

Language rights of minorities in the areas of education, the administration of justice and public administration: European developments in 2017

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This section overviews the 2017 situation of the language rights of European minorities in the fields of education, the administration of justice and public administration. The author presents the relevant legal developments in the activities of the major international organizations, i.e. the United Nations, the Organization for Security and Cooperation in Europe, the European Union, and 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. In the concluding remarks, tendencies and common patterns are emphasized.

Keywords: Language rights, Regional or minority languages, Education, Administration of justice, Public administration

I United Nations (UN)

A. Office of the United Nations 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 37th session (26 February – 23 March 2018)² gives an overview of the work of the OHCHR from 1 December 2016 to 30 November 2017. Among the thematic priorities of the High Commissioner we find 'Discrimination on the basis of indigenous or minority status'. The High Commissioner used the occasion of the 25th anniversary of the Declaration on the Rights of Persons Belonging to National or

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² OHCHR, Annual report of the United Nations High Commissioner for Human Rights, 26 January 2018, A/HRC/37/3, at <https://digitallibrary.un.org/record/1474804/files/A_HRC_37_3-EN.pdf>.

Ethnic, Religious and Linguistic Minorities to draw attention to the achievements and challenges still to be faced in protecting minority rights.³ Activities connected to ‘Transitional justice’ as well as ‘Administration of justice and law enforcement’ were conducted in countries outside Europe.⁴

B. General Assembly (UNGA)

The General Assembly allocates to the Third Committee agenda items relating to a range of social, humanitarian and human rights issues that affect people all over the world, including minorities. On the 72nd session of the Assembly, the Committee submitted its report on the rights of indigenous peoples, including a draft resolution. The draft resolution, recognizing the importance of access to justice in the promotion and protection of the rights of indigenous peoples,⁵ 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.⁶ It also reaffirmed the proclamation of the year 2019 as the International Year of Indigenous Languages to draw attention to the critical loss of indigenous languages and the urgent need to preserve, revitalize and promote them, including as an educational medium.⁷ Furthermore, it urged governments to take measures to ensure indigenous women have access to quality and inclusive education.⁸

More relevant to the purposes of this review is the report of the Secretary-General on the effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. One of the main concerns of the Secretary General was that “despite the global consensus on the principles of the Declaration, persons belonging to minorities continue to be targets of human rights violations in a range of contexts”.⁹ On the other hand, he was pleased to see that, while the UN Forum and the Special Rapporteur on Minority Issues “have continued to be key catalysts for improving the implementation of the Declaration, [...] the rights of

³ *Ibid.* 5-6.

⁴ *Ibid.* 9-11.

⁵ UNGA, Report of the Third Committee, 28 November 2017, A/72/436, at <<http://undocs.org/A/72/436>>, 4.

⁶ *Ibid.* 6.

⁷ *Ibid.* 7.

⁸ *Ibid.* 8.

⁹ UNGA, Report of the Secretary-General, 27 July 2017, A/72/219, at <<https://undocs.org/A/72/219>>, 1.

persons belonging to minorities are incorporated into the work of human rights bodies and mechanisms with a more general mandate”. In this respect, he welcomed the “frequent references to minorities in country-specific conclusions and general comments by various human rights treaty bodies as well as in the reports of many special rapporteurs”.¹⁰

As regards language rights, the report highlighted the activities of the Special Rapporteur on Minority Issues (discussed in Section I.G of this article). It also presented information on recent measures that some states had taken to accommodate the use of minority languages. Georgia’s law on the state language, adopted in 2016, provides for the use of minority languages in regions densely populated by ethnic minorities. In Lithuania, minority languages can now be used and interpretation provided in administrative and criminal justice procedures. In Kyrgyzstan, the OHCHR is supporting the National Commission for the State Language to develop training materials to teach the Kyrgyz language to civil servants. This programme aims to prevent a decrease in the number of civil servants with a minority background which resulted from a law stipulating that civil servants must be fluent in the Kyrgyz language by 2020.¹¹ The report concluded by underlining the importance of minority rights in building diverse societies that are cohesive and grounded in human rights, and called for better implementation at the country level as well as effective partnerships with minority stake-holders.¹²

C. United Nations Educational, Scientific and Cultural Organization (UNESCO)

UNESCO has adopted several instruments that might be relevant for the language rights of minorities in the context of education. Most important among them is the 1960 Convention against Discrimination in Education, which provides for the right of members of national minorities to carry out their own educational activities, including school maintenance and, depending on the educational policy of the individual state, the use or teaching of their own language, provided certain quality and access standards

¹⁰ *Ibid.* 3.

¹¹ *Ibid.* 12.

¹² *Ibid.*

are met.¹³ The body responsible for monitoring this convention is the Committee on Conventions and Recommendations. As of 1 June 2017, the committee had received 67 reports from Member States, including 12 from Western European and 18 from Eastern European countries.¹⁴ A comprehensive report on these was adopted at the 9th Consultation of UNESCO's member states on the implementation of UNESCO's Convention and Recommendation against Discrimination in Education.¹⁵ Concerning the inclusion of minority groups in education, many Eastern European States reported on strategies or programmes that focus on the Roma population (Bulgaria, Croatia, Czech Republic, Hungary, Latvia, Poland, Serbia and Slovakia).¹⁶ Since minority groups often face language barriers, several states have devised policies to facilitate national language learning. For example, in Latvia, the Latvian Language Agency provides systematic, sustainable support for minority education from different funding sources, whereas in Georgia, the National Curriculum makes it mandatory for schools to teach a native language (Azeri, Armenian or Russian) as well as a state language in minority schools.¹⁷ A separate section of the report is devoted to 'Private education and rights of minorities'. Several European states protect national minorities' educational rights in their constitution (such as Croatia, Macedonia and Romania), while in several other countries, national legislations also regulate the right of national minorities to study in their mother tongue (in particular Bulgaria, the Czech Republic, Estonia, Germany, Hungary, Ireland, Macedonia, Moldova, Norway, Romania, Slovakia, Turkey and Ukraine). In addition to legislation, many states provide classes for the study of students' mother tongues, either in mainstream schools or in minority schools. Educational standards were also reported to be regulated. Some states provided textbooks for national minority groups. Hungary and Norway reported on funding for national minorities. With reference to teachers, some states reported on targeted measures. Some challenges have emerged, however. For example, some territories have experienced difficulties in protecting the right of minorities to be taught in their own

¹³ UNESCO Convention against Discrimination in Education, at http://www.unesco.org/education/pdf/DISCRI_E.PDF, Article 5.1(c).

¹⁴ The reports are available at <http://www.unesco.org/education/edurights/index.php?action=countries&lng=en>.

¹⁵ UNESCO: *Ensuring the right to equitable and inclusive quality education*, July 2017, at <http://unesdoc.unesco.org/images/0025/002514/251463E.pdf>.

¹⁶ *Ibid.* 31-33.

¹⁷ *Ibid.* 33.

language; others reported challenges in providing equal opportunities and rights, owing to cultural and geographical diversity.¹⁸

The Committee on Conventions and Recommendations also examines communications concerning the exercise of human rights under UNESCO's remit, such as the right to education as expressed in Article 26 of the Universal Declaration of Human Rights. The procedure is confidential. From 1978 to 2017, 602 communications were considered by the committee, including 400 which it successfully settled. In 16 cases, victims were able to benefit from changes in certain education laws that were discriminatory towards ethnic or religious minorities; and in 9 cases victims were able to resume their studies.¹⁹

The General Conference of UNESCO, meeting in Paris from 30 October to 14 November 2017, adopted a recommendation on science and scientific researchers. The document invited UNESCO member states to assist in the emergence of scientific researchers of "high calibre", especially by ensuring that, without discrimination on the basis of, *inter alia*, race, native language, national or ethnic origin, all citizens enjoy equal opportunities for the initial education and training needed to qualify for research and development careers, as well as ensuring that all citizens who succeed in so qualifying enjoy equal access to available employment in scientific research.²⁰

In 2017, UNESCO was also busy with the preparatory works of the International Year of Indigenous Languages, beginning on 1 January 2019. UNESCO, the lead agency for the Year, held three consultative sessions in 2017 in order to develop an Action Plan for the organization.²¹

D. Human Rights Committee

The Human Rights Committee is a body of independent experts responsible for monitoring the implementation of the International Covenant on Civil and Political Rights (ICCPR). The Committee held three sessions in 2017, during which it considered 19 state parties' reports in sum, including 6 from Europe (Bosnia and

¹⁸ *Ibid.* 62-65.

¹⁹ UNESCO, Committee on Conventions and Recommendations, 2018, at <<http://unesdoc.unesco.org/images/0026/002617/261794e.pdf>>, 30.

²⁰ UNESCO Recommendation on Science and Scientific Researchers, 13 November 2017, at <http://portal.unesco.org/en/ev.php-URL_ID=49455&URL_DO=DO_TOPIC&URL_SECTION=201.html>, Article 13.a.

²¹ For more information, consult <<https://en.unesco.org/IY2019>>. The Action Plan was adopted on the Seventeenth session of the Permanent Forum on Indigenous Issues, on 21 February 2018, at <http://www.un.org/en/ga/search/view_doc.asp?symbol=E/C.19/2018/8>.

Herzegovina, Italy, Serbia, Liechtenstein, Switzerland, Romania).²² While all concluding observations referred to minorities, they did so mostly in the context of discrimination, hate speech and educational segregation, affecting especially the Roma. The language rights of minorities were only remotely mentioned in two instances. The Committee welcomed the adoption of the ordinance of 4 June 2010 on the National Languages and Understanding between the Linguistic Communities in Switzerland,²³ and called on Romania to promote an environment inclusive of people belonging to minorities, including with respect to their linguistic and cultural rights.²⁴

During its three sessions in 2017, the Committee also examined 99 communications submitted under the Optional Protocol by individuals who claimed that their rights under the ICCPR had been violated by a State party. Half (47) of the complaints were submitted against European states (Albania, Austria, Belgium, Bosnia and Herzegovina, Belarus, Denmark, Greece, Ireland, Lithuania, the Netherlands and Russia). Many cases related to deportation of refugees or immigrants, and none of them concerned the language rights of minorities.

E. Human Rights Council

During its three sessions in 2017, the Human Rights Council—an intergovernmental UN body responsible for strengthening the promotion and protection of human rights around the globe—adopted several resolutions relevant to the rights of minorities. Sadly, none of these deal with language rights.²⁵

A specific process of the Council involves a review of the human rights records of all UN member states. The Working Group on the Universal Periodic Review (UPR) held two sessions in 2017, reviewing 28 countries in sum, including 8 European states (Finland, the UK, Poland, the Netherlands, Czech Republic, Switzerland and

²² 119th session (6–29 March 2017); 120th session (3–28 July 2017); 121st session (16 October 2017 – 10 November 2017), at

<http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/SessionsList.aspx?Treaty=CCPR>.

²³ Human Rights Committee, Concluding observations on the fourth periodic report of Switzerland, 22 August 2017, CCPR/C/CHE/CO/4, para. 3.a.

²⁴ Human Rights Committee, Concluding observations on the fifth periodic report of Romania, 11 December 2017, CCPR/C/ROU/CO/5, para. 44.

²⁵ For resolutions adopted at the 34th (27 February – 24 March 2017) and the 35th (6–23 June 2017) sessions, see UNGA, Report of the Human Rights Council, A/72/53, New York, 2017, at <<http://undocs.org/en/A/72/53>>. For resolutions adopted at the 36th session (11 to 29 September 2017), see <<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session36/Pages/ResDecStat.aspx>>.

Ukraine).²⁶ As the Secretary General observed, there was a sharp increase in recommendations relevant to the rights of minorities in the second cycle of the UPR (2012–2016) compared with the first cycle (2008–2011).²⁷ This tendency seems to continue in the third cycle of the reviews, at least as far as the year 2017 is concerned. We might take the optimistic stance of the Secretary General in concluding that “[w]hile this rise reflects persistent challenges in the implementation of rights, it also suggests that Member States are paying increased attention to the human rights of persons belonging to minorities.”²⁸

While all of the 2017 European UPR reports mentioned the rights of minorities and/or indigenous peoples, only two of them made references to language rights.²⁹ Switzerland was commended for improving multilingualism in education, as shown by the country’s fourth report on the implementation of the Council of Europe Framework Convention for the Protection of National Minorities, adopted at the beginning of 2017. The issue of Roma language rights was raised in the context of a 2015 application by Roma organizations for the Swiss Roma to be recognized as a national minority and for Romani to be recognized as a minority language under the European Charter for Regional or Minority Languages. The outcome is yet to be seen, nevertheless, Switzerland was recommended to continue to overcome obstacles faced by the Yenish, Manush, Sinti and Roma in accessing education and preserving their language and lifestyle.³⁰

Ukraine was severely criticized for its recent Law on Education, especially Article 7, which strengthens education in the state language while significantly reducing the scope of education in minority languages.³¹ The provision was seen as violating the rights of

²⁶ See the timetables of review at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRSessions.aspx>.

²⁷ *Supra* note 9, 3.

²⁸ *Ibid.*

²⁹ Reports of the Working Group are available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>.

³⁰ Report of the Working Group of the UPR on Switzerland, A/HRC/37/12, paras. 18–19 and 146.115.

³¹ For more information on the new law, see: European Commission for Democracy through Law (Venice Commission): “Opinion on the Provisions of the Law on Education of 5 September 2017 which concern the Use of the State Language and Minority and other Languages in Education”, Opinion No. 902/2017, Strasbourg, 11 December 2017, available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)030-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)030-e). The Commission concludes that criticism against the new law “seems justified due to a number of reasons” (para. 120). In its view, Article 7 “allows to radically change the previous language regime, at least in secondary education, towards a system focused on the mandatory use of the Ukrainian language as the language of education. This could result in a substantial diminution in the opportunities available to persons belonging to national minorities to be taught in their languages, which would amount to a

linguistic minorities to be educated in their mother tongue’ therefore, Ukraine was urged by member states to revoke Article 7 or the new education law altogether, and at the minimum to ensure that it does not lead to discrimination against minorities.³² Ukraine was further advised to improve respect for the freedom of expression, considering that its media legislation is hampering freedom of expression through thresholds that limit broadcasting in the languages of national minorities.³³

F. Special Rapporteur on the Right to Education

The Special Rapporteur submitted a report on realizing the right to education through non-formal education to the 35th session of the Human Rights Council (6–23 June 2017), which is based on the belief that non-formal education programmes support cultural and language rights.³⁴ A separate section is devoted to mother tongue instruction, recalling the scientific fact that students learn best when they are taught in their native language. However, in many states English, French or another “national” language is used as the medium of instruction. The Special Rapporteur warns that this can be particularly disadvantageous for members of ethnic minorities, who are at risk of losing their language, and for children from households that do not speak the language of instruction. Non-formal education programmes, in turn, normally instruct in the language children use at home, supported by the teaching of locally relevant topics. Furthermore, appropriate non-formal curricula, materials, pedagogies and the use of an appropriate language of instruction can help out-of-school children from minority groups to learn in safe and appropriate environments and prevent potential discrimination.³⁵ Furthermore, as a complement to formal education, non-formal programmes can also be designed to teach minority or other languages and cultures on weekends or after school, helping to safeguard the cultural values and traditional

disproportionate interference with the existing rights of persons belonging to national minorities”
(*ibid.*)

³² Human Rights Council, Report of the Working Group of the UPR on Ukraine, A/HRC/16, paras. 34, 116.136-140, 116.175-176.

³³ *Ibid.* para. 116.89.

³⁴ Report of the Special Rapporteur on the Right to Education, “Realizing the right to education through non-formal education”, 2 June 2017, A/HRC/35/24, 1, at <<https://undocs.org/A/HRC/35/24>>. Non-formal education is typically interpreted as in contrast with formal education (the State-run system, organized and delivered by Governments, recognized as official), encompassing any institutionalized, organized learning that is outside of the formal system. Cf. *ibid.* 4-5.

³⁵ *Ibid.* 11.

knowledge of indigenous people and minorities.³⁶ In light of the above, the Special Rapporteur recommends that, especially in situations where the language of formal instruction is a second language, non-formal education programmes should be taught in the mother tongue and a curriculum should be developed in that language, especially for primary education.³⁷

G. Forum on Minority Issues & Special Rapporteur on Minority Issues

The Forum on Minority Issues has been established to provide a platform for promoting dialogue and cooperation on issues pertaining to national or ethnic, religious and linguistic minorities. Its mandate includes identifying and analysing best practices, challenges, opportunities and initiatives for implementing the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The forum meets annually to discuss thematic issues, led by the Special Rapporteur on Minority Issues, who in turn reports the forum's thematic recommendations to the Human Rights Council.

The tenth session of the forum was held on 30 November and 1 December 2017, with the topic "Minority youth: towards diverse and inclusive societies".³⁸ Its recommendations were published in January 2018 based on the discussions among and contributions made by forum participants.³⁹ The recommendations were organized under four agenda items:

- Empowering minority youth through inclusive education
- Promoting the participation of minority youth in public life
- Challenges and opportunities for minority youth in media in the digital age
- The role of minority youth in promoting peace and stability

Unsurprisingly, language rights have an important role to play in all these areas. As regards education, recommendations were made concerning the possibility for the use

³⁶ *Ibid.*

³⁷ *Ibid.* 20.

³⁸ UN Forum for the Minority Issues, "Minority youth: towards diverse and inclusive societies", Tenth session of the Forum on Minority Issues, at <http://www.ohchr.org/EN/HRBodies/HRC/Minority/Pages/Session10.aspx>.

³⁹ UN Special Rapporteur on Minority Issues, Report on recommendations made by the Forum on Minority Issues at its tenth session on the theme "Minority youth: towards inclusive and diverse societies, 30 January 2018, A/HRC/37/73, at <https://undocs.org/A/HRC/37/73>.

of minority languages at all levels and the supply of adequate teaching and learning materials to facilitate the learning of minority languages.⁴⁰ States were called upon to recognize in their constitutions the right of members of minorities to be taught in their mother tongue; develop programmes that offer teaching in minority languages, while ensuring that minorities also have access to instruction in other languages; and ensure that members of minorities are able in practice to use their own language at school, both public and private.⁴¹ It is important that minority youth have access to employment in the public sector without linguistic discrimination, and to that end, states should make training and professional orientation programmes available in minority languages, too.⁴² It is crucial to provide training for youth to participate in cultural industries, including in their own languages.⁴³ States were further recommended to support minority youth-led media initiatives, such as television or radio programmes in minority languages.⁴⁴

The year 2017 marked the end of Rita Izsák-Ndiaye's six-year tenure as holder of the Special Rapporteur mandate. Therefore, her last annual report⁴⁵ presented not only her activities in 2016, but a brief overview of her thematic priorities during her whole tenure, as well. The rights of linguistic minorities were one of those priorities, especially looking at the various shortcomings in the implementation of language rights. The then-Special Rapporteur prepared a thematic report to the Human Rights Council⁴⁶ as well as a practical handbook focusing on the rights of linguistic minorities.⁴⁷ In her thematic report, she emphasized that for minorities, language is "a central element and expression of their identity and of key importance in the preservation of group identity".⁴⁸ She also observed that minority language use is frequently a source of tensions, both between and within states, and that it is often only when minorities assert their language rights that discrimination or persecution start. Her main finding is that

⁴⁰ *Ibid.* paras. 33-34.

⁴¹ *Ibid.* paras. 35 and 39.

⁴² *Ibid.* paras 54 and 56.

⁴³ *Ibid.* para. 59.

⁴⁴ *Ibid.* para. 71.

⁴⁵ Report of the Special Rapporteur on Minority Issues, 9 January 2017, A/HRC/34/53, at <<https://undocs.org/A/HRC/34/53>>.

⁴⁶ Report of the Independent Expert on Minority Issues, Rita Izsák, 31 December 2012, A/HRC/22/49, at <<https://undocs.org/A/HRC/22/49>>.

⁴⁷ UN Special Rapporteur on minority issues, "Language Rights of Linguistic Minorities: A Practical Guide for Implementation", Geneva, March 2017, at <http://www.ohchr.org/Documents/Issues/Minorities/SR/LanguageRightsLinguisticMinorities_EN.pdf>.

⁴⁸ *Supra* note 45, para. 38.

fulfilling the rights of minorities, including their language rights, is an essential means of conflict prevention.⁴⁹ The handbook is available in all six official languages of the UN, and aims to serve as a practical tool to assist policymakers and right holders to have a better understanding of both language rights and best practice implementation.⁵⁰ The implementation of language rights was also observed during the several country visits the Special Rapporteur made. For instance, in connection with her visit to the Republic of Moldova in June 2016, she observed that “the use of the mother tongue is highly important and emotive for many communities and an essential aspect of personal and community identity”. She therefore urged that measures be taken “to minimize the politicization of the use of languages, which often leads to polarization and might threaten peaceful coexistence”.⁵¹ She made recommendations related to language rights in the education system, public administration, names, and denominations and health care.⁵²

The new Special Rapporteur, Mr Fernand de Varennes, is one of the leading authorities on language rights in the academic world. He assumed his functions in August 2017, and even though it is too early to draw any conclusions on his work, it is promising that only two months after he took up his position, he called attention to the close links between the human rights of minorities and language rights. He also emphasized “the close relationship between prohibition of discrimination in education and access to services such as health care, and how this could lead to obligations, based on human rights standards, to use or provide services in indigenous languages in certain contexts”.⁵³ Although language rights as such do not feature among the four thematic priorities of the new mandate, the issue of the use of a minority language as the medium of instruction constitutes a core element of the fourth thematic priority, “the sometimes misunderstood human rights dimensions of education and the rights of minorities”.⁵⁴

⁴⁹ *Ibid.*

⁵⁰ *Ibid.* para. 39.

⁵¹ *Ibid.* para. 6.

⁵² Report of the Special Rapporteur on Minority Issues on her mission to the Republic of Moldova, 11 January 2017, A/HRC/34/53/Add.2, at <<https://undocs.org/A/HRC/34/53/Add.2>>.

⁵³ Report of the Special Rapporteur on Minority Issues, 16 January 2018, A/HRC/37/66, para. 24, at <<https://undocs.org/A/HRC/37/66>>.

⁵⁴ *Ibid.* paras. 48 and 72.

H. Special Rapporteur on the Rights of Indigenous Peoples, Expert Mechanism on the Rights of Indigenous Peoples & Permanent Forum on Indigenous Issues

The Special Rapporteur, the Expert Mechanism and the Permanent Forum are the three UN bodies mandated to specifically deal with indigenous peoples' issues. While the Special Rapporteur and the Expert Mechanism are special procedures under the Human Rights Council, the Permanent Forum is a high-level advisory body established by the Economic and Social Council.⁵⁵

The year 2017 marked the tenth anniversary of the adoption of the Declaration on the Rights of Indigenous Peoples. For this occasion, the Special Rapporteur on the Rights of Indigenous Peoples reviewed the status of implementation of the Declaration. The report paints an overall worrisome picture.⁵⁶ While it acknowledges that certain countries have developed sectoral laws on specific indigenous peoples' rights, including language rights,⁵⁷ it warns of the obstacles that indigenous peoples face in accessing justice, such as a lack of interpreters available for their languages during court hearings.⁵⁸

The Expert Mechanism on the Rights of Indigenous Peoples also made its own evaluation on the implementation of the Declaration, and arrived at a similarly depressing conclusion: "Despite the advances made in terms of their formal recognition, indigenous peoples still report numerous and growing violations of their human rights. In many examples, indigenous peoples are denied [...] the protection of their cultures, including their languages, religions and ways of life."⁵⁹ As for recent European

⁵⁵ Language rights of indigenous peoples were also mentioned by the UN Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment No. 24. States have been encouraged to ensure the use of indigenous languages and/or interpreters in courts and the availability of legal services and information on remedies in indigenous languages, as well as to address barriers to accessing non-judicial mechanisms for indigenous victims, including language barriers. See, CESCR, General Comment to the ESCR No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, E/C.12/GC/24, paras. 52 and 56, at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/GC/24&Lang=en>.

⁵⁶ Report of the Special Rapporteur on the Rights of Indigenous Peoples, 1 November 2017, A/HRC/36/46, paras. 19-23, at <<https://undocs.org/A/72/186>>.

⁵⁷ *Ibid.* para. 31.

⁵⁸ *Ibid.* para. 58.

⁵⁹ "Report of the Expert Mechanism on the Rights of Indigenous Peoples: Ten years of the implementation of the United Nations Declaration on the Rights of Indigenous Peoples: good practices and lessons learned—2007–2017", 7 August 2017, A/HRC/36/56, para. 5, at <<http://undocs.org/en/A/HRC/36/56>>.

developments, the Expert Mechanism welcomed the draft Nordic Sami convention (finalized on 13 January 2017), which includes rights to lands and resources, Sami traditional livelihoods, language, culture and education, and confirms that the Sami people should have their own representative political bodies, the Sami Parliaments.⁶⁰ On the sixteenth session of the Permanent Forum on Indigenous Issues, the issue of language was brought up in the context of education. Recalling Article 14 of the Declaration,⁶¹ the forum urged member states to “adopt and fully implement comprehensive national indigenous education policies and bring into practice the education of indigenous language teachers in accordance with indigenous peoples’ initiatives”.⁶²

II Organization for Security and Cooperation in Europe (OSCE)

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

The ODIHR provides support and expertise to states and civil society to promote democracy, rule of law, human rights, tolerance and non-discrimination. It organizes annual human dimension implementation meetings (HDIMs) where the participating states can discuss the application of their commitments in the human dimension of security. The 2017 HDIM took place in Warsaw between 11–22 September. The most popular session, in terms of interventions, was the working session “on tolerance and non-discrimination including rights of persons belonging to national minorities and Roma and Sinti issues”.⁶³ The discussions also focused on language rights. A number of participating states and NGOs raised the issue of violation of the rights of national minorities to get education in their mother tongue, language discrimination, and the prohibition of use of minority language in the public sphere. Other states referred to

⁶⁰ *Ibid.* para. 76.

⁶¹ The Article sets out the right of indigenous peoples to establish and control educational institutions that provide education in their own languages, and calls on states to take effective measures—in conjunction with indigenous peoples—in order for indigenous individuals to have access to an education provided in their own language. Cf. United Nations Declaration on the Rights of Indigenous Peoples, Resolution No. 61/295, adopted by the General Assembly, 13 September 2007, at <http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf>.

⁶² Permanent Forum on Indigenous Issues, Report on the sixteenth session, 24 April – 5 May 2017, Recommendations of the Permanent Forum Discussion on the theme “Tenth anniversary of the United Nations Declaration on the Rights of Indigenous Peoples: measures taken to implement the Declaration”, E/2017/43-E/C.19/2017/11, para. 40, at <<https://undocs.org/en/E/2017/43>>.

⁶³ OSCE ODIHR, 2017 Human Dimension Implementation Meeting, Consolidated Summary, at <<https://www.osce.org/odihr/365486?download=true>>, 9, 44-48.

their good practices, such as bilingual education and minority schools, or broadcasting and publications in national minority languages.⁶⁴ The recommendations of the session called on participating states to guarantee education in minority languages at all levels, to allow the use of minority languages in areas largely populated by national minorities, and to refrain from restrictive measures.⁶⁵ Among the language-related recommendations addressed to individual (European) countries, Latvia stands out: the Latvian Human Rights Committee urged the government to repeal the provisions for depriving local councillors and MPs of their mandates for allegedly insufficient command of the Latvian language; to restore the network of minority schools and give them choice of language of instruction; to allow people to take exams in minority languages; and cancel Latvian language requirements for local councillors, NGO board members and educators teaching in other languages.⁶⁶

Apart from the HDIM, ODIHR activities mainly engaged with issues related to elections, migration, hate crime, gender equality and the rights of people with disabilities; minority language rights were rarely mentioned. However, in its report on Bulgaria's early parliamentary elections, the ODIHR recommended that the Bulgarian government ensure that individuals belonging to national minorities be allowed to campaign in their mother tongues.⁶⁷

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 de-escalating tensions involving national minorities within the OSCE area. On 19 July 2017, Ambassador Lamberto Zannier (Italy) took over the mandate, succeeding Ambassador Astrid Thors.

The highlight of HCNM's 2017 activities was undoubtedly the adoption of the Graz Recommendations on Access to Justice and National Minorities, made public on 14 November 2017.⁶⁸ One of the 10 recommendations explicitly refers to minority

⁶⁴ *Ibid.* 46.

⁶⁵ *Ibid.* 47.

⁶⁶ *Ibid.* 99 and 155.

⁶⁷ OSCE ODIHR, "Reviewing restrictions of suffrage rights and arrangements for voting abroad, permitting use of other languages among recommendations in OSCE/ODIHR final report on Bulgaria's early parliamentary elections", 30 June 2017, at <<https://www.osce.org/odihr/elections/bulgaria/327176>>.

⁶⁸ OSCE HCNM, The Graz Recommendations on Access to Justice and National Minorities, at <<https://www.osce.org/hcnm/graz-recommendations>>.

language rights: “States should ensure that when persons belonging to national minorities engage with judicial and national human rights institutions and take part in proceedings, they are able to do so in a language they understand, and preferably in their language, as well as in an environment that is respectful of their identity.”⁶⁹ As the Explanatory Note elaborates, this is “a basic standard of due process that is universally applicable in judicial proceedings”,⁷⁰ but beyond that, “when persons belonging to national minorities are able to use their language in proceedings, their perception that the process is fair increases, which in turn fosters confidence in the justice system and contributes to conflict prevention”.⁷¹ The right to use a language one understands, preferably one’s own language, also constitutes a core element of other rights within the field of access to justice, including non-discrimination, the right to a fair hearing and the right to legal assistance.⁷² The language element stands out in practically all 10 recommendations from the composition of courts through detention by law enforcement agencies to judicial remedies.⁷³

Language rights of European minorities also featured in other HCNM activities, including many of their events.⁷⁴ Ukraine’s language policy—due to the controversial new Law on Education—was a focus point here, too.⁷⁵ At a conference on 13 April in Kyiv, the HCNM emphasized “the need to strike a balance between, on the one hand, preserving and developing the languages of minorities and, on the other, encouraging them to become fluent in the state language—to be fully engaged in public life, feel that they belong and realize their full potential in society.”⁷⁶ The HCNM promised to keep actively engaged with the situation,⁷⁷ and for that purpose he visited Ukraine from 11 to 13 December 2017 to further stress “the importance of an inclusive policy, where the

⁶⁹ *Ibid.* 8.

⁷⁰ *Ibid.* 18.

⁷¹ *Ibid.* 19.

⁷² *Ibid.* 11-14.

⁷³ *Ibid.* 10-40. Altogether there are 78 references to ‘language’ or ‘linguistic’ in the whole document.

⁷⁴ Conference on “Multilingual education in the OSCE region: experiences and perspectives for Ukraine”, Kyiv, 13 April 2017, at <<https://www.osce.org/hcnm/312161>>; conference on “Integration with respect to diversity: legal standards and good practices from across the OSCE region”, Odessa, 13 June 2017, at <<https://www.osce.org/hcnm/323011>>; “Forum on Language Compliance in Kosovo”, Prishtinë/Priština, 9 November 2017, at <<https://www.osce.org/hcnm/355591>>; “Eastern Europe, Caucasus, Central Asia School on Multilingual and Multicultural Education for Integration and Sustainable Development”, Shymkent, Kazakhstan, 4 to 8 December 2017, at <<https://www.osce.org/hcnm/360466>>.

⁷⁵ Cf. section I.E of this article.

⁷⁶ *Supra* note 74.

⁷⁷ OSCE HCNM, “OSCE High Commissioner on National Minorities says he is actively engaged on education issues in Ukraine”, 9 October 2017, at <<https://www.osce.org/hcnm/348536>>.

needs of diverse groups are taken into consideration to minimize the risk of minority issues being instrumentalized”.⁷⁸

At another event, the High Commissioner emphasized that “a key component of conflict prevention is the successful integration of society and the realization of human rights, including language rights”.⁷⁹ He further underlined that “[w]here the enjoyment of the right to use one’s own language is guaranteed, members of all communities view such acts as a sign of respect and inclusiveness. Conversely, failures to comply with language requirements can fuel resentment”.⁸⁰

As regards field visits, the HCNM not only visited Ukraine, but Macedonia (Skopje and Tetovo) and Moldova as well. In Skopje, he stressed the need to improve opportunities for higher education in minority languages,⁸¹ and to avoid further segregation in the education sector.⁸² In Moldova, he encouraged the authorities “to strike a careful balance between promoting the state language and protecting minority languages and cultures”, and “to support national minorities’ access to quality teaching of the state language and to education in minority languages”. As a promising model, he mentioned an HCNM pilot project on bilingual teaching in the state language and in the Gagauz language in kindergartens in the Autonomous Territorial Unit of Gagauzia.⁸³

III European Union⁸⁴

Minority rights have long been neglected by EU institutions, and language rights even more so. Although linguistic diversity is a fundamental value of the European integration process, “the legal status of national minorities (including their language rights) is one of the few remaining policy areas in which the role of the European Union

⁷⁸ OSCE HCNM, “OSCE High Commissioner on National Minorities discusses language law and other national minority issues in Ukraine”, 13 December 2017, at <<https://www.osce.org/hcnm/362496>>.

⁷⁹ OSCE HCNM, “The Importance of Language Compliance”, Keynote speech by Lamberto Zannier, OSCE High Commissioner on National Minorities to the Forum on Language Compliance, Prishtinë/Priština, 9 November 2017, at <<https://www.osce.org/hcnm/355571?download=true>>, 2.

⁸⁰ *Ibid.* 5.

⁸¹ *Supra* note 63, 75.

⁸² OSCE HCNM, Address by Lamberto Zannier, OSCE High Commissioner on National Minorities to the 1164th Plenary Meeting of the OSCE Permanent Council, 16 November 2017, at <<https://www.osce.org/permanent-council/357651?download=true>>, 5.

⁸³ *Ibid.* 6.

⁸⁴ Unless otherwise indicated, all documents referred to in this section are available at <<http://eur-lex.europa.eu/>>.

continues to remain minimal and almost inexistent”.⁸⁵ Even the European Parliament (EP), which has always been the forerunner in protecting minority rights within the EU, was silent on the issue in 2017. The only relevant document here is a motion for an EP resolution on the Annual Report on Human Rights and Democracy, in which minorities are mentioned as frequent victims of discrimination, hate crimes and other violations of human rights.⁸⁶

In the annual report of the European Union Agency for Fundamental Rights (FRA), minorities were referred to only in the context of continued discrimination against the Roma, and no reference was made to language rights.⁸⁷ The 2016 Report on the Application of the EU Charter of Fundamental Rights mentioned ethnic, religious and other minorities as a common target of racism and intolerance.⁸⁸

The Court of Justice of the European Union (CJEU) delivered one judgment in 2017 relevant to national minorities, which concerned the Minority SafePack initiative. This citizens’ initiative calls upon the EU to improve the protection of national and linguistic minorities and strengthen cultural and linguistic diversity in the European Union. The CJEU’s judgment annulled the prior European Commission decision to reject the request for registration of Minority SafePack.⁸⁹ As a consequence, finally registered the citizens’ initiative, and agreed that in the event of its success, it will propose certain legislation with the aim to, *inter alia*, protect and promote cultural and linguistic diversity in the EU, adapt funding programmes so that they become accessible for small regional and minority language communities, and create a centre for linguistic diversity

⁸⁵ B. De Witte, “Language Rights and the Work of the European Union”, in Iryna Ulasiuk, Laurențiu Hadîrcă and William Romans (eds.), *Language Policy and Conflict Prevention* (Brill Nijhoff, Leiden/Boston, 2018), 221-230, at 221.

⁸⁶ EP, “Report on the Annual Report on Human Rights and Democracy in the World 2016 and the European Union’s policy on the matter” (2017/2122(INI)), 23 November 2017, paras. 8, 26 and 34. Furthermore, the EP commissioned a study on minority language education: R. Van Dongera, C. van der Meer, and R. Sterk, *Research for CULT Committee – Minority languages and education: best practices and pitfalls*, European Parliament, Policy Department for Structural and Cohesion Policies (Brussels, 2017), at http://www.europarl.europa.eu/RegData/etudes/STUD/2017/585915/IPOL_STU%282017%29585915_EN.pdf.

⁸⁷ FRA, 2017 Fundamental Rights Report, May 2017 at <http://fra.europa.eu/en/publication/2017/fundamental-rights-report-2017>.

⁸⁸ European Commission, The 2016 Report on the Application of the EU Charter of Fundamental Rights, 18 May 2017, COM(2017) 239 final, 6.

⁸⁹ CJEU, *Minority SafePack – one million signatures for diversity in Europe v Commission*, 3 February 2017, T-646/13.

that will strengthen awareness of the importance of regional and minority languages.⁹⁰ On the other hand, still insists on that “[w]hile the Union institutions are bound to respect ‘cultural and linguistic diversity’ in accordance with Article 3(3) TEU and to refrain from discrimination based on ‘membership of a national minority’ in accordance with Article 21(1) of the Charter of Fundamental Rights of the European Union none of these provisions constitutes a legal basis for whatever action by the institutions”. Therefore, will not propose any effective measures to address discrimination or to promote equal treatment for national minorities.⁹¹

IV Council of Europe (CoE)

A. European Court of Human Rights (ECtHR)

Even though the European Convention on Human Rights (ECHR) is not a minority-specific instrument, in the light of the jurisprudence of the ECtHR, its scope extends to the protection of minority rights.⁹² Minority language rights are addressed in the following provisions: Everyone has the right to be informed promptly, in a language they understand, of the reasons for their arrest (Article 5.2 of the ECHR) and the nature of any criminal charges (Article 6.3a). The ECHR also guarantees the right to a free interpreter if a defendant cannot speak or understand the language used in court (Article 6.3e). These rights appear in the context of judicial proceedings, however, language rights may be derived from other provisions of the ECHR, such as the prohibition of discrimination on the basis of language (Article 14, Protocol 12) or the right to education (Article 2, Protocol 1). In 2017, the ECtHR did not consider any cases where minority language issues were dealt with in the context of justice or public administration, but it delivered two judgments, both involving Turkey, that are relevant to minority education.

⁹⁰ European Commission, Commission Decision No. 2017/652 of 29 March 2017 on the proposed citizens’ initiative entitled ‘Minority SafePack — one million signatures for diversity in Europe’, Article 1.

⁹¹ *Ibid.* preamble, para. 8.

⁹² For an overview, see e.g. D. Anagnostou, “Does European Human Rights Law Matter? Implementation and Domestic Impact of Strasbourg Court Judgments on Minority-related Policies”, 5 *The International Journal of Human Rights* (2010), 721-743; G. Pentassuglia, “The Strasbourg Court and Minority Groups: Shooting in the Dark or a New Interpretive Ethos?”, 19 *International Journal on Minority and Group Rights* (2012), 1-23.

The case of *Döner and Others v. Turkey*⁹³ arose from the arrest and prosecution of parents who, in 2001, petitioned the education directorates for the right of their children to receive education in the Kurdish language in the public elementary schools they attended. Their houses were subsequently searched on suspicion that their action had been instigated by the Kurdistan Workers' Party (PKK). Although no incriminating materials were found, the applicants were arrested and tried before a State Security Court with the charge of aiding and abetting an illegal armed organization. In the Convention proceedings, the applicants complained that they had been subjected to criminal proceedings for using their constitutional right to file a petition, despite the absence of any provisions in domestic law criminalizing such conduct. The ECtHR considered their complaint to fall under Article 10, and concluded that prosecuting someone for merely petitioning the state authorities on a matter of "public interest" amounted to an interference with the exercise of freedom of expression.

It was unnecessary to determine whether the interference was prescribed by law or pursued a legitimate aim as, in any event, it had not been necessary in a democratic society:

While the Court does not underestimate the difficulties to which the fight against terrorism gives rise, it considers that that fact alone does not absolve the national authorities from their obligations under Article 10 of the Convention. Accordingly, although freedom of expression may be legitimately curtailed in the interests of national security, territorial integrity and public safety, those restrictions must still be justified by relevant and sufficient reasons and respond to a pressing social need in a proportionate manner.⁹⁴

In that regard, the Court observed that "the petitions requesting education in Kurdish in elementary schools were submitted amidst a public debate in Turkey regarding the social and cultural rights of Turkish citizens of Kurdish ethnic origin", and thus concerned a matter of "public interest".⁹⁵ According to ECtHR case law, there is little scope for restrictions on debate on questions of public interest, and yet, the Turkish authorities had not displayed the requisite restraint, but had instead used "the legal

⁹³ ECtHR, Application no. 29994/02, *Döner and Others v. Turkey*, judgment of 7 March 2017, at <<https://hudoc.echr.coe.int>>.

⁹⁴ *Ibid.* para. 102.

⁹⁵ *Ibid.* para. 103.

arsenal at their hands in an almost repressive manner”.⁹⁶ For the ECtHR, neither the views expressed in the petitions nor the form in which they were conveyed raised doubts regarding the peaceful nature of the applicants’ request. The fact that the request may have coincided with the aims of an illegal armed organization did not remove it from the scope of protection of Article 10.⁹⁷

Although the ECtHR found a violation of Article 10, it rejected the applicants’ other allegation, namely that the Turkish authorities’ attitude towards Kurdish people’s right to education in their mother tongue had amounted to a violation of Article 14 on the prohibition of discrimination. The ECtHR found it proved that the applicants were charged “not because of the content of their petitions *per se*, but for allegedly acting on the instructions of an illegal armed organisation”. Therefore, “the crux of the problem” was not the denial of their right to education and alleged discrimination in that respect, but “the measures they faced for submitting those petitions with the alleged intent of supporting the PKK”.⁹⁸

In contrast, in the very similar case of *Çölgeçen and Others v. Turkey*,⁹⁹ the ECtHR did find that the applicants were sanctioned purely because of the views expressed in their petitions, and therefore found a violation of their right to education (Article 2 of Protocol No. 1). The case concerned seven university students who had either been expelled or suspended after requesting Kurdish language classes. In 2001 the applicants, who were studying at the University of Istanbul, requested that Kurdish language classes be introduced as an optional module. The university initiated disciplinary investigations against them and in February 2002 they were either suspended or expelled. The University suspended the sanctions a few months later and by 2007, all but one of the students had graduated. In the meantime, the administrative courts annulled the disciplinary sanctions on the grounds that they were unlawful, but they rejected the applicants’ claims for compensation. The Turkish courts stated, as the

⁹⁶ *Ibid.* paras. 104-106.

⁹⁷ *Ibid.* para. 107.

⁹⁸ *Ibid.* paras. 112-113. In any event, the case ended well for the applicants, since two years after their petitions, in July 2003, the Foreign Language Education and Teaching Act was amended to provide for the teaching of the different languages used by Turkish citizens, at least on a private basis initially. Subsequent legislation further broadened the scope of this legislation, so that today it is possible to learn Kurdish in primary and secondary schools as an elective subject, and Kurdish can be used as the language of instruction in private schools. *Ibid.* paras. 36-39.

⁹⁹ ECtHR, Applications nos. 50124/07, 53082/07, 53865/07, 399/08, 776/08, 1931/08, 2213/08 and 2953/08, *Çölgeçen and Others v. Turkey*, judgment of 12 December 2017, at <<https://hudoc.echr.coe.int>>.

university authorities had allowed the students to take repeat exams, this adequately compensated for the exams which they had been unable to sit when suspended or expelled. At that point the students turned to the ECtHR.

First of all, the ECtHR observed that the University of Istanbul's decision to suspend or expel the applicants constituted a restriction on their right to education. While accepting that there was an accessible legal basis for the restriction, the ECtHR had "serious doubts as to whether the application of this regulation in the present case was foreseeable or that it served any legitimate aim in Convention terms". However, the ECtHR did not deem it necessary to determine that question, because it found the key issue to be examined was that of proportionality.¹⁰⁰ In that regard, the ECtHR observed that the applicants were subject to a disciplinary sanction merely for submitting petitions which conveyed their views on the need for Kurdish language education without resorting to violence or breaking the peace. Since neither their views expressed nor the form in which they were conveyed would warrant disciplinary sanctions, the imposition of sanctions could not be considered reasonable or proportionate and as such violated Article 2 of Protocol No. 1.¹⁰¹

The applicants had another allegation concerning the violation of their right to education: the failure of the Turkish authorities to provide education in their mother tongue.¹⁰² After a somewhat confusing line of reasoning, the ECtHR decided that this part of the application was introduced out of time and therefore had to be rejected.¹⁰³ In any event, had the ECtHR assessed this claim on its merits, it is highly unlikely that it would have decided in favour of the applicants. As early as 1968, in the landmark *Belgian linguistic case*, the ECtHR established that the right to education only implies the right to be educated in the national language, and the right to education in any other language cannot be derived from the ECHR.¹⁰⁴ The ECtHR has not changed its opinion

¹⁰⁰ *Ibid.* paras. 52-53.

¹⁰¹ *Ibid.* paras. 54-57.

¹⁰² Since then the situation has improved, and currently graduate and postgraduate education in the field of Kurdish language and literature is available in six universities in Turkey (but not in the University of Istanbul). *Ibid.* para. 30.

¹⁰³ The Court viewed the University Rector's office's failure to reply to the applicants within 60 days as a tacit refusal of their petition. They could have brought this particular complaint before the national authorities, "[e]ven assuming that this remedy offered only a remote prospect of success", but they did not do so. Therefore, "in order to comply with the six-month rule, the applicants should have lodged their complaints with this Court within six months after the tacit refusal of their request." *Ibid.* para. 65.

¹⁰⁴ ECtHR, Case «relating to certain aspects of the laws on the use of languages in education in Belgium», Application nos 1474/62, 1677/62, 1691/62, 1769/63, 1994/63, 2126/64, judgment of 23 July 1963, at <<https://hudoc.echr.coe.int>>.

since; in fact, during the decades it has adopted a rather narrow approach to the protection of language rights under the ECHR. It appears that the judges of the Council of Europe only examine certain aspects of language use when they are absolutely necessary for the enforcement of (explicit) rights included in the ECHR. Sadly, the sphere of education is no exception.¹⁰⁵

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

The ECRML protects regional or minority languages in seven spheres of language use: education, culture, administration, media, justice, economic life and cross-border cooperation. State parties have to specify the languages to which they want to give enhanced protection, and then they have to select at least 35 concrete undertakings to support each language. For the purposes of this review, three articles of the ECRML are relevant: Article 8 on education, Article 9 on judicial authorities, and Article 10 on administrative authorities and public services.

As part of the monitoring process of the ECRML, five state periodical reports were submitted in 2017: Austria's fourth report, Cyprus' fifth report, Denmark's fifth report, Liechtenstein's seventh report and Serbia's fourth report. Unfortunately, out of the 25 state parties to the , 19 are late with their submissions—many of them have not reported for years—which seriously hinders the effectiveness of the monitoring mechanism. Good news, on the other hand, is that Portugal is strongly pondering the possibility of signing the Charter.¹⁰⁶

¹⁰⁵ N. Nagy, "Language rights as a sine qua non of democracy—a comparative overview of the jurisprudence of the European Court of Human Rights and the Court of Justice of the European Union", forthcoming in 1 *Central and Eastern European Legal Studies* (2019).

¹⁰⁶ Portugal's Secretary of State said at a meeting in Miranda do Douro, 14–15 December 2017, that the government is committed to guaranteeing "a more democratic and inclusive society" with regard to the preservation of "linguistic rights" in Portugal. ECRML, "Possibility for Portugal", at <<https://go.coe.int/0bwYJ>>.

The Committee of Experts issued seven evaluation reports in 2017 on Austria,¹⁰⁷ Cyprus,¹⁰⁸ Denmark,¹⁰⁹ Liechtenstein,¹¹⁰ Montenegro,¹¹¹ Romania¹¹² and Ukraine. (The evaluation report on Ukraine has not been made public as of May 2018, and in the case of Liechtenstein the Committee of Experts only took note of the periodical report which asserted that there are no regional or minority languages in the country.) Committee of Ministers' recommendations were adopted regarding Armenia,¹¹³ Denmark,¹¹⁴ Montenegro¹¹⁵ and Sweden.¹¹⁶ In the following section, developments in these countries will be discussed in light of the Committee of Experts' evaluation reports and the Committee of Ministers' recommendations.¹¹⁷

1. Developments in the field of education

Armenia was recommended to promote the use of Assyrian, Greek, Kurdish and Yezidi in pre-school education and extend the offer of teaching of these languages at primary and secondary levels, paying particular attention to teacher training. In Austria, while minority languages are taught at all levels of education and measures have been taken to improve minority language teaching, structural problems remain, primarily related

¹⁰⁷ CoE Committee of Experts of the European Charter for Regional or Minority Languages (hereinafter: COMEX), Fourth report of the Committee of Experts in respect of Austria, 22 November 2017, CM(2018)38. All the reports and recommendations are available at <<https://www.coe.int/en/web/european-charter-regional-or-minority-languages/reports-and-recommendations>>.

¹⁰⁸ COMEX, Fifth report of the Committee of Experts in respect of Cyprus, 22 November 2017, CM(2018)34.

¹⁰⁹ COMEX, Fifth report of the Committee of Experts in respect of Denmark, 20 June 2017, CM(2017)117.

¹¹⁰ COMEX, Seventh report of the Committee of Experts in respect of Liechtenstein, 20 June 2017, CM(2017)113.

¹¹¹ COMEX, Fourth report of the Committee of Experts in respect of Montenegro, 23 March 2017, CM(2017)89.

¹¹² COMEX, Second report of the Committee of Experts in respect of Romania, 23 June 2017, CM(2018)4.

¹¹³ CoE Committee of Ministers (hereinafter: CoM), Recommendation CM/RecChL(2017)2 on the application of the ECRML by Armenia, 11 May 2017.

¹¹⁴ CoM, Recommendation CM/RecChL(2017)4 on the application of the ECRML by Denmark, 25 October 2017.

¹¹⁵ CoM, Recommendation CM/RecChL(2017)3 on the application of the ECRML by Montenegro, 27 September 2017.

¹¹⁶ CoM, Recommendation CM/RecChL(2017)1 on the application of the ECRML by Sweden, 11 May 2017.

¹¹⁷ It must be noted that not all countries have undertakings under Part III of the ECRML, and in the cases of those countries where only recommendations were issued in 2017, not all areas relevant for this review are necessarily mentioned by the Committee of Ministers.

to enrolment regulations. This causes discontinuity from primary to secondary level and negatively affects the quality of education.

In Cyprus, Armenian is a medium of instruction in pre-school, primary and lower secondary education, while Cypriot Maronite Arabic is only taught in primary education. The authorities were invited to extend the teaching of these languages to other levels, as well as to provide teacher training for Armenian and Cypriot Maronite Arabic.

As regards *Denmark*, the Committee of Experts seemed to be satisfied with the current situation: the German-speaking minority has its own schools and it is possible to receive education in German at all levels except technical and vocational education, where teaching of German as a subject is provided only to some extent. The school support scheme has been changed so that the German schools get the same amount of support as the regular Danish schools.

In *Montenegro*, the Committee commended the situation of Albanian, but regretted the fact that Romani is absent from formal education, due mainly to the non-existent teacher training and teaching materials.

As regards *Romania* education system guarantees a high level of support for many minority languages at all levels, with the exception of technical and vocational education. However, the 2011 Law on Education established a minimum number of pupils for minority language education at different levels. The Committee of Experts believes that some of these thresholds are too high, and that the procedure for holding classes with fewer pupils than required by the law relies entirely on individual and uncoordinated decisions of local school boards and thus cannot serve as a basis for the structured implementation of Romania's undertakings under Article 8. For smaller minority groups such as Bulgarian, Croatian, Czech, Serbian and Slovak, the traditional education model of teaching in the minority language covers only a relatively small part of the language group. The Romanian authorities were invited to develop an adapted model for teaching these languages outside the population strongholds of these language groups. A shortage of teachers was noted to significantly hamper the education of Hungarian, German, Ukrainian and Turkish.

Finally, Sweden was called on to strengthen education of or in all national minority languages by adopting a comprehensive and structured approach based on the needs of the speakers and according to the situation of each of the minority languages, to ensure

that mother tongue education meets the requirements of the ECRML enabling pupils to achieve mature literacy in the languages concerned. They were also urged to increase the amount of bilingual education in Finnish and Sami, establish bilingual education in Meänkieli, and develop a system of teacher training according to the needs of the speakers and to the situation of each of the minority languages.

2. Developments in the field of judicial authorities

Armenia was urged to take determined action to support the use of Assyrian, Greek, Kurdish and Yezidi before judicial authorities. As regards Austria, while the right to use the minority languages before the relevant courts is guaranteed, practical implementation occurs only in Carinthia with respect to Slovenian; no use of Burgenland-Croatian or Hungarian in Burgenland was noted.

The undertakings chosen by Denmark under Article 9 are relatively unambitious as they only allow documents and evidence to be produced in German, through the use of interpreters and translations if necessary. Since authorities are not obligated to use German as the language of proceedings, it is unsurprising that German is hardly ever used before the courts. Denmark was called on to consider changing the instrument of ratification so that it better reflects the sociolinguistic situation of German language in the country.

In Montenegro, the government has proposed to amend the Law on Minority Rights and Freedoms with the aim of declaring official status for a minority language in areas where at least 5% of the population speaks it as a mother tongue. This might have positive consequences for the use of minority languages before the courts, as well. In addition, there seem to be no problems with the possibility of using Albanian in judicial procedures.

For Romani, on the other hand, there is no implementation, mainly due to the lack of qualified court interpreters.

Under Romanian legislation, minority languages can be used before courts and there is some evidence of this being the practice. However, there is a need for the authorities to encourage minority language speakers to more widely use their languages in judicial proceedings, and to clarify whether the expenses of interpretation and translation in civil and administrative proceedings are covered by the state.

3. *Developments in the field of administrative authorities and public services*

Armenia was called on to take determined action to support the use of Assyrian, Greek, Kurdish and Yezidi before the administrative authorities, and introduce place names in the minority languages in the municipalities concerned. In *Austria*, the use of minority languages with administrative authorities is possible, but the minority language speakers rarely avail themselves of this opportunity in practice. The government was recommended to take measures to encourage the speakers to make use of this right.

The situation of public administration in Denmark is the same as that of justice, in terms of the relatively unambitious undertakings of the government under Article 10. (These only ensure that users of German may validly submit a document in German to local branches of the national authorities.) The Danish authorities were once again prompted to consider changing the instrument of ratification so that it better reflects the sociolinguistic situation of the German language in the country.

In Montenegro, the overall situation of Albanian in administration and in the provision of public services was found satisfactory. However, local branches of state authorities in the Albanian-speaking areas often do not use Albanian, and Romani is not used at all in public administration.

In Romania, the 20% threshold of population belonging to the minority living in a particular administrative unit limits the use of minority languages in relations with the administrative authorities, and the one-third threshold in the number of councillors limits the use of minority languages in debates in the local assemblies. A 20% threshold applies for bilingual place name signs, too. Although some municipalities have maintained or voluntarily set up new bi- or multilingual place name signs despite the minorities concerned having fallen below or not making up 20% of the population, these local initiatives cannot guarantee the general implementation of Article 10(2). The authorities were therefore called on to reconsider these thresholds, since in light of the Committee of Experts' standing interpretation they deprive minority languages whose speakers do not reach these thresholds of full protection under Article 10. In addition, the committee is disappointed that there is no information about the existence or the use of administrative texts and forms in minority languages (except for Hungarian), and that minority languages are not used in the provision of public services.

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

The Framework Convention is the first legally binding multilateral instrument devoted entirely to the protection of national minorities, including their language rights. In this review, Article 10 (use of minority languages in relations with administrative authorities and the rights of the accused) and Articles 13–14 (private schools and teaching in/of minority languages) will be discussed.¹¹⁸ It is easy to notice that the Framework Convention and the Language Charter—despite their many differences—have considerable overlap in terms of their objectives, core principles and certain provisions.¹¹⁹ Notably, both documents provide for language rights¹²⁰ in the field of education, justice and public administration. However, due to the *à la carte* nature of the undertakings in the Language Charter and the programmatic, soft-law-style provisions of the Framework Convention, obligations of the same state under the two treaties may differ dramatically. Consequently, the two monitoring bodies' opinions and recommendations are not mere repetitions of one another. In addition, the FCNM has far more state parties (39) than the ECRML (25) which means that for many European countries the former is the only international treaty that guarantees the language rights of minorities.

In 2017 the Advisory Committee adopted six advisory opinions, on Azerbaijan, Bosnia and Herzegovina, Kosovo,¹²¹ Romania,¹²² Sweden,¹²³ and Ukraine.¹²⁴ (Opinions on

¹¹⁸ Although Article 11 on the use of minority languages on topographical signs and in identity documents might also be relevant as subfields of public administration, and the Advisory Committee indeed made several important observations and recommendations in this respect, these must be excluded from this review due to space restrictions.

¹¹⁹ See, R. Dunbar, “Comparative Study of the working methods and conclusions of the Committee of Experts of the European Charter for Regional or Minority Languages and the Advisory Committee of the Framework Convention for the Protection of National Minorities”, Council of Europe, 2005, at <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806d22c3>>.

¹²⁰ The Language Charter does not ensure rights as such, instead it protects languages. However, states' obligations to protect regional or minority languages are not too difficult to be translated into individual minority rights.

¹²¹ CoE Advisory Committee on the Framework Convention for the Protection of National Minorities (hereinafter: ACFC), Fourth Opinion on Kosovo, 8 March 2017, ACFC/OP/IV(2017)001. All the opinions and resolutions are available at <<http://www.coe.int/en/web/minorities/country-specific-monitoring>>.

¹²² ACFC, Fourth Opinion on Romania, 22 June 2017, ACFC/OP/IV(2017)005.

¹²³ ACFC, Fourth Opinion on Sweden, 22 June 2017, ACFC/OP/IV(2017)004.

¹²⁴ ACFC, Fourth Opinion on Ukraine, 10 March 2017, ACFC/OP/IV(2017)002.

Azerbaijan and Bosnia and Herzegovina remain restricted as of May 2018.) Moreover, in 2017 the opinions on Armenia,¹²⁵ Austria,¹²⁶ Malta,¹²⁷ Moldova,¹²⁸ Norway¹²⁹ and the United Kingdom,¹³⁰ adopted in 2016, were published. The Committee of Ministers issued six resolutions, on Austria,¹³¹ Croatia,¹³² Czech Republic,¹³³ Finland,¹³⁴ Hungary¹³⁵ and Italy.¹³⁶

In the following, developments in the above-mentioned countries in the fields of education and public administration will be discussed in light of the Advisory Committee's opinions and the Committee of Ministers' resolutions.¹³⁷ As regards the administration of justice, the Framework Convention—in contrast with the Language Charter—only applies to criminal proceedings, providing “the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter” (Article 10-3). This is no more than what the relevant provisions of the ECHR provide (cf. Section IV.A of this article). Since nowadays practically every person belonging to a national minority understands the official language of their country, Article 10(3) is quite insignificant for the language rights of minorities—no wonder that the Advisory Committee did not evaluate the implementation of this provision in its opinions.

¹²⁵ ACFC, Fourth Opinion on Armenia, 26 May 2016, ACFC/OP/IV(2016)006.

¹²⁶ ACFC, Fourth Opinion on Austria, 14 October 2016, ACFC/OP/IV(2016)007.

¹²⁷ ACFC, Fourth Opinion on Malta, 14 October 2016, ACFC/OP/IV(2016)009.

¹²⁸ ACFC, Fourth Opinion on the Republic of Moldova, 25 May 2016, ACFC/OP/IV(2016)004.

¹²⁹ ACFC, Fourth Opinion on Norway, 13 October 2016, ACFC/OP/IV(2016)008.

¹³⁰ ACFC, Fourth Opinion on the United Kingdom, 25 May 2016, ACFC/OP/IV(2016)005.

¹³¹ CoM, Resolution CM/ResCMN(2017)6 on the implementation of the FCNM by Austria, 17 October 2017.

¹³² CoM, Resolution CM/ResCMN(2017)3 on the implementation of the FCNM by Croatia, 11 May 2017.

¹³³ CoM, Resolution CM/ResCMN(2017)8 on the implementation of the FCNM by the Czech Republic, 29 November 2017.

¹³⁴ CoM, Resolution CM/ResCMN(2017)1 on the implementation of the FCNM by Finland, 15 March 2017.

¹³⁵ CoM, Resolution CM/ResCMN(2017)5 on the implementation of the FCNM by Hungary, 5 July 2017.

¹³⁶ CoM, Resolution CM/ResCMN(2017)4 on the implementation of the FCNM by Italy, 5 July 2017.

¹³⁷ The Government of Malta insists that there are no national minorities in Malta, therefore the Advisory Committee could only assess measures with regard to Articles 3 and 6 of the Framework Convention, as these apply to everyone living in Malta, irrespective of their ethnic, cultural, linguistic or religious identity. The opinion is irrelevant for the subject matter of this review. (See, ACFC, Fourth Opinion on Malta, 14 October 2016, ACFC/OP/IV(2016)009, *supra* note 127.) Furthermore, the resolution on the Czech Republic contains no reference for language rights in the field of education, justice or public administration. (See, CoM, Resolution CM/ResCMN(2017)8 on the implementation of the FCNM by the Czech Republic, 29 November 2017, *supra* note 133.)

1. Developments in the field of education

In Armenia, the Advisory Committee (just like the Committee of Experts) pointed out the persisting lack of teachers of Assyrian, Kurdish and Yezidi. Authorities were called on to continue monitoring the situation to assess whether the framework for teaching of and in minority languages corresponds to actual needs and take the necessary steps to address any shortcomings.

The very same recommendation was addressed to Romania, where minority languages can be learned in schools with the national minority language as language of instruction (here all subjects with the exception of the Romanian language are taught in the language of a national minority), or in Romanian language schools offering teaching of a national minority language as a subject at the initiative of at least 10–15 parents. The authorities were called on to support less resourceful minorities; improve the opportunities for Roma children to study the Romani language; and ensure that an adequate number of qualified teachers and of teaching and learning materials in minority languages is available at all levels of education. A special recommendation concerns exams in Romanian language and literature: authorities were requested to show more flexibility when carrying out these exams at schools using national minority languages as the medium of education and ensure that the level at which the exam is administered corresponds to the curriculum used to teach the subject.

The same observation was made with regards to exams in Ukrainian in Ukraine, where two basic educational models exist according to the same logic as in Romania (a minority language is used as a language of instruction for all subjects or taught as an elective subject in state language schools). A major problem is the low quality of textbooks and the lack of other teaching materials in minority languages, especially in Romani and Rusyn. These languages also suffer from a lack of qualified teachers. The Advisory Committee was concerned about the possible effects of the recent educational initiatives on the availability of minority language education in the future (cf. Section I.F of this article). Authorities were called on to design comprehensive and long-term measures to increase the availability and quality of state language teaching through a balanced approach using parallel measures to adequately protect and promote the languages of national minorities, including through the introduction of multilingual teaching methodologies.

The importance of this balanced approach was also emphasized in the opinion on Moldova, where minority languages are still taught only at Russian-language schools, leaving people belonging to national minorities with inadequate opportunities for gaining full state language proficiency.

Austria was encouraged to extend the availability of specialized teacher training courses for minority languages, including Romani and including the preschool level; improve access to and the quality of minority language education at the upper secondary level; and consider favourably an amendment to the Private School Act in order to address the long-standing concerns of access to education for people belonging to national minorities outside Burgenland and Carinthia.

Croatia was urged to consult closely with national minority representatives on all questions related to minority language education, including through modern bi- and multilingual methodologies and in integrated environments.

Italy was advised to provide adequate funding for teaching of and in national minority languages, ensure appropriate provision of qualified teachers and textbooks, and pay special attention to the needs of people belonging to the numerically smaller minorities. In Kosovo, Kosovan institutions offer teaching in the Albanian, Turkish and Bosnian languages, whereas Serbian-administered schools offer education in Serbian. Education in the other official language continues to be unavailable in both systems. According to the Advisory Committee, the continuing existence of two separate education systems inevitably perpetuates divisions between communities and carries a move towards monolingualism. Therefore, the authorities should create opportunities for everyone to learn the two official languages of Kosovo and provide adequate teacher training programmes for official and minority languages. They should further ensure adequate first language education opportunities for members of the numerically smaller communities.

Finland was urged to intensify efforts to adopt the Action Plan related to the 2012 Strategy for the National Languages of Finland in order to guarantee that the knowledge and visibility of the Swedish language is maintained in education (and administration). They should continue to support effective access to education in the Sami languages in the Homeland, and develop additional opportunities in the rest of the country's territory where Sami children are present in substantial numbers. The Sami were also singled out in the opinion on Sweden: given the vast geographical area in which they live, the authorities were encouraged to pursue the digital path of ensuring that all Sami students

receive education. Furthermore, the Advisory Committee welcomed the fact that, following its recommendations in the previous cycle, children are no longer required to have basic knowledge of a national minority language in order to be entitled to first language instruction. Also, the requirement of a minimum of five students requesting minority language education has been lifted for Finnish and Yiddish. The most significant concern is the severe shortage of national minority language teachers, especially in preschools, which should be addressed by making this profession more attractive. Teaching time is also a problem: most students receive only about one hour of instruction in the minority language per week, which is insufficient not only for the development of mature literacy, but also for the survival of small minority languages. In its opinion on Norway, the Advisory Committee was mainly concerned with Kven language teaching in various fields including early education, compulsory education (outside the traditional geographical areas as well), higher education, teacher training, and teaching and learning materials. The lack of qualified teachers and teaching materials were also mentioned in connection with Romani and Romanes as a main reason why teaching in these languages is virtually absent in Norway.

In the United Kingdom, while the Advisory Committee was by and large content with the education of Gaelic and Welsh, it called on the authorities to renew their efforts to develop Irish-medium education and Irish language teaching, as well as to consider flexible and pragmatic solutions to allow for a more systematic provision of teaching in and of the Cornish language.

2. Developments in the field of public administration

The Advisory Committee observed in many instances that the right to use minority languages in relations with administrative authorities in the geographical areas inhabited by a substantial number of persons belonging to national minorities is regrettably not (always) applied in practice. This was the case in Armenia and Croatia, where the authorities were called on to carry out an awareness-raising campaign encouraging the use of minority languages in contacts with local administration.

Greater visibility of minority languages in public life and some encouragement for people belonging to national minorities are also needed in Hungary, where the government was also advised to monitor the implementation of legislative provisions on recruitment of municipal employees capable of speaking minority languages.

In addition to make sustained efforts to promote the use of minority languages, Italy was called on to ensure that language help desks are opened in all the municipalities concerned and given the necessary human and financial resources.

The issue of non-implementation is seriously problematic in Kosovo. Not only are people unaware of their language rights but institutions also remain uninformed of their responsibilities, and there is an overall lack of political commitment to further implement the legislation. Further obstacles include the poor quality of translation of legal texts, discrepancies between different official language versions, and the lack of properly trained translators and other personnel proficient in Serbian. Lip service is not enough: the authorities should take strategic and comprehensive steps in order to address these problems.

The situation is not better in Moldova, either. The 1989 Law on Languages establishes the state language (Moldovan/Romanian) in the Latin alphabet as the only official language, and Russian as “language of inter-ethnic communication” to guarantee “real national-Russian bilingualism”. While Gagauz has co-official status in Gagauzia, it is used only very rarely in official communications and even less in written correspondence, not to mention other minority languages. The law gives citizens the choice of using either Russian or the state language (or Gagauz in Gagauzia) when approaching central administrative authorities. Unfortunately, implementation of these provisions remains inconsistent throughout the country. Discrimination on the basis of language has been revealed, in particular with respect to access to justice, with a number of cases where courts refused the use of interpretation services or to respond to complaints submitted in Russian. The Law on Languages also provides that in localities where people belonging to the Bulgarian, Russian and Ukrainian minorities constitute the majority of the population, “the native or other convenient language” is used. The level of implementation of this provision, however, also varies significantly. In some areas mainly Russian is spoken in contacts with local administrative authorities, even to the point that issues of language discrimination towards speakers of the state language arise. The number of speakers who are fully bilingual in the state language and in Russian is decreasing, which means that the aim of “real bilingualism” has not been achieved—in turn, the Moldovan language policy has contributed to the formation of two parallel and mutually exclusive public spheres (similar to what one experiences in Kosovo). Furthermore, there is very little use of Ukrainian in local official

communications, and Romani is not used in any official contacts, not even where Roma constitute the majority of the population.

In Austria, the amendments of the National Minorities Act in 2011 altered the legislative framework governing the use of minority languages in contacts with administrative authorities based on the compromise that had been reached between the federal government and the Land of Carinthia. Accordingly, minority languages may be used in those localities that are included in a closed list of administrative districts, municipalities and individual villages. The list was adopted as a constitutional provision, which means if a location is not on the list, denial of the right to use one's minority language in official contacts cannot be questioned in any court. The Advisory Committee found this to be a major problem, along with the fact that representatives of the Hungarian and Croat minorities in Burgenland were not consulted, despite the fact that the list also exhaustively establishes the localities where these minority languages are admitted for official use. Overall the amended legislative framework has not led to more clarity and the authorities were urged to ensure that the rights contained in Article 10(2) are consistently implemented on the basis of firm and rights-based considerations instead of political negotiations.

Finland was called on to ensure that first language access to social welfare and health services is adequately available, in particular in Swedish and Sami, and that any administrative reforms guarantee the language rights of persons belonging to minorities. In order for the Kven language to be used in the public sphere, Norway was called on to develop a comprehensive and adequately resourced plan to revitalize and promote the language.

In Sweden, a person has the right to use Finnish, Meänkieli or Sami in their dealings with authorities within the administrative areas for the respective languages, and also outside these areas, if the matter can be handled by staff. The Advisory Committee lamented that these legal guarantees remain only partially implemented, mainly due to the lack of staff speaking national minority languages. In particular, elderly people have considerable difficulties accessing health care in their minority language, which should be addressed by authorities by identifying language skills among local staff, offering training to those with limited knowledge of the languages, and rewarding minority language skills in recruitment proceedings.

In Romania, the issue of thresholds was discussed once again. In this context, the Advisory Committee has consistently recommended "a flexible and context-specific

approach with respect to numerical thresholds for the applicability of minority rights”.¹³⁸ The 2001 Law on Public Administration provides for the use of minority languages in administrative territorial units where a minority represents at least 20% of the population, according to the last census. Despite the fact that the law entered into force over 15 years ago, there are no standardized translations of administrative forms into national minority languages and in practice, the right to use one’s minority language in dealings with local authorities is not always respected. Efforts to employ people who speak the minority language in municipalities where the threshold is met are hampered by complaints addressed to the courts. On a number of occasions, the courts found that introducing such a requirement in an offer of employment constitutes an act of discrimination.¹³⁹ Just as in the context of education, the Advisory Committee reminded the Romanian authorities of the importance of striking “a balance between the protection of the state language and the language-related rights of persons belonging to national minorities”.¹⁴⁰

Ukraine, where the language issue continues to polarize society and trigger heated public debates, received the same warning. At the time of the adoption of the Advisory Committee’s opinion, the 2012 Law “On the Principles of the State Language Policy” was under review by the Constitutional Court. The law, while confirming the status of Ukrainian as the sole state language, created conditions for better protection of Russian and other national minority languages in regions where the number of minority language speakers exceeded 10%, according to census data. The Advisory Committee expressed strong concern regarding access to language rights should the law be revoked.¹⁴¹ Notwithstanding the uncertainty surrounding the status of the language law, numerous local self-governments took decisions to recognize minority languages present within their territory as regional languages. This is important because recognition of a minority language as a regional language entailed, pursuant to Article 7 of the language law, its use in the work of local self-government bodies, in state and

¹³⁸ Fourth opinion on Romania, *supra* note 122, 27.

¹³⁹ For example, the High Court of Cassation and Justice in its Decision No. 6324 of 25 September 2013 considered that the condition to speak Hungarian at an average level in a job description of a General Secretary of a village hall in a municipality where 70% of the residents belong to the Hungarian minority was discriminatory. The judgment is available in Romanian at <<http://www.scj.ro>>.

¹⁴⁰ Fourth opinion on Romania, *supra* note 122, 28.

¹⁴¹ In fact, on 28 February 2018 the Constitutional Court ruled the law unconstitutional in its decision No. 2-r/2018. A summary of the judgment in English is available at <<http://www.ccu.gov.ua/sites/default/files/docs/2-r-2018.doc>>.

municipal institutions and in other spheres of public life. However, problems have been encountered in practice with regard to access to this right. The possibility of using minority languages in relations with administrative authorities is further hampered by the Law “On State Service”, adopted in 2015, which provides for the exclusive use of the state language by public officials, in sharp contrast with the provisions of the (then effective) language law and Article 10 of the Framework Convention.

The UK was urged to fully implement the Gaelic, Scots and Welsh language strategies, earmark sufficient resources for this purpose and monitor outcomes so as to ensure that the active use of minority languages is maintained in the public sphere. The Advisory Committee was disappointed that there had been little progress on the Irish Language Bill. Notwithstanding public support, the Northern Ireland Executive rejected the competent minister’s proposal, and a separate strategy to enhance the Ulster-Scots language followed the same fate. The UK government was called on to help create the political consensus needed for such adoption. In addition, the use and visibility of Cornish in public life should be improved, and authorities were urged to reinstate immediately the previous level of funding and consider the possibility of adopting a Cornish Language Act.

V Concluding Remarks

In 2017, the UN, the OSCE, the EU and the Council of Europe continued their vigorous efforts to facilitate the implementation of international instruments relevant for minorities. It appears that in the activities of international organizations, language rights receive less attention compared with other rights of minorities, with the exception of the monitoring bodies of the two Council of Europe instruments. Recommendations on the implementation of the Language Charter and the Framework Convention often emphasized the importance of a close cooperation with the representatives of national minorities, and awareness-raising among the minority population as well as state authorities of existing language rights.

In dealings with administrative authorities, persons belonging to national minorities often cannot use their language rights in practice, notwithstanding the sometimes generous legal framework. In the field of education, the lack of teachers and quality teaching materials in minority languages were identified as main problems. Another common pattern is that while in many countries there are well functioning systems for

'bigger' minority languages, the needs of numerically smaller communities are often neglected. In the case of the Roma, not only education in or of their language is problematic but also their access to education in general, let alone the use of Romani in administration. The situation of minority rights are particularly worrisome in Ukraine, Romania, Moldova and Kosovo. While appreciating the legitimate aim of states in protecting their state language, several international bodies underlined the need for a balanced approach in the support of the state language *versus* minority languages. This is especially important when taking into consideration that the language issue frequently becomes a major source of tensions and leads to divided societies.

Although the role of the two Council of Europe instruments cannot be underestimated in promoting language rights of minorities, the recommendations of their monitoring bodies are not binding, and so, after all, implementation depends on the benevolence of individual states. In turn, the courts of the Council of Europe and the European Union have relatively strong enforcement mechanisms, but so far none of them showed great interest in protecting minority language rights. The abstention of the European Union as a whole in national minority issues is becoming increasingly conspicuous by the day. The author considers that international organizations should take a much firmer stance as regards the protection of language rights of minorities not only because this has proved essential to stability and peace but also because the appreciation of minority communities and identities is a *sine qua non* of a Europe "united in diversity". Most importantly, it should be universally recognized that minority language rights are human rights, just as important as any other, and ensuring them is not a mere choice but a legal duty of every state.