinet Regulation No. 130 on *Regulations regarding Use of Languages in Information*.

In the field of education, Article 112 of the constitution stipulates that “everyone has the right to education.” Article 14 of the *Official Language Law* states that “the right to acquire education in the official language is guaranteed in the Republic of Latvia. The use of the official language in regard to education shall be determined by the laws regulating education.”

According to the 1998 *Education Law*, although “education shall be acquired in the official language,” it may also be acquired in another language “in State and local government educational institutions in which educational programmes for ethnic minorities are implemented” or “in private educational institutions.”³⁶⁶ Minorities have the ability to use of minority languages as teaching languages in their own schools or in special classes within the public education system.

The 1999 *General Education Law* introduced the possibility for minorities to be provided with bilingual curricula, in public primary and secondary education. These curricula differ depending on the minority. They are programmes that allow pupils to learn in their language and acquire knowledge of their own specific identity and culture. Pupils are also provided with the ability to learn their languages, alongside Latvian language and culture. However, the law determines the subjects of study of these programmes, which have to be taught in Latvian.³⁶⁷ According to Article 38 of the *Education Law*, educational programmes for minorities are a specific type of educational programmes that “include content necessary for acquisition of the relevant ethnic culture.”³⁶⁸ Such programmes are available for several minority languages, including Russian, Estonian, Polish, Ukrainian, Lithuanian, Belarussian. Nevertheless, among these languages, Russian is in a dominant position as a teaching language.³⁶⁹

Minorities are also provided with adequate opportunities for minority languages instruction at pre-school level.

³⁶⁵ *Official Language Law*, art. 21.5.

³⁶⁶ *Education Law*, art. 9.

³⁶⁷ *Ibid.*

³⁶⁸ *Education Law*, art. 41.2.

³⁶⁹ *Supra* note 308, p.33.

In 2004, the Latvian education system underwent a reform and more restrictive language conditions have been placed on the education provided for minorities, especially the Russian-speaking minority.³⁷⁰ The new provision, clearly aiming at restricting the availability of education in Russian language, make it compulsory to teach a minimum 60% of the public state funded secondary school bilingual curricula in Latvian. It resulted in the predominance of the Latvian language as medium of instruction in public secondary school curricula for minorities.³⁷¹

Although there have been largely social protest over the education reform, in Latvian eyes it is a successful “education reform that lead to considerable improvements to the Latvian language skills among the members of national minority communities.”³⁷² Currently, the Latvian government continues to implement a bilingual education programme at the secondary school level, but with more than half of the course content in Latvian.

In 2007, another obligation was imposed on all pupils, including on those who have received their secondary education in a minority language: to sit the secondary school leaving examination in Latvian.³⁷³ Obviously, this raises problems for persons whose native language is not Latvian.

There are no restrictions for persons belonging to minorities to establish and administrate private educational and training institutions. However, if they want to be eligible for state subsidies, they have to provide instruction in the Latvian language, since, in accordance with the law, the state “shall participate in the financing of private educational institutions [...] if such educational institutions implement accredited basic education and general secondary educational programmes in the official language.”³⁷⁴

³⁷⁰ The 1998 Education Law foresaw, starting from 1 September 2004, the transition of all public secondary schools to Latvian as the only language of instruction.

³⁷¹ In 2005, the Latvian Constitutional Court was asked to check the constitutionality of these amendments. The Court upheld the amendment law and considered it in line with the constitutional preference for the Latvian language as a means for strengthening the national identity. According to the Court, the argument of the negative impact of such a policy on the rights of minorities is not consistent, since the education in minority languages is still allowed. Judgment no. 2004-18-0106 of 13.5.2005 of the Constitutional Court of the Republic of Latvia is available at: http://www.satv.tiesa.gov.lv/wp-content/uploads/2004/08/2004-18-0106_Spriedums_ENG.pdf.

³⁷² Third Report submitted by Latvia pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities. State Report, Third Cycle, received on 6 December 2016, p.34.

³⁷³ Supra note 308, p.34.

³⁷⁴ *Education Law*, art. 59.2.

Nowadays the Latvian education system is divided in two, as children follow either Latvian language or minority language schooling, mainly in Russian. Few efforts are made to create an integrated system where children of different backgrounds study together.³⁷⁵

As regards higher education, all state funded private universities must conduct education in Latvian language, and incoming students whose native language is not Latvian must pass a language entrance examination. In addition, the work required for the acquisition of academic degrees has to be prepared in Latvian.³⁷⁶ Alternatively, the written work shall be submitted “in a foreign language with an attached translation of an expanded summary into the official language.”³⁷⁷

It is striking to note that non-citizens have the right to maintain and develop their native language. The 1995 *Law on the Status of Former USSR Citizens who are not Citizens of Latvia or any other State* prescribes that non-citizen holds the right to “to maintain his/her native language and culture within the limits of cultural-national autonomy and traditions if such do not contravene the laws of the Republic of Latvia.”³⁷⁸

In sum, it could be said that the right of minorities to use their languages freely is rather limited, notwithstanding all the external pressure put on the government by international organizations.

Fundamental linguistic rights are guaranteed by Latvian constitution: Article 91 states that “all human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind;” Article 96 states that “everyone has the right to inviolability of their private life, home and correspondence;” Article 100 provides that “everyone has the right to freedom of expression which includes the right to freely receive, keep and distribute information and to express their views. Censorship is prohibited.”

Furthermore, Latvia has ratified the major international instruments that are important in terms of the rights of minorities: the *International Covenant on Civil and Political Rights*; the *International Covenant on Economic, Social and Cultural Rights*;

³⁷⁵ Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Latvia. Second Cycle, adopted on 18 June 2013, pp.6-7.

³⁷⁶ *Education Law*, art. 9.5.

³⁷⁷ *Official Language Law*, art. 15.

³⁷⁸ *Law on the Status of Former USSR Citizens who are not Citizens of Latvia or any other State*, art. 2.2 (1).

the *Convention on the Rights of the Child*; the *European Convention for the Protection of Human Rights and Fundamental Freedoms*; the *Framework Convention for the Protection of National Minorities*. Latvia has not signed yet the *European Charter on Regional and Minority Languages*, demonstrating, once again, all its reluctance to grant its large Russian-speaking minority special rights to use Russian in public.

CONCLUSION

This paragraph aims at drawing conclusions about the effectiveness of the international instruments, compared with the European instruments.

Issues related to minority languages have become a discussed topic on the international agenda. It is now widely accepted that mere non-discrimination measures are not enough to accommodate the needs of minorities and preserve their separate linguistic identity. To translate equality under the law into equality in fact, special rights should be taken by states. These special rights can be seen as a way of trying to achieve for a minority, the situation that the majority takes for granted. They are necessary both to protect the identity of minorities and to guarantee an effective integration of minorities in societies.

International organizations are now aware of the significance of language for a minority and, in fact, international law provides for the adoption of special measures in relation to linguistic matters in favor of minorities. Notwithstanding the efforts, the existing system for minority linguistic rights protection is not sufficient for the actual accommodation of minorities' need in relation to language.

Although the existing international instruments recognize rights for the protection of minorities' language, their efficacy is doubtful. In fact, they impose little obligations on signatory states. Consequently, it is not surprising that, in general, in contemporary societies the treatment of linguistic rights is weak. More often than not, states, which have signed treaties or conventions thus agreeing to grant adequate measure to promote minority languages use do not fully implement those rights in practice.

The current status on minority linguistic rights is deficient and this is mainly due to the use of weak formulations of rights provisions, which leave a considerable amount of discretion to states. Despite the demands that states take concrete measures for the protection and promotion of minority languages, there is vagueness about such demands, and this reduce their impact. The provisions are, for the most part, so vague that are subject to multiple interpretations; for instance, it is not clear to what the expression “in the public” refers. Furthermore, many modifications are included in the formulations, such as “as far as possible,” “where necessary’,” “appropriate” or “favorable conditions,” “who so wish in a number considered sufficient.” A number of alternatives are as well included, such as “to allow, encourage or provide.” All this permit reluctant states to meet

the obligations undertaken in a minimalist way. A state can justify itself by claiming that a provision was not “appropriate,” or that numbers did not “justify” a provision. A state could also claim that it “allowed” or “encouraged” the implementation of such rights. It is up to governments to decide how and where these rights can be exercised: it is the state that decide what is “appropriate” or “adequate.”

Provisions often refers to a numerical threshold, but there is no generally accepted minimum threshold as to the numerical size for a minority to be entitled to linguistic rights. The principle of proportionality is often applied. It means that states limit these rights by proportion, that is the numbers and territorial concentration of speakers justify specific provisions. In so doing, states may be failing to address adequately the rights of minorities. Similarly, limiting the implementation of these rights by areas where minorities are concentrated above a certain percentage may result in not adequately addressing the rights of minorities throughout the country. Limiting to specific territories the application of rights designed as non territorial is a matter of concern for minorities. In this way, those who live dispersed throughout the country cannot benefit from the rights that are granted to the other members of the minority living compactly together in well-defined areas.

It is important to bear in mind that the regulation of language use, especially in communications with public authorities, can be restrictive because of limited state financial resources. State's lack of willingness is just one of the obstacles to the effective implementation of the commitments it has assumed under international treaties.

The fact that the majority of these international law documents are not legally binding strengthen the argument on weakness of international minority linguistic rights system. International non legally binding instruments do not oblige states to implement the guidelines they outline; they serve as a starting point in shaping the legislation of states that had signed them. Thus, their effectiveness lies in the willingness of the states.

What is needed is a system of more detailed provisions to ensure that legal commitments undertaken by states for their minorities are effectively enforced. International instruments should offer a set of unambiguous rules to accommodate linguistic diversity. International organizations should also adopt a monitoring mechanism to guarantee an effective implementation of these rights.

The implementation of linguistic rights is given particular attention by the European Union. The Union's monitoring mechanisms is fundamental to redress situations of non-compliance by states. The EU obliges states to make positive efforts to improve the enjoyment of linguistic rights. The Union has pushed states to introduce policies aimed at politically accommodating linguistic diversity. The Union's role in ensuring minorities to enjoy their rights is interesting: considering that the EU still has not formulated any legal provision in the field, its ability to compel states to respect their commitments is remarkable.

States are not willing to accommodate diversity by promoting linguistic rights because fear the effects of granting special rights to minorities. They fear that the maintenance of linguistic diversity and the use of minority languages strengthen the identity of minorities and that this could become a threat to their sovereignty and territorial integrity. States are reluctant of modify their languages policies: they want to defend the primacy of the official state language.

The protection of minority languages is considered to risk the state's internal cohesion, unity and security. Conversely, the lack of linguistic rights is a potential cause of conflict. Granting linguistic rights to minorities does not create conflicts, but reduces the possibility of conflicts and contributes to the political and social stability of states. Language can become a mobilizing factor only where the minority group feels itself threatened.

Similarly, attempts by states to eliminate minority languages through policies of assimilation, with a view to guaranteeing homogeneity to the state, can lead to conflicts. If minorities are forced to assimilate into the majority language, not only the minority loses its distinct linguistic identity, but also tensions are created. Minority protection provisions should be aimed at integrating minorities into the society, and not at assimilating them. Minorities wish to take part in the society while preserving their identity; they seek integration and preservation at the same time.

The denial of linguistic rights to the minorities causes marginalization and social exclusion. Linguistic rights are fundamental to the participation of persons belonging to national minorities in the political, economic, social and cultural life of the state where they live. Some members of a minority could, indeed, be excluded from participation in the public life because of their lack of state language proficiency. Providing minorities

with the opportunity of using their languages in various aspects of public life should be the aim of good governance. Lack of linguistic rights prevents a minority from achieving equity with the majority. Consequently, minorities' presence within the society contributes positively to states' peace and stability.

As shown, there are many reasons why states should avoid trying to eliminate linguistic diversity. Another reason is the importance of linguistic and cultural diversity. It is commonly affirmed that when a language disappears, an important part of minority's identity disappears. Enabling members of a minority to express themselves in their language and ensuring the continuity of their language is fundamental to not only protect and preserve their distinct identity. As minority languages contribute to the cultural and linguistic richness of societies, the loss of a language is a loss not only for minorities, but also for the rest of the societies they live in. Granting linguistic rights is fundamental to maintain linguistic diversity.

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SUMMARY IN ITALIAN

La tutela dei diritti linguistici delle minoranze è un tema ormai di grande importanza sul piano internazionale ed europeo. È ormai raro che uno stato non abbia, all'interno dei propri confini, gruppi di persone numericamente inferiori alla maggioranza che parlano una lingua diversa da quella della maggioranza.

La tutela dei diritti linguistici è ormai divenuta un obiettivo condiviso perseguito da attori internazionali. Per questa ragione, i principali organismi internazionali, quali le Nazioni Unite, il Consiglio d'Europa, l'Organizzazione per la Sicurezza e la Cooperazione in Europa e l'Unione Europea, si sono impegnati nella ricerca di soluzioni. La loro attività ha portato all'adozione di numerosi strumenti elaborati al fine di proteggere il diritto delle minoranze ad usare la propria lingua.

Occorre, innanzitutto, individuare e definire i soggetti a cui tali misure sono destinate. Definire una minoranza è un compito difficile, data la vaghezza del concetto di "minoranza." Nonostante i numerosi tentavi, sia a livello internazionale che a livello europeo, non si è ancora raggiunto consenso circa una definizione. La difficoltà principale deriva dalla natura relativa del concetto di minoranza, in quanto si costruisce unicamente grazie alla relazione con il concetto di "maggioranza." Una minoranza per essere tale deve essere posta in riferimento ad una maggioranza: solo sulla base del rapporto tra un gruppo numericamente inferiore e un gruppo numericamente maggiore si può parlare di minoranza. Le difficoltà, però, non sono solo prettamente concettuali. La riluttanza degli stati, spesso, impedisce di trovare un accordo. Gli stati sono ben consapevoli del fatto che una volta stabiliti i parametri per individuare una minoranza ricadrà su di loro il dovere di tutelarla e di garantirle dei diritti speciali. A questo proposito, c'è anche chi sostiene che una precisa definizione di minoranza non sia necessaria poiché, osservando la costituzione etnica di una popolazione, si è in grado di individuare una minoranza. Nonostante l'assenza di una definizione, da un'analisi delle definizioni proposte, sia dagli studiosi che dalle organizzazioni internazionali, è possibile individuare i tratti identificati più ricorrenti, i quali, è possibile concludere, compongono la definizione di "minoranza." Tali tratti ricadono in due categorie: la prima racchiude i tratti relativi alle cosiddette caratteristiche soggettive, mentre la seconda categoria comprende quelle che sono definite le caratteristiche oggettive.

Tra le caratteristiche soggettive rientrano l'esistenza di un'etnicità, cultura, lingua o religione condivisa, l'inferiorità numerica e la posizione di non dominanza all'interno della società. Come già accennato, un gruppo deve essere numericamente inferiore rispetto al resto della popolazione per poter essere identificato come una minoranza. Da sottolineare che, solitamente, il paragone viene realizzato con riferimento alla maggioranza a livello di stato, e non a livello locale. L'inferiorità numerica però non è sufficiente: essendo le minoranze una realtà sociale, un ulteriore parametro identificativo è la posizione di non dominanza negli ambiti politici e economici. L'elemento sicuramente più importante rimane la condivisione di etnicità, cultura, lingua o religione. In generale, le caratteristiche soggettive sono quelle che, visibilmente, distinguono minoranza e maggioranza.

Un ulteriore parametro è la cittadinanza. Secondo alcuni il possesso della cittadinanza di uno stato è prerequisito necessario nell'identificare una minoranza; altri invece sostengono che non sia corretto includere tale prerequisito: in questo modo, infatti, i membri di una minoranza sono esclusi dal godimento di speciali diritti solo perché non (ancora) cittadini di uno stato. A tal proposito, alcuni studiosi supportano l'idea per cui un lungo periodo di permanenza sul territorio di uno stato sia sufficiente. In questo modo quindi rientrano nella definizione di minoranza solamente quelle che vengono definite minoranze "storiche" o "tradizionali" e si escludono le "nuove minoranze," frutto dei recenti processi migratori e costituite principalmente da immigrati e richiedenti asilo politico.

Tra le caratteristiche oggettive, l'elemento più rilevante è l'auto identificazione dei soggetti come membri di una minoranza. La decisione di appartenere ad una minoranza deve essere libera, ma comunque basarsi su criteri soggettivi. È importante inoltre che la scelta di appartenere o non appartenere ad una minoranza non comporti conseguenze negative al soggetto. I membri di una minoranza devono altresì dimostrare di voler mantenere e tutelare la loro diversa identità. A tal proposito, gli stati tendono ad avanzare l'idea per la quale i soggetti di una minoranza vogliono tutelare la loro identità e mantenere le loro caratteristiche solamente perché nascono e crescono all'interno di una minoranza. Di conseguenza, anche l'appartenenza ad una minoranza non dipenderebbe da una scelta individuale, ma sarebbe involontariamente indotta dal contesto in cui tali soggetti vivono. Al contrario, secondo alcuni studiosi, il fatto che, pur avendo a

disposizione la possibilità di assumere i tratti costitutivi della maggioranza, i membri di una minoranza scelgono involontariamente di mantenere i propri tratti, è sufficiente a dimostrare la loro intenzione di non perdere la propria identità.

Ultimo parametro, molto dibattuto, è il riconoscimento da parte dello stato. Nonostante molti studiosi ritengano che non sia necessario per poter identificare una minoranza poiché sono sufficienti i tratti soggettivi, è anche vero che le minoranze necessitano del riconoscimento formale per poter essere individuate come destinatarie dei diritti speciali.

A livello internazionale i tentativi di definire una minoranza da parte dell'Organizzazione delle Nazioni Unite, del Consiglio d'Europa e dell'Organizzazione per la Sicurezza e la Cooperazione in Europa, sono stati futili e, di conseguenza, nessun documento con valenza legale contiene una definizione. Allo stesso modo, l'Unione Europea non è riuscita a formulare una definizione. In generale, da un'analisi delle varie proposte di definizione, emerge la tendenza ad unire il concetto di minoranza con il concetto di caratteristiche etniche, culturali, religiose e linguistiche. Conseguentemente, i soggetti beneficiari dei diritti delle minoranze risultano essere le persone che condividono un'etnia, una cultura e una lingua, in una posizione non dominante all'interno della maggioranza e in numero inferiore rispetto al resto della popolazione, che si identificano nella loro identità condivisa e desiderano mantenere e proteggere le loro caratteristiche identificative. Il requisito della cittadinanza spesso viene escluso.

Gli strumenti atti a proteggere il diritto dei membri delle minoranze ad utilizzare la propria lingua sono fondamentali, data l'importanza che riveste la lingua per l'identità di una persona. La lingua infatti non è solamente il mezzo attraverso il quale si svolge una comunicazione, ma è un elemento costitutivo dell'identità di una minoranza, in quanto radicata nella storia della comunità. La minoranza si identifica con la lingua e, per questa ragione, è un elemento determinante nel mantenimento del gruppo minoritario. Inoltre, se una lingua non è oggetto di tutela, il rischio è che possa morire e i suoi parlanti essere assimilati nella lingua della maggioranza: i diritti linguistici sono essenziali ai fini del mantenimento della lingua. Tutte le conoscenze ed i valori di una comunità sono racchiusi nella lingua. Nel campo della linguistica è ormai molto affermata l'idea per cui la lingua è l'espressione di una visione del mondo: perdere una lingua significa perdere anche una visione del mondo.

È spesso dibattuto se i diritti linguistici delle minoranze siano una parte integrante dei diritti umani fondamentali. Solamente il diritto alla non discriminazione, sulla base della preferenza linguistica, il diritto alla libertà di espressione e il diritto ad un equo processo possono essere considerati diritti umani linguistici, parte fondamentale dei diritti umani. Il diritto di non essere oggetto di discriminazione in base alla lingua prevede che i parlanti una lingua minoritaria possano godere dei diritti previsti dalla legge, senza alcuna interferenza o discriminazione da parte dello stato, fondata sull'uso di una lingua minoritaria. Il diritto alla libertà di espressione tutela la libertà di scegliere la lingua veicolare, sia nelle comunicazioni orali che nelle comunicazioni scritte. È il diritto che garantisce ai membri appartenenti ad una minoranza di poter impiegare la loro lingua all'interno della comunità: si limita quindi alla sfera del privato. Il diritto ad un equo processo garantisce al soggetto accusato di un crimine, durante un processo, di essere informato dei motivi dell'arresto e della natura del crimine commesso nella propria lingua veicolare. Il diritto prevede altresì, nei casi in cui il soggetto interessato non abbia padronanza della lingua in cui è svolto il processo, il diritto ad essere assistito, senza spese aggiuntive, da un interprete. I diritti linguistici fondamentali non sono destinati alla salvaguardia delle lingue minoritarie. Sono diritti umani, garantiti a tutti gli esseri umani in quanto tali, indipendentemente dall'appartenenza ad un gruppo minoritario. In quanto diritti umani, sono protetti dai principali strumenti per la tutela dei diritti umani, come la *Dichiarazione universale dei diritti umani*, la *Convenzione internazionale sui diritti economici, sociali e culturali*, il *Patto internazionale sui diritti civili e politici*, la *Convenzione internazionale sui diritti dell'infanzia*, la *Convenzione europea per la salvaguardia dei diritti dell'uomo e delle libertà fondamentali* e la *Carta dei diritti fondamentali dell'Unione europea*.

I diritti linguistici hanno un ruolo e una natura completamente diversi: sono un costrutto politico e hanno come unico destinatario le minoranze. Questi diritti richiedono l'intervento dello stato: la semplice tolleranza non è sufficiente, ma sono necessarie specifiche misure.

Tra i diritti linguistici con il semplice obiettivo di tollerare le diversità linguistiche e i diritti mirati al mantenimento delle lingue si situa anche la questione dei diritti collettivi. I diritti linguistici fondamentali sono diritti individuali mentre i diritti linguistici, nonostante la ricorrente formulazione in termini individuali, sono diritti che

hanno una valenza collettiva: sono garantiti all'individuo in virtù dell'appartenenza ad un gruppo minoritario e vengono esercitati all'interno del gruppo, con gli altri membri della comunità.

I diritti linguistici destinati a promuovere l'uso delle lingue minoritarie sono necessari non solo per salvaguardare le lingue minorate e impedire che le minoranze perdano una parte della loro identità, ma anche per assicurare l'uguaglianza sostanziale tra maggioranza e minoranza. I diritti speciali, infatti, non sono da considerarsi come diritti atti a privilegiare le minoranze, ma come diritti destinati a risolvere situazioni di disuguaglianza. È ormai consolidata l'idea per cui discriminazione significa anche trattare ugualmente situazioni differenti.

Le aree di applicazione dei diritti linguistici sono molteplici: dalla vita pubblica e i rapporti sociali, passando per il campo dei mezzi di comunicazione di massa e delle comunicazioni con le autorità amministrative, fino al campo dell'istruzione.

Nel campo dei mass media, i membri appartenenti alla minoranza dovrebbero poter godere del diritto di ricevere programmi radio e tv nella propria lingua, per un totale di ore sufficiente per poter godere appieno delle loro manifestazioni culturali, e in una fascia oraria adeguata. Per il raggiungimento di questo scopo gli stati dovrebbero adottare misure atte a facilitare l'accesso alla radio e alla televisione locali e incoraggiare la creazione di canali radio e tv privati, astenendosi da misure discriminatorie nei confronti delle minoranze. Allo stesso modo, nel caso in cui lo stato ponga degli incentivi finanziari a disposizione dei media, le minoranze dovrebbero poter aver accesso al budget statale.

Per quanto riguarda i rapporti con le autorità amministrative e gli uffici pubblici, occorre che la lingua della minoranza abbia un posto in questo ambito, affinché i membri del gruppo minoritario possano partecipare pienamente alla vita pubblica. L'ideale sarebbe poter impiegare la propria lingua in ogni tipo di comunicazione, includendo anche la documentazione cartacea, nelle aree in cui la minoranza è presente in un numero consistente e ne ha esplicitamente espresso il desiderio. Le disposizioni, in questo caso, hanno lo scopo di favorire la comunicazione fra le autorità pubbliche e coloro che parlano lingue minoritarie.

Il diritto di poter parlare la propria lingua innanzi agli organi giudiziari, durante i processi penali, civili o amministrativi è un diritto distinto dal diritto ad un equo processo. Il diritto ad un equo processo non prevede la possibilità di richiedere che l'intero processo

avvenga nella lingua minoritaria, se l'accusato ha la padronanza della lingua di stato; al contrario, il diritto ad esprimersi nella propria lingua nei rapporti con gli organi giudiziari prevede che il soggetto interessato goda della possibilità di avanzare tale richiesta, nonostante la conoscenza della lingua veicolare degli organi giudiziari.

I diritti linguistici riguardano anche la sfera privata: si tratta del diritto a poter condurre attività economiche, sociali, culturali o sportive nella lingua minoritaria. Nei casi in cui, tali attività abbiano una valenza anche per la maggioranza, lo stato può richiedere che venga utilizzata anche la lingua della maggioranza.

L'ambito più dibattuto è quello dell'istruzione. È necessario distinguere tra il diritto ad imparare la propria lingua madre ed il diritto a ricevere l'istruzione per mezzo della propria lingua. Nel campo dell'istruzione dovrebbe essere consentito e promosso l'insegnamento delle lingue e culture minoritarie nell'ambito dei programmi ufficiali, dalla scuola materna fino all'Università, con una attenzione particolare alla scuola materna, affinché il bambino possa apprendere al meglio la sua lingua madre. Tale diritto è particolarmente rilevante poiché è la scuola il luogo in cui, sempre più spesso, avviene l'assimilazione linguistica delle minoranze. Ulteriore sviluppo di tale diritto è il diritto a ricevere l'educazione per mezzo della propria lingua: un diritto molto generoso che può trovare attuazione solamente nelle aree in cui i membri di una minoranza sono concentrati. Nella sfera privata è ormai largamente riconosciuto il diritto a fondare e dirigere istituzioni educative che promuovano l'insegnamento non solo della lingua della minoranza, ma anche l'insegnamento per mezzo della lingua minoritaria.

I diritti linguistici comprendono anche dei diritti strettamente legati all'identità della persona: il diritto ad utilizzare il proprio nome, secondo le regole del proprio sistema linguistico, e il diritto al riconoscimento in certificati e documenti ufficiali. Il diritto al proprio nome può avere un vasto raggio di azione, fino ad includere il diritto, nei territori in cui la minoranza risiede da tempo, ad esporre le indicazioni topografiche, tra cui nomi di luoghi e segnali stradali, nella lingua minoritaria.

Il problema di individuare forme di trattamento differenziato per i gruppi minoritari si è sviluppato solamente a partire dalla fine degli anni sessanta. In precedenza, infatti, il principio dello stato-nazione era predominante: l'esistenza di minoranze non assimilate era percepita come un tradimento allo stato-nazione. Secondo il principio dello stato-nazione, infatti, lo stato deve consistere di un solo gruppo nazionale, con una sola

lingua. Il primo punto di svolta è stato l'anno 1815, con il *Protocollo finale* del Congresso di Vienna, quando per la prima volta, fu concesso ad una minoranza il diritto ad esprimersi nella propria lingua innanzi agli organi amministrativi. Un ulteriore passo avanti si è verificato al termine del primo conflitto mondiale con la creazione della Società delle Nazioni, la quale ha portato alla creazione di una rete di accordi bilaterali e trattati speciali tra stati finalizzati a tutelare le minoranze. Con l'avvicinarsi del secondo conflitto mondiale, l'acuirsi dei risentimenti nazionalisti, ha portato al crollo del primo sistema internazionale di protezione dei gruppi minoritari, il cui posto fu poi assunto, nel periodo successivo alla conclusione del secondo conflitto mondiale, dall'Organizzazione delle Nazioni Unite. Nel conteso delle Nazioni Unite però la questione minoritaria non occupava una posizione di rilievo: era consolidata l'idea per cui il principio di non-discriminazione e di uguaglianza fossero sufficienti a tutelare le minoranze. Conseguentemente, non erano previsti i diritti legati alla dimensione linguistica.

Nel 1966 l'introduzione di un articolo completamente destinato a proteggere il diritto di godere della propria cultura e di esprimersi nella propria lingua, in un trattato sui diritti umani, segna l'inizio di una nuova era: si tratta dell'articolo 27 del *Patto internazionale sui diritti civili e politici* dell'ONU. Sebbene formulato in termini negativi e nonostante lasci un ampio margine di apprezzamento agli stati, è considerato l'articolo più importante nell'ambito delle questioni minoritarie. In seguito, l'ONU ha inserito altri articoli destinati a tutelare i diritti linguistici delle minoranze e, più in generale, i diritti minoritari. Articoli destinati alle minoranze sono presenti nella *Convenzione internazionale sui diritti economici, sociali e culturali* e nella *Convenzione internazionale sui diritti dell'infanzia*. Fondamentale è stata anche l'adozione della *Dichiarazione sui diritti delle persone appartenenti alle minoranze nazionali o etniche, religiose e linguistiche* nel 1992. Nella dichiarazione, interamente dedicata alla tutela delle minoranze sono contenuti articoli rilevanti per i diritti linguistici delle minoranze; purtroppo però si tratta una dichiarazione e, in quanto tale, non impone obblighi sugli stati, a differenza dei trattati sopra menzionati, i quali, impongono obblighi agli stati firmatari e istituiscono delle commissioni dedicate a monitorare le attività degli stati.

Seguendo le orme delle Nazioni Unite, anche all'interno del Consiglio d'Europa l'interesse verso le questioni minoritarie è maturato tardivamente. Così come la *Dichiarazione universale dei diritti umani* del 1948 dell'ONU, la *Convenzione europea*

per la salvaguardia dei diritti dell'uomo e delle libertà fondamentali del 1950 non prevede alcun articolo a beneficio delle minoranze. Punto di svolta è rappresentato dall'adozione nel 1992 della *Carta europea delle lingue regionali o minoritarie* e nel 1995 della *Convenzione-quadro per la protezione delle minoranze nazionali*. La *Convenzione-quadro* è uno strumento multilaterale consacrato alla protezione delle minoranze nazionali. Data la sua natura, gli stati firmatari si impegnano a rispettare gli obblighi che ne derivano. Per quanto riguarda la lingua, numerosi sono le disposizioni a favore delle minoranze: sono infatti previste misure nel campo dei mass media, dei rapporti con le autorità amministrative e dell'educazione. Della stessa natura è la *Carta europea delle lingue regionali o minoritarie*, la quale impegna gli stati ad adottare speciali misure per la salvaguardia delle lingue minoritarie o regionali. Obiettivo infatti della carta è la tutela delle lingue e solo indirettamente può essere considerata uno strumento per la tutela dei diritti linguistici delle minoranze. La carta prevede misure per agevolare l'uso delle lingue minoritarie in tutti i campi della vita pubblica: l'insegnamento, la giustizia, le autorità amministrative ed i servizi pubblici, i media, le attività culturali, la vita economica e sociali.

La relazione tra le minoranze e l'Organizzazione per la Sicurezza e la Cooperazione in Europa ha una natura diversa. In quanto organizzazione per la sicurezza, si occupa di questione relative alle minoranze nei casi in cui queste possano trasformarsi in conflitti: l'OSCE si adopera infatti per assicurare la stabilità, la pace e la democrazia. A questo scopo, nel 1992, è stato istituito l'Alto Commissariato per le Minoranze Nazionali, concepito come uno strumento di prevenzione nei confronti delle situazioni di possibile tensione etnica. Spesso l'Alto Commissariato è stato coinvolto in questione relative alla lingua: da qui, la decisione di formulare una serie di raccomandazioni con lo scopo di aiutare gli stati ad adottare misure a favore delle lingue minoritarie. Di particolare rilevanza, soprattutto per la formulazione di standard nel campo delle lingue delle minoranze, nonostante la loro natura non vincolante, sono le *Raccomandazioni di Oslo sui diritti linguistici delle minoranze nazionali* e le *Raccomandazioni di The Hague sui diritti all'educazione delle minoranze nazionali*.

Sul piano interazionale, i trattati dell'ONU e le convenzioni del Consiglio d'Europa spesso non si traducono in misure concrete. Nonostante pongano sugli stati firmatari degli obblighi, la realizzazione di misure a beneficio delle lingue minoritarie spesso non si

compie. Tale situazione è, per di più, favorita della formulazione di tali disposizioni sempre molto vaga e aperta a più interpretazioni, lasciando così molta libertà agli stati. L'OSCE, invece, opera instaurando un dialogo politico con i governi degli stati, e non attraverso trattati. Nonostante nei documenti dell'OSCE sia spesso affermato l'obbligo degli stati a tutelare le minoranze, questi documenti sono validi solo politicamente e non sono vincolanti: la protezione delle lingue dipende dalla “buona volontà” degli stati partecipanti.

La tutela delle minoranze e dei loro diritti linguistici ha una diversa natura a livello europeo. Il rispetto per la diversità linguistica e culturale è uno degli elementi costitutivi dell'Unione europea: tale principio è sancito dalla *Carta europea dei diritti fondamentali* all'articolo 22. L'Unione Europea, però, non ha mostrato fin dall'origine interesse in tale campo. L'unico organo che fin dall'inizio ha mostrato interesse per la salvaguardia e tutela della diversità linguistica è il Parlamento europeo, il quale ha adottato una serie di risoluzioni in materia; purtroppo però le risoluzioni non hanno natura vincolante. La tutela delle minoranze è divenuta una questione di rilievo solamente in seguito all'allargamento del 2004 a nuovi paesi dell'Europa centrale e dell'est. Il timore che nuovi paesi, con al proprio interno numerose questioni minoritarie irrisolte, divenissero un fattore di instabilità sul suolo europeo, ha indotto l'Unione ad adottare delle misure per scongiurare tale possibile pericolo. In seguito al Consiglio europeo di Copenaghen del 1993, l'adesione all'Unione da parte di nuovi stati è condizionata dal rispetto di alcuni criteri. Uno dei criteri di Copenaghen richiede che il paese candidato abbia raggiunto una stabilità istituzionale che garantisca il rispetto e la protezione delle minoranze. Questo criterio richiede un adeguamento degli ordinamenti dei paesi candidati ad una serie di standard finalizzati a garantire la protezione delle minoranze. Con l'entrata in vigore del *Trattato di Lisbona* la protezione delle minoranze si inserisce tra i valori su cui si fonda l'Unione Europea, divenendo oggetto di politica comunitaria: in precedenza i diritti delle minoranze non erano parte dell'*acquis communautaire*.

In quanto non possiede uno standard autonomo per la tutela delle minoranze, l'Unione fa riferimento agli standard internazionali per la tutela delle minoranze, elaborati dal Consiglio d'Europa e dall'Organizzazione per la Sicurezza e la Cooperazione in Europa. L'Unione incoraggia i paesi candidati a firmare e ratificare la *Convenzione-*

quadro per la protezione delle minoranze nazionali e la Carta europea delle lingue regionali o minoritarie.

A differenza dei trattati internazionali, la *conditionality* riesce ad incidere sulla sovranità degli stati, in relazione alla volontà di adottare misure dedicate al rispetto dell'identità delle minoranze. Il rischio di non adesione ha il potere di condizionare gli stati e l'esigenza di garantire misure di protezione per le minoranze diviene così una priorità.

È proprio in relazione a questo specifico criterio che la Lettonia ha modificato il proprio sistema normativo di protezione di diritti delle minoranze. Il caso della Lettonia è esemplare poiché l'intero processo di adesione è stato caratterizzato da una tensione interna: da una parte le forze nazionaliste, volenterose di lasciare nel passato l'occupazione sovietica e liberarsi dalla forzata russificazione e, dall'altra parte, la necessità di tutelare la minoranza russofona. Il processo di ascesso della Lettonia mostra anche che la Commissione europea privilegia alcune minoranze e impiega approcci diversi in base al paese candidato. Nonostante sul territorio lettone risiedano persone appartenenti a diverse minoranze, la Commissione si è concentrata solamente sulla minoranza russa: è ragionevole ritenere che si tratti di un tentativo di stabilire buoni rapporti con la vicina Russia.

La Lettonia è stata per secoli condizionata dall'influenza russa. Il paese era già stato sotto il dominio russo, quando, dopo il primo conflitto mondiale, l'intera regione fu illegittimamente occupata ed annessa all'Unione Sovietica. Sotto il regime di occupazione sovietica, si è assistito ad un enorme afflusso di migranti sovietici nel territorio lettone; di conseguenza, dopo la riconquista dell'indipendenza, risultava sul territorio lettone una numerosa comunità russofona. Il timore di divenire una minoranza nel proprio paese, aggiunto al timore della potenziale scomparsa della lingua lettone, a causa dell'ormai predominante lingua russa, indussero la Lettonia ad adottare politiche con lo scopo di tutelare la propria sopravvivenza. Sono proprio queste politiche che hanno attirato l'attenzione del Consiglio d'Europa prima, e della Commissione europea poi, in quanto l'essere membro del Consiglio d'Europa è prerequisite per poter accedere all'Unione Europea. Dato il trattamento allora riservato alla minoranza russa, ai fini di garantire stabilità ed evitare possibili conflitti, anche l'Alto Commissariato per le Minoranze Nazionali dell'OSCE si è molto interessato alla questione.

Questione di fondamentale importanza era, ed è tuttora, l'alto numero dei non cittadini. Lo status di non cittadini comporta, ancora oggi, notevoli restrizioni nelle opportunità di partecipazione alla vita sociale e politica; numerosi sono anche i limiti professionali ancora in vigore nel settore pubblico. La restrittiva legge sulla cittadinanza, adottata dopo la ritrovata sovranità, prevedeva l'automatica concessione della cittadinanza solo a coloro che risultavano possedere la nazionalità lettone prima dell'annessione sovietica, e i loro discendenti. Da tale politica rimasero esclusi tutti gli immigranti sovietici ed i loro discendenti nati sul suolo lettone, divenendo persone senza alcuno stato di riferimento. Nel 1994 furono adottate le misure che avrebbero regolato il processo di naturalizzazione: un sistema "delle finestre" che limitava il numero delle richieste di cittadinanza sulla base di criteri legati all'età. Solo in seguito alle pressioni esercitate dalla comunità internazionale si è posto rimedio a tale situazione e la legge sulla cittadinanza ha subito sostanziali emendamenti, tra cui l'abolizione "delle finestre."

Altra questione rilevante per la comunità internazionale era, ed è tuttora, il prerequisito della conoscenza della lingua lettone, non solo per superare l'esame di lingua previsto dal processo di naturalizzazione, ma anche per accedere ad alcune occupazioni. Una particolare attenzione quindi è stata posta alla promozione dell'apprendimento della lingua lettone fra i membri della minoranza russofona. Dal 2004 infatti, nelle scuole pubbliche che offrono curricula bilingui per le minoranze, l'ammontare del numero di lezioni insegnate in lingua lettone è stato aumentato. Tale decisione, approvata dalla Commissione europea, è in contrasto con l'approccio impiegato con altri paesi candidati, teso a promuovere l'insegnamento delle lingue minoritarie.

Per le questioni legate alla lingua, è stata la prima bozza della legge sulla lingua ufficiale ad aver destato le preoccupazioni delle organizzazioni internazionali. Il governo intendeva limitare l'uso delle lingue minoritarie anche nella sfera privata: i numerosi appelli internazionali hanno, ancora una volta, influenzato la politica interna del paese e portato all'adozione di misure meno restrittive.

In generale, le lingue minoritarie non vantano di molte misure destinate alla loro tutela. La costituzione, così come la legge sulla lingua di stato, tendono a ribadire l'importanza e la supremazia della lingua lettone: è un chiaro segnale, da parte dei lettoni, di voler riportare la propria lingua a lingua dominante nel paese. Inoltre, è interessante notare come nel quadro normativo si faccia riferimento alle lingue presenti sul territorio,

oltre al lettone, come lingue straniere: è bizzarro considerare la lingua russa, parlata non solamente da persone di etnia russa ma anche da lettoni, una lingua straniera. Nonostante, quindi, qualche piccola apertura alle lingue minoritarie, le minoranze in Lettonia non godono di generosi diritti linguistici.

Ciò non impedisce di poter affermare che *membership conditionality* europea non abbia avuto un ruolo significativo nell'indurre sostanziali modifiche nelle politiche minoritarie lettoni. Il caso della Lettonia sostiene la tesi qui avanzata: l'Unione Europea è l'unica organizzazione che riesce ad influenzare lo status delle minoranze negli stati; gli impegni derivanti dalla firma di trattati o convenzioni internazionali, nella maggior parte dei casi, non producono effetti concreti.

Nonostante sia oggi riconosciuta l'importanza della lingua per l'identità di un gruppo minoritari, gli stati sono assai riluttanti nel concedere alle proprie minoranze dei diritti linguistici. Sono ancora molto diffuse false convinzioni secondo le quali la garanzia di diritti linguistici condurrebbe alla richiesta di autonomia e di indipendenza, fino allo sgretolamento dello stato. Al contrario, le questioni linguistiche possono diventare la causa di conflitti solo nei casi in cui le minoranze mancano di garanzie linguistiche oppure sono soggette all'imposizione della lingua ufficiale.

La mancanza di tutela linguistica porta anche alla morte delle lingue: salvaguardare e valorizzare la diversità linguistica è importante per una società poiché contribuisce ad arricchirla culturalmente.