Observing Minority Rights in the Administration of Justice and Public Administration: European Developments in 2016*

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Abstract: This article overviews the 2016 developments concerning the status and rights of European minorities with respect to administrative and judicial proceedings, with special focus on language rights. The longest section of the article is devoted to the activities of the Council of Europe, including the case-law of the European Court of Human Rights and the implementation of the European Charter for Regional and Minority Languages, as well as the Framework Convention for the Protection of National Minorities. Furthermore, the relevant legal developments in the activities of the United Nations, the Organization for Security and Cooperation in Europe and the European Union are presented.

Keywords: national/ethnic minorities and indigenous people in Europe; access to justice; public administration; language rights

I. United Nations

A. Office of the High Commissioner for Human Rights (OHCHR)

The OHCHR has lead responsibility in the UN system for the promotion and protection of human rights. The annual report of the High Commissioner, adopted at the Human Rights Council's (HRC's) 34th session (27 February-24 March 2017)[2] gives an overview of the work of the OHCHR from 1 December 2015 to 30 November 2016. Although among the thematic priorities of the High Commissioner we may find "[d]iscrimination on the basis of indigenous or minority status" (p. 7), the related activities are not relevant for the purposes of this review. Activities connected to "[t]ransitional justice" (pp. 9-10) and "[a]dministration of justice and law enforcement" (pp. 10-11) were conducted in countries outside Europe. Similarly, the report of the High Commissioner on the rights of indigenous peoples[3]

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[2] HRC, Annual Report of the United Nations High Commissioner for Human Rights, 13 January 2017, A/HRC/34/3, at <http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/3>.

[3] HRC, Rights of Indigenous Peoples - Report of the United Nations High Commissioner for Human Rights, 20 July 2016, A/HRC/33/27, at <http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/33/27>.

thoroughly discusses access to justice and strengthening the legal protection of indigenous peoples' rights, but its territorial focus is South America and South-East Asia.

B. General Assembly - Third Committee

The General Assembly allocates to the Third Committee agenda items relating to a range of social, humanitarian affairs and human rights issues that affect people all over the world, including minorities. At the 71st session of the Assembly, the Committee submitted its report on the rights of indigenous peoples including a draft resolution.[4] The draft resolution, recognizing the importance of access to justice in the promotion and protection of the rights of indigenous peoples and individuals and the need to examine and take steps to remove obstacles to justice, urged governments and the UN system to promote awareness of indigenous rights among all sectors of society, including members of legislatures, the judiciary and the civil service. It also drew attention to the critical loss of indigenous languages and the urgent need to preserve, revitalize and promote them (p. 5-7).

C. Human Rights Committee

The Human Rights Committee is a body of independent experts responsible for monitoring implementation of the International Covenant on Civil and Political Rights (ICCPR). The Committee held three sessions in 2016 during which it considered 21 state parties' reports in sum, including six from Europe (Slovenia, Sweden, Denmark, Moldova, Poland, Slovakia), submitted under Article 40 of the ICCPR.[5] While all concluding observations mentioned minorities, most of them related to racism, xenophobia, hate speech, and discrimination (especially against Roma, Muslims and Jews). As regards judicial proceedings and public administration, the Committee was concerned about the difficulties faced by Sami in *Sweden* in securing rights over lands and resources, including the high burden of proof requirements on Sami claimants to demonstrate land ownership and the inability of Sami villages to obtain legal aid under the Legal Aid Act, despite the fact that they are the only legal entities empowered to act as litigants in land disputes in respect of Sami lands and grazing rights.[6]

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[4] Report of the Third Committee, 1 December 2016, A/71/48, at <http://undocs.org/A/71/481>.
[5] 116th session (7-31 March 2016); 117th session (20 June-15 July 2016); 118th (17 October-4 November 2016), at <http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/SessionsList.aspx?Treaty=CCPR>.
[6] Concluding Observations on the Seventh Periodic Report of Sweden, 28 April 2016, CCPR/C/SWE/CO/7, para. 38.

During its three sessions, the Committee also examined 92 communications submitted under the Optional Protocol by individuals who claimed that their rights under the ICCPR had been violated by a state party. One of these complaints, *Mohamed Rabbae, A.B.S and N.A. v. the Netherlands*, is relevant for the purposes of this review.[7] Although the subject matter of the case was incitement to racial or religious hatred, substantive issues included: right to an effective remedy, right to a fair hearing, right to equality before the law, equal protection of the law without discrimination, and the rights of minorities (Arts. 2(3), 14(1), 17, 20(2), and 26-27 ICCPR). The background of the case was that between 2006 and 2009 the Dutch police received hundreds of reports from individuals and organizations concerning insults and incitement to discrimination, violence and hatred by Geert Wilders, a member of parliament and the founder of an extreme right-wing political party. However, the public prosecutor decided not to prosecute Mr. Wilders, arguing that his statements fell within the space granted by freedom of expression (para. 2.1). The authors of the communication, having a direct interest in the prosecution, lodged a complaint against the decision. As a result, the Amsterdam Court of Appeal ordered the prosecutor to prosecute Mr. Wilders before the Amsterdam District Court (para. 2.2). The authors and several other individuals and organizations of Muslims and migrants joined the criminal proceedings as injured parties, claiming from Mr. Wilders a symbolic compensation of EUR 1 each (para. 2.4). The Court decided that the elements of the indictment could not be proven and acquitted Mr. Wilder of all charges. The authors, having no further domestic remedies to exhaust, turned to the Human Rights Committee (para. 2.6). They claimed that Mr. Wilders' statements amounted to incitement to hatred, discrimination and violence against Muslims and non-Western migrants as human beings (para. 2.7). As Moroccans and Muslims, the authors felt personally and directly affected by Mr. Wilders' hate speech and suffered its effects in their daily lives. They had been either personally attacked or threatened and humiliated through the Internet. They were also affected by the Netherland's failure to convict Mr. Wilders and the signal given to the public that his conduct was not criminal (para. 2.11). The authors claimed their rights under the Covenant were not respected owing to the limited role they had as injured parties and the lack of an effective prosecution (para. 10.2).

[7] Views adopted by the Committee under Art. 5(4) of the Optional Protocol, Concerning Communication No. 2124/2011, CCPR/C/117/D/2124/2011, at <http://juris.ohchr.org/Search/Details/2153>.

The Committee recalled its jurisprudence that Article 14 does not provide individuals with a right to have other individuals prosecuted or punished, but they can claim their right to a fair hearing in the determination of their rights and obligations in a law suit. In the present case, the authors chose to exercise their rights by bringing a civil claim. During this procedure, their lawyers were allowed to speak about whether the facts of the charge were liable to punishment, and the authors were allowed to submit documentation and testify before the Court (para. 10.3). The Committee also noted that Article 20(2) secures the right of people as individuals and as members of groups to be free from hatred and discrimination under Article 26 by requiring states to prohibit certain conduct and expression by law. Article 20(2) is crafted narrowly in order to ensure that other equally fundamental Covenant rights, including freedom of expression, are not infringed. Freedom of expression embraces even expression that may be regarded as deeply offensive. Furthermore, Article 20(2) does not expressly require the imposition of criminal penalties, but requires that such advocacy be prohibited by law, including civil, administrative as well as criminal penalties (para. 10.4). Also, Article 20(2) does not extend to an obligation for the state party to ensure that a person who is charged with incitement to discrimination, hostility or violence will invariably be convicted (para. 10.7). Therefore, the Committee concluded that the facts before it did not reveal a breach of any provision of the Covenant (para. 11).

D. Human Rights Council

The Human Rights Council is an intergovernmental body within the UN system responsible for strengthening the promotion and protection of human rights around the globe. The Council adopted several resolutions relevant for the rights of minorities during its three sessions in 2016,[8] but only one of them deals with the administration of justice (and none of them with public administration). At its 31st session (29 February-24 March 2016), the Council adopted a resolution on the rights of persons belonging to national or ethnic, religious and linguistic minorities,[9] which includes recommendations to states on their criminal justice processes with a reference to the eighth session of the Forum on Minority

[8] See, for example, Resolution 33/13 on Human Rights and Indigenous Peoples, 29 September 2016, A/HRC/33/L.24, at <http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/33/L.24>.

[9] Resolution 31/13 on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, 23 March 2016, A/HRC/31/L.18, at <http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/L.18>.

Issues (see below). Specifically, the Council urged states, *inter alia*, to: review any legislation, policy or practice that has a discriminatory effect on persons belonging to national, ethnic, religious or linguistic minorities; ensure that all individuals within their jurisdiction enjoy their human rights throughout the criminal justice system in accordance with international human rights law, including the right to a fair trial, the right to legal assistance, the presumption of innocence and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment; promote a composition of law enforcement bodies (police, judiciary, prosecution services, prison personnel) that reflects the diversity of the population, including by fostering the recruitment, promotion and retention of persons belonging to national or ethnic, religious and linguistic minorities; remove obstacles that prevent persons belonging to these minorities from reporting a violation of their rights or having access to formal justice; address the overrepresentation of persons belonging to minorities in pretrial detention or prison; and work towards detention or imprisonment conditions that take into consideration the needs of prisoners belonging to minorities (pp. 3-4).

A specific process under the auspices of the Human Rights Council involves a review of the human rights records of all UN member states. The Working Group on the Universal Periodic Review (UPR) held three sessions in 2016 reviewing 39 countries in sum, including 10 European states.[10] While almost all of the reports to a lesser or greater extent dealt with the rights of minorities and/or indigenous peoples, only a few references were made to the judiciary and public administration in relation to them.[11] Several recommendations urged state parties to step up their efforts to investigate and punish hate crime, and to ensure effective access to justice for victims, including members of minority communities.[12] Furthermore, *Estonia* was recommended to introduce guarantees with respect to the right to use a minority language in all stages of the criminal proceedings, as well as to further guarantee the status and rights of national ethnic and linguistic minorities on the judicial

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[10] See <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRSessions.aspx>.
[11] Reports of the Working Group are available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>.
[12] See, e.g., Report of the Working Group of the UPR on the Republic of Moldova, A/HRC/34/12, para. 121.73; Report of the Working Group of the UPR on Lithuania, A/HRC/34/9, paras.100.74 and 100.82; Report of the Working Group of the UPR on Denmark, A/HRC/32/10, para. 120.127; Report of the Working Group of the UPR on Turkey, A/HRC/33/7, paras. 134.38, 136.8, and 136.22.

front.[13] *Denmark* was recommended to take effective measures to address the inequality in the status of court interpretation of minority languages, and step up efforts to tackle structural discrimination faced by minority groups with regard to access to justice.[14] *Latvia* was called on to: increase awareness among persons belonging to national minorities about the means available for legal protection from discrimination and hatred; ensure that appeals from those who do not master the Latvian language are sufficiently considered by state bodies by providing them an opportunity to use their mother tongue before state bodies; and provide the opportunity to use personal names, place names, street names and other geographical indications in minority languages, as well as enable contact with the authorities in a minority language on the territories where a significant part of the population belongs to those minorities.[15] *Lithuania* was called on to address the issue of the official use of minority languages.[16]

E. Special Rapporteur on Minority Issues, Forum on Minority Issues

The mandate of the Special Rapporteur on Minority Issues includes promoting full and effective realization of the rights of persons belonging to minorities and guiding the work of the Forum on Minority Issues. The current Special Rapporteur, Ms. Rita Izsák-Ndiaye, submitted her thematic report on "Minorities and Discrimination based on Caste and Analogous Systems of Inherited Status" at the 31st session of the Human Rights Council in January 2016.[17] Although the concept of caste system is primarily associated with the South Asian region, it can be found within diverse religious and ethnic groups in all geographical regions, including within diaspora communities in Europe, specifically the United Kingdom. Areas of impact of discrimination in caste-based and analogous systems include access to justice and policing. According to the Special Rapporteur, caste discrimination within the criminal justice system translates into victims from lower castes facing multiple obstacles at every stage of the legal process: from lodging a complaint to investigation, trial and judgement. Furthermore, the fear of reprisal often prevents them from reporting attacks, and if they do, law enforcement officers often refuse to register and/or investigate their cases.

[13] Report of the Working Group of the UPR on Estonia, A/HRC/32/7, paras. 123.44 and 123.50.
[14] Report of the Working Group of the UPR on Denmark, A/HRC/32/10, paras. 120.161 and 120.172.
[15] Report of the Working Group of the UPR on Latvia, A/HRC/32/15, paras. 118.8, 121.2, and 121.3.
[16] Report of the Working Group of the UPR on Lithuania, A/HRC/34/9, para. 100.161.
[17] Human Rights Council, Report of the Special Rapporteur on Minority Issues, 28 January 2016, A/HRC/31/56, at <http://undocs.org/A/HRC/31/56>.

Lower castes are also disproportionately represented in pretrial detention, owing to indiscriminate arrests, slow investigations and prosecutions, weak legal aid systems and inadequate safeguards against lengthy detention periods (paras. 60-63). The Special Rapporteur acknowledged that in-depth studies of caste-affected communities, particularly outside of South Asia, are needed in order to comprehensively assess their specific challenges (para. 125). She recommended, *inter alia*, that: states should conduct awareness-raising campaigns including informing victims of their rights and available means of legal recourse (para. 129); law enforcement officers should receive training to identify and adequately respond to cases of caste-based discrimination; and criminal penalties should be established for officers who neglect or intentionally decide not to investigate and/or prosecute complaints filed by individuals regarded as "low caste" (para. 134).

In February 2016, the Human Rights Council published the recommendations on 'Minorities and the Criminal Justice System' from the eighth session of the Forum on Minority Issues, which took place on 24 to 25 November 2015.[18] The Forum's document deals thoroughly with all aspects of criminal justice and provides thematic recommendations to states on how to improve their systems based on proper data collection and studies and, with regards to access to justice, detention facilities, and judicial proceedings and sentencing. The recommendations contain measures that are seen as essential to prevent discrimination against minorities in the administration of justice including education, training and capacity-building, community engagement, improving diversity throughout the system, and independent oversight and integrity mechanisms. The Forum calls on states to ensure that all individuals within their jurisdiction enjoy their fundamental rights throughout the criminal justice system, including through measures that specifically promote the equal treatment of minorities. States should enact legislation explicitly prohibiting and punishing the questioning, searching and arrest of individuals based solely or primarily on their physical appearance or perceived membership to a minority. States should also ensure that members of minorities are fully informed, including in their own language, of their rights as offenders, and that complaints by members of the most vulnerable populations are pursued with the same diligence applied to others. Other recommendations focus on minorities in detention

[18] HRC, Recommendations of the Forum on Minority Issues at its Eighth Session: Minorities and the Criminal Justice System (24 and 25 November 2015), 4 February 2016, A/HRC/31/72, at <http://undocs.org/A/HRC/31/72>.

facilities, including: the prevention and prosecution of acts of violence, harassment and abuse by prison staff; competent legal assistance to members of minorities; and the need for compulsory training, education and capacity building of law enforcement and judicial officials in human rights and minority rights.[19]

In 2016, the Special Rapporteur conducted official visits to three countries: Iraq, the Republic of Moldova and Sri Lanka. In her end of mission statement on Moldova, she especially addressed minority language rights in public administration and access to justice. The possibility to use the Russian language when addressing public administration featured strongly during her visit. The Special Rapporteur heard many complaints of instances in which written submissions in Russian, including court complaints, were not responded to or were directly rejected. She was also informed that the current system for registration of names and surnames is permitted in the state language and in Latin script only. Russian speaking minority members stated that it is no longer possible to insert their patronymic name in their identity card.[20] She called for public administration services to ensure the use of Russian and other minority languages along with the state language.[21]

F. Special Rapporteur on the Rights of Indigenous Peoples

The Special Rapporteur on the Rights of Indigenous Peoples, whose mandate was extended by the Human Rights Council in September 2016 for another three years,[22] is responsible for examining ways and means of overcoming existing obstacles to the full and effective protection of the rights of indigenous peoples. In August 2016, the Special Rapporteur reported on the human rights situation of the Sami people in the Sápmi region of Norway, Sweden and Finland, with a few observations concerning language rights of the Sami people

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[19] See also the HRC's general debate on human rights bodies and mechanism, 16 March 2016, at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=17239&LangID=E>.

[20] End-of-Mission Statement of the UN Special Rapporteur on Minority Issues on the Official Visit to the Republic of Moldova, 20-29 June 2016, at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20201&LangID=E>.

[21] Effective Promotion of the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities: Note by the Secretary-General Transmitting the Report of the Special Rapporteur on Minority Issues, 29 July 2016, A/71/254, 5, at <http://undocs.org/A/71/254>.

[22] Resolution 33/12 on Human Rights and Indigenous Peoples: Mandate of the Special Rapporteur on the Rights of Indigenous Peoples, 29 September 2016, A/HRC/33/L.23, at <http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/33/L.23>.

in public administration.[23] In *Norway*, the Sami people's right to preserve and develop their languages is recognized in the constitution and in several laws, including the Sami Act of 1987. The Special Rapporteur was pleased to learn that a committee to evaluate legislation, measures and arrangements for the Sami languages was appointed in 2014 to clarify current initiatives in place and their adaption within the public sector to ensure equal public services in Sami. She hopes that the committee's report will address the concerns about the need for a more comprehensive language policy (para. 33). As for *Sweden*, under the National Minorities and Minority Languages Act, Sami languages are granted protection within certain designated administrative areas, including with respect to dealings with state agencies. Those legal guarantees, however, remain only partially implemented, often as a result of a lack of staff with Sami language skills (para. 49).

II. Council of Europe

General developments with respect to the status and the rights of minorities in the area of public administration and administration of justice regard the accession and ratification by Turkey of Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 117), which includes: the right of a person convicted of a criminal offence to have the conviction or sentence reviewed by a higher tribunal; the right to compensation in the event of a miscarriage of justice; and the right not to be tried or punished in criminal proceedings for an offence for which one has already been acquitted or convicted. More particular developments regarding the implementation of the Council of Europe treaties are reviewed below.

A. European Court of Human Rights (ECtHR)

In the light of the jurisprudence of the Court, the scope of the European Convention on Human Rights (ECHR) extends to the protection of minority rights, even though the Convention is not a minority-specific instrument. Linguistic rights of minorities in the context of judicial proceedings are covered by the following provisions: everyone has the right to be informed promptly, in a language he/she understands, of the reasons for arrest (Art. 5.2 ECHR) and the nature of any criminal charges (Art. 6.3a ECHR). The Convention

[23] Human Rights Council, Report of the Special Rapporteur on the Rights of Indigenous Peoples on the Human Rights Situation of the Sami People in the Sápmi Region of Norway, Sweden and Finland, 9 August 2016, A/HRC/33/42/Add.3, at <http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/33/42/Add.3>.

also guarantees the right to a free interpreter if a defendant cannot speak or understand the language used in court (Art. 6.3e ECHR). During 2016, the ECtHR considered two cases where the rights of minorities were dealt with in the context of justice and public administration.[24]

In the case of *Lupeni Greek Catholic Parish and Others v. Romania*[25] the applicants—belonging to the Greek Catholic Church—alleged that the domestic courts refused to grant their claim for restitution of a church building and therefore there had been a breach of their right of access to a court, a failure to comply with the principle of legal certainty and a violation of the right to a fair hearing within a reasonable time (Article 6, § 1 ECHR). The applicants also claimed that they had been discriminated against in their enjoyment of the right of access to a court *because* they belonged to a minority denomination (paras. 1-3 and 153). First of all, the Court established that "the applicants' action was covered by Article 6 § 1 of the Convention in its civil limb, since it was aimed at securing recognition of their title to a building, a pecuniary right" (para. 69), *i.e.* "a right of ownership, even if the subject matter of the dispute was a place of worship" (para. 73). The applicants alleged that "the fact of applying the criterion of the worshippers' wishes, laid down by Legislative Decree no. 126/1990, in the context of their action for recovery of possession amounted to a restriction that rendered their right of access to a court illusory" (para. 92).[26] In turn, the Court noted that "the applicants were not prevented from bringing their action for restitution of the church building before the domestic courts. Their case was litigated at three levels of jurisdiction and, after their action was declared admissible in 2004, no procedural bar or limitation period was invoked against them" (para. 93). In fact, "the difficulties encountered by the applicants in their attempts to secure the return of the contested church building resulted from the applicable substantive law and were unrelated to any limitation on the right of access to a

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[24] All ECtHR cases are available at <http://hudoc.echr.coe.int>.
[25] ECtHR, Application No. 76943/11, *Lupeni Greek Catholic Parish and Others v. Romania*, judgement of 29 November 2016.
[26] According to Article 3 of the said Decree, the legal situation of the places of worship would be determined taking account of "the wishes of the worshippers in the communities in possession of these properties". "This criterion must be understood in the historical and social context in Romania, where the places of worship being reclaimed by the Greek Catholic parishes had been transferred to the Orthodox parishes following the dissolution of the Greek Catholic denomination in 1948. Moreover, when it was enacted in 1990 the legal provision in question had been drawn up after consultation with the interested parties and out of a desire to maintain neutrality, aimed at respecting the freedom of the former Greek Catholic but now Orthodox worshippers to decide about their faith and the fate of places of worship"—the Court explained (para. 170).

court" (para. 106). However, the Court did establish the violation of Article 6 § 1 on account of the breach of the principle of legal certainty—the legal provisions on the disputed properties were not clear and the related-case law was not consistent (paras. 116-135). The length of the proceedings was also considered—the proceedings were suspended on several occasions and altogether took a little over ten years (paras. 142-152). As for the alleged violation of Article 14 in conjunction with Article 6 § 1, the Court examined discrimination in comparison with other Greek Catholic parishes and with the Orthodox parish, but found no difference in treatment "between the applicants and the defendant in respect of the possibility of applying to the courts and obtaining a judicial decision on the action to recover possession of the place of worship" (paras. 165-174).

In the case of *Boacă and Others v. Romania*[27] the applicants alleged that I.B. had been a victim of police brutality, that the ensuing investigation was flawed, and that the victim had been discriminated against on the ground of his Roma origin. All seven applicants were Romanian nationals of Roma origin and heirs of I.B. who initiated the domestic proceedings but then died (para. 1-5). The applicants' and the Romanian Government's reports about the incidents of 30 March 2016 are contradictory. Apparently, there was a brawl involving some twenty people, mainly belonging to the family of the applicants and the family of G. (belonging to the Ursari Roma community). Some of those involved in the violence, including I.B., ended up getting arrested, but no one was prosecuted at the end (paras. 7-20). The Court considered that the complaint was to be examined only under Article 3 of the Convention prohibiting torture and inhuman or degrading treatment or punishment (para. 54). As for the substantive aspect of this provision, the Court first observed that "the severity of the injuries incurred by the victim, whether inflicted by State agents or private individuals, is sufficient to pass the threshold of Article 3 of the Convention" (para. 68). Second, taking into account the fact that the victim did not resist arrest and was not recorded as having any injuries upon arrival at the police station, but was recorded with injuries by the forensic doctors upon release, coupled with the failure by the authorities to provide a plausible explanation for the origin of those injuries, the Court concluded that "the victim suffered harm at the hands of the authorities" (para. 79). The Court also established the violation of

[27] ECtHR, Application no. 40355/11, *Boacă and Others v. Romania*, judgement of 12 January 2016.

the procedural limb of Article 3 for “the investigations into the allegations of police brutality were not effective” (paras. 81-88).

The applicants also claimed that their ill treatment and the decision not to bring criminal charges against the police officers who had beaten them were predominantly due to their Roma ethnicity, contrary to the principle of non-discrimination set forth in Article 14 of the Convention taken together with Article 3 (para. 89). The Court reminded that “racial violence is a particular affront to human dignity and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction” (para. 97). In the absence of concrete evidence, the Court found “not possible to speculate on whether the victim’s Roma origin had any bearing on the police officers’ perception of them”, and whether “racist attitudes played a role in the police actions” (paras. 102-103). However, it did establish that the respondent state failed to investigate possible racist motives

> when investigating violent incidents, State authorities have an additional duty to take all reasonable steps to unmask any racist motives and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Treating racially-induced violence and brutality on an equal footing with cases that have no racist overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights (para. 105).

A thorough investigation would have been further justified “against the background of the many published accounts of the existence in Romania of general prejudice and hostility towards Roma people and of continuing incidents of police abuse against members of this community” (para. 108). Therefore, the Court concluded that “the lack of any apparent investigation into the complaint of discrimination amounts to a violation of Article 14 taken together with Article 3 of the Convention in its procedural head” (para. 109).

B. European Charter for Regional and Minority Languages (ECRML)

The Language Charter does not ensure rights *prima facie*; instead it protects languages. However, states’ obligations to protect these regional or minority languages are not too difficult to be translated into individual minority rights. From the point of view of this article, two articles of the Language Charter are relevant: Article 9 on judicial authorities, and Article 10 on administrative authorities and public services.

As part of the monitoring process of the Language Charter, five state periodical reports were submitted in 2016: Austria's fourth report, Montenegro's fourth report, Romania's second report, Sweden's sixth report, and Ukraine's third report. The Committee of Experts issued five evaluation reports on Bosnia and Herzegovina, Hungary, the Netherlands, Sweden, and Switzerland. (The evaluation report on Sweden has not been made public as of March, 2017). Seven Committee of Ministers' recommendations were adopted regarding Bosnia and Herzegovina, Hungary, the Netherlands, Serbia, Slovakia, Spain, and Switzerland.

In the following, the Committee of Experts' evaluation reports and the Committee of Ministers' recommendations will be discussed.[28] Since the recommendations are strongly built on the evaluation reports, they will be presented jointly in the case of those countries where both the evaluation report and the recommendation were published in 2016, i.e. Bosnia and Herzegovina, Hungary, the Netherlands, and Switzerland. The recommendations on Serbia, Slovakia and Spain will be discussed separately.

1. Developments in Bosnia and Herzegovina, Hungary, the Netherlands, and Switzerland in light of the Committee of Experts' Evaluation Reports and the Committee of Ministers' Recommendations

Bosnia and Herzegovina[29] undertook to apply Part III of the Language Charter to a great number of languages, in fact, to all minority languages spoken in the country: Albanian, Czech, German, Hungarian, Italian, Macedonian, Montenegrin, Polish, Romani, Romanian, Ruthenian, Slovak, Slovene, Turkish, Ukrainian and Jewish (Yiddish and Ladino).[30] According to the Committee of Experts, however, despite the "ambitious scheme of protection", the complex government structure of the country hinders the implementation of the Charter (para. 1). The relevant legislation at state, entity and cantonal level works with very high thresholds (sometimes requiring the majority of the population) for the official use of minority languages, which are practically never met, resulting in non-fulfilment of most

[28] All the reports and recommendations are available at <http://www.coe.int/en/web/european-charter-regional-or-minority-languages/reports-and-recommendations>.
[29] Second Report of the Committee of Experts on Bosnia and Herzegovina, ECRML(2016)3; Recommendation CM/RecChL(2016)4 of the Committee of Ministers on the application of the ECRML in Bosnia and Herzegovina. (In-text references are made to the Report.)
[30] However, since Macedonian and Montenegrin are not "traditionally used" in Bosnia and Herzegovina, measures to promote them are not subject to monitoring by the Committee of Experts (para. 14).

undertakings (paras. 2, 25). In addition, there is no infrastructure or strategy to ensure the actual application of the Charter (paras. 3, 19).

As far as the use of the minority languages before judicial authorities and by administrative authorities is concerned, the domestic legal setup is not in conformity with the Charter, and there is almost no practice in using minority languages before these authorities (paras. 5, 127, 157). Therefore, the Committee of Experts recommended for the authorities to ensure that minority language users have the possibility to use their language in court proceedings by ensuring that court officials master the minority language or that court interpreters are available. It also urged the authorities to inform minority language users of their right to use their languages before judicial authorities (para. 128). In criminal proceedings, the accused should have the right to use his/her minority language irrespective of whether or not he/she understands one of the official languages, if necessary by the use of interpreters and translations involving no extra expense for the persons concerned (para. 136). Requests and evidence, whether written or oral, shall neither be considered inadmissible solely because they are formulated in a minority language nor involve extra expense for interpretation or translation (para. 139). The same holds for litigants in civil proceedings (paras. 143, 146) and proceedings before courts concerning administrative matters (paras. 150, 153).

Bosnia and Herzegovina was also urged to take concrete measures to promote the use of minority languages by local and regional authorities and to create favourable conditions for the population to use minority languages in dealings with those authorities (para. 160). Specifically, users of all minority languages should be able to validly submit oral or written applications in their languages to state authorities (para. 167), and state authorities should be allowed to draft documents in all minority languages (para. 170). Authorities should take active steps to encourage the use of Albanian, Czech, German, Hungarian, Italian, Polish, Romani, Romanian, Ruthenian, Slovak, Slovenian, Turkish and Ukrainian in relations with regional or local authorities covering their traditional settlements (para. 180), as well as the possibility to submit oral or written applications in these languages (para. 184). Bosnia and Herzegovina was recommended to adopt traditional forms of place names in the minority languages, and address such municipalities and local communities for which there are traditional place names in the minority languages (e.g. in the Gradiška, Laktaši and Prnjavor municipalities). This undertaking was considered partly fulfilled for Italian, not fulfilled for

Czech, German, Hungarian, Polish and Ukrainian, and not applicable to Albanian, Romani, Romanian, Ruthenian, Slovak, Slovenian and Turkish (paras. 185-188). Authorities were further urged to allow users of minority languages to submit a request in all minority languages to public service providers (para. 193) and to create the possibility for public bodies to comply as far as possible with requests from public service employees who have a knowledge of minority languages to be appointed in the territory in which these languages are used (para. 196).

Hungary[31] agreed to apply Part III of the Language Charter to the Beash, Croatian, German, Romani, Romanian, Serbian, Slovak and Slovene languages.[32] According to the Committee of Experts, the country has "highly detailed and complex legislation" governing the use of minority languages (para. 1), however, the undertakings concerning judicial and administrative proceedings are only formally fulfilled for almost all minority languages. Although the legal framework guarantees the use of minority languages, they are rarely employed in practice (para. 5). As regards Article 9 on judicial authorities, the Committee of Experts, although it did not comment on several provisions in relation to which no major issues were raised, considered most of the undertakings to "remain formally fulfilled" for all minority languages. The situation is even less favourable concerning Article 10 on administrative authorities where most of the undertakings were considered to "remain formally fulfilled" for all minority languages. Furthermore, the Committee of Experts found paragraph 2 subparagraph g[33] to be partly fulfilled for all languages (except Beash and Romani, where it was formally fulfilled), and it strongly urged the Hungarian authorities to encourage the relevant municipalities to adopt all local topographical names in the relevant minority language and financially assist their use in conjunction with the official use of the Hungarian names. Paragraph 4 subparagraph a[34] was also only partly fulfilled for all languages (except for Beash where due to lack of information the Committee of Experts was

[31] Sixth Report of the Committee of Experts on Hungary, ECRML(2016)6; Recommendation CM/RecChL(2016)5 of the Committee of Ministers on the application of the ECRML by Hungary. (In-text references are made to the Report.)
[32] Armenian, Bulgarian, Greek, Polish, Ruthenian and Ukrainian are protected only under Part II, therefore Arts. 9 and 10 do not apply to them.
[33] "the use or adoption, if necessary in conjunction with the name in the official language(s), of traditional and correct forms of place names in regional or minority languages".
[34] "With a view to putting into effect those provisions of paragraphs 1, 2 and 3 accepted by them, the Parties undertake to take one or more of the following measures: a. translation or interpretation as may be required."

not in a position to conclude), so Hungary was called to provide targeted information with regard to the use of translation or interpretation into minority languages. In addition, the Committee of Experts strongly urged the Hungarian authorities to promote the oral and written use of Slovak by local authorities in debates in their assemblies. Finally, paragraph 3 subparagraph c with regard to public services provided by administrative authorities was considered not fulfilled in case of all languages, so Hungarian authorities were again called to ensure that speakers of minority languages can submit requests in their languages to public service providers in practice.

The *Netherlands*[35] undertook to apply Part III of the Language Charter to the Frisian language in the province of Fryslân (Friesland).[36] On 1 January 2014 a new administrative organization of municipalities entered into force in the province, which has led to the weakening of the position of Frisian in practice (para. 30). On the same day, a new Use of Frisian Act came into force, providing that Frisian and Dutch are official languages in the Province of Fryslân and regulating the use of Frisian in courts and in relations with the administrative authorities. The Act contains additional clauses on the setting up of a Frisian Language Body (DINGtiid), which acts as an advisory body both to the national authorities and to the province (paras. 33, 105). Furthermore, a new Administrative Agreement on the Frisian Language and Culture 2013-2018 was signed between the central authorities and the Province of Fryslân, which contains actions in the fields of justice and administration as well (para. 34).

As part of the administrative reforms, the Judicial Map (Revision) Act entered into force on 1 January 2013. The number of district courts was reduced from 19 to 11 and the number of courts of appeal from 5 to 4 (para. 151). Frisian may be used before the Court of North Netherlands and the Arnhem-Leeuwarden Court of Appeal. However, it is increasingly difficult to speak Frisian before courts when cases are assigned to the two locations of the Court of North Netherlands outside Leeuwarden, in Groningen or Assen, or to courts in Zwolle and Almelo. Since there is still only one certified interpreter for Frisian, and in the

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[35] Fifth Report of the Committee of Experts on the Netherlands, ECRML(2016)4; Recommendation CM/RecChL(2016)7 of the Committee of Ministers on the application of the ECRML by the Netherlands. (In-text references are made to the Report.)

[36] Limburgish, Low Saxon, Romanes and Yiddish are protected only under Part II, therefore Arts. 9 and 10 do not apply to them.

absence of Frisian-speaking lawyers, judges, prosecutors and other staff, trials take place in Dutch. Therefore, the Committee of Experts encouraged the Dutch authorities to take practical steps to ensure the right to use Frisian before courts (paras. 153-154).

The reorganization of Frisian municipalities is ongoing with mainly rural municipalities being merged or split and attached to other municipalities. For example, in 2014, the municipality of Boarnsterhim, with a majority of Frisian speakers, was split between Leeuwarden, Heerenveen and a new municipality, Súdwest-Fryslân; in 2018, the municipality of Littenseradiel, over 80% Frisian-speaking, will be split between Leeuwarden, Súdwest-Fryslân and a new municipality, Wandhoeke. New municipalities have their administrative centre in larger cities where Frisian is spoken to a lower extent (para. 155). The new Use of Frisian Act provides that Frisian can be used in dealings with the administrative bodies located in the province of Fryslân; however, administrative bodies may ask for Dutch to be used on the grounds that the use of Frisian would lead to a disproportionate burden on administrative matters or unsatisfactory oral communications. The Committee of Experts underlined that these provisions could undermine the right to use Frisian in relation with administrative authorities (para. 156). Furthermore, the Netherlands was urged to allow administrative authorities to draft documents in Frisian (paras. 157-159), ensure the use or adoption of traditional and correct forms of place names in Frisian (paras. 160-162), and ensure compliance with requests from public service employees who speak Frisian to be appointed in the territory in which this language is used (paras. 163-165).

Switzerland[37] agreed to apply Part III of the Language Charter to Romansh and Italian, as "the less widely used official languages" in the Cantons of Graubünden/Grischun/Grigioni and Ticino.[38] According to the Committee of Experts, "by and large, the situation of these languages is satisfactory". However, municipality mergers in the Canton of Graubünden pose serious risks for Romansh, the use of which is generally decreasing in public life. The situation of Italian in the Canton of Ticino is considered fully in line with the Charter. Concerning Italian in the Canton of Graubünden, some problems persist in cantonal administration and in the public sector under the control of the canton (p. 4, paras. 19-20).

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[37] Sixth Report of the Committee of Experts on Switzerland, ECRML(2016)5; Recommendation CM/RecChL(2016)6 of the Committee of Ministers on the Application of the ECRML by Switzerland. (In-text references are made to the Report.)

[38] French, German and Yenish are protected only under Part II, therefore Arts. 9 and 10 do not apply to them.

Positive developments include the creation of the position of delegate for multilingualism in the federal administration, and two new parliamentary intergroups promoting minority languages (paras. 24-25).

Regarding Articles 9 and 10, the Committee of Experts did not comment on most of the provisions since they were considered as fulfilled. No specific observation was made concerning Romansh or Italian, except that the use of Italian by the staff in the administration and the public sector under cantonal control is insufficient in a number of areas (19). The Committee of Ministers recommended for the Swiss authorities to continue promoting the use of Italian in cantonal administration and in the public sector under cantonal control in Graubünden, and to take measures to ensure that mergers of municipalities do not hamper the use of Romansh. As for the use of German, the Committee of Experts recommended that the cantonal authorities should consider the adoption of a legal text regulating the official use of German in the municipality of Bosco-Gurin in public life, and provide for adequate financial subsidies (para. 36). It also observed that the specific situation of the municipality of Ederswiler required a structured policy by the Canton of Jura. It urged the Swiss authorities to adopt a specific legal text to confirm the status of German as the official language of the municipality, to regulate the use of German in relations of the inhabitants and the municipal authorities with the cantonal authorities and service providers, and to provide adequate financial support (para. 49). Concerning the use of French, the Committee of Experts noted that the difficult situation of a number of speakers communicating in French with the institutions of the Canton of Bern/Berne was due to a varying distribution of French-speaking civil servants at the different levels of administration in the canton, and called the Swiss authorities to support a targeted policy in training of staff (paras. 58-61). There was no observation made regarding the use of Yenish in justice or administration.

2. Developments in Serbia, Slovakia and Spain in light of the Committee of Ministers' Recommendations

In contrast to the Committee of Ministers' resolutions on the implementation of the Framework Convention (see below), recommendations on the implementation of the Language Charter are quite short, containing only 5-6 points. In the cases of *Serbia*[39] and

[39] Recommendation CM/RecChL(2016)3 on the application of the ECRML by Serbia.

Slovakia,[40] just one recommendation concerns the subject matter of this review: Serbia was advised to strengthen the use of all regional or minority languages in administration, while Slovakia should review the requirements related to thresholds in order to make the undertakings in the field of administration operational. *Spain*[41] was recommended to: amend the legal framework with a view to making it clear that the criminal, civil and administrative judicial authorities in the Autonomous Communities can conduct the proceedings in co-official languages at the request of one party; continue to implement legal and step up practical measures aimed at ensuring that an adequate proportion of the judicial staff posted in the Autonomous Communities has a working knowledge of the relevant languages, as well as ensuring the adequate presence of the co-official languages in the state administration at the level of the Autonomous Communities; and finally, consider extending the recognition of regional or minority languages with a co-official status in six Autonomous Communities to other Autonomous Communities provided that there is a sufficient number of users.

C. Framework Convention for the Protection of National Minorities

1. General Advancement

A major highlight related to the Framework Convention in 2016 is undoubtedly the adoption of the fourth Thematic Commentary by the Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC) on the scope of application of the Framework Convention.[42] Here only the most important statements will be mentioned related to the rights of minorities in the field of justice and public administration, that is, Article 10 (use of minority languages in relations with administrative authorities; rights of the accused) and Article 11 (topographical signs and identity documents).

In view of the Advisory Committee, Articles 10(1), 10(3), 11(1) and 11(2)—mentioned under the umbrella term 'language'—are to be considered as having a *broad* scope of application, also including under their protection persons belonging to national minorities who are *not* recognized as such by the respective state party (para. 64). The Advisory Committee states

[40] Recommendation CM/RecChL(2016)2 on the application of the ECRML by the Slovak Republic.
[41] Recommendation CM/RecChL(2016)1 on the application of the ECRML by Spain.
[42] Council of Europe, ACFC, Thematic Commentary No. 4 "The Scope of Application of the Framework Convention for the Protection of National Minorities" [The Framework Convention: a Key Tool to Managing Diversity through Minority Rights], 27 May 2016, ACFC/56DOC(2016)001, at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a4811>.

> [t]he right to use one's language in public and in private, contained in Article 10(1) of the Framework Convention, the right to use one's personal name in the minority language and to have it officially recognised (Article 11(1)), and the right to put up signs of a private nature in minority languages (Article 11(2)) carry a particular weight for the personal identity, dignity and self-awareness of persons belonging to national minorities.

An important statement concerning Article 10(3) on the individual human right of being promptly informed in a known language, if necessary through an interpreter, of the reasons for an arrest and of the nature and cause of any accusation reiterates what was already stipulated in the Explanatory Report of the Framework Convention: "the provision, which is based on guarantees contained in Articles 5 and 6 of the European Convention on Human Rights, does not go beyond those safeguards. Thus, it does not imply a right to legal process and trial in one's minority language and applies to all persons belonging to national minorities" (para. 72). Therefore, the level of protection guaranteed by the Framework Convention in the field of justice is weaker than that of the Language Charter where state parties can undertake, if they wish, to provide that the courts conduct criminal or civil proceedings in the regional or minority languages (cf. Arts. 9-1. a. *i.* and 9-1. b. *i*).

In contrast, the right to use a minority language in relations with local administrative authorities (Art. 10(2)), and the right to have topographical indications and signposts also displayed in the minority language (Art. 11(3)) should have a *specific* (narrow) scope of application. According to the ACFC, "given the particular financial and administrative commitment required in order to give effect to [these rights], states parties may establish special conditions for their enjoyment", meaning that "their availability may be limited to certain areas where persons belonging to national minorities reside traditionally […] and/or in substantial numbers" (para. 79). Although "the Advisory Committee has consistently recommended a flexible and context-specific approach with respect to these conditions and in particular with respect to numerical thresholds" (para. 80), its cautious approach allowed certain member states to make these rights practically ineffective.

2. Monitoring Procedures

In 2016 the Advisory Committee adopted ten Advisory opinions on Armenia, Finland, Hungary, Macedonia, the United Kingdom, Austria, Kosovo, Malta, Moldova and Norway.

Opinions on the latter five countries remain restricted as of March, 2017. Moreover, in 2016 the opinions on Croatia, the Czech Republic, Georgia, Italy, and San Marino adopted in 2015 were published. The Committee of Ministers issued eight Resolutions on Cyprus, Estonia, Germany, Lithuania, Portugal, San Marino, Slovakia and Spain. In the following, these will be discussed in detail.[43]

(a) Developments in Armenia, Croatia, the Czech Republic, Finland, Georgia, Hungary, Italy, Macedonia, and the United Kingdom in light of the Advisory Committee's Opinions Concerning the application of *Article 10* in *Armenia*,[44] the Advisory Committee noted that in principle, persons belonging to national minorities have the right to address local administrative authorities in their minority language provided that they give translation of all documents in Armenian. This requirement places the financial burden exclusively on persons belonging to national minorities and dissuades potentially interested people from using this right. Moreover, there are no legislative or administrative provisions requiring or encouraging the use of minority languages on the part of local officials, even in those municipalities which are inhabited by a substantial number of persons belonging to national minorities. As a consequence, the right to use minority languages in relations with administrative authorities "remains a dead letter in the law". Therefore, the Advisory Committee reiterated its call on the authorities to ensure that the appropriate use of minority languages in relations with administrative authorities is effective and respected (paras. 68-70). As regards *Article 11*, apparently the situation concerning the use of minority languages for topographical indications had not changed in Armenia since the adoption of the previous opinion. The existing regulations provide that topographical indications and signposting should be done in Armenian and English. The Advisory Committee invited the authorities to adopt the necessary legislative provisions which would allow for direct participation of residents in the administration of community affairs, with a view to facilitating consultations on the existing demands and needs on this matter. The authorities were also invited to conduct an awareness-raising campaign, and to engage in a constructive dialogue with representatives of

[43] All the opinions and resolutions are available at <http://www.coe.int/en/web/minorities/country-specific-monitoring>. The following opinions and resolutions will not be discussed in this review, since none of them deals with Arts. 10 or 11: Fourth Opinion on San Marino, ACFC/OP/IV(2015)007; Resolution CM/ResCMN(2016)8 on the implementation of the FCNM by Cyprus; Resolution CM/ResCMN(2016)7 on the implementation of the FCNM by Portugal; Resolution CM/ResCMN(2016)11 on the implementation of the FCNM by San Marino; Resolution CM/ResCMN(2016)10 on the implementation of the FCNM by Spain.
[44] ACFC, Fourth Opinion on Armenia, ACFC/OP/IV(2016)006.

municipalities and national minorities on the introduction of topographical indications in minority languages in municipalities with substantial national minority populations (paras. 71-74).

In *Croatia*,[45] according to the Constitutional Act on the Rights of National Minorities, the official use of minority languages shall be exercised in areas where the minority constitutes one third of the population, where agreed in international treaties, or when stipulated in local self-government statutes. As a result, there is great variety in the implementation of Article 10(2) of the Framework Convention. In some counties and local self-government units, minority languages such as Italian are spoken and used in official contacts as well as in courts, even where the minority population is far below 33%. However, other languages, e.g. Hungarian, are not used in official contacts in some regions, despite their historic presence there. The Advisory Committee called on the authorities to implement more consistently the rights contained in Article 10(2) (paras. 57-61). Implementation of *Article 11* on topographical signs again varies according to the level of societal cohesion and the extent to which national minorities are respected, with a few local self-governments obstructing the display of bilingual signs (see, e.g., the violent protests in Vukovar resulting in a country-wide campaign against the use of Cyrillic script). The Advisory Committee urged the authorities to raise awareness amongst the public of Croatia's international and national legal obligations towards national minorities, and to promote close consultations among local authorities with representatives of minorities and the majority regarding the display of bilingual or trilingual signposts (paras. 62-67).

In the *Czech Republic*,[46] persons belonging to national minorities in principle have the right to address local administrative authorities in their minority language; however, in practice it is only in the municipalities where committees for national minorities have been established that this right is implemented, and in a very limited scope. In fact, only those regulations which affect the rights of persons belonging to national minorities must be published in the language of the national minority concerned (in addition to Czech). A welcome amendment to the Municipalities Act introduced the rule that the 10% threshold within the whole municipal population triggering the obligation to set up a committee for national minorities

[45] ACFC, Fourth Opinion on Croatia, ACFC/OP/IV(2015)005rev.
[46] ACFC, Fourth Opinion on the Czech Republic, ACFC/OP/IV(2015)004.

needs to be attained by all national minorities cumulatively and not by one minority as before. However, the number of municipalities required by law to establish such committees still decreased to 51 (as compared to 283 municipalities meeting the threshold prior to the census). The Advisory Committee encouraged the authorities to pursue a flexible and pragmatic approach with regard to the application of the law and not to exclusively rely on the census (paras. 76-79). The exercise of the right to display bilingual signs and indications of place names is also conditioned on a 10% threshold. According to 2011 census data, the legal requirements for displaying bilingual Czech and Polish signs and inscriptions are met in 30 municipalities in the Frýdek-Místek and Karviná districts, Czech and Slovak signs in eight municipalities in the Brutnál, Břeclav, Cheb, Karlovy Vary and Jeseník districts, and Czech and German in three municipalities in the Sokolov district. The Advisory Committee was satisfied to see that most of these bilingual signs were indeed displayed, and invited the authorities to encourage local authorities in those districts where this was not the case to implement the right to display bilingual signs of place names in practice (paras. 84-86).

In *Finland*,[47] a Strategy for the National Languages of Finland was adopted in 2012 aiming to ensure that Finland continues to be a "viable bilingual Finnish-Swedish country". In relation to *Article 10* of the Framework Convention, the Advisory Committee urged the authorities to ensure that the action plan to implement the Strategy is swiftly adopted to enhance the effective implementation of the language-related legislation, encouraging in particular language skills and recruitment efforts. Proficiency in the Swedish language is to be considered an advantage for the recruitment of public servants in relevant municipalities, so as to reverse the negative trend affecting Swedish and guaranteeing a viable bilingualism including with respect to access to social welfare and health-care services. Adequate funding should be earmarked for this purpose so as to guarantee the Swedish language maintains its visibility and presence in the public domain. The authorities were also encouraged to ensure that adequate training for law enforcement personnel and updated information on pharmaceuticals are available in Swedish in Åland (paras. 63-68). New policy measures were adopted for the revival of the Sámi languages and Romani, as well, and the Advisory Committee encouraged the authorities to enhance their efforts to implement fully these measures (paras. 69-72). As regards *Article 11*, Finland was called on to take the necessary

[47] ACFC, Fourth Opinion on Finland, ACFC/OP/IV(2016)002.

steps to guarantee the registration of Sámi names respecting the language diacritic signs in public registries, passports, and other public documents without further delay (para. 74).

A major improvement in *Georgia*[48] regarding the legal framework on the use of minority languages was the preparation of a draft Law on the State Language[49] in consultation with representatives of national minorities. The law aims at strengthening the constitutional status of the state language as an element of statehood and main tool of communication among all residents, while according a protected status to minority languages traditionally spoken in regions of Georgia and establishing guarantees for their use in the municipalities that are inhabited in substantial numbers by persons belonging to national minorities. In practice, however, not much has changed since the first monitoring cycle. There is no established system to ensure that communication at the local level can effectively take place with persons belonging to national minorities. For example, significant problems were reported with respect to the necessity to conduct all official paperwork throughout Georgia in Georgian, creating considerable delays as well as additional costs for persons belonging to national minorities. Instead of using translators, the Advisory Committee considers that a policy of functional bilingualism in areas where national minorities reside compactly better suits the needs of the population. It called on the authorities to create an environment that is conducive to the active use of minority languages (paras. 74-81). Concerning *Article 11*, the Advisory Committee welcomed legislative amendments allowing for changes to be made to personal names, including when wishing to restore a historical name; however, awareness of this possibility is very low. Furthermore, sometimes the insufficient command of the Georgian language amongst state officials in regions of compact minority settlements results in misspellings of names. While bilingual and even trilingual signposts exist, these are most often displaying English language indications for touristic purposes rather than designating traditional areas of national minority residence. The Advisory Committee encouraged the authorities to raise awareness about the rights contained in Article 11, specifically to ensure correct transcription of names when issuing birth certificates, and to address the restoration of historical place names (paras. 82-86).

[48] ACFC, Second Opinion on Georgia, ACFC/OP/II(2015)001.
[49] In the meantime, the law was adopted and entered into force on 1 January 2016. See <https://matsne.gov.ge/en/document/download/2931198/0/en/pdf>.

The legal framework of *Hungary*[50] on the rights of minorities has undergone major changes since the last monitoring cycle, including the entry into force of the new Fundamental Law (Constitution) and the cardinal Act on the Rights of Nationalities (the traditional terminology now used instead of national minorities). The level of protection has formally remained the same, but "in spite of the good intentions, these rapid changes have resulted in some minority organisations experiencing insecurities with their implementation". Also, the position of the Commissioner for National Minorities was abolished, and the competences of the newly created position of the Deputy Commissioner on the Rights of Nationalities working under the Commissioner for Fundamental Rights are restricted. The Advisory Committee urged the authorities to reinforce the competences of the Deputy Commissioner by empowering the office holder to undertake investigations on his/her own initiative (p. 1). As far as the use of minority languages in relations with administrative authorities is concerned, the Advisory Committee reached similar conclusions to those of the Committee of Experts with regards to the implementation of the Language Charter (see, section II.B(1) of this article). Whereas legislation provides for the right to use minority languages in civil, criminal and public proceedings as well as in the municipalities (e.g. regarding the promulgation of municipal decrees and announcements) and in the National Assembly, in practice this opportunity is seldom (if ever) used on account of the fluency of all concerned in Hungarian, and on account of the administrative and financial burden it would entail. The Advisory Committee reiterated its call on the authorities to encourage persons to use minority languages when dealing with administrative authorities by creating an environment which is not obstructive to such a possibility in practice (paras. 121-125). The right to display topographical indications in minority languages (*Article 11*) is also rarely used in practice, even in the case of the very few municipalities where persons belonging to national minorities live in substantial numbers to meet the statutory threshold of ten percent. The authorities are asked to encourage municipalities to implement this provision (paras. 129-131).

In *Italy*,[51] the public use of the languages of "historic linguistic minorities" is well developed. The right to use minority languages in communication with administrative authorities is most thoroughly respected in the Autonomous Region of Valle d'Aosta/Vallée d'Aoste, and the

[50] ACFC, Fourth Opinion on Hungary, ACFC/OP/IV(2016)003.
[51] ACFC, Fourth Opinion on Italy, ACFC/OP/IV(2015)006.

Autonomous Province of Bolzano/Bozen (Trentino–Alto Adige/Südtirol Region) where respectively French and German languages are used on an equal footing with Italian. Furthermore, the Ladin language is used in the two valleys in the South Tyrol region inhabited predominantly by Ladins. Minority languages are used in public meetings, for publication of official documents and in administrative communication with individuals. In a number of regions, such as Sardinia and Friuli Venezia Giulia, additional funding for linguistic help desks has been provided by regional authorities. The Advisory Committee encouraged the authorities to continue their efforts to promote the use of minority languages, to open linguistic help desks for numerically smaller minorities, and to ensure, when implementing the digitalization strategy, that persons belonging to the Slovene minority continue to be able to communicate fully in Slovenian (paras. 74-80). Concerning *Article 11*, the Advisory Committee invited the authorities to review provisions concerning the right to use surnames and first names in official documents in minority languages to ensure that rights of all persons belonging to national minorities are respected in this regard, irrespective of their place of residence and the particular minority they are associated with. Efforts should be made to ensure that technical obstacles do not undermine effective access to rights, especially in case of the Slovene minority. As far as topographical indications are concerned, widespread bilingualism has been in place for a long time in some areas such as the Autonomous Province of Bolzano/Bozen and the Autonomous Region of Aosta Valley, whereas in territories traditionally inhabited by numerically smaller minorities, such as the Albanian, Catalan, Croatian, Ladin, Franco-Provençal and Occitan minorities, some steps have been taken to introduce topographical indications in their languages. Problems do arise, though, for example in South Tyrol, and in relation to some administrations (such as the Roads Authority), and thus Italian authorities are invited to make further efforts in this field (paras. 81-89).

Macedonia[52] is experiencing a period of serious political crisis, with a deeply divided society and little interaction between the two largest ethnic communities, Macedonians and Albanians. The legislative framework on the protection of national minorities accords rights only to persons belonging to the six minorities who are explicitly mentioned in the constitution, thereby excluding persons belonging to the various other and numerically

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[52] ACFC, Fourth Opinion on the former Yugoslav Republic of Macedonia, ACFC/OP/IV(2016)001.

smaller communities (p. 1). Macedonian in its Cyrillic script is the official language throughout the country while any other language spoken by at least 20% of the population is also an official language. In practice this provision applies to the Albanian language only, with a regretfully diverse practice among public institutions. In addition, the languages of communities that constitute more than 20% of the population at the local level shall be used in official communication in those municipalities. Altogether, out of 80 municipalities, 28 are obliged to provide for official use of Albanian, four should use Turkish in official communication, one should use Serbian, and one should use Romani. In terms of implementation of these rights, again a great variety exists. The Advisory Committee called on the authorities at the central and local level to ensure that the legislative framework pertaining to the use of languages is consistently implemented, and to refrain from relying exclusively on the available and outdated statistics when determining the access to linguistic rights. It further called on them to prioritize the recruitment at local level of public servants with appropriate language skills over the employment of interpreters (paras. 60-64). Concerning *Article 11*, the issuance of bilingual identity cards featuring both the Macedonian language in Cyrillic script and the languages and scripts used by national minorities is possible upon request (although most persons belonging to national minorities have opted for the regular Macedonian/English version). As for topographical signs and street names, there is a legal possibility of using two or three languages in municipalities where minority communities account for at least 20% of the population. In this regard, the situation is not satisfactory in Skopje. The Advisory Committee called on the authorities to ensure that the Law on the Use of Languages with respect to topography is effectively implemented everywhere (paras. 65-66).

A special feature of minority protection in the *United Kingdom*[53] is the system of devolved governments in Scotland, Wales and Northern Ireland, with great differences in the *de jure* and *de facto* situations of the respective national minority groups. As for the legislative framework on language use, the Gaelic Language (Scotland) Act 2005 seeks to secure the status of Gaelic as an official language of Scotland, with the Bòrd na Gàidhlig as a public body responsible for promoting and developing the Gaelic language. Recently, a Scots language policy has been adopted. The Welsh Language (Wales) Measure 2011 confirmed

[53] ACFC, Fourth Opinion on the United Kingdom, ACFC/OP/IV(2016)005.

the official status of the Welsh language in Wales and created a new legislative framework for the revival of the Welsh language. The authorities are recommended to enhance their efforts to implement fully the Gaelic, Scots and Welsh language strategies and other policy documents, to earmark sufficient resources for this purpose and to monitor outcomes so as to ensure that the active use of minority languages is maintained in the public sphere (paras. 98-102). The Advisory Committee regretted that there had been little progress on the Irish Language Bill or a strategy for the development of the Irish language. Notwithstanding public support, the Northern Ireland Executive rejected the competent minister's proposal for the Irish Language Bill and strategy. A separate strategy to enhance the Ulster-Scots language appears to have followed the same fate. The Advisory Committee sees appropriate legislation by the Northern Ireland Assembly as a necessity to protect and promote the Irish language and called on the UK government to help create the political consensus needed for such adoption (paras. 103-105). Furthermore, authorities were called on to take measures to improve the use and visibility of Cornish in public life, to reinstate immediately the previous level of funding and to consider the possibility of adopting a Cornish Language Act (para. 109). As for *Article 11*, in Wales all road signs are bilingual, while bilingual street names depend on local authorities (but there is no additional cost for local authorities to set them up). In Cornwall, the visibility of Cornish on place-name signs, street and housing estate signs and Cornwall Council buildings was highlighted as one of the most significant developments for Cornish in recent years. Although bilingual signs currently represent only 16% of the total, there is a policy to replace old and worn signs with bilingual signs where appropriate. In Northern Ireland, the Local Government (Miscellaneous) Order 1995 permits the erection of bilingual street signs, but implementation is patchy and often subject to legal controversy. No legal framework exists for bilingual signage for roads and other place names, and it is a criminal offence to put up an unofficial Irish language sign. The Advisory Committee is very concerned by the fact that signage has assumed a 'territorial marker' connotation, which continues to lead to an official policy of not posting signs for fear that they may cause controversy or put at risk public authorities' duty to promote 'good relations'.

The government and local authorities in Northern Ireland were called for a closer dialogue to identify pragmatic and flexible solutions on this matter (paras. 110-112).[54]

(b) Developments in Estonia, Germany, Lithuania and Slovakia in light of the Committee of Ministers' Resolutions

As far as the implementation of language rights provided in *Articles 10 and 11* is concerned, *Estonia*[55] was advised to: increase efforts to ensure that the Language Act is implemented in a flexible way, taking into account the linguistic rights of persons belonging to national minorities; refrain from imposing fines on employers for violation of the Language Act; and replace the penalizing approach with a policy of positive incentives. It is recommended to: ensure that persons belonging to national minorities, in areas where they reside traditionally or in substantial numbers, have the effective possibility to use their minority language in relations with local authorities, in writing and orally; and review the conditions required for the display of traditional local names, street names and other topographical indications intended for the public in minority languages, alongside Estonian, in areas where persons belonging to national minorities reside traditionally or in substantial numbers.

Germany[56] was recommended to implement fully the legislation in place to: promote the use of minority languages in contacts with local and regional administrative authorities; adopt effective measures to create an environment conducive to their use in this context; take the necessary steps to bring German legislation concerning the use of minority names fully in conformity with Article 11 of the Framework Convention and ensure that names in minority languages can be correctly represented in electronic registers; and promote the installation of bilingual topographical signs in minority languages.

In *Lithuania*,[57] since the 1989 Law on National Minorities was declared null and void in January 2010, there has been no coherent legal framework for the protection of rights of persons belonging to national minorities. The Law on the State Language, which imposes the exclusive use of Lithuanian in all official correspondence and on all topography, continues to

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[54] The Advisory Committee made no mention of the situation of topography in Scotland, but the previous monitoring cycle indicated some problems, and the Scottish authorities were invited to develop a more consistent policy for bilingual signposting. Cf. ACFC, Third Opinion on the United Kingdom, ACFC/OP/III(2011)006, paras. 159 and 162.

[55] Resolution CM/ResCMN(2016)15 on the implementation of the FCNM by Estonia.

[56] Resolution CM/ResCMN(2016)4 on the implementation of the FCNM by Germany.

[57] Resolution CM/ResCMN(2016)9 on the implementation of the FCNM by Lithuania.

prevent in particular the enjoyment of language rights in line with the Framework Convention. Therefore, the country was recommended to adopt without delay and in close consultation with minority representatives a coherent legal framework for the protection of rights of persons belonging to national minorities, in particular regarding language rights in line with Articles 10 and 11 of the Framework Convention.

Slovakia[58] was called on to develop a flexible approach towards the implementation of the legislative framework on the use of minority languages, and promote pragmatic solutions to accommodate the demands of the population in line with the principles contained in the Framework Convention; and ensure that the rights contained in Article 4 of the Minority Language Act are effectively implemented in all designated municipalities, with regard to all relevant languages, including Romani.

III. Organization for Security and Cooperation in Europe (OSCE)

A. Parliamentary Assembly

The Parliamentary Assembly, representing the national parliaments of OSCE member states, held its 25th annual session in Tbilisi, 1-5 July 2016, where it accepted the Tbilisi Declaration and several resolutions. While observing important statements on human rights and minority issues, minority rights in the field of justice and public administration did not feature in the discussions.[59]

B. High Commissioner on National Minorities (HCNM)

The High Commissioner on National Minorities, as an instrument of conflict prevention at the earliest possible stage, deals with containing and deescalating tensions involving national minorities within the OSCE area. The former High Commissioner, Mrs. Astrid Thors, delivered a report on her activities from November 2015 to May 2016 to the OSCE Permanent Council on 2 June 2016,[60] including on her visits to Kyrgyzstan, Serbia, Ukraine, Bosnia and Herzegovina, Georgia, Croatia, Hungary, Slovakia and Moldova. The report only

[58] Resolution CM/ResCMN(2016)6 on the implementation of the FCNM by the Slovak Republic.
[59] Cf. Final Report on the 2016 Annual Session and Tbilisi Declaration and Resolutions adopted by the OSCE Parliamentary Assembly at the Twenty-Fifth Annual Session Tbilisi, 1 To 5 July 2016, both at <http://www.oscepa.org/meetings/annual-sessions>.
[60] OSCE HCNM, Address by Astrid Thors OSCE High Commissioner on National Minorities to the 1102nd Plenary Meeting of the OSCE Permanent Council, 30 May 2016, HCNM.GAL/5/16/Corr.2*, at <http://www.osce.org/hcnm/244281>.

marginally relates to the administration of justice or public administration by urging the ratification and/or full implementation of relevant legal instruments, such as the State Language Law and the European Charter for Regional or Minority Languages in Georgia (p. 6), or the Constitutional Act on the Rights of National Minorities in Croatia (p. 7). Furthermore, the High Commissioner encouraged the Kyrgyz authorities to step up activities aimed at full access to justice (p. 2), and provided guidance to Croatia on aspects of public administration reform that are pertinent to minority rights (p. 7).

During her visit to Kosovo from 7 to 10 June 2016, the HCNM pointed to the need to improve access to justice for all non-majority communities, to thoroughly follow up on crimes targeting them, and to fully enforce their property rights. She also underlined the importance of speaking more than one language, especially for local government officials, who regularly engage with members of public, to be able to communicate with every person in their community.[61]

Since 2016, the HCNM has been working on developing guidelines on access to justice for national minorities which is a recurrent theme in the High Commissioner's work.[62] According to Mrs. Thors,

> in most countries, access to justice is addressed satisfactorily at a legal and regulatory level. […] However, […] the reality on the ground is often different and uneven, particularly when it comes to the vulnerable groups within society, including national minorities. Our work […] will provide examples of both legislative solutions for the impediments to national minorities' access to justice and practical policy solutions to ensure a more integrated society in which each and every member can enjoy the same rights.[63]

The recommendations are planned to be published in 2017.[64]

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[61] Language Rights, Participation, Security and Access to Justice Fundamental to Welfare of Communities in Kosovo, says High Commissioner Thors, 14 June 2016, at <http://www.osce.org/hcnm/246591>.
[62] Cf. Laurentiu Hadirca, "Access to Justice for National Minorities: A Recurrent Theme in the Work of the OSCE High Commissioner on National Minorities", 24(2) *IJMGR* (2017), 174-194.
[63] OSCE HCNM, Keynote Speech by Astrid Thors to the Annual Congress of the Federal Union of European Nationalities (FUEN), Wrocław, Poland, 19 May 2016, 7-8, <http://www.osce.org/hcnm/243696>.
[64] OSCE HCNM, Opening Remarks by Henrik Villadsen to the Supplementary Human Dimension Meeting 'National Minorities, Bridge Building and Integration', Vienna, Austria, 10 November 2016, 3, at <http://www.osce.org/hcnm/280916>.

C. Office for Democratic Institutions and Human Rights (ODIHR)

ODIHR provides support, assistance and expertise to participating states and civil society to promote democracy, rule of law, human rights, tolerance and non-discrimination. It organizes annual human dimension meetings (HDIMs) where the participating states can discuss the application of their commitments in the human dimension of security. In addition, ODIHR organizes supplementary human dimension meetings (SHDMs) following up on key substantive concerns raised at the previous HDIMs, and annual human dimension seminars. The year 2016 marked the 20th Human Dimension Implementation Meeting held in Warsaw on 19 to 30 September 2016. Although the large scale conference did not specifically deal with the rights of minorities in the context of justice or public administration,[65] the final SHDM of 2016 focused on 'National Minorities, Bridge Building and Integration', addressing relevant issues for the purposes of this review.[66] Furthermore, the 2016 OSCE Human Dimension Seminar, held on 22 November 2016 in Warsaw, included a side event devoted to 'Diversity and the Judiciary: Promoting Full and Equal Participation of Women and Minorities'.[67]

IV. EUROPEAN UNION (EU)[68]

In a Europe dealing with issues arising from unprecedented arrivals of refugees and migrants as a top priority, national and ethnic minorities have not featured high on the agenda of EU institutions recently.[69] Even in the documents of the European Parliament (EP), which has always been the forerunner in protecting minority rights within the EU, European minorities were mentioned only marginally in 2016, except in the context of hate crimes, xenophobia,

[65] See <http://www.osce.org/odihr/hdim_2016highlights>.

[66] OSCE, Supplementary Human Dimension Meeting: National Minorities, Bridge Building and Integration, 10-11 November 2016, Hofburg, Vienna, Final Report, 22 March 2017, PC.SHDM.GAL/10/16, at <http://www.osce.org/office-for-democratic-institutions-and-human-rights/306461>.

[67] OSCE/ODIHR Annual Report 2016, 42, at <http://www.osce.org/odihr/annual-report/2016>.

[68] Unless indicated otherwise, all documents referred to in this section are available at <http://eur-lex.europa.eu/>.

[69] The 2015 Report on the Application of the EU Charter of Fundamental Rights (COM(2016) 265 final), published on 19 May 2016, for example, did not make a single reference to the rights of minorities. The European Court of Justice delivered one judgement (*Izsák and Dabis v. Commission*, case T-529/13) in 2016 relevant for national minorities, but its subject matter (European citizens' initiative – cohesion policy – national minority regions) is very distant from the topic of this review. Available at <http://curia.europa.eu/juris/celex.jsf?celex=62013TJ0529&lang1=en&type=TXT&ancre>.

and discrimination, with the exception of the minority situations in the EU candidate countries.

A. European Parliament

On 9 September 2016, the 2014 Annual Report on Monitoring the Application of the EU Law was made public, including the Opinion of the Committee on Petitions of 22 April 2016. The Committee regrets that petitions submitted by EU citizens still refer to violations of EU law, mainly concerning alleged breaches of the EU law in the fields of fundamental rights, including the rights of people belonging to minorities.[70]

The Resolution on the Situation of Fundamental Rights in the European Union in 2015[71] stresses that the respect for the rights of persons belonging to minorities is one of the EU's founding principles and that minorities contribute to the richness and diversity of Europe. As a consequence, the effective protection of minorities needs to be strengthened, and in view of the rise in populism and extremism, coexistence with and respect for minorities should be promoted (para. AI). The resolution dedicates an entire section to the rights of minorities, expressing the EP's concern that minority groups encounter obstacles in the enforcement of their rights, including access to justice and other public services, urging the member states to take action to prevent administrative and financial obstacles that could delay linguistic diversity at European and national level, and encouraging those member states that have not yet done so to ratify without further delay the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages (paras. 96-104).

The Resolution on the Annual Report on Human Rights and Democracy[72] also contains a section on the rights of indigenous people and of persons belonging to minorities, expressing the EP's particular concern about widespread and growing human rights abuses against indigenous peoples. The Resolution emphasizes that full and effective equality between persons belonging to a minority and those belonging to the majority should be promoted in

[70] EU, Report on Monitoring the Application of Union Law: 2014 Annual Report, 9 September 2016, 2015/2326(INI).
[71] European Parliament Resolution of 13 December 2016 on the Situation of Fundamental Rights in the European Union in 2015, 2016/2009(INI).
[72] European Parliament Resolution of 14 December 2016 on the Annual Report on Human Rights and Democracy in the World and the European Union's Policy on the Matter 2015, 2016/2219(INI).

all areas of economic, social, political and cultural life, and urges the Commission to follow closely the implementation of provisions protecting the rights of persons belonging to minorities throughout the enlargement process (paras. 125-127).

In 2016, the Parliament issued two resolutions on the situation of Crimean Tatars, seriously condemning the illegal annexation of the Crimean Peninsula by the Russian Federation on 20 February 2014 as well as the human rights violations that have occurred there ever since, including the decision of the so-called Supreme Court of Crimea to ban the Mejlis of the Crimean Tatar people. The EP urges the Russian Federation to, *i.a.*, uphold the legal order in Crimea and protect citizens from arbitrary judicial or administrative measures.[73]

The Parliament also adopted resolutions on 2015 reports of aspiring EU member states including Serbia, Kosovo, Macedonia, Montenegro, Turkey, Albania and Bosnia and Herzegovina. All resolutions emphasized the importance of minority rights in the EU, especially the one on Serbia which devoted a separate section (paras. 21-23) to respect for and protection of minorities.[74]

B. European Union Agency for Fundamental Rights (FRA)

In 2016, the FRA was mainly engaged in Europe's migration situation, hindering hate crime and fostering inclusion. These issues were explored in depth during the 2016 Fundamental Rights Forum held in Vienna, 20 to 23 June 2016, while inclusion was further discussed in the second wave of the European Union Minorities and Discrimination Survey (EU-MIDIS II). Looking specifically at Roma, the results pointed to intolerable discrimination, appalling deprivation and unequal access to vital services.[75]

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[73] EP Resolution of 4 February 2016 on the Human Rights Situation in Crimea, in particular of the Crimean Tatars, 2016/2556(RSP); EP Resolution of 12 May 2016 on the Crimean Tatars, 2016/2692(RSP).

[74] EP Resolution of 4 February 2016 on the 2015 Report on Serbia, 2015/2892(RSP); EP Resolution of 4 February 2016 on the 2015 Report on Kosovo, 2015/2893(RSP); EP Resolution of 10 March 2016 on the 2015 Report on the former Yugoslav Republic of Macedonia, 2015/2895(RSP); EP Resolution of 10 March 2016 on the 2015 Report on Montenegro, 2015/2894(RSP); EP Resolution of 14 April 2016 on the 2015 Report on Turkey, 2015/2898(RSP); EP Resolution of 14 April 2016 on the 2015 Report on Albania, 2015/2896(RSP); EP Resolution of 14 April 2016 on the 2015 Report on Bosnia and Herzegovina, 2015/2897(RSP). In the meantime, the European Commission published its 2016 reports on these countries with several observations regarding the protection of minorities. The reports are available at <https://ec.europa.eu/neighbourhood-enlargement/countries/package_en>.

[75] Cf. FRA, Fundamental Rights Report 2016, at <http://fra.europa.eu/en/publication/2016/fundamental-rights-report-2016>. For a quick review of the Agency's 2016 activities, visit <http://fra.europa.eu/en/news/2016/year-review-eu-agency-fundamental-rights-2016>.

As far as access to justice is concerned, although in January 2016 the FRA published a complete handbook on the subject, it is not relevant for the rights of minorities.[76] Another publication, however, on the rights of suspected and accused persons across the EU[77] is important for the purposes of this review, since it focuses on translation, interpretation and information, which are crucial for, *i.a.*, minority speakers. The report reviews member states' legal frameworks, policies and practices regarding the right to translation, interpretation and information provided in Directives 2010/64/EU and 2012/13/EU.[78] Good practices include, for example, that some EU member states provide for legal procedures to take place in the language of a minority residing in that state (or a region within that state). Such a 'language privilege' is also to be extended to EU citizens from other EU member states who are in a situation comparable to that of the protected minority (p. 27). However, the report reminds of the opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities: "while adequate legal provisions may exist, this right is often not systematically implemented because of inadequate financial resources and/or a lack of qualified interpreters. This is particularly the case for the languages of numerically smaller minorities" (p. 23).

V. CONCLUSIONS

In 2016, the bodies of the UN, the Council of Europe, the OSCE and the EU continued their efforts, although with diverse amounts of vigour, on facilitating and monitoring the implementation of international instruments relevant for the rights of minorities in the field of justice and public administration. Apparently the Council of Europe remains the international flagbearer for minority protection in Europe, however, due to the various functions and competences of the ECtHR, the Committee of Ministers, the Committee of Experts, and the Advisory Committee, and its efficiency is varying. Although in principle the ECtHR has the strongest enforcement mechanism, the logic of the ECHR—enhancing minority rights *as part of* human rights—does not allow for an extensive space for the specific needs of minorities. Unless persons belonging to national minorities are able to justify a violation of their human

[76] Handbook on European Law relating to Access to Justice, European Union Agency for Fundamental Rights and Council of Europe, Luxembourg, 2016.
[77] Rights of Suspected and Accused Persons across the EU: Translation, Interpretation and Information, European Union Agency for Fundamental Rights and Council of Europe, Luxembourg, 2016.
[78] Cf. Arts. 5 and 6 ECHR.

rights, they are excluded from the possibility to enforce those rights that are essential for their very existence as a minority group and the preservation of their minority identity. In turn, while the Language Charter and the Framework Convention contain a wide range of obligations/rights relevant for minority languages and communities, the monitoring mechanisms of these instruments remain far less effective than expected.

Furthermore, it seems that the dominant approach for the implementation of international documents on minority rights increasingly focuses on social inclusion and integration, and is more concerned about broader societal concerns than individual minority rights. Also, the protection of national minorities remains closely linked with security, and is still primarily seen important for being essential to stability and peace. Instead of this ‘preventive’ attitude, the author suggests a positive approach where securing minority rights stems from the appreciation of minority communities and identities in European societies where diversity is, allegedly, not only a situation to be managed, but a value to be cherished.