

# **Language Rights of European Minorities in the Administration of Justice, Public Administration and Public Services: International Developments in 2018**

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## **Abstract**

This article provides an overview of European minorities' language rights in the administration of justice, public administration, and public services in 2018. 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 with special focus on 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 will be outlined.

## **Keywords**

Language rights – Regional or minority languages – Administration of justice – Public administration – Public services – Topographical indications

## **1. United Nations (UN)**

### **1.1. 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 2018, during which it considered 15 States parties' reports, including five from Europe (Belarus, Bulgaria, Hungary, Lithuania, Norway).<sup>1</sup> While all concluding observations referred to minorities (in the case of Norway: indigenous peoples), they did so mostly in the context of discrimination, hate speech and hate crimes, especially in relation to Roma people. The language rights of minorities were mentioned in two instances only. *Norway* was called on to increase the recruitment and training of Sami language teachers and increase the availability of Sami language instruction for Sami children in kindergarten in

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<sup>1</sup> 122<sup>nd</sup> session (12 March – 6 April 2018); 123<sup>rd</sup> session (2-27 July 2018); 124<sup>th</sup> session (8 October – 2 November 2018), at <[http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/SessionsList.aspx?Treaty=CCPR](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/SessionsList.aspx?Treaty=CCPR)>.

all regions.<sup>2</sup> With regard to *Bulgaria*, the Committee noted with concern the new draft legislation targeting extremist religious groups, which, *inter alia*, prohibits preaching in any language except Bulgarian and requires that all election campaigns and voting materials are in Bulgarian only, preventing those who only speak minority languages from participating effectively in the electoral process. Bulgaria was called on to remove these linguistic barriers, which limit freedom of religion and freedom of expression.<sup>3</sup>

During its three sessions in 2018, the Committee also examined 73 communications submitted by individuals under the Optional Protocol who claimed that their rights under the ICCPR had been violated by a State party. More than half (40) of the complaints were submitted against European states (Armenia, Azerbaijan, Belarus, Denmark, France, Hungary, the Netherlands, Russia, Spain, Turkey, Ukraine), but none of them concerned the language rights of minorities.<sup>4</sup>

## 1.2. Human Rights Council

During its three regular sessions in 2018, the UN Human Rights Council (UNHRC) – an inter-governmental body responsible for the promotion and protection of human rights around the globe – adopted several resolutions relevant to minority rights,<sup>5</sup> including one that exclusively dealt with the rights of persons belonging to national or ethnic, religious and linguistic minorities. The resolution urged states to, *inter alia*, promote the adequate representation of persons belonging to minorities in national and local institutions, including municipalities, schools and police forces.<sup>6</sup> Resolution 39/13 focused on the rights of indigenous peoples, encouraging states to participate actively in the organization and implementation of the activities relating to the International Year of Indigenous Languages in 2019, and “to uphold

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<sup>2</sup> Human Rights Committee: Concluding observations on the seventh periodic report of Norway, 25 April 2018, CCPR/C/NOR/CO/7, para. 37.

<sup>3</sup> Human Rights Committee: Concluding observations on the fourth periodic report of Bulgaria, 15 November 2018, CCPR/C/BRG/CO/4, paras. 34-35.

<sup>4</sup> However, one case might be interesting for language rights in general: here, a Belarusian national requested Belarus authorities to provide him with an official response in his mother tongue (i.e. Belarusian, not Russian) and claimed to be victim of discrimination on the ground of language. Human Rights Committee: Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2199/2012, 27 April 2018, CCPR/C/122/D/2199/2012.

<sup>5</sup> For resolutions adopted at the 37<sup>th</sup> (26 February – 23 March 2018) and the 38<sup>th</sup> (18 June to 6 July 2018) sessions, see UNGA, Report of the Human Rights Council, A/73/53, New York, 2018, at <[http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/73/53](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/73/53)>. For resolutions adopted at the 39<sup>th</sup> session (10 to 28 September 2018), see

<<https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session39/Pages/39RegularSession.aspx>>.

<sup>6</sup> Human Rights Council resolution 37/14, 22 March 2018, A/HRC/37/L.25, 56-59.

the spirit of the Year” by drawing attention to the critical loss of indigenous languages and the need to preserve, revitalize and promote them.<sup>7</sup>

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 three sessions in 2018 reviewing 42 countries as part of the third cycle, including 11 European states (France, Liechtenstein, Luxembourg, Montenegro, Romania – 29<sup>th</sup> session; Azerbaijan, Germany, Russia – 30<sup>th</sup> session; Malta and Monaco – 31<sup>st</sup> session).<sup>8</sup> While all of the 2018 European UPR reports (except the ones on microstates) mentioned national minorities and/or indigenous peoples, only the one on Serbia made direct reference to the (language) rights of minorities in the areas of justice and public administration.<sup>9</sup> In Serbia, an Action Plan for the Realization of the Rights of National Minorities had been drawn up to ensure the full implementation of the legislative framework and to measure progress in the realization of the rights of national minorities. Serbia was praised for the adoption of the action plan, which also aims to increase the participation of minorities in the work of public institutions and the use of their languages.<sup>10</sup>

### **1.3. Forum on Minority Issues & Special Rapporteur on Minority Issues**

The Forum on Minority Issues provides 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 and initiatives for the implementation of 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.

The recommendations of the tenth session of the Forum, held on 30 November and 1 December 2017 on the theme of ‘Minority youth: towards diverse and inclusive societies’, were published in January 2018. Language rights are essential for minority youth in many areas including education, media and participation in public life, and this was discussed in detail. As a fourth agenda item, the role of minority youth in promoting peace and stability was

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<sup>7</sup> Human Rights Council resolution 39/13, 28 September 2018, A/HRC/39/L.18/Rev.1.

<sup>8</sup> See the timetables of review at <<http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRSessions.aspx>>.

<sup>9</sup> Reports of the Working Group at <<http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>>. The reports on Malta and Monaco were not available as of 9 January 2019.

<sup>10</sup> Report of the Working Group of the UPR on Serbia, A/HRC/38/17, 18 April 2018, paras. 19. and 52. Cf. also paras. 57, 63, 69, 100 and 106.

emphasized. No recommendation was made regarding the administration of justice or public administration.<sup>11</sup> The eleventh session of the Forum, held on 29 and 30 November 2018, focused on the theme ‘Statelessness: A Minority Issue’,<sup>12</sup> and as such has little relevance for this review.

In January 2018 Mr. Fernand de Varennes submitted his first report to the UNHRC and the General Assembly in his capacity as Special Rapporteur on minority issues, summarizing the mandate holder’s activities in 2017<sup>13</sup> as well as his priorities for the year 2018.<sup>14</sup> Although none of the four thematic priorities – that is: statelessness, ethnic conflicts, hate speech, and the human rights dimensions of education and minority rights – is particularly relevant for the rights of minorities before judicial and administrative authorities, clarifying “the sometimes misunderstood human rights dimensions” of the rights of minorities may have a major impact on how states interpret and implement these provisions in the future.

In addition to participating at many events where he emphasized the importance of minority language rights, the new Rapporteur led a country mission to Slovenia from 5 to 13 April “to gather first-hand information on human rights issues involving minorities”.<sup>15</sup> He praised the country’s long established and strong commitment towards its minorities, especially the Hungarians and the Italians, whereas he found the protection of other communities (e.g. Roma people) to be less effective and comprehensive. Areas of concern included a lack of bilingual services where they should be and bilingual officials either being absent or lacking the required fluency levels. A review of hiring policies, language testing and bilingualism requirements for civil servants was recommended to remedy these issues. The Special Rapporteur further suggested that legislation for the Ombudsman and the Advocate should be reviewed to remove ambiguities and provide for more effective legal remedies for victims of discrimination and other human rights violations.<sup>16</sup>

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<sup>11</sup> 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>>.

<sup>12</sup> See <<https://www.ohchr.org/EN/HRBodies/HRC/Minority/Pages/Session11.aspx>>. Recommendations of the Forum are discussed in in Anna Barlow, “Participation, Citizenship and Transfrontier Exchanges – 2018” in this volume.

<sup>13</sup> This has been discussed in detail in the previous issue of EYMI, in N. Nagy: Language rights of minorities in the areas of education, the administration of justice and public administration: European developments in 2017. *European Yearbook on Minority Issues 2017*, Brill, 2019, pp. 63-97.

<sup>14</sup> Report of the Special Rapporteur on minority issues, 16 January 2018, A/HRC/37/66, at <<https://undocs.org/A/HRC/37/66>>, para. 24.

<sup>15</sup> Report of the Special Rapporteur on minority issues – Statelessness: a minority issue, 20 July 2018, A/73/205, at <[http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/73/205](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/73/205)>, para. 3.

<sup>16</sup> *Ibid.* paras. 3-9.

#### **1.4. 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 specifically mandated to deal with indigenous peoples' issues. While the Special Rapporteur and the Expert Mechanism are special procedures under the UNHRC, the Permanent Forum is a high-level advisory body established by the Economic and Social Council.

In 2018, the Special Rapporteur, Victoria Tauli-Corpuz, carried out two country visits outside Europe (in Guatemala<sup>17</sup> and Ecuador<sup>18</sup>), while her annual report focused on attacks against and the criminalization of indigenous human rights defenders, and including potential prevention and protection measures.<sup>19</sup> In addition to the general problem of indigenous individuals' access to justice, the report calls attention to the "frequently flaunted" procedural guarantees. It found that indigenous peoples "are unlikely to be in a position to demand the assistance of an interpreter, as in most countries where indigenous languages are spoken interpretation is rarely or not available within the judicial system, nor do ordinary justice systems give much, if any, consideration to the customs, traditions and legal systems of indigenous peoples".<sup>20</sup>

The Expert Mechanism held its eleventh session in Geneva from 9 to 13 July 2018 where it adopted its study and advice on free, prior and informed consent.<sup>21</sup> The document underlined that 'informed' consent implies that "the information should be presented in a manner and form understandable to indigenous peoples, including translation into a language that they understand".<sup>22</sup> While the importance of access to justice in indigenous languages was

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<sup>17</sup> Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Guatemala, A/HRC/39/17/Add.3, 10 August 2018, at <[http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/39/17/Add.3](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/17/Add.3)>.

<sup>18</sup> End of mission statement by the United Nations Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz on her visit to Ecuador, at <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23864&LangID=E>>.

<sup>19</sup> Report of the Special Rapporteur on the rights of indigenous peoples, A/HRC/39/17, 10 August 2018, at <[http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/39/17](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/17)>.

<sup>20</sup> *Ibid.* para. 50.

<sup>21</sup> Study of the Expert Mechanism on the Rights of Indigenous Peoples: Free, prior and informed consent: a human rights-based approach, A/HRC/39/62, 10 August 2018, at <[http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/39/62](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/62)>.

<sup>22</sup> *Ibid.* 27. Cf. *Ibid.* Expert Mechanism advice No. 11, para. 7. at 19.

discussed at the panel on recognition, reparation and reconciliation,<sup>23</sup> a separate panel was dedicated to cultural heritage, indigenous languages and traditional knowledge.<sup>24</sup>

In 2018, the Expert Mechanism undertook its first two country missions under its new mandate to Finland from 10 to 16 February and to Mexico from 26 February to 2 March. The purpose of the mission to Finland was to provide assistance and advice on the amendments to the Sámi Parliament Act, which is the basic law for the Sámi self-government, and therefore crucial for the rights of minorities in the areas of justice and public administration. The Expert Mechanism's advisory note focuses on the definition of Sámi for the purpose of the electoral roll and the obligation of the State to negotiate with the Sámi.<sup>25</sup>

Preparations for the International Year of Indigenous Languages in 2019 occupied a major role in the annual session of the Permanent Forum, while access to justice was only marginally mentioned.<sup>26</sup>

## **2. Organization for Security and Cooperation in Europe (OSCE)**

### **2.1. Office for Democratic Institutions and Human Rights (ODIHR)**

The Office for Democratic Institutions and Human Rights (ODIHR) provides support and expertise to states and civil society to promote democracy, rule of law, human rights, tolerance and non-discrimination. It organizes the annual Human Dimension Implementation Meetings (HDIMs) where the participating states can discuss the application of their commitments in the human dimension of security. In 2018 the HDIM took place in Warsaw between 10-21 September.<sup>27</sup> The rights of minorities, including language rights, were discussed most prominently at Working Session 8, which focused on tolerance and non-discrimination, and Working Session 16, which focused on combating racism, xenophobia, intolerance and discrimination. UN Special Rapporteur on Minority Issues De Varennes participated and emphasized that the denial of the human rights of persons belonging to minorities, including by discrimination on the ground of language, can contribute to tensions and feelings of exclusion.<sup>28</sup>

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<sup>23</sup> Annual report of the Expert Mechanism on the Rights of Indigenous Peoples, 10 August 2018, A/HRC/39/68, at <[http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/39/68](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/68)>, paras. 52-57.

<sup>24</sup> *Ibid.* paras. 74-81.

<sup>25</sup> *Ibid.* paras. 42-51.

<sup>26</sup> Permanent Forum on Indigenous Issues, Report on the seventeenth session, 16–27 April 2018, E/2018/43-E/C.19/2018/11, at <<https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/06/Report-on-ForumEnglish.pdf>>.

<sup>27</sup> OSCE ODIHR, 2018 Human Dimension Implementation Meeting, Consolidated Summary, at <<https://www.osce.org/odihr/398840?download=true>>.

<sup>28</sup> *Ibid.* 40-41.

A number of delegations and civil society representatives referred to systemic restrictions on language rights of national minorities in several participating States.<sup>29</sup> Although most of the statements and recommendations addressed language issues in education, justice and public administration were also mentioned. The Mikó Imre Association for the Protection of Minority Rights called on participating States in the Organization for Security and Cooperation in Europe (OSCE) to “commit to a more comprehensive approach toward ensuring the use of minority languages in relations with the public administration and within the judicial system”, including by setting a legislative framework with concrete measures for implementation and sanctioning mechanisms, as well as allocating the necessary human and financial resources.<sup>30</sup> As far as individual countries are concerned, *Latvia* received the same recommendation as at the 2017 HDIM, namely that it should repeal the provisions for depriving local councillors and MPs of their mandates for allegedly having insufficient command of the Latvian language.<sup>31</sup>

## **2.2. High Commissioner on National Minorities (HCNM)**

The year 2018 marked the 20th anniversary of the Oslo Recommendations regarding the Linguistic Rights of National Minorities, launched by the OSCE High Commissioner on National Minorities in 1998. The Oslo Recommendations seek to provide guidance to OSCE participating States on how best to ensure the linguistic rights of national minorities within their borders and to freely use their language in, *inter alia*, their relations with administrative authorities and public services. The anniversary conference brought together representatives of the OSCE participating States, civil society, experts and policy-makers to discuss best practices for a balanced language policy in the OSCE area as well as contemporary challenges, such as the accommodation of diversity in times of resurgent nationalism and divisive rhetoric. For the occasion an edited volume on ‘Language Policy and Conflict Prevention’ was launched with a foreword by OSCE High Commissioner Lamberto Zannier and several articles directly relevant for the rights of minorities in the field of public administration and justice.<sup>32</sup>

In 2018 the High Commissioner addressed the Plenary Meeting of the OSCE Permanent Council on two occasions, his primary message being that “[s]triking a balance between the legitimate interest in a strong State language and the required respect for minority languages is

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<sup>29</sup> *Ibid.* 41.

<sup>30</sup> *Ibid.* 147-148.

<sup>31</sup> *Ibid.* 86.

<sup>32</sup> See <<https://www.osce.org/hcnm/371676>>.

a delicate business”.<sup>33</sup> In 2018 the High Commissioner continued his dialogue with the Ukrainian government, including a visit to the Zakarpattia (*i. e.* Transcarpathia) region in February. Since the situation continues to be tense because of the new education law, as well as abolishing the law ‘On the Principles of State language policy’, the HCNM reiterated the need to depoliticize language issues in the country. He also provided expertise to the National Agency for Civil Service of Ukraine with regard to implementing the new language requirements for civil servants.<sup>34</sup> The adoption of the first reading of the draft law ‘On ensuring the functioning of Ukrainian as a State language’ raised further concerns, and the HCNM advised “to proceed in a way that is inclusive in substance and in process and that preferably relies on positive rather than punitive measures to strengthen the State language”.<sup>35</sup> Language issues were high on the agenda of the HCNM during his country visits to Slovakia, Albania, Estonia, Latvia, Kyrgyzstan, Uzbekistan,<sup>36</sup> Croatia, Serbia, Georgia and Russia as well,<sup>37</sup> although without explicitly mentioning the areas of justice or public administration.

### 3. European Union (EU)<sup>38</sup>

Although the EU was established as an economic organization without any specific competence on human or minority rights, during the decades it has become an all-encompassing political organization, which has more influence on its member states’ legal systems than any other intergovernmental organization. In fact, the European Court of Justice (ECJ) claimed that human rights are “enshrined in the general legal principles of Community law and protected by the Court” as early as 1969<sup>39</sup> and since then in many cases confirmed the role of the EU in the protection of human rights.<sup>40</sup> Furthermore, in 2009 the Lisbon Treaty conferred legally binding status on the Charter of Fundamental Rights, giving a further impetus for broadening the EU’s

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<sup>33</sup> Address by Lamberto Zannier OSCE High Commissioner on National Minorities to the 1188<sup>th</sup> Plenary Meeting of the OSCE Permanent Council, 8 June 2018, at <<https://www.osce.org/permanent-council/384168?download=true>>, 2-3.

<sup>34</sup> *Ibid.* 6-7.

<sup>35</sup> Address by Lamberto Zannier OSCE High Commissioner on National Minorities to the 1199<sup>th</sup> Plenary Meeting of the OSCE Permanent Council, 31 October 2018, at <<https://www.osce.org/permanent-council/401942?download=true>>, 8.

<sup>36</sup> Address by Lamberto Zannier, 8 June 2018, *op. cit.* note 32, 8-11.

<sup>37</sup> Address by Lamberto Zannier, 31 October 2018, *op. cit.* note 34, 6-9.

<sup>38</sup> Unless otherwise indicated, all documents referred to in this section are available at <<http://eur-lex.europa.eu/>>.

<sup>39</sup> C-29/69, *Stauder v Ulm* [1969] ECR 4119

<sup>40</sup> Cf. C-11/70, *Internationale Handelsgesellschaft v Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1971] ECR 1125; C-4/73, *Nold v Commission* [1974] ECR 491; Case 36/75, *Rutili v Minister for the Interior* [1975] ECR 1219; Case 44/79, *Hauer v Land Rheinland-Pfalz* [1979] ECR 3727; Case 5/88, *Wachauf v Germany* [1989] ECR 2609; Case C-13/94, *P v S and Cornwall CC* [1996] ECR I-2143; Case C-36/02, *Omega* [2004] ECR I-9609; Case C-540/03, *European Parliament v Council* [2006] ECR I-5769.



human rights competence.<sup>41</sup> The protection of minorities was also a priority during the eastern enlargement (enshrined in the famous Copenhagen criteria), and since then many authors have claimed that the rights of minorities should be an internal concern for the EU, not only an external one.<sup>42</sup>

Still, as a recent European Parliament resolution admits, “minority issues have not been high enough on the EU agenda”<sup>43</sup> which is why every minority-relevant instrument and action by EU institutions are most welcome. In 2018 there was no significant contribution on minority rights in the areas of justice or public administration by the European Union Agency for Fundamental Rights (FRA)<sup>44</sup> or the Court of Justice of the European Union. However, the ‘Minority SafePack’ European Citizens’ Initiative progressed,<sup>45</sup> and the European Parliament adopted two relevant resolutions. In the resolution on protection and non-discrimination with regard to minorities, the Parliament confirmed its belief that “the EU has a responsibility to protect and promote the rights of minorities”, and the necessity “to improve the EU’s legislative framework to protect the rights of persons belonging to minorities in a comprehensive manner”.<sup>46</sup> Member States of the EU are encouraged to ensure that the right to use a minority language is upheld, to protect linguistic diversity within the Union in accordance with the EU Treaties, and to respect linguistic rights in communities where there is more than one official language. At the same time, the Commission should strengthen the promotion of the teaching and use of regional and minority languages.<sup>47</sup>

More specific details are given in European Parliament resolution of 13 November 2018 on minimum standards for minorities, which dedicates an entire section to language rights.<sup>48</sup> As far as administrative authorities and public services are concerned, the Commission and the Member States are encouraged to allow and promote “the use of regional or minority languages

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<sup>41</sup> For an overview on the EU’s human rights competence and related literature, see OHCHR Regional Office for Europe: The European Union and International Human Rights Law, at [https://europe.ohchr.org/Documents/Publications/EU\\_and\\_International\\_Law.pdf](https://europe.ohchr.org/Documents/Publications/EU_and_International_Law.pdf).

<sup>42</sup> See e.g. N. Nagy: Double Standard in a Peripheral Policy of the European Union: the Issue of Minority Protection. In: Andrásy György – Jyrki Kakönen – Nagy Noémi (eds.): European Peripheries. Studia Europaea 2012 - Jurisprudentia et Practica. Pécs, 2012. pp. 159-173.

<sup>43</sup> European Parliament Resolution of 7 February 2018 on protection and non-discrimination with regard to minorities in the EU Member States (2017/2937(RSP)), para. 3.

<sup>44</sup> In the annual report of the FRA, minorities were referred to in the context of equality, non-discrimination, racism, xenophobia and related intolerance, and no reference was made to language rights. FRA, 2018 Fundamental Rights Report, at <http://fra.europa.eu/en/publication/2018/fundamental-rights-report-2018>.

<sup>45</sup> See Katharina Crepaz, “The Minority SafePack Initiative – A European Participatory Process Supporting Cultural Diversity” in this volume.

<sup>46</sup> *Ibid.* para. 4.

<sup>47</sup> *Ibid.* paras. 16-18.

<sup>48</sup> European Parliament Resolution of 13 November 2018 on minimum standards for minorities in the EU (2018/2036(INI)).

in practice, in line with the principle of proportionality”, whereas Member States should “make information and public services available in these languages, including on the internet, in areas with substantial numbers of people belonging to national and ethnic minorities”.<sup>49</sup> The use of regional or minority languages should be promoted at the local and regional levels, with the active role of municipal authorities.<sup>50</sup> The visual representation of minority languages is essential to protecting national minority rights, therefore they should be used on safety labels, public announcements, place names, topographical designations, road signs and in the names of administrative and public institutions.<sup>51</sup>

#### **4. Council of Europe (CoE)**

Several international treaties relevant to the linguistic rights of minorities have been adopted under the aegis of the Council of Europe (CoE), the most important ones being the European Charter for Regional or Minority Languages (ECRML) and the Framework Convention for the Protection of National Minorities (FCNM). In addition, although the European Convention on Human Rights (ECHR) is not a minority-specific instrument, in light of the jurisprudence of the European Court of Human Rights (ECtHR), the scope of the Convention extends to the protection of minority rights. In 2018 the Court did not consider any cases where minority language issues were dealt with in the context of justice or public administration.

##### **4.1. European Charter for Regional or Minority Languages (ECRML)**

The ECRML (Language Charter) 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 an enhanced protection, and then they have to select at least 35 concrete undertakings in respect of each language. For the purposes of this review, three articles of the Charter are relevant: Article 9 on judicial authorities, Article 10 on administrative authorities and public services, and Article 7 in the case of those minority languages which are not covered by Part III of the Charter.

As part of the monitoring process of the Charter, eight state periodical reports were submitted in 2018: the Czech Republic’s fourth report, Germany’s sixth report, Hungary’s

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<sup>49</sup> *Ibid.* para. 69.

<sup>50</sup> *Ibid.* paras. 71-72.

<sup>51</sup> *Ibid.* paras. 73-74.

seventh report, Luxembourg's fifth report, the Slovak Republic's fifth report, Spain's fifth report, Switzerland's seventh report and the United Kingdom's revised fifth report.<sup>52</sup> The Committee of Experts issued only one evaluation report in 2018, namely on Finland.<sup>53</sup> Furthermore, the evaluation reports on Norway<sup>54</sup> and Ukraine,<sup>55</sup> adopted in 2017, were made public. Six Committee of Ministers' recommendations were adopted regarding Austria,<sup>56</sup> Cyprus,<sup>57</sup> Finland,<sup>58</sup> Norway,<sup>59</sup> Romania,<sup>60</sup> and Ukraine.<sup>61</sup> In the following, developments in the individual countries will be discussed in light of the Committee of Experts' evaluation reports and the Committee of Ministers' recommendations.

In the case of Austria, Cyprus and Romania, only Committee of Ministers' recommendations were issued in 2018. No recommendation relevant for the purposes of this paper was addressed to Cyprus. *Austria* was recommended to adopt a structured policy for the protection and promotion of all minority languages, especially in Vienna, to create favourable conditions for their use in public life, and to take practical measures for the use of the Burgenland-Croatian, Hungarian and Slovenian languages before the relevant judicial and administrative authorities. *Romania*, in turn, should reconsider the thresholds for official use of minority languages in the administration.<sup>62</sup>

*Finland* submitted its fifth periodical report more than six years(!) after the due date for submission. This delay seriously hampers the effectiveness of the monitoring mechanism in the country. All in all, Swedish as a second national language still has a strong position, nevertheless, there are shortcomings in its use before judicial and administrative authorities, and there is a general lack of awareness of the minority languages in the administration. Concerning the legal framework, the Committee of Experts welcomed the modification of the

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<sup>52</sup> All the state periodical reports as well as the reports of the Committee of Experts of the European Charter for Regional or Minority Languages (COMEX) and the recommendations of the Committee of Ministers (CoM) are available at <<https://www.coe.int/en/web/european-charter-regional-or-minority-languages/reports-and-recommendations>>.

<sup>53</sup> COMEX, Fifth report of the Committee of Experts in respect of Finland, 22 March 2018, CM(2018)114.

<sup>54</sup> COMEX, Seventh report of the Committee of Experts in respect of Norway, 24 November 2017, CM(2018)88-final.

<sup>55</sup> COMEX, Third report of the Committee of Experts in respect of Ukraine, 24 March 2017, CM(2017)97.

<sup>56</sup> CoM, Recommendation CM/RecChL(2018)2 on the application of the ECRML by Austria, 4 April 2018.

<sup>57</sup> CoM, Recommendation CM/RecChL(2018)1 on the application of the ECRML by Cyprus, 4 April 2018.

<sup>58</sup> CoM, Recommendation CM/RecChL(2018)5 on the application of the ECRML by Finland, 3 October 2018.

<sup>59</sup> CoM, Recommendation CM/RecChL(2018)4 on the application of the ECRML by Norway, 4 July 2018.

<sup>60</sup> CoM, Recommendation CM/RecChL(2018)3 on the application of the ECRML by Romania, 4 April 2018.

<sup>61</sup> CoM, Recommendation CM/RecChL(2018)6 on the application of the ECRML by Ukraine, 12 December 2018.

<sup>62</sup> The issue of thresholds was discussed in great depth in the Committee of Experts' last report on Romania (see my paper in the previous issue of EYMI: N. Nagy: Language rights of minorities in the areas of education, the administration of justice and public administration: European developments in 2017. European Yearbook on Minority Issues 2017, Brill, 2019, pp. ???) as well as by the Advisory Committee during the last monitoring cycle of the Framework Convention (see the next section of this paper).

Language Act by which, in the context of a municipal merger, a bilingual municipality shall not become monolingual even if in the newly constituted municipality the number of minority language speakers is lower than the one prescribed by the Act. Other welcome amendments include putting the onus on the national authorities to send correspondence to municipalities both in Finnish and Swedish, relieving the municipal authorities of some translation costs, as well as extending the obligation of the national authorities to issue notices and minutes in both languages.<sup>63</sup> As far as the use of minority languages by judicial authorities is concerned, a reform is due to be implemented in 2019 foreseeing the reduction of the number of district courts and branches. As a result, the number of bilingual district courts will be lowered from eight to five. The authorities claim that the linguistic rights of the Swedish speakers will be preserved by creating Swedish language departments with a sufficient number of Swedish-speaking judges in bilingual courts. According to the Committee of Experts, the scarce availability of court staff proficient in Swedish remains a problem, whereas the number of Swedish-speaking judges is acceptable. In the Sami Homeland, very few people decide to use Sami when addressing the District Court of Lapland. The availability of forms in the Sami languages is generally limited. Although reportedly there were no requests for Sami forms, the authorities should proactively make available services in the Sami language.<sup>64</sup>

Regarding administrative authorities in Finland, a Population Information System is used to find out people's own language in order to, ideally, provide them with services in that language, at least in the case of Swedish and Sami. However, the System does not offer a veritable picture of the number of speakers because it allows the indication of only one language per person, while many people are plurilingual. The authorities are currently pondering a possible modification of the System which the Committee of Experts would welcome.<sup>65</sup> Swedish speakers can communicate in Swedish easily with the national authorities. On the other hand, at the municipal level the situation varies a lot. The websites of the municipalities, for instance, are translated into Swedish poorly or too late. In his 2015 report, the Chancellor of Justice brought up concerns over the diminishing use of Swedish. Except in Ostrobothnia, the administration relies on individual Swedish-speaking or bilingual public officials, or interpreters and translation services. Less and less training materials and guides for authorities are available in Swedish.<sup>66</sup> With regard to the Sami languages, the rights of Sami speakers to

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<sup>63</sup> Fifth report of the Committee of Experts in respect of Finland, *op. cit.* note 49, paras. 9-10.

<sup>64</sup> *Ibid.* paras. 61-65.

<sup>65</sup> *Ibid.* paras. 66-68.

<sup>66</sup> *Ibid.* paras. 71-72.

access services in their own language are far from fully realised. Municipal authorities seem not to be aware of their obligations under the Sami Language Act, and sometimes, Sami speakers are told to speak in Finnish because they are fluent in it.<sup>67</sup> While Finland's legislation provides for the use of Swedish and the Sami languages in the provision of public services in the same way as required of the administrative authorities, this often does not happen in practice.<sup>68</sup> Concerning place names, the Committee of Experts welcomed the fact that a digital archive had been created that soon would also include place names in Swedish and Sami. Although it is for the municipality to decide, in connection with a municipal merger, to what extent the street signs of an area that was previously monolingual are to be replaced by bilingual signs, the Committee encouraged the authorities to adopt bilingual place names whenever traditional ones exist.<sup>69</sup>

The evaluation report on *Norway* emphasized that the overall demand for the use of the Sami languages in contact with judicial authorities is sparse which is mainly due to the lack of trained interpreters. Good news, on the other hand, is that staff recruitment in the penitentiary system increasingly takes into consideration the knowledge of North Sami.<sup>70</sup> Progress has been made with the use of Sami special characters in central administration, including for family names, however, a further inclusion of Sami special characters on online forms is still needed, *inter alia* in tax administration. The use of minority languages in contact with administrative authorities and public services is also characterised by the sparse demand and the lack of trained interpreters. During the on-the-spot visit, the interlocutors expressed concerns about the potential negative effect of the pending national reform of the territorial administrative units.<sup>71</sup> The authorities were further called on to continue their efforts to use or adopt additional place names in Lule Sami and South Sami, in cooperation with the speakers. (The respective undertaking was evaluated as only partly fulfilled for these two languages, whereas it was fulfilled in the case of North Sami.)<sup>72</sup>

Turning to *Ukraine*, the Committee of Ministers formulated two recommendations in the areas of justice and public administration: authorities should ensure that the Part III languages can be used in practice in the field of administration, and to promote the adoption and use of traditional and correct forms of place names in the minority languages. The

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<sup>67</sup> *Ibid.* para. 74.

<sup>68</sup> *Ibid.* para. 79.

<sup>69</sup> *Ibid.* para. 81.

<sup>70</sup> Seventh report of the Committee of Experts in respect of Norway, *op. cit.* note 50, para. 13.

<sup>71</sup> *Ibid.* para. 14.

<sup>72</sup> *Ibid.* Sections 2.3, 2.4 and 2.7.

Committee of Experts, at the outset of their report, expressed deep concern for the situation of the minority language users in the illegally annexed Crimea where the Charter has been *de facto* not applied. Furthermore, the absence of information about the practical implementation of a considerable number of provisions indicates that no structured approach exists for the application of Charter undertakings in Ukraine.<sup>73</sup> In judicial proceedings, only languages that have been granted the status of ‘regional language’ pursuant to the Law of Ukraine ‘On the Principles of State Language Policy’ may be used. This implies that the respective Charter undertakings are not fulfilled for Belarusian, German, Greek, and Moldovan whose introduction as regional languages is pending. Russian seems effectively to be used in practice and there also seems to be some use of Hungarian (in Transcarpathia) and of Romanian (in the Chernivtsi region). The Belarusian, Bulgarian, Gagauz, German, Greek, Polish, Slovak, and Yiddish languages, however, are still not used before judicial authorities in conformity with Ukraine’s undertakings under the Charter.<sup>74</sup> In public administration, only Russian, Hungarian and Romanian (the latter two at local level and only to a certain extent) are effectively used by local and regional authorities. Bulgarian, Crimean Tatar (in the Kherson region), Gagauz, and Polish have only a symbolic presence in local administration. The other minority languages are effectively not used by regional or local authorities. Additional legal, practical and financial measures also need to be taken to facilitate the publication by regional authorities of their official documents in the relevant minority languages, as well as the use by regional and local authorities of minority languages in debates in their assemblies. The Committee of Experts urged Ukrainian authorities to take organisational measures such as the appointment of public service employees who have a knowledge of the given minority language, and to encourage the use of minority languages in administration, *inter alia* by making official documents in the minority languages more easily available and by ensuring that signs on administrative buildings and in offices have inscriptions in minority languages.<sup>75</sup>

Strangely, the Committee of Experts – in contrast with the Advisory Committee to the Framework Convention – did not mention that in the examined period the Law ‘On the Principles of the State Language Policy’ was under review by the Constitutional Court of Ukraine,<sup>76</sup> let alone that a law on state service was adopted in 2015 providing for the exclusive

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<sup>73</sup> Third report of the Committee of Experts in respect of Ukraine, *op. cit.* note 51, Executive Summary.

<sup>74</sup> *Ibid.* paras. 21-22.

<sup>75</sup> *Ibid.* paras. 23-28.

<sup>76</sup> 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/en/docs/2058>>.

use of the state language by public officials. While the Advisory Committee, in its opinion adopted exactly two weeks before the Committee of Experts' report, expressed its deep concern (see the next section), the Committee of Experts appeared to turn a blind eye to recent events and kept insisting throughout its report that Ukrainian authorities should take active steps to ensure the application of the 2012 Language Law.

#### **4.2. Framework Convention for the Protection of National Minorities (FCNM)**

Although both the Language Charter and the Framework Convention contain provisions on language use in the areas of justice and public administration, due to the different nature of the undertakings of the two instruments, obligations of the same state under the two treaties may differ considerably. Consequently, the respective monitoring bodies' opinions and recommendations are at best complementary to 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 protects the language rights of minorities.

As part of the monitoring process of the Framework Convention, three state periodical reports were submitted in 2018: the Netherland's third report, Portugal's fourth report and Serbia's fourth report. The Advisory Committee adopted six advisory opinions in 2018 on Albania, Ireland, Latvia,<sup>77</sup> Lithuania,<sup>78</sup> Russia,<sup>79</sup> and Switzerland.<sup>80</sup> (Opinions on Albania and Ireland remain restricted as of January 2019.) Moreover, in 2018 the opinions on Bosnia and Herzegovina<sup>81</sup>, Romania,<sup>82</sup> Slovenia<sup>83</sup> and Ukraine,<sup>84</sup> all adopted in 2017, were published. The

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<sup>77</sup> CoE Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC), Third Opinion on Latvia, 23 February 2018, ACFC/OP/III(2018)001. All the opinions and resolutions are available at <<http://www.coe.int/en/web/minorities/country-specific-monitoring>>.

<sup>78</sup> ACFC, Fourth Opinion on Lithuania, 30 May 2018, ACFC/OP/IV(2018)004. The opinion was published in January 2019.

<sup>79</sup> ACFC, Fourth Opinion on Russia, 20 February 2018, ACFC/OP/IV(2018)001. The opinion was published in January 2019.

<sup>80</sup> ACFC, Fourth Opinion on Switzerland, 31 May 2018, ACFC/OP/IV(2018)003.

<sup>81</sup> ACFC, Fourth Opinion on Bosnia and Herzegovina, 9 November 2017, ACFC/OP/IV(2017)007.

<sup>82</sup> ACFC, Fourth Opinion on Romania, 22 June 2017, ACFC/OP/IV(2017)005.

<sup>83</sup> ACFC, Fourth Opinion on Slovenia, 21 June 2017, ACFC/OP/IV(2017)003.

<sup>84</sup> ACFC, Fourth Opinion on Ukraine, 10 March 2017, ACFC/OP/IV(2017)002.

Committee of Ministers issued eight resolutions on Armenia,<sup>85</sup> Bulgaria,<sup>86</sup> Georgia,<sup>87</sup> Malta,<sup>88</sup> Norway,<sup>89</sup> Slovenia,<sup>90</sup> Sweden<sup>91</sup> and the United Kingdom.<sup>92</sup>

In the following, developments in the above-mentioned countries in the field of public administration will be discussed in light of the Advisory Committee's opinions and the Committee of Ministers' resolutions. Relevant provisions of the FCNM include Article 10 (use of minority languages in relations with administrative authorities) and Article 11 (use of minority languages on topographical signs and in identity documents as special subfields of public administration). 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). 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, therefore the Advisory Committee does not evaluate the implementation of this provision in its opinions.

As regards the *Committee of Ministers' resolutions*, the ones addressed to *Georgia*, *Norway*, *Sweden* and the *United Kingdom* did not specifically touch upon the language rights of minorities in public administration. In turn, both *Armenia* and *Bulgaria* were recommended to assess, in close consultation with representatives of minorities, the demand for the use of minority languages in relations with administrative authorities and for topographical indications in geographical areas inhabited by a substantial number of persons belonging to national minorities. Armenia was further called on to carry out an awareness-raising campaign encouraging the use of minority languages in local administration, whereas Bulgaria was advised to identify and eliminate any possible remaining impediments to the use in daily life of

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<sup>85</sup> CoM, Resolution CM/ResCMN(2018)5 on the implementation of the FCNM by Armenia, 2 May 2018.

<sup>86</sup> CoM, Resolution CM/ResCMN(2018)2 on the implementation of the FCNM by Bulgaria, 7 February 2018.

<sup>87</sup> CoM, Resolution CM/ResCMN(2018)7 on the implementation of the FCNM by Georgia, 30 May 2018.

<sup>88</sup> CoM, Resolution CM/ResCMN(2018)8 on the implementation of the FCNM by Malta, 4 July 2018. 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 which apply to all persons living in Malta, irrespective of their ethnic, cultural, linguistic or religious identity. The resolution is therefore irrelevant for the subject-matter of this review.

<sup>89</sup> CoM, Resolution CM/ResCMN(2018)6 on the implementation of the FCNM by Norway, 2 May 2018.

<sup>90</sup> CoM, Resolution CM/ResCMN(2018)12 on the implementation of the FCNM by Slovenia, 24 October 2018.

<sup>91</sup> CoM, Resolution CM/ResCMN(2018)9 on the implementation of the FCNM by Sweden, 12 September 2018.

<sup>92</sup> CoM, Resolution CM/ResCMN(2018)1 on the implementation of the FCNM by the United Kingdom, 7 February 2018.



names in mother-tongue languages. *Slovenia* was recommended to ensure that the legal framework pertaining to the protection of the Italian and Hungarian national minorities is adequately implemented, in particular by facilitating the use of minority languages in official communication with local authorities, in the judiciary and with providers of basic services in the relevant ethnically-mixed areas.

Naturally, the *Advisory Committee's opinions* contain more detail on our subject-matter. A frequent observation by the Committee is that the right to use minority languages with administrative authorities is unfortunately not (always) implemented in practice, even if the Framework Convention provides for this right only in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers. In *Bosnia and Herzegovina*, the situation has been untenable for years; minority languages are not used at all in public administration, which is not surprising due to the “prohibitively high”<sup>93</sup> 33% threshold. (In fact, the Advisory Committee declared at the outset of its opinion that national minorities do not effectively enjoy access to any FCNM rights beyond the mere recognition of their existence.)<sup>94</sup> As for the display of topographical indications in minority languages (to which the same threshold applies), a significant number of them have been vandalised to obscure the script used by persons belonging to a minority in the given location. Regrettably such signs are rarely repaired and the perpetrators of these acts are seldom brought to account.<sup>95</sup>

The situation is troublesome in *Latvia*, too, where minority languages have been the victim of a language policy aimed at strengthening the state language (as opposed to Russian) for years. Latvian is the only language authorised in dealings with the administrative authorities, in topographical signs and other inscriptions and in identity documents, and the use of minority languages is tolerated only in submissions to police, medical institutions and emergency calls. Officials who do not respect the obligation to use exclusively the Latvian language in their communication with their constituents risk being fined.<sup>96</sup>

As compared to the divided societies of Bosnia and Herzegovina and Latvia, *Lithuanian* society is largely characterised by tolerance and respect with regard to national minorities. The absence of a comprehensive legislative framework, however, continues to impede the implementation of a number of important language rights contained within the Framework

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<sup>93</sup> Fourth Opinion on Bosnia and Herzegovina, *op. cit.* note 77, para. 94.

<sup>94</sup> *Ibid.* p. 1.

<sup>95</sup> *Ibid.* para. 99.

<sup>96</sup> Deterrent examples include that of the mayor of Riga Mr Nils Ušakovs who was fined 140 EUR for using the Russian language alongside Latvian on Riga City Council's Twitter account. See Third Opinion on Latvia, *op. cit.* note 73, 34-35.

Convention, concerning in particular the “long-standing issue”<sup>97</sup> of the spelling of names in official documents. While the 1995 Law on the State Language prescribes for the use of the state language in all communication within and between public institutions and private enterprises, the 1999 Law on Public Administration explicitly allows public authorities to accept oral and written requests in languages other than Lithuanian, and some municipalities and public authorities actually make use of this possibility.<sup>98</sup> Furthermore, although legislation demands that all public indications must be displayed in Lithuanian, there remains a strong claim by minority communities to display topographical indications in their languages and some municipalities in fact decide to satisfy these demands even at the expense of entering a legal grey zone.<sup>99</sup> The Advisory Committee urged the authorities to review the legislative framework to ensure an adequate balance between the promotion of the state language and access to the language rights of persons belonging to national minorities.

The main issue in *Romania* was the numerical thresholds for the applicability of minority rights. In this context, the Advisory Committee has consistently recommended a flexible and context-specific approach. 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 standardised 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.<sup>100</sup> Efforts to employ persons speaking 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 constituted an act of discrimination.<sup>101</sup> 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”.<sup>102</sup> The exercise of the right to display topographical indications in minority languages is also conditional on a 20% threshold. The Advisory Committee welcomed the fact that in several municipalities bi- or multilingual signage had been maintained in spite

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<sup>97</sup> Fourth Opinion on Lithuania, *op. cit.* note 74, para. 70.

<sup>98</sup> *Ibid.* paras. 67-68.

<sup>99</sup> *Ibid.* paras. 73-74.

<sup>100</sup> Fourth opinion on Romania, *op. cit.* note 78, paras. 87-88.

<sup>101</sup> *Ibid.* para. 94. 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>>.

<sup>102</sup> *Ibid.* para. 95.

of the fall of the minority population below the threshold. On the other hand, there have been examples for the removal of bilingual place names and their replacement by Romanian-language ones only. What is more, in a number of municipalities inhabited by a substantial number of persons belonging to the Hungarian minority (and where the 20% threshold has been met), street signs remain Romanian monolingual, or only partially translated into the Hungarian language. The Advisory Committee asked the authorities to take more proactive measures to ensure the effective implementation of the FCNM provisions, and a flexible approach to the introduction of signs displaying street names in languages of national minorities.<sup>103</sup>

Minority languages in *Russia* – in contrast with the country’s immense variety of ethnic groups – have limited visibility in the public space. This is partly due to the fact that whereas the 1991 Law on the Languages of the Peoples of Russian Federation provides for the use of minority languages in various public and official settings – on the decision of the republics and other constituent entities –, it requires the mandatory use of Russian in a large number of other settings. In practice, the public (and private!) use of minority languages is diminishing, and their use in relations with administrative authorities is limited to the official languages of some republics. The Advisory Committee recalls that the active promotion of minority languages and the creation of an overall environment that is conducive to their use is the responsibility of the state.<sup>104</sup> As for topographical indications and other inscriptions, they can be displayed in the official languages of the republics, alongside Russian, and the constituent entities have the right to use other minority languages “where necessary”, in the areas densely populated by minorities. However, the implementation of this right seems to vary throughout the Russian Federation, which calls for a clear and unambiguous legislative basis and transparent procedures.<sup>105</sup>

In *Slovenia*, the Advisory Committee welcomed the adoption of policy measures aimed at further strengthening the use of minority languages and the development of bilingual administration (for example, administrative forms in minority languages are now available electronically). There have been no complaints about the use of Hungarian and Italian as regional official languages, although there is always room for improvement. For example, while one judge and one clerk have knowledge of Hungarian at the Lendava/Lendva Court, no judges have a sufficient working knowledge of Italian and proceedings need to be translated rather

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<sup>103</sup> *Ibid.* paras. 99-103.

<sup>104</sup> Fourth Opinion on Russia, *op. cit.* note 75, paras. 100-103.

<sup>105</sup> *Ibid.* paras. 109-112.

than carried out in this language. The two national minorities also expressed appreciation on progress accomplished so far in elaborating topographical signs in minority languages and anticipated their introduction in geographical maps shortly.<sup>106</sup>

*Switzerland* has one of the most sophisticated multilingual legal frameworks and practices in Europe, and the Advisory Committee was overall satisfied with it. Federal authorities may be addressed in any of the official languages, and the judgements of the Federal Tribunal are delivered in the language of the requesting party. A possible problem is that in the absence of a law degree in Italian or Romansh in Switzerland, lawyers are more inclined to submit complaints in German or French, which may render access to the judgments more difficult for minority language speakers. The Advisory Committee suggested to translate the main judgments of the Federal Tribunal related to the rights of persons belonging to national minorities into other national languages.<sup>107</sup> Concerning the trilingual Canton of Graubünden/Grischun/Grigioni, authorities were called on to further promote the use of minority languages in their day-to-day activities, in information campaigns, in public administration and in the judiciary.<sup>108</sup> As regards topographical indications, place names are in the official language of the municipality concerned, while in bilingual municipalities the language of the majority is used along with a minority language when the linguistic minority represents at least 30% of inhabitants. The Advisory Committee recalled that the scope of Article 11 of the Framework Convention includes other signs such as street signs; furthermore, it found that actual practice tends to follow a narrow application of the principle of territoriality and the percentage required to introduce bilingual signs is fixed at an “unduly high level”.<sup>109</sup>

In *Ukraine*, the language issue continues to polarise society and trigger heated public debates. 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 the 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 concerns regarding access to language rights, should the law be revoked.<sup>110</sup> Notwithstanding the uncertainty surrounding the status of the Language Law,

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<sup>106</sup> Fourth Opinion on Slovenia, *op. cit.* note 79, paras. 69-70.

<sup>107</sup> Fourth Opinion on Switzerland, *op. cit.* note 76. paras. 87-89.

<sup>108</sup> *Ibid.* para. 93.

<sup>109</sup> *Ibid.* paras. 94-95.

<sup>110</sup> Fourth Opinion on Ukraine, *op. cit.* note 80, paras. 116-117.

numerous local governments decided to recognise minority languages present within their territory as regional languages. This is important because the 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 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.<sup>111</sup> As far as personal names are concerned, the Advisory Committee urged the Ukrainian authorities to take all necessary measures that persons belonging to national minorities have their personal names officially recognised in their language, including in their identity documents (which does not happen in practice). It specifically called them to ensure that international standards regarding the transliteration and transcription of names are respected.<sup>112</sup> The Advisory Committee welcomed progress achieved in the introduction of bilingual topographical indications and other inscriptions in a number of regions of Ukraine, but as a whole it was unsatisfied with the authorities’ efforts. It noted with concern that due to financial considerations only a very few municipalities opted for bilingual street signs, and that the ongoing territorial and administrative reform might have a negative impact on the possibility to display bilingual topographical signage.<sup>113</sup>

## 5. Concluding Remarks

Based on the 2018 activities of major international organizations, the situation of the linguistic rights of European national minorities is far from being reassuring (at least as far as language use before judicial and administrative authorities are concerned). A general observation is that in the work of the UN, the OSCE, and the EU language rights receive less attention as compared with other rights of minorities, and the two CoE treaties remain the most important international standard-setting tools for European states in this area. However, despite the vigorous efforts of the respective monitoring bodies, the author must agree with the European Parliament that “the effect of the agreements concerned is weakened by a slow ratification process, by the

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<sup>111</sup> *Ibid.* paras. 119, 123-125.

<sup>112</sup> *Ibid.* paras. 131, 134.

<sup>113</sup> *Ibid.* paras. 135-137.

reservations entered by the Parties and by a lack of powers of scrutiny, which makes them dependent on the goodwill of states; whereas the systematic non-implementation of [...] recommendations also leads to a normalisation of non-compliance with the two international instruments”.<sup>114</sup> Not that the EU could show a better record in this respect; it has long been lagging behind other international organizations as regards minority protection, and we can only hope that the reinforced interest of the European Parliament, as well as the success of the Minority SafePack Initiative, will bring about positive changes. The effectiveness of the work of international organizations and monitoring bodies could be strengthened by a closer cooperation in their day-to-day activities (see the above-mentioned conspicuous difference between the COMEX’s report and the ACFC’s opinion on Ukraine).

Concerning the implementation of the Language Charter and the Framework Convention, common elements of the monitoring bodies’ recommendations include calling the attention of state parties to the need for:

- close cooperation with the representatives of national minorities, especially when assessing the demand for the use of minority languages in relations with administrative authorities and on topographical indications;
- active promotion and awareness-raising of existing language rights among authorities as well as stakeholders;
- a clear, unambiguous legal framework, as well as a structured policy on the protection of minorities;
- reconsidering numerical thresholds for the applicability of minority rights;
- ensuring that territorial administrative reforms and mergers do not endanger the effective exercise of linguistic rights of minorities;
- addressing the lack of available staff in minority languages.

Furthermore, when dealing with administrative authorities, persons belonging to national minorities often do not or cannot use their language rights in practice, notwithstanding the sometimes generous legal framework. In this respect, the CoE committees clearly lay the burden of responsibility on the states and are not satisfied with the mere provisions on paper, but expect practical implementation. As Professor Gábor Kardos, the Hungarian member of the COMEX, points out, the state “has to make an infrastructural offer to minority language users”,<sup>115</sup> *i.e.* it should explicitly encourage those concerned to enforce their linguistic rights.

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<sup>114</sup> European Parliament resolution of 13 November 2018, *op. cit.* note 43. para. J.

<sup>115</sup> G. Kardos, “Mérlegen a Nyelvi charta” (“The Language Charter on the scales”), *Kisebbségi Szemle*, 2017, No. 3, 33-41. at 37.

In reality, however, the right to use minority languages with administrative authorities is sometimes no more than “a theoretical construct, and not a real effective legal provision”.<sup>116</sup> The worst scenario, of course, is that domestic legislation is not satisfactory either because, for example, it openly segregates between different linguistic groups and/or undermines (in a few cases even prohibits) the use of minority languages under the guise of supporting the state language, expressly violating the state’s international obligations. While appreciating the legitimate aim of states in protecting their state language, international organs underline 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 tension and leads to divided societies. Although the style of the (monitoring and other official) documents is restrained and respectful, the voice of dissatisfaction can be felt in all of them. As positive examples, perhaps only Slovenia and Switzerland can be mentioned from the period under review, although there are good practices in the Scandinavian region as well.

As a final conclusion, the author observes that the implementation of the examined international treaties and their enforcement mechanisms have not yet reached their full potential in terms of minority protection and language rights, and looks forward to further developments in the near future.

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<sup>116</sup> Cf. *e.g.* Fourth Opinion on Bosnia and Herzegovina, *op. cit.* note 62, 28.