

# Language Rights of European Minorities in the Administration of Justice, Public Administration and Public Services: International Developments in 2019

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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 2019. Relevant legal developments are presented in the activities of the major international organizations, i.e. the United Nations, the Organization for Security and Co-operation in Europe, the European Union, and the Council of Europe. Since the most relevant treaties on the language rights of minorities in Europe are the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities, special attention is paid to the implementation thereof.

Whereas international monitoring mechanisms devoted to the effective protection of minorities are abundant, language rights of national minorities receive less attention, especially in the fields of official language use, that is, in public administration and justice. The regulation of these areas has been traditionally considered as almost exclusively belonging to the states' competence, and international organizations are consequently reluctant to interfere. As a result, the official use of minority languages differs in the various countries of Europe, with both good practices (e.g. the Netherlands, Spain, Finland) and unbalanced situations (e.g. Estonia, Ukraine, Azerbaijan).

**Keywords:** Language rights, regional or minority languages, administration of justice, public administration, public services, topographical indications.

## I. UNITED NATIONS

### A. *Human Rights Committee and Committee on Economic, Social and Cultural Rights*

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The Human Rights Committee is a body of independent experts responsible for monitoring the implementation of the International Covenant on Civil and Political Rights (CCPR), a major human rights treaty containing first-generation rights, including those relevant for the administration of justice and public administration. During its three sessions in 2019, the Committee considered 13 states party reports, including four from Europe (Estonia, the Netherlands, Belgium and the Czech Republic).<sup>1</sup> While all concluding observations referred to minorities, they did so mostly in the context of racial discrimination, hate speech and hate crimes against: the Roma (the Czech Republic); refugees, migrants, Muslims, Jews (the Czech Republic, the Netherlands); persons belonging to ethnic, religious, or linguistic minorities (Belgium). In *Belgium*, discrimination based on language can result in “ethnic profiling for identity checks by the police and obstacles to access to housing or the enjoyment of social benefits”.<sup>2</sup> In *Estonia*, although progress has been made, the integration of the Russian-speaking minority remains problematic, because restrictive language policies and practices continue to hinder the full enjoyment of rights by the community.<sup>3</sup>

The issue of language rights of the Russian minority in *Estonia* was also dealt with by the Committee on Economic, Social and Cultural Rights (CESCR/C), a UN treaty body monitoring the implementation of the International Covenant on Economic, Social and Cultural Rights (CESCR). The CESCR recommended that Estonia “[r]emove all punitive elements of the enforcement of the Language Act, including by reviewing the mandate and functions of the Language Inspectorate”; “[r]emove all administrative barriers against the use of patronymics in official personal documents”; reduce the 50% threshold for the use of a minority language in contacts with local authorities to “a reasonable level”; and “[r]eview the conditions for the use of traditional local names, street names and other public topographical indications in a minority language in areas where people belonging to a linguistic minority group reside traditionally or in substantial number”.<sup>4</sup>

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<sup>1</sup> 125th session (4-29 March 2019); 126th session (1-26 July 2019); 127th session (14 October-8 November 2019), at <[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/SessionsList.aspx?Treaty=CCPR](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/SessionsList.aspx?Treaty=CCPR)>.

<sup>2</sup> Human Rights Committee: Concluding observations on the sixth periodic report of Belgium, CCPR/C/BEL/CO/6 (6 December 2019), para. 15.

<sup>3</sup> Human Rights Committee: Concluding observations on the fourth periodic report of Estonia, CCPR/C/EST/CO/4 (18 April 2019), paras. 37-38.

<sup>4</sup> Committee on Economic, Social and Cultural Rights: Concluding observations on the third periodic report of Estonia, E/C.12/EST/CO/3 (27 March 2019), paras. 50-51.

In 2019, the Human Rights Committee examined 54 individual communications—28 submitted against European states—under the Optional Protocol to the CCPR, but only one of these concerned the language rights of minorities.<sup>5</sup> The author of the communication was a citizen of *Ukraine* of Russian ethnicity who alleged that the spelling modification of his name in the international passport issued to him violated his right to privacy and the right to use his own language as a member of a national minority under Articles 17 and 27 of the CCPR. On Mr Moyseenko’s birth certificate, his given name, patronymic and surname were written in Russian, whereas in his Ukrainian internal passport (the main domestic identification document), his name was written in both the Ukrainian and Russian languages.<sup>6</sup> In May 2009, the author acquired an international passport where his name was written in the Ukrainian language, together with a Latin transliteration, against his wishes. Mr Moyseenko complained that the transliteration does not match the name on his birth certificate and does not reflect the fact that he is a member of the Russian-speaking minority, whereas the Civil Code of Ukraine provides for individuals the right to transliteration of their family name and first name in accordance with their national tradition. He further argued that the “State party arbitrarily chose to spell his name in Ukrainian, which is not his own language, thereby imposing unnecessary restrictions and depriving him as a person belonging to a linguistic minority of the right to use his native language”.<sup>7</sup> The state party accepted the author’s argument about the provision in the Civil Code but did not explain it any further. Instead, it referred to the domestic rules on transliteration and established with satisfaction that the information in the author’s Ukrainian passport is in accordance with the national legislation.<sup>8</sup> The Human Rights Committee rejected the communication as inadmissible, in the absence of “specific arguments as to how the State party has unlawfully or arbitrarily interfered with the author’s rights under articles 17 and 27, and as to how the transliteration of the author’s first name into the Latin alphabet from Ukrainian in his international passport has concretely affected him”.<sup>9</sup>

This decision is quite surprising and unconvincing, especially in light of the tense international attention that Ukraine’s controversial language policy has been receiving

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<sup>5</sup> Human Rights Committee: Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2717/2016, CCPR/C/127/D/2717/2016 (6 December 2019).

<sup>6</sup> *Ibid.*, para. 2.1.

<sup>7</sup> *Ibid.*, paras. 2.2 and 3.1.

<sup>8</sup> *Ibid.*, paras. 4.1-4.10.

<sup>9</sup> *Ibid.*, para. 6.4.

for the past couple of years. As a matter of fact, at the time of the case, Ukraine had long been party to the Framework Convention for the Protection of National Minorities, Article 11(1) of which is unequivocal about the states' obligation "to recognise that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them". While the Committee is not in a position to supervise the implementation of the Framework Convention, it could have used this treaty and its monitoring materials to explore the content of Article 27 CCPR as related to the merits of the case, instead of summarily rejecting the complaint as insufficiently substantiated.

### *B. Human Rights Council*

The rights of European minorities did not feature in the resolutions adopted by the UN Human Rights Council (UNHRC)—an intergovernmental body responsible for the promotion and protection of human rights around the globe—during its three regular sessions in 2019.<sup>10</sup> In turn, the UNHRC adopted a resolution on the Situation of human rights of Rohingya Muslims and other minorities in Myanmar<sup>11</sup> and two resolutions on the human rights of indigenous peoples.<sup>12</sup>

The Working Group on the Universal Periodic Review (UPR) held three sessions in 2019 reviewing the human rights records of 42 countries as part of the third cycle, including 10 European states: North Macedonia, Slovakia, Cyprus – 32nd session; Norway, Albania, Portugal – 33rd session; Italy, San Marino, Slovenia, Bosnia and Herzegovina – 34th session. (Reports of the 34th session were not yet available as of 28 January 2020).<sup>13</sup> While all available 2019 European UPR reports mentioned national minorities and/or indigenous peoples, only two of them made direct reference to the (language) rights of minorities in the areas of justice and public administration.<sup>14</sup> *Slovakia* was recommended by Hungary to "[e]nsure that the use of minority languages

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<sup>10</sup> For resolutions adopted at the 40th (25 February-22 March 2019), 41st (24 June-12 July 2019) and 42nd sessions (9-27 September 2019), see <<https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/>>.

<sup>11</sup> UNHRC, Resolution 42/3, A/HRC/42/L.21/Rev.1 (25 September 2019), at <<https://documents-dds-ny.un.org/doc/UNDOC/LTD/G19/284/51/PDF/G1928451.pdf?OpenElement>>.

<sup>12</sup> UNHRC, Resolution 42/19, A/HRC/42/L.24 (25 September 2019), at <<https://documents-dds-ny.un.org/doc/UNDOC/LTD/G19/284/44/PDF/G1928444.pdf?OpenElement>>; and Resolution 42/20, A/HRC/42/L.25 (24 September 2019), at <<https://documents-dds-ny.un.org/doc/UNDOC/LTD/G19/282/56/PDF/G1928256.pdf?OpenElement>>.

<sup>13</sup> See the review timetables at <<http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRSessions.aspx>>.

<sup>14</sup> Reports of the Working Group are available at <<http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>>.

in public life is in line with the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities, and implement the national minority-related commitments set by the treaty on good neighbourhood relations and friendly cooperation between Hungary and Slovakia”.<sup>15</sup> *Albania* “had significantly improved its legal framework for the protection of minorities by adopting a specific law on national minorities in 2017”. Now, in places where national minorities live traditionally or constitute over 20% of the population, persons belonging to national minorities have the right to use their language in interactions with the administrative authorities, when relevant conditions permit and there is sufficient demand. Albania was recommended to apply the 20% threshold to smaller local communities “instead of the municipalities enlarged since 2014”, and to ensure that the rights of minorities to use their minority language is protected.<sup>16</sup>

### *C. Forum on Minority Issues and 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. The Forum meets annually to discuss thematic issues, led by the Special Rapporteur on minority issues. The twelfth session of the Forum was held from 28 to 29 November 2019 in Geneva, focusing on Education, Language and the Human Rights of Minorities. The recommendations of the Forum are not yet published (as of 28 January 2020).<sup>17</sup>

In March 2019, the Special Rapporteur on minority issues, Fernand de Varennes, presented his annual report to the UNHRC, summarizing the mandate holder’s activities in 2018. In addition to participating in many events where he emphasized the importance of minority language rights, the Special Rapporteur undertook two missions

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<sup>15</sup> Report of the Working Group of the UPR on Slovakia, A/HRC/41/13 (16 April 2019), para. 121.160.

<sup>16</sup> Report of the Working Group of the UPR on Albania, A/HRC/42/4 (3 July 2019), paras. 13-14, 95.119., 95.182.

<sup>17</sup> See <<https://www.ohchr.org/EN/HRBodies/HRC/Minority/Pages/Session12.aspx>>.

in 2018: to Slovenia<sup>18</sup> and Botswana.<sup>19</sup> In 2019, he visited Kyrgyzstan<sup>20</sup> and Spain. While the final report on *Spain* will be presented to the UNHRC only in March 2020, the Special Rapporteur's preliminary observations are available and touch upon the situation of minority languages in the public sphere. Although the Spanish system of co-official languages is to be praised and linguistic minorities have the right to use their language in relations with state authorities, there seems to be “a disconnect between the claimed status of co-official languages and the extent of their actual use and of implementation of legislation”. The Special Rapporteur was informed that judges and law-enforcement officials are not required to know a co-official language even when based in an Autonomous Community, leading to “unfortunate misunderstandings and even denial or discrimination in access to public services”. The relevant provision of the Organic Law of Judicial Power stipulates that in judicial procedures, co-official languages can only be used if no party objects. The Special Rapporteur warned that this “blanket obstacle” gives rise to concerns as to compliance with international human rights obligations. The Special Rapporteur was also worried about the rights of persons whose minority languages are outside of the Autonomous Communities, in particular, those without any official status, such as in Asturias and Navarre.<sup>21</sup>

*D. Special Rapporteur on the Rights of Indigenous Peoples, Expert Mechanism  
on the Rights of Indigenous Peoples and Permanent Forum on Indigenous  
Issues*

The year 2019 marked the International Year of Indigenous Languages with the lead of UNESCO and the active participation of the three UN bodies specifically mandated to deal with indigenous peoples' issues: the Special Rapporteur, the Expert Mechanism, and the Permanent Forum. The Year embraced more than 800 activities around the world, including awareness-raising campaigns, capacity-building workshops, academic

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<sup>18</sup> The mission to Slovenia was discussed in the previous issue of EYMI, in Noémi Nagy, “Language Rights of European Minorities in the Administration of Justice, Public Administration and Public Services: International Developments in 2018”, 17 *EYMI* (2018) (Brill Nijhoff, Leiden, Boston, 2020), 80-104, at 84. See also, UNHRC, Visit to Slovenia: Report of the Special Rapporteur on minority issues, A/HRC/40/64/Add.1 (8 January 2019), at <<https://undocs.org/A/HRC/40/64/ADD.1>>.

<sup>19</sup> Report of the Special Rapporteur on minority issues, A/HRC/40/64 (9 January 2019), at <<https://undocs.org/A/HRC/40/64>>.

<sup>20</sup> United Nations Special Rapporteur on minority issues, Fernand de Varennes, Visit to Kyrgyzstan, 6-17 December 2019, available at <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25422&LangID=E>>.

<sup>21</sup> Statement of the United Nations Special Rapporteur on minority issues, Fernand de Varennes, on the conclusion of his official visit to Spain, 14-25 January 2019, available at <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24112&LangID=E>>.

conferences, intergovernmental meetings, theatrical, musical and artistic performances, hackathons and online events, international award ceremonies, etc.<sup>22</sup> The event series was so successful that the Expert Mechanism suggested that the Human Rights Council support the proclamation of an international decade of indigenous languages. In making this proposal, the Expert Mechanism stressed the critical nature of these languages to the rights of indigenous peoples, the ongoing discrimination against indigenous peoples who speak their languages, and the threat of extinction of indigenous languages.<sup>23</sup>

In 2019, the Special Rapporteur, Victoria Tauli-Corpuz, carried out two country visits (both outside Europe: in Timor-Leste<sup>24</sup> and Congo<sup>25</sup>), while her annual report focused on access to justice for indigenous peoples.<sup>26</sup> The Special Rapporteur was particularly concerned about the lack of effective recognition of indigenous systems of justice by local, regional and national authorities; ongoing discrimination and prejudice against indigenous peoples in the ordinary justice system; inadequate redress and reparation; and the deficiency of effective coordination between indigenous justice systems and the state justice authorities.<sup>27</sup> According to the Special Rapporteur, a major obstacle to access to justice for indigenous peoples is language barriers. Indigenous persons who are arrested and prosecuted may face violations of their liberty, the right to a fair trial, or other rights if their lawyers, defenders or justice officials do not speak indigenous languages and if interpretation and translation services are inaccessible or inadequate.<sup>28</sup> It is no wonder that indigenous peoples still heavily rely on their customary justice mechanisms, where their right to use their own language is more likely to be respected.<sup>29</sup>

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<sup>22</sup> UNESCO: Strategic Outcome Document of the 2019 International Year of Indigenous Languages, 40 C/68 (15 November 2019), at <<https://en.iyil2019.org/release-of-the-strategic-outcome-document-of-the-iyil2019/>>, para. 6. For further details, see the dedicated website at <<https://en.iyil2019.org/>>.

<sup>23</sup> UN GA, Annual report of the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/42/55 (31 July 2019), para. 15, at <<https://undocs.org/en/A/HRC/42/55>>.

<sup>24</sup> UN GA, Report of the Special Rapporteur on the rights of indigenous peoples, Visit to Timor-Leste, A/HRC/42/37/Add.2 (2 August 2019), at <<https://undocs.org/A/HRC/42/37/ADD.2>>.

<sup>25</sup> End of mission statement by the United Nations Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz on her visit to the Republic of Congo, at <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25196&LangID=E>>.

<sup>26</sup> UN GA, Report of the Special Rapporteur on the rights of indigenous peoples, A/HRC/42/37 (2 August 2019), at <[https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/42/37](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/42/37)>.

<sup>27</sup> *Ibid.*, para. 7.

<sup>28</sup> *Ibid.*, paras. 40, 42, 48-49.

<sup>29</sup> *Ibid.*, paras. 62-64.

The Expert Mechanism held its twelfth session in Geneva on 15-19 July 2019 where it adopted a study on indigenous peoples' rights in the context of borders, migration and displacement.<sup>30</sup> The document underlined that one of the greatest challenges to both internal and crossborder migration is the consequent loss of indigenous languages.<sup>31</sup> A specific challenge at border crossings stems from the assumption that indigenous persons speak the language of the state of departure or most recent entry. For instance, it was reported that at the Mexico/United States border, indigenous persons were provided with Spanish interpreters, even though they spoke only indigenous languages. This contributed to misunderstandings and reports of deaths in border detention.<sup>32</sup> The Expert Mechanism's report on the implementation of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) emphasized that recognition of indigenous languages is a key aspect of the recognition of indigenous peoples themselves, and enlisted examples for the legal recognition of indigenous peoples' languages from several countries.<sup>33</sup>

Discussion of the International Year of Indigenous Languages occupied a major role in the annual session of the Permanent Forum. The Forum expressed concern for the state of the world's indigenous languages and called for the adoption of a rights-based approach that considers the full spectrum of human rights in accordance with the UNDRIP. It suggested particularly that allowing indigenous peoples to gain access to health care and other public services in their own languages would help to ensure their overall well-being.<sup>34</sup> In the context of regional dialogues, the Forum called upon the Russian Federation and member states from Eastern Europe to adopt effective measures to create a sustainable language environment by, *inter alia*, using indigenous/native languages in public spheres.<sup>35</sup>

## II. OSCE

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<sup>30</sup> UN GA, Indigenous peoples' rights in the context of borders, migration and displacement: Study of the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/EMRIP/2019/2 (3 May 2019), at <<https://www.undocs.org/a/hrc/emrip/2019/2>>.

<sup>31</sup> *Ibid.*, para. 45.

<sup>32</sup> *Ibid.*, para. 52.

<sup>33</sup> UN GA, Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples: recognition, reparation and reconciliation: Report of the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/EMRIP/2019/3 (2 May 2019), at <<https://www.undocs.org/a/hrc/emrip/2019/3>>, paras. 34-36.

<sup>34</sup> UN Permanent Forum on Indigenous Issues, Report on the eighteenth session, 22 April-3 May 2019, E/2019/43-E/C.19/2019/10, at <<https://undocs.org/en/E/2019/43>>, paras. 15-24.

<sup>35</sup> *Ibid.*, para. 128.

### A. Office for Democratic Institutions and Human Rights

The Office for Democratic Institutions and Human Rights (ODIHR) provides support and expertise to states and civil society to promote democracy, the 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 2019, the HDIM took place in Warsaw on 16-27 September.<sup>36</sup> The rights of minorities, including language rights, were discussed most prominently at Working Session 12, which focused on tolerance and non-discrimination.<sup>37</sup>

### B. High Commissioner on National Minorities

In 2019, the High Commissioner on National Minorities (HCNM), Lamberto Zannier, continued to witness “a strong degree of polarization”<sup>38</sup> around language issues during his visits which included Turkmenistan, Estonia, Latvia, Kosovo, Serbia, North Macedonia, Ukraine, Tajikistan, the Russian Federation and Kazakhstan. Although his main focus was education and the 20th anniversary of The Lund Recommendations on the Participation of National Minorities in Public Life, he also referred on a number of occasions to language use in the public sphere.<sup>39</sup> The High Commissioner called for a pragmatic implementation of the new language law in *North Macedonia* “so that the wider public perceives linguistic pluralism in education and the public services as an issue that does not affect existing rights, but rather enriches all”.<sup>40</sup> With regard to the recent promulgation of the law ‘On ensuring the functioning of Ukrainian as a State language’, the High Commissioner acknowledged *Ukraine’s* “efforts to promote the knowledge of the State language as a key tool to facilitate integration and social cohesion”, at the same time he took note of “concerns expressed by minority representatives that the law and its implementation may undermine their language

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<sup>36</sup> OSCE ODIHR, 2019 Human Dimension Implementation Meeting, at <[https://www.osce.org/odihr/hdim\\_2019](https://www.osce.org/odihr/hdim_2019)>.

<sup>37</sup> Unfortunately, the consolidated summary of the HDIM is not available as of 28 January 2020, but full video recordings of the sessions are available at <[https://www.osce.org/odihr/hdim\\_2019\\_Live\\_English](https://www.osce.org/odihr/hdim_2019_Live_English)>.

<sup>38</sup> Address by Lamberto Zannier OSCE High Commissioner on National Minorities to the 1229th Plenary Meeting of the OSCE Permanent Council, HCNM.GAL/2/19/Rev.2 (23 May 2019), 5, at <<https://www.osce.org/permanent-council/420572?download=true>>.

<sup>39</sup> *Ibid.*; Address by Lamberto Zannier OSCE High Commissioner on National Minorities to the 1246th Plenary Meeting of the OSCE Permanent Council, HCNM.GAL/9/19/Rev.1 (7 November 2019), at <<https://www.osce.org/permanent-council/438302?download=true>>.

<sup>40</sup> Address by Lamberto Zannier, 23 May 2019, *op. cit.*, note 38, 10.

rights”. He urged the authorities to apply a balanced and gradual approach in the implementation process, taking into account the interests of national minorities and using incentives rather than punitive measures.<sup>41</sup> A similar recommendation was made to *Tajikistan*.<sup>42</sup> During his visit to the *Russian Federation*, the High Commissioner took note that Tatar enjoys the status of a state language in the Republic of Tatarstan and is used alongside Russian in dealings with public administration as well as in toponyms.<sup>43</sup>

### III. EUROPEAN UNION

In 2019, there was no significant contribution on the rights of national minorities by the EU institutions. The European Union Agency for Fundamental Rights (FRA) adopted a report on access to justice, which deals extensively with language barriers during judicial proceedings; however, it does not mention national minorities, being more relevant for third-country nationals.<sup>44</sup> The annual report of FRA is of no relevance for this study.<sup>45</sup> The ‘Minority SafePack’ European Citizens’ Initiative further progressed before the Court of Justice of the European Union (CJEU),<sup>46</sup> but the process is not yet at the stage of adopting concrete legislative proposals by the European Commission.<sup>47</sup> The European Ombudsman published her report on the public consultation on multilingualism in the EU institutions,<sup>48</sup> where some respondents raised the importance of using regional or minority languages within EU bodies. It is not clear what consequences, if any, this public consultation would have. The Ombudsman also conducted a few inquiries on issues related to the language use of EU institutions, but minority languages were not mentioned.<sup>49</sup> The Council adopted a recommendation on

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<sup>41</sup> *Ibid.*, 11. (Cf. Address by Lamberto Zannier, 7 November 2019, *op. cit.* note 39, 7).

<sup>42</sup> Address by Lamberto Zannier, 7 November 2019, *op. cit.*, note 39, 4.

<sup>43</sup> *Ibid.*, 5.

<sup>44</sup> FRA: Rights in practice: access to a lawyer and procedural rights in criminal and European arrest warrant proceedings (2019), at <[https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2019-rights-in-practice-access-to-a-lawyer-and-procedural-rights-in-criminal-and-european-arrest-warrant-proceedings.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-rights-in-practice-access-to-a-lawyer-and-procedural-rights-in-criminal-and-european-arrest-warrant-proceedings.pdf)>.

<sup>45</sup> FRA, Fundamental Rights Report 2019, available at <[https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2019-fundamental-rights-report-2019\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-fundamental-rights-report-2019_en.pdf)>.

<sup>46</sup> CJEU, *Romania v Commission*, Case T-391/17, Judgment of the General Court (Second Chamber) of 24 September 2019, ECLI:EU:T:2019:672.

<sup>47</sup> See more on the developments of the Minority SafePack Initiative in Anna Barlow’s contribution in this issue of EYMI.

<sup>48</sup> European Ombudsman: Multilingualism in the EU institutions – Report on public consultation (15 February 2019), at <<https://www.ombudsman.europa.eu/en/report/en/110044>>.

<sup>49</sup> European Ombudsman: Decision in case 773/2018/PL on how the European Union Aviation Safety Agency conducted a consultation on drones (29 November 2019); Decision in case 2204/2018/TE on how the European Commission dealt with comments submitted under the notification procedure set up by the EU Single Market Transparency Directive (19 September 2019); Decision in case 766/2018/PL on how the European Chemicals Agency conducted a consultation on a proposal to restrict lead in

the teaching and learning of languages within the EU,<sup>50</sup> but apart from stating the obvious—“[m]ore than half of the Member States officially recognise regional or minority languages within their borders for legal or administrative purposes”<sup>51</sup>—it did not make any recommendations concerning the teaching and learning of these languages. The European Parliament’s annual report on the global situation of human rights and democracy<sup>52</sup> only marginally refers to the rights of minorities.

To conclude, it seems that the protection of minorities remains mainly an external policy concern for the EU,<sup>53</sup> as is evidenced by the Commission’s opinions on the respective applications of Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, Serbia and Turkey for EU membership.<sup>54</sup>

#### IV. COUNCIL OF EUROPE

The most important international treaties relevant to the linguistic rights of minorities adopted under the aegis of the Council of Europe (CoE) are 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 is not a minority-specific instrument, in light of the jurisprudence of the European Court of Human Rights, the scope of the Convention extends to the protection of minority rights. In this section, implementation of the above treaties, as well as relevant opinions of the Venice Commission will be addressed.

##### *A. European Court of Human Rights*

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gunshot (16 July 2019); Decision in case 649/2019/TE on the Council’s failure to make available a German translation of a press release (16 July 2019); Decision in case 1128/2018/TM on the European Commission’s webpages on ‘novel foods’ being available in English only (27 June 2019). All these decisions are available at <<https://www.ombudsman.europa.eu/en/legal-document-search?keys7=817>>.

<sup>50</sup> Council Recommendation of 22 May 2019 on a comprehensive approach to the teaching and learning of languages, 2019/C 189/03, at <[https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1580383962721&uri=CELEX:32019H0605\(02\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1580383962721&uri=CELEX:32019H0605(02))>.

<sup>51</sup> *Ibid.*, Preamble, para. 14.

<sup>52</sup> European Parliament: Report on human rights and democracy in the world and the European Union’s policy on the matter – annual report 2018, 2019/2125(INI) (11 December 2019), at <[https://www.europarl.europa.eu/doceo/document/A-9-2019-0051\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-9-2019-0051_EN.html)>.

<sup>53</sup> See e.g. Noémi Nagy, “Double Standard in a Peripheral Policy of the European Union: the Issue of Minority Protection”, in András György, Jyrki Kakönen, Noémi Nagy (eds.), *European Peripheries. Studia Europaea 2012 - Jurisprudentia et Practica* (University of Pécs, Faculty of Law, Centre for European Studies, Pécs, 2012), 159-173.

<sup>54</sup> See the corresponding 2019 reports at <[https://ec.europa.eu/neighbourhood-enlargement/countries/package\\_en](https://ec.europa.eu/neighbourhood-enlargement/countries/package_en)>.

Out of the many minority-related cases that the European Court of Human Rights (ECtHR) discussed in 2019, *Rooman v. Belgium* is of particular importance for the language rights of minorities. The applicant, who belongs to the German-speaking minority in Belgium, suffered from a severe mental disorder. He was detained in a specialized institution in the French-speaking region and was denied psychiatric treatment in his own language (the only language he understood). Interestingly, the Court did not consider the case from the point of view of non-discrimination (that is, between German and French speakers, or members of a language minority vs. the majority). Instead, the judges established the violation of Article 3 of the Convention on the prohibition of degrading treatment, suggesting—but in a rather contradictory way—that under certain circumstances the existence of a right to psychiatric treatment in a particular (minority) language may exist.<sup>55</sup>

### B. Venice Commission

The European Commission for Democracy through Law—better known as the Venice Commission as it meets in Venice—is the Council of Europe’s advisory body on constitutional matters. It provides legal advice to its member states in the fields of democracy, the rule of law and human rights, including minority rights. In 2019, the Venice Commission adopted two opinions that are relevant for this study: on the new language laws of Ukraine and North Macedonia, respectively.

Ukraine’s language policy has been undergoing a significant transformation process for the past decade, with serious consequences for the rights of minorities. The new provisions have been debated at several national and international fora,<sup>56</sup> including in four opinions of the Venice Commission.<sup>57</sup> The latest opinion addresses the 2019 Law

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<sup>55</sup> ECtHR, *Rooman v. Belgium*, Application No. 18052/11, Judgment of 31 January 2019, available at <[https://hudoc.echr.coe.int/eng#{"itemid":\["001-189902"\]}](https://hudoc.echr.coe.int/eng#{)>. The case is dealt with in more detail by Mariya Riekkinen in this issue of EYMI.

<sup>56</sup> For an academic discussion, see István Csernicskó and Mihály Tóth (eds.), *The right to education in minority languages: Central European traditions and the case of Transcarpathia* (Autdor-Shark, Uzhhorod, 2019); István Csernicskó, “Ukrajna nemzetközi kötelezettségvállalásai a kisebbségek nyelvén folyó oktatás területén a Keretegyezmény és a Karta alkalmazásáról készült jelentések tükrében” [Ukraine’s international commitments in the field of minority language education in the light of reports on the implementation of the Framework Convention and the Charter], *Kisebbségi Szemle*, 2018/4, 27-46.

<sup>57</sup> Venice Commission: Opinion No. 605/2010 on the Draft Law on Languages in Ukraine, CDL-AD(2011)008 (30 March 2011); Opinion No. 651/2011 on the Draft Law on Principles of the State Language Policy of Ukraine, CDL-AD(2011)047 (19 December 2011); Opinion No. 902/2017 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, CDL-AD(2017)030 (11 December 2017); Opinion No. 960/2019 on the Law on Supporting the Functioning of the Ukrainian Language as the State Language,

on Supporting the Functioning of the Ukrainian Language as the State Language.<sup>58</sup> The Venice Commission acknowledged that language policy is a sensitive and highly politicized issue in Ukraine and that in light of Ukraine’s historical past and the situation of Russian as one of the most widely used languages in the country, it is perfectly understandable that the legislator wants to strengthen the role of the Ukrainian language in society.<sup>59</sup> However, “this legitimate purpose has to be coordinated and adequately balanced with guarantees and measures for the protection of the linguistic rights of Ukraine’s minorities”. Unfortunately, the new law (as was the case with the previous ones the Venice Commission assessed) “fails to strike a fair balance” with many of its provisions being “very problematic from the perspective of non-discrimination”, while others impose disproportionate limitations on the freedom of expression and the freedom of association.<sup>60</sup> In order to fulfil its international obligations, the Venice Commission called on Ukraine to prepare “without any unnecessary delay” the Law on Minorities and until the adoption thereof postpone the implementation of the State Language Law’s provisions which are already in force. It further recommended to revise or repeal the problematic provisions of the State Language Law, including the mechanism of complaint and sanctions set forth for cases of non-compliance.<sup>61</sup>

The opinion on *North Macedonia*<sup>62</sup> is also remarkable, although for the opposite reason. It seems that in their pursuit to comply with the needs of the Albanian minority community, the legislators ‘bit off more than one can chew’. According to the Venice Commission, the 2018 language law considerably extends the use of the Albanian language, in fact, in many respects, the provisions “go beyond the European standards” set by the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages. In certain areas, however, in

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CDL-AD(2019)032 (9 December 2019). All opinions are available at <[https://www.venice.coe.int/WebForms/documents/by\\_opinion.aspx?lang=EN](https://www.venice.coe.int/WebForms/documents/by_opinion.aspx?lang=EN)>.

<sup>58</sup> The English text of the law is contained in the document of the Venice Commission, CDL-REF(2019)036-e (18 November 2019), at <[https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2019\)036-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2019)036-e)>.

<sup>59</sup> Opinion on the Law on Supporting the Functioning of the Ukrainian Language as the State Language, adopted by the Venice Commission at its 121st Plenary Session, 6-7 December 2019, CDL-AD(2019)032-e (9 December 2019), at <[https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)032-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)032-e)>, paras. 132-135.

<sup>60</sup> *Ibid.*, paras. 136-137.

<sup>61</sup> *Ibid.*, paras. 138-139.

<sup>62</sup> Venice Commission: North Macedonia – Opinion on the law on the use of languages, adopted by the Venice Commission at its 121st Plenary Session, 6-7 December 2019, CDL-AD(2019)033-e (9 December 2019), at <[https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)033-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)033-e)>.

particular, concerning the use of Albanian in court, the new law goes “too far by imposing what proved to be unrealistic legal obligations on the public institutions”, coupled with heavy sanctions in case of non-compliance and the possibility of reversing judicial decisions for a failure of translation. The Commission was concerned that this would “considerably slow down the functioning of the entire judicial system”, risking serious violations of the right to a fair trial.<sup>63</sup> Authorities were thus recommended to “abandon the provisions of the Law regarding the bilingualism in judicial proceedings” and to ensure that the obligation to use the Albanian language in internal and interinstitutional relations be limited to written official communication, or else the entry of the law into force be postponed “until proper implementation of this provision appears realistic”.<sup>64</sup>

### *C. European Charter for Regional or Minority Languages*

The European Charter for Regional or Minority Languages (ECRML) protects regional or minority languages in various spheres of language use: education, culture, administration, media, justice, economic life and crossborder cooperation. For 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(1)(d) in the case of those languages which are not covered by Part III of the Charter.

As part of the monitoring process of the Charter, nine state periodical reports were submitted in 2019: Armenia’s fifth report, Croatia’s sixth report, Cyprus’s sixth report, Montenegro’s fifth report, the Netherlands’ sixth report, Poland’s third report, Slovenia’s fifth report, Sweden’s seventh report, and Ukraine’s fourth report.<sup>65</sup> The Committee of Experts issued four evaluation reports in 2019: on Luxemburg,<sup>66</sup> the

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<sup>63</sup> *Ibid.*, paras. 99-100.

<sup>64</sup> *Ibid.*, para. 102.

<sup>65</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 (CM) are available at <<https://www.coe.int/en/web/european-charter-regional-or-minority-languages/reports-and-recommendations>>.

<sup>66</sup> The Fifth Report of the Committee of Experts in respect of Luxembourg was adopted on 18 March 2019, but remains restricted as of 13 January 2020. The Committee of Ministers did not make any recommendations, because the fifth state report confirmed the information provided in the initial report according to which there are no regional or minority languages used in Luxembourg.

Slovak Republic,<sup>67</sup> Spain<sup>68</sup> and Switzerland.<sup>69</sup> Furthermore, the evaluation reports on the Czech Republic,<sup>70</sup> Germany,<sup>71</sup> Hungary,<sup>72</sup> and Serbia,<sup>73</sup> adopted in 2018, were made public. Seven Committee of Ministers' recommendations were adopted regarding the Czech Republic,<sup>74</sup> Germany,<sup>75</sup> Hungary,<sup>76</sup> Serbia,<sup>77</sup> the Slovak Republic,<sup>78</sup> Spain,<sup>79</sup> and Switzerland.<sup>80</sup> 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 *Czech Republic*, the Charter applies to German, Romani, Moravian Croatian, Polish and Slovak, the latter two being protected under Part III. The Committee of Experts was overall satisfied with the implementation of the Charter and suggested extending the instrument of ratification for German as a Part III language. Concerning the use of regional or minority (R/M) languages by judicial authorities, the situation has not changed: a person must declare that he or she does not have a command of Czech to use a minority language in criminal proceedings. The Committee of Experts reiterated its call that speakers of Part III languages, i.e. Polish and Slovak, must have the right to use their minority language, irrespective of their knowledge of Czech and involving no extra expense. A positive development is that, as a result of the amendment

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<sup>67</sup> ECRML, Fifth report of the Committee of Experts in respect of the Slovak Republic, CM(2019)126 (2 September 2019).

<sup>68</sup> ECRML, Fifth report of the Committee of Experts in respect of Spain, CM(2019)125 (29 August 2019).

<sup>69</sup> ECRML, Seventh report of the Committee of Experts in respect of Switzerland, 16 September 2019, MIN-LANG(2019)10.

<sup>70</sup> ECRML, Fourth report of the Committee of Experts in respect of the Czech Republic, CM(2019)73 (21 May 2019).

<sup>71</sup> ECRML, Sixth report of the Committee of Experts in respect of Germany, CM(2018)142 (30 October 2018).

<sup>72</sup> ECRML, Seventh report of the Committee of Experts in respect of Hungary, CM(2019)86 (21 November 2018).

<sup>73</sup> ECRML, Fourth report of the Committee of Experts in respect of Serbia, CM(2018)144 (30 October 2018).

<sup>74</sup> CM, Recommendation CM/RecChL(2019)3 on the application of the ECRML by the Czech Republic (19 June 2019).

<sup>75</sup> CM, Recommendation CM/RecChL(2019)1 on the application of the ECRML by Germany (30 January 2019).

<sup>76</sup> CM, Recommendation CM/RecChL(2019)4 on the application of the ECRML by Hungary (19 June 2019).

<sup>77</sup> CM, Recommendation CM/RecChL(2019)2 on the application of the ECRML by Serbia (4 April 2019).

<sup>78</sup> CM, Recommendation CM/RecChL(2019)5 on the application of the ECRML by the Slovak Republic (5 November 2019).

<sup>79</sup> CM, Recommendation CM/RecChL(2019)7 on the application of the ECRML by Spain (11 December 2019).

<sup>80</sup> CM, Recommendation CM/RecChL(2019)6 on the application of the ECRML by Switzerland (11 December 2019).

of the Municipalities Act, minority associations in a given municipality can also request the use of bilingual place names and other topographical signs, whereas previously only local National Minority Committees enjoyed this right. However, a precondition is that according to the last census, the ratio of the respective national minority reaches 10% of the local population. This threshold also applies to the use of the minority language in contact with administrative authorities, and thus hinders the application of the Charter in municipalities where the ratio falls below 10%.<sup>81</sup> German and Moravian Croatian are not used before courts or administrative authorities in the Czech Republic, whereas Slovak—being mutually intelligible with Czech—can, in practice, be used.<sup>82</sup> (No information was provided in the report for Romani in this context.)

In *Germany*, the Charter applies to Danish, Upper Sorbian, Lower Sorbian, North Frisian, Sater Frisian, Low German and Romani, its implementation lying mainly with the *Länder*. The Committee of Ministers recommended as a matter of priority to strengthen the use of R/M languages in dealings with the administration in practice.<sup>83</sup> This is particularly relevant for the administrative authorities with whom the speakers often come into contact and which cover many relevant aspects of daily life. The authorities should show a proactive and welcoming approach.<sup>84</sup> The situation varies between *Länder* depending on the undertakings chosen and the regional or minority language concerned, but overall, R/M languages are used mainly in oral exchanges (rarely in writing), and at the level of local authorities. Recent legislation in several *Länder* might bring about positive changes in this field. Bilingual signage in the names of municipalities, street names, road signs, information signs, names of institutions, etc., is common practice and regularly encouraged by the authorities. In contrast, the use of R/M languages before courts is very limited, with cases in practice where courts do not accept documents submitted in a R/M language and ask for a German translation.<sup>85</sup>

In *Hungary*, the Boyash, Croatian, German, Romani, Romanian, Serbian, Slovakian and Slovenian languages are protected under Part III of the Charter, while Armenian,

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<sup>81</sup> Fourth report of the Committee of Experts in respect of the Czech Republic, *op. cit.*, note 70, Executive Summary, paras. 10, 12-13, 15-17.

<sup>82</sup> *Ibid.*, paras. 23, 27, 31.

<sup>83</sup> Recommendation on the application of the ECRML by Germany, *op. cit.*, note 75, para 4.

<sup>84</sup> Sixth report of the Committee of Experts in respect of Germany, *op. cit.*, note 71, Executive Summary.

<sup>85</sup> *Ibid.*, paras. 16-19.

Bulgarian, Greek, Polish, Ruthenian and Ukrainian are covered by Part II only. In contrast to the evolved legal framework ensuring the rights of national minorities to use their mother tongues in administrative and judicial proceedings, there is hardly any use of minority languages in these fields. Neither have structural measures been taken to prepare public service providers for the use of minority languages. Regarding topographical indications, many municipalities display their name in the minority language on place name signs, and some of them (including a district of Budapest) have also installed a few bilingual street name signs in the centre. Other topographic names in minority languages are usually neither adopted nor used by the local administration. A considerable number of municipalities with local Nationality self-governments have not even adopted the traditional place names in the given language. In turn, there is some, albeit limited and symbolical, use of minority languages in the parliament by the Nationality advocates.<sup>86</sup> The Committee of Ministers called on Hungary as a matter of priority to take measures to encourage the use of minority languages in contacts with the authorities.<sup>87</sup>

In *Serbia*, the Albanian, Bosnian, Bulgarian, Croatian, Hungarian, Romani, Romanian, Ruthenian, Slovakian and Ukrainian languages are protected under Part III of the Charter, whereas Bunjevac, Czech, German, Macedonian and Vlach are covered by Part II only. Although the use of all Part III languages is allowed before a court, this possibility is rarely implemented in practice. Similarly, apart from in the Autonomous Province of Vojvodina, minority languages are rarely used by administrative authorities.<sup>88</sup> In fact, the Committee of Experts found most undertakings under Articles 9 and 10 only formally fulfilled, and not fulfilled in the cases of Romani and Ukrainian. There is no indication that local branches of the national authorities use minority languages. In Vojvodina, it is possible to submit oral or written applications to the provincial authorities in Croatian, Hungarian, Romanian, Ruthenian and Slovakian. At municipality level, the local authorities are not systematically using minority languages in communication with speakers. Topographical indications are displayed in most languages covered by the Charter: however, these are limited to place name signs and,

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<sup>86</sup> Seventh report of the Committee of Experts in respect of Hungary, *op. cit.*, note 72, Executive Summary and paras. 23-30.

<sup>87</sup> Recommendation on the application of the ECRML by Hungary, *op. cit.*, note 76, para. 4.

<sup>88</sup> Fourth report of the Committee of Experts in respect of Serbia, *op. cit.*, note 73, Executive Summary and para. 15.

less frequently, street name signs in areas where the respective national minority makes up a significant part of the population. The use of family names in minority languages is possible if the given language is in official use locally: however, authorities occasionally omit diacritics of the given minority script.<sup>89</sup> The Committee of Ministers recommended Serbia to strengthen the use of all R/M languages in the judiciary and administration.<sup>90</sup>

In the *Slovak Republic*, the Charter applies to the Bulgarian, Croatian, Czech, German, Hungarian, Polish, Romani, Ruthenian, Ukrainian, Yiddish, and as of 2015, the Russian and Serbian languages. (Yiddish, Russian and Serbian are protected only by Part II). In the latest monitoring cycle, several positive steps have been taken in favour of minority languages, including the use of place names in minority languages at railway stations and the provision of translations of legal texts. Still, the actual situation and use of minority languages do not fully correspond to the Slovak Republic's ambitious commitments under the Charter. This is mainly due to the percentage thresholds (recently lowered from 20% to 15%, but not yet operational), which continue to hamper the practical use of nearly all minority languages in administration. Minority languages are used mainly in oral communication with local authorities, in particular in those municipalities where the minority speakers represent a more significant share. Place names in minority languages appear mainly on signs marking the entrance and exit of a settlement, on separate and smaller place name signs, often in a smaller font size. The Committee of Experts reiterated in this respect that flexible measures and a proactive approach is expected,<sup>91</sup> and the Committee of Ministers also called on the authorities to ensure as a matter of priority that the Part III languages are used in practice in the field of administration regardless of thresholds.<sup>92</sup> Furthermore, the Code of Criminal Procedure still provides that an interpreter will be provided only when the accused declares that they do not speak Slovakian. This is contradictory to the Slovak Republic's respective undertaking under the Charter.<sup>93</sup>

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<sup>89</sup> *Ibid.*, paras. 16-20.

<sup>90</sup> Recommendation on the application of the ECRML by Serbia, *op. cit.*, note 77, para. 3.

<sup>91</sup> Fifth report of the Committee of Experts in respect of the Slovak Republic, *op. cit.*, note 67, Executive Summary and paras. 1, 6, 16-18, 32-36.

<sup>92</sup> Recommendation on the application of the ECRML by the Slovak Republic, *op. cit.*, note 78, para. 1.

<sup>93</sup> Fifth report of the Committee of Experts in respect of the Slovak Republic, *op. cit.*, note 67, para. 30.

In *Spain*, the use of R/M languages in administration and justice depends on their legal status. Basque has official status in the Basque Country and in part of Navarre, Catalan in the Balearic Islands and Catalonia, as well as in Valencia under the name Valencian, and Galician in Galicia. Together with Occitan of the Aran Valley in Catalonia (Aranese), these languages are protected by Part III of the Charter. The following languages are covered only by Part II: Amazigh in Melilla, Arabic/Darija in Ceuta, Aragonese in Aragon, Asturian in Asturias, Caló as a non-territorial language, Catalan in Aragon, Estremeño in Extremadura, Fala/Galician in Extremadura, Galician-Asturian in Asturias, Leonese in Castile and León, Portuguese in Extremadura and Valencian/Catalan in Murcia. Co-official languages are used especially in regional and local administration (the Committee of Experts considered most respective undertakings fulfilled), but there are long-standing deficiencies in the judiciary, state administration and public services. In front of courts, the use of a co-official language is only allowed if neither of the parties objects to it. It requires translation and thus lengthens the procedures. A 2015 law allows General State Administration bodies located in the territory of an Autonomous Community to use the co-official language, but in practice, the knowledge and use of these languages remain insufficient. The situation of the Part II languages is critical; some of them have no presence at all in the public sphere.<sup>94</sup> Against this background, it is no wonder that three out of the five Committee of Ministers' recommendations addressed the spheres of public administration and justice. Spanish authorities were urged to amend the Organic Law on the Judiciary to ensure the use of the co-official languages in judicial proceedings at the request of one of the parties, to improve the use of the co-official languages in state administration in the Autonomous Communities, and to include the names of Part II languages in the Statutes of Autonomy of the Autonomous Communities where these languages are spoken in those cases where they are not yet included.<sup>95</sup>

In *Switzerland*, the Charter applies to Italian and Romansh (Part III), as well as French, German and Yenish (Part II). Italian is an official language in the Cantons of Ticino and Graubünden/Grischun/Grigioni, whereas Romansh is one of the official languages of Graubünden/Grischun/Grigioni. Both languages (Romansh to a lesser extent) are used before courts in judicial districts where they are official or co-official. Some

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<sup>94</sup> Fifth report of the Committee of Experts in respect of Spain, *op. cit.*, note 68, Executive Summary and paras. 6-8, 11-16.

<sup>95</sup> Recommendation on the application of the ECRML by Spain, *op. cit.*, note 79, paras. 1-2, 4.

shortcomings persist in the use of Italian in the cantonal administration and the public sector of Graubünden/Grischun/Grigioni. Concerning French and German, the principle of territoriality, the 30% threshold and the lack of cantonal or local language legislation hamper their structured promotion in the public sphere in those territories where they are non-official minority languages. Yenish speakers resist using their language in public life.<sup>96</sup> The principle of territoriality often results in “rigid toponymic monolingualism”: although the bilingual areas of Switzerland have a rich heritage of place names in different languages, the use of bilingual names is rare.<sup>97</sup> The Committee of Ministers recommended that Swiss authorities adopt cantonal and/or local legislation on the public use of French and German in the municipalities where they are minority languages, and continue promoting the use of Italian in cantonal administration and the public sector under cantonal control in Graubünden/Grischun/Grigioni.<sup>98</sup>

#### *D. Framework Convention for the Protection of National Minorities*

As part of the monitoring process of the Framework Convention for the Protection of National Minorities (FCNM), fifteen periodical state reports were submitted in 2019: Poland’s fourth report, and the fifth reports of Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Italy, Malta, Moldova, Romania, the Slovak Republic and Spain, respectively. The Advisory Committee adopted nine advisory opinions in 2019: on Cyprus, Denmark, Finland,<sup>99</sup> Georgia,<sup>100</sup> Montenegro,<sup>101</sup> the Netherlands,<sup>102</sup> Poland, Portugal, Serbia.<sup>103</sup> (Opinions on Cyprus, Denmark, Poland and Portugal remain restricted as of 13 January 2020.) Moreover, in 2019, the opinions

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<sup>96</sup> Seventh report of the Committee of Experts in respect of Switzerland, *op. cit.*, note 69, Executive Summary and paras. 1, 7-11, 55-59.

<sup>97</sup> *Ibid.*, para. 60.

<sup>98</sup> Recommendation on the application of the ECRML by Switzerland, *op. cit.*, note 80, paras. 1-2.

<sup>99</sup> CoE, Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC), Fifth Opinion on Finland, ACFC/OP/V(2019)001 (adopted on 27 June 2019, published on 31 October 2019). All the opinions and resolutions are available at <<http://www.coe.int/en/web/minorities/country-specific-monitoring>>.

<sup>100</sup> ACFC, Third Opinion on Georgia, ACFC/OP/III(2019)002 (adopted on 7 March 2019, published on 5 September 2019).

<sup>101</sup> ACFC, Third Opinion on Montenegro, ACFC/OP/III(2019)001rev (adopted on 7 March 2019, published on 2 October 2019).

<sup>102</sup> ACFC, Third Opinion on the Netherlands, ACFC/OP/III(2019)003 (adopted on 6 March 2019, published on 5 September 2019).

<sup>103</sup> ACFC, Fourth Opinion on Serbia, ACFC/OP/IV(2019)001 (adopted on 26 June 2019, published on 18 December 2019).

on Albania,<sup>104</sup> Ireland,<sup>105</sup> Lithuania<sup>106</sup> and the Russian Federation,<sup>107</sup> adopted in 2018, and the opinion on Azerbaijan,<sup>108</sup> adopted in 2017, were published. The Committee of Ministers issued six resolutions: on Bosnia and Herzegovina,<sup>109</sup> Ireland,<sup>110</sup> Lithuania,<sup>111</sup> North Macedonia,<sup>112</sup> Switzerland<sup>113</sup> and Kosovo.<sup>114</sup>

In the following, developments in the above-mentioned countries in the field of public administration and justice 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 and judicial authorities) and Article 11 (use of minority languages on topographical signs and in identity documents as special subfields of public administration).

### *1. Resolutions of the Committee of Ministers*

The resolution addressed to Ireland did not specifically touch upon the language rights of minorities in public administration or justice. In turn, *Bosnia and Herzegovina* was called on to take more proactive measures to ensure that the provisions for the use of minority languages in dealings with the administrative authorities and for topographical indications are effectively implemented in municipalities inhabited traditionally or in substantial numbers by persons belonging to national minorities.<sup>115</sup> *Kosovo* was recommended to ensure full implementation of the Law on the Use of Languages;

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<sup>104</sup> ACFC, Fourth Opinion on Albania, ACFC/OP/IV(2018)006 (adopted on 11 October 2018, published on 19 March 2019).

<sup>105</sup> ACFC, Fourth Opinion on Ireland, ACFC/OP/IV(2018)005 (adopted on 10 October 2018, published on 20 June 2019).

<sup>106</sup> ACFC, Fourth Opinion on Lithuania, ACFC/OP/IV(2018)004 (adopted on 30 May 2018, published on 8 January 2019). The opinion was discussed in the previous issue of the EYMI, Nagy, *op. cit.*, note 18, 98-99.

<sup>107</sup> ACFC, Fourth Opinion on the Russian Federation, ACFC/OP/IV(2018)00120 (adopted on 20 February 2018, published on 15 January 2019). The opinion was discussed in the previous issue of EYMI, Nagy, *op. cit.*, note 18, 100.

<sup>108</sup> ACFC, Fourth Opinion on Azerbaijan, ACFC/OP/IV(2017)006 (adopted on 8 November 2017, published on 4 February 2019).

<sup>109</sup> CM, Resolution CM/ResCMN(2019)8 on the implementation of the FCNM by Bosnia and Herzegovina (12 June 2019).

<sup>110</sup> CM, Resolution CM/ResCMN(2019)14 on the implementation of the FCNM by Ireland (16 October 2019).

<sup>111</sup> CM, Resolution CM/ResCMN(2019)4 on the implementation of the FCNM by Lithuania (27 March 2019).

<sup>112</sup> CM, Resolution CM/ResCMN(2019)5 on the implementation of the FCNM by North Macedonia (27 March 2019).

<sup>113</sup> CM, Resolution CM/ResCMN(2019)7 on the implementation of the FCNM by Switzerland (14 May 2019).

<sup>114</sup> CM, Resolution CM/ResCMN(2019)11 on the implementation of the FCNM in Kosovo (3 July 2019).

<sup>115</sup> Resolution on the implementation of the FCNM by Bosnia and Herzegovina, *op. cit.*, note 109, Further recommendations.

address central and local level capacity gaps in language knowledge, quality of official translation and provision of services in minority languages, including in the judicial system; address disparities in access to justice between the K/Albanian majority and minorities; align the use of the Serbian language in judicial and administrative proceedings with the relevant legislation; and further increase the presence of non-Albanian judges, lawyers and support staff.<sup>116</sup> *Lithuania* was invited to bring its legislative framework on the use of minority languages in dealings with administrative authorities, in private signs and topographical indications, and pertaining to the spelling of names in official documents, into line with the Framework Convention.<sup>117</sup> The Committee of Ministers asked *North Macedonia* to ensure the effective implementation of the Law on the Use of Languages at central and local levels, including as regards the display of minority languages on topographical signs; encourage the use of minority languages in the public sphere, and refrain from relying exclusively on the 2002 census.<sup>118</sup> *Switzerland* was recommended to ensure effective equality among persons belonging to the different official linguistic communities so that they may continue to use their own languages in their contacts with the federal administration; consider translating the main judgments of the Federal Tribunal related to the rights of persons belonging to national minorities into other national languages; and further promote the use of minority languages in day-to-day activities of public administration and the judiciary of the Canton of Graubünden/Grischun/Grigioni.<sup>119</sup>

## 2. *Opinions of the Advisory Committee*

In *Albania*, a welcome development was the adoption of the Law on the Protection of National Minorities in 2017, which seeks to fill the gaps that so far existed as regards the use of minority languages in relations with administrative authorities. However, the 20% threshold constitutes an insurmountable barrier for effective access to language rights, since—due to an administrative reform involving merges—there are only three

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<sup>116</sup> Resolution on the implementation of the FCNM in Kosovo, *op. cit.*, note 114, Recommendations for immediate action.

<sup>117</sup> Resolution on the implementation of the FCNM by Lithuania, *op. cit.*, note 111, Recommendations for immediate action.

<sup>118</sup> Resolution on the implementation of the FCNM by North Macedonia, *op. cit.*, note 112, Further recommendations.

<sup>119</sup> Resolution on the implementation of the FCNM by Switzerland, *op. cit.*, note 113, Further recommendations.

local government units (out of 61) where the threshold is met.<sup>120</sup> The Advisory Committee recalled that “the rights of Article 10.2 are triggered by one of the two main criteria (substantial number *or* area traditionally inhabited), they apply also to areas where only a relatively small percentage of persons belonging to national minorities reside, provided that persons belonging to national minorities *traditionally* inhabit the areas concerned, that there is a request by these persons, and that such a request corresponds to a real need”.<sup>121</sup> This applies to topographical indications, as well.<sup>122</sup> Authorities were called on to review the relevant provisions, adopt flexible measures, and ensure that the competence to make decisions on the use of minority languages with administrative authorities and on topographical indications is vested with neighbourhood community councils.<sup>123</sup> A further problem is that Albanian legislation conditions the right to use surnames and first names in minority languages on using it alongside the Albanian language. This provision does not correspond to the Framework Convention, thus should be eliminated.<sup>124</sup>

In *Azerbaijan*, although the promotion of multiculturalism has a long-standing tradition, the legal and institutional framework to protect minority rights is still lacking.<sup>125</sup> Regrettably, minority languages are mainly restricted to the private and informal sphere, and no progress has been made regarding the use of minority languages in relations with administrative authorities. Azerbaijan has so far failed to ratify the European Charter for Regional or Minority Languages, and there is still no formal possibility to use minority languages in contacts with local or regional authorities.<sup>126</sup> The display of topographical indications in minority languages in areas traditionally inhabited by substantial numbers of persons belonging to a national minority is not promoted. In fact, the Advisory Committee saw no bilingual place or street signs during its visit to Lankaran and Massali, and restrictions also exist elsewhere.<sup>127</sup>

*Finland* was praised for its long tradition of support for minority languages and cultures, enshrined in a well-developed legal framework affording extensive linguistic rights.

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<sup>120</sup> Fourth Opinion on Albania, *op. cit.*, note 104, para. 102. Reference is made to Thematic Commentary No. 3 on the language rights of persons belonging to national minorities, para. 56.

<sup>121</sup> *Ibid.*, paras. 100-101.

<sup>122</sup> *Ibid.*, paras. 110-113.

<sup>123</sup> *Ibid.*, paras. 105-106, 114-115.

<sup>124</sup> *Ibid.*, paras. 107-109.

<sup>125</sup> Fourth Opinion on Azerbaijan, *op. cit.*, note 108, 1.

<sup>126</sup> *Ibid.*, paras. 65-69.

<sup>127</sup> *Ibid.*, paras. 70-71.

However, a gap has gradually been emerging between *de jure* guarantees and *de facto* shortfalls in implementation, especially as regards the supply of public services in Swedish and Sami languages.<sup>128</sup> The Advisory Committee urged the authorities to ensure that commitments made regarding public services in the Swedish language are realistic, effective, matched with adequate resources, regularly monitored, and that, in practice, Swedish speakers have access to health care and social welfare services in their first language. This also applies to the Sami, preferably outside the Sami homeland, as well.<sup>129</sup> Another concern was the reduction of the number of bilingual district courts from eight to five, which—according to Swedish speakers—will lead to the weakening of the position of the Swedish language within the judicial system.<sup>130</sup> The use of Sami forenames and surnames remains problematic: public administration systems, including the Finnish Population Information System, do not support the Sami spellings, despite several recommendations by the Advisory Committee to remedy the situation. Authorities were once again called on to guarantee without further delay the registration of Sami names in public documents, respecting the language diacritic signs.<sup>131</sup>

*Georgia* has continued to vigorously promote the use of the Georgian language in all areas of public life, including through the adoption of the Law on State Language in 2015. In contrast, the necessary complementary efforts on promoting the use of minority languages in relations with the administration are below the standards of the Framework Convention.<sup>132</sup> This means that although the law provides for the use of minority languages in municipalities where persons belonging to national minorities “compactly reside”, in practice, even in municipalities largely composed of minority speakers, the minutes of the municipal councils’ meetings are only in Georgian, even when the discussions themselves took place in the minority language. The Committee regretted that the use of minority languages in many public and social contexts (such as the Public Defender local offices or health care) depends on the goodwill of civil servants and *ad hoc* circumstances.<sup>133</sup> As regards judicial procedures, a permanent

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<sup>128</sup> Fifth Opinion on Finland, *op. cit.*, note 99, paras. 1, 9 and 11.

<sup>129</sup> *Ibid.*, paras. 18, 22-23, 128-150. See also the failure of the Sote reform which planned to centralize the health and social service provision, and eventually led to the resignation of the government. *Ibid.*, paras. 124-127.

<sup>130</sup> *Ibid.*, para. 136.

<sup>131</sup> *Ibid.*, paras. 151-153.

<sup>132</sup> Third Opinion on Georgia, *op. cit.*, note 100, 1 and 6.

<sup>133</sup> *Ibid.*, paras. 101-105.

concern is that while adequate legal provisions exist, the right to interpretation is often not systematically implemented because of insufficient financial resources and/or a lack of qualified interpreters, especially in the case of the languages of numerically smaller minorities (Abkhaz, Assyrian, Avar, Chechen, Kurmanji, Ossetian and Udi).<sup>134</sup> Whereas the transliteration of personal names seems to be a resolved issue,<sup>135</sup> the display of topographical signs in minority languages remains problematic.<sup>136</sup> Finally, Georgia has still not complied with its pre-accession commitment to the Council of Europe as regards the ratification of the European Charter for Regional or Minority Languages.<sup>137</sup>

As regards *Ireland*, although the revitalization of the Cant (De Gammon, Shelta) language used by Irish Travellers was underlined as being of central importance,<sup>138</sup> the Advisory Committee did not deal with the language rights of minorities in the fields of administration or justice specifically.

In *Montenegro*, there is no single ethnic group making up the majority of the population.<sup>139</sup> Montenegrin is the state language whilst the Serbian, Bosnian, Croatian and Albanian languages are “in official use”; Cyrillic and Latin scripts are assigned equal value. At the local level, the Statutes and Rules of Procedure of the municipalities where persons belonging to national minorities constitute the majority of the local population define the use of languages and alphabets.<sup>140</sup> In 2017, legislation on language rights was reviewed, and a 5% threshold was established for the use of minority languages at the local level. The Advisory Committee generally welcomed the amendments as they have contributed to clarifying the situation for the implementation of language rights.<sup>141</sup> Concerning topographical signs, however, contradictions in legislation remain: the constitution, for example, maintains the wording of “significant share in [the] total population” (Article 79(8)) for guaranteeing the right to have topographical signs in minority languages. The Advisory Committee would favour clear and transparent procedures and reiterated its call on the authorities to consult with

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<sup>134</sup> *Ibid.*, paras. 106 and 109.

<sup>135</sup> *Ibid.*, para. 112.

<sup>136</sup> *Ibid.*, paras. 113-115.

<sup>137</sup> *Ibid.*, paras. 107 and 110.

<sup>138</sup> Fourth Opinion on Ireland, *op. cit.*, note 105, paras. 67-70.

<sup>139</sup> Third Opinion on Montenegro, *op. cit.*, note 101, 1.

<sup>140</sup> *Ibid.*, para. 109.

<sup>141</sup> *Ibid.*, paras. 110-112.

minority representatives to ascertain whether there is a demand for topographical indications in minority languages and to ensure that this right is applied in an equal manner across the territory of Montenegro.<sup>142</sup> Personal names may be used in official documents in any minority language, in either Cyrillic or Latin script.<sup>143</sup>

*The Netherlands* continues to maintain a high standard of protection of the rights of the Frisian national minority.<sup>144</sup> Pursuant to the 2013 Use of Frisian Act, Frisian is designated as the official language in the Province of Fryslân, along with Dutch. Anyone may use the Frisian language in their dealings with administrative bodies established in the province, except if it would result in a disproportionate administrative burden, which gives the authorities a considerable margin of appreciation.<sup>145</sup> In practice, the possibilities for the official use of Frisian are quite good, with numerous ongoing projects to facilitate the use of the language, and with a high level of oral and written command among civil servants.<sup>146</sup> As regards the effective implementation of the right to use the Frisian language in court, a lack of interpreters and court staff constitutes a practical barrier. The recent administrative reform involving mergers of municipalities entails the risk of weakening the use of the Frisian language. In all cases, the Advisory Committee considered that authorities should take “a strategic and participatory approach”, involving more effective consultation and participation of associations representing the Frisian minority.<sup>147</sup> In terms of topographical signs, the municipalities themselves may decide whether to use Frisian, Dutch or bilingual indications, and Frisian language inscriptions are indeed widely used; nevertheless, the authorities were encouraged to increase their efforts in this area.<sup>148</sup>

*Serbia’s* legal framework on minorities is solid, but its implementation is not monitored using evidence-based approaches, and the contrast between the levels of protection in the Autonomous Province of Vojvodina vs. Central or Southern Serbia remains notable.<sup>149</sup> Good practices are present at the local level, including the development of bilingual administrative forms in Serbian/Bulgarian in Bosilegrad and Dimitrovgrad or

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<sup>142</sup> *Ibid.*, paras. 116-119.

<sup>143</sup> *Ibid.*, paras. 113-115.

<sup>144</sup> Third Opinion on the Netherlands, *op. cit.*, note 102, 2.

<sup>145</sup> *Ibid.*, paras. 98-99.

<sup>146</sup> *Ibid.*, paras. 102-105.

<sup>147</sup> *Ibid.*, 2-3, paras. 108-113.

<sup>148</sup> *Ibid.*, paras. 115-118.

<sup>149</sup> Fourth Opinion on Serbia, *op. cit.*, note 103, 1.

the use of interpreters and translators in the Bosnian language in courts in Novi Pazar and Prijepolje, but there is much room for improvement. The pause in recruitment in the state and local administrations has become a significant obstacle to the employment of speakers of minority languages, in respect of which there is still no comprehensive data. Minorities encounter difficulties in accessing state and local administration services in their own language and are often unaware of their language rights. The Advisory Committee remains concerned that, although the 15% threshold is met in certain local self-government units, the effective official use of the minority language(s) concerned is not respected,<sup>150</sup> including in topographical indications.<sup>151</sup> While the registration of personal names in minority languages does not raise difficulties in practice, authorities should ensure that extracts of civil records containing data in a minority language can be printed bilingually or multilingually.<sup>152</sup>

## V. CONCLUDING REMARKS

In 2019, international organizations and monitoring bodies continued their dedicated work for the effective protection of minorities. Nevertheless, language rights still receive less attention when compared to other areas of minority protection, especially in the fields of official language use, that is, in public administration and justice. The regulation of these areas has been traditionally considered as almost exclusively belonging to the states' competence, and international organizations are therefore reluctant to interfere. Consequently, the situation of the official use of minority languages is very different in the various European countries.

Whereas problematic issues concerning minority rights exist in all European countries, in 2019, Ukraine received the widest international attention and was repeatedly called on by the OSCE HCNM as well as the Venice Commission to maintain a careful balance between supporting the state language and ensuring the use of minority languages.

The Council of Europe's Framework Convention and the European Charter for Regional or Minority Languages continue to be the most important standard-setting mechanisms in terms of the (language) rights of European minorities. Those who

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<sup>150</sup> *Ibid.*, paras. 77-83.

<sup>151</sup> *Ibid.*, paras. 85 and 87.

<sup>152</sup> *Ibid.*, paras. 84 and 86.

regularly follow the monitoring procedures of these treaties may realize with some disappointment that progress is slow—especially in terms of practical implementation—and that the two expert committees’ repeated recommendations often fall on deaf ears. Outstanding issues include, *inter alia*, the need for a flexible application of numerical thresholds, the lack of available staff in minority languages, and the possible dangers that administrative mergers may entail for minority speakers. In contrast, good practices are also widespread and reflect the cooperative attitudes of most European states, which—along with the Minority SafePack Initiative’s hopeful progress within the EU—might give reason for guarded optimism for the supporters of minority rights.