

# **The Rights of European Minorities: Justice, Public Administration, Participation, Transfrontier Exchanges and Citizenship – International Developments in 2020**

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**Abstract:** This article provides an overview of the implementation of the rights of European national, ethnic or linguistic minorities and indigenous peoples in 2020, in the fields of administration of justice, public administration, participation, citizenship and transfrontier exchanges. Relevant legal developments are presented in the activities of the United Nations, the Organization for Security and Co-operation in Europe, the European Union, and the Council of Europe. Special attention is paid to the application of the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities, which are the most important international treaties on the rights of minorities in Europe.

**Keywords:** national minorities; indigenous peoples; administration of justice; public administration; participation; transfrontier exchanges; regional or minority languages

## I. INTRODUCTION

This article presents legal developments concerning the rights of autochthonous (national, ethnic, and/or linguistic) minorities and indigenous peoples in Europe during the year of 2020. All persons belonging to a minority are entitled to universal human rights as well as group-specific rights provided especially with the aim to preserve their unique characteristics and identity, which differentiate them from the majority. As such, minority rights are manifold; however, in this paper only the following selected areas will be examined: administration of justice (judicial proceedings), public administration and public services, participation, and transfrontier exchanges—that is, basically civil and political rights. Relevant developments concerning citizenship will also be presented.

Whereas minority issues have been increasingly visible in the work of international organizations relevant for European minorities—the United Nations, the Organization for Security and Co-operation in Europe, the Council of Europe and even the European

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Union—the Covid-19 pandemic had a negative impact on their day-to-day activities: many meetings, events, working sessions, country visits, etc. had to be cancelled in 2020. Furthermore, the global pandemic has exacerbated the vulnerability of certain minorities and deepened the already existing inequalities in many states.<sup>1</sup> The reason is that several groups and politicians have exploited Covid-19-related fears to scapegoat minorities which led to an alarming growth in verbal and physical abuses against them, with some even being denied access to health care and information about the pandemic in their own languages.<sup>2</sup> With respect to minorities in Europe, this problem has mainly affected the Roma communities.<sup>3</sup> As regards indigenous peoples, an important lesson learned is that those communities have managed to best resist the pandemic which have achieved autonomy and self-government, allowing them to manage their lands, territories and resources.<sup>4</sup>

## II. UNITED NATIONS

### A. *Human Rights Committee*

During its three sessions in 2020, the Human Rights Committee—an expert body monitoring the implementation of the International Covenant on Civil and Political Rights (CCPR)—considered several state party reports, but adopted only one concluding observations in respect of a European country, namely Portugal.<sup>5</sup> The Committee was concerned about ongoing discrimination, hate crimes and the excessive use of force against racial and ethnic minorities, especially against the Roma and

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<sup>1</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC), Statement on the COVID-19 pandemic and national minorities (28 May 2020), at <<https://rm.coe.int/acfc-statement-covid-19-and-national-minorities-28-05-2020-final-en/16809e8570>>.

<sup>2</sup> OHCHR, COVID-19 fears should not be exploited to attack and exclude minorities – UN expert, Geneva, 30 March 2020, at <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25757&LangID=E>>.

<sup>3</sup> European Parliament, Resolution on the impact of COVID-19 measures on democracy, the rule of law and fundamental rights, 2020/2790(RSP) (13 November 2020), para. AD, at <[https://www.europarl.europa.eu/doceo/document/TA-9-2020-0307\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0307_EN.html)>. Cf. OHCHR, Bulgaria/COVID-19 response: “Stop hate speech and racial discrimination against the Roma minority” – UN experts, Geneva, 13 May 2020, at

<<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25881&LangID=E>>.

<sup>4</sup> OHCHR, “COVID-19 is devastating indigenous communities worldwide, and it’s not only about health” – UN expert warns, Geneva, 18 May 2020, at <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25893&LangID=E>>.

<sup>5</sup> 128th session (2–27 March 2020); 129th session (29 June – 24 July 2020); 130th session (12 October – 6 November 2020), at <[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/SessionsList.aspx?Treaty=CCPR](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/SessionsList.aspx?Treaty=CCPR)>.

African descendants, and called on the state to intensify its efforts to address these issues, *inter alia* by providing adequate training to law enforcement officials.<sup>6</sup>

In 2020, the Human Rights Committee examined 58 individual communications—31 submitted against European states—under the Optional Protocol to the CCPR, but none of these had a bearing on the rights of national minorities.

### *B. Human Rights Council*

In 2020 the UN Human Rights Council (UNHRC) held three regular sessions.<sup>7</sup> At the 43<sup>rd</sup> session, it adopted a resolution on the rights of persons belonging to national or ethnic, religious and linguistic minorities. The resolution emphasized the importance of minority languages and the protection of minority rights, commended the work of the special rapporteur on minority issues, and noted the role of other UN organs, as well as international and regional organizations. Furthermore, it called upon states to ensure that persons belonging to minorities are aware of and able to exercise their rights set out in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and urged states to take legislative, policy and practical measures to this end.<sup>8</sup> Another resolution, adopted at the UNHRC's 45<sup>th</sup> session, focused on the rights of indigenous peoples, also in the context of Covid-19 (having a disproportionately negative effect on them), and with a special focus on the right to participation. The resolution emphasized the importance of the full and effective participation of indigenous persons (especially women and the youth) in decision-making processes in matters that affect them, and explored ways to involve indigenous peoples' representatives and institutions in the work of relevant United Nations bodies.<sup>9</sup> In addition, the UNHRC planned to hold an intersessional roundtable on possible steps to enhance the participation of indigenous peoples' representatives in its meetings, but this was cancelled due to pandemic restrictions.<sup>10</sup>

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<sup>6</sup> Human Rights Committee, Concluding observations on the fifth periodic report of Portugal, CCPR/C/PRT/CO/5 (28 April 2020), paras. 12-15, 24-25.

<sup>7</sup> For documentation of the 43<sup>rd</sup> (24 February - 23 March 2020), 44<sup>th</sup> (30 June - 17 July 2020) and 45<sup>th</sup> sessions (14 September - 7 October 2020), see <<https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/>>.

<sup>8</sup> UNHRC, Resolution 43/8, A/HRC/43/L.9 (19 June 2020), at <<https://undocs.org/A/HRC/43/L.9>>.

<sup>9</sup> UNHRC, Resolution 45/12, A/HRC/45/L.34 (9 October 2020), at <<https://undocs.org/en/A/HRC/RES/45/12>>.

<sup>10</sup> *Ibid.*, para. 15.

In 2020, the Working Group on the Universal Periodic Review (UPR) reviewed the human rights records of 28 countries as part of the third cycle, including seven European states: Spain, Sweden, Turkey—35th session; Andorra, Belarus, Bulgaria, Croatia—36th session.<sup>11</sup> (Reports of the 36th session were not yet available as of 31 December 2020, therefore, will be presented in the next Yearbook. The 2019 report on San Marino was also published in 2020 but it is not relevant for the rights of minorities.) All reports were alarmed about issues of racism, discrimination and intolerance against minorities—and, in Sweden, indigenous peoples—in European societies.<sup>12</sup> Spain and Sweden were called on to strengthen measures for the integration of Roma, including to ensure their participation in political and social life, and their equal access to justice.<sup>13</sup> Sweden was commended for its commitment to the self-determination of the Sami, and for strengthening its legislation to support national minorities, including to promote the use of their languages and consultations with them in decision-making. Progress has been made regarding the adoption of the Nordic Sami Convention and the ratification of the ILO Convention on Indigenous and Tribal Peoples.<sup>14</sup> In turn, the inadequate representation of minority women in politics, the access of indigenous peoples and national minorities to justice, and their participation in public life in general remained worrisome issues.<sup>15</sup> Turkey was called on to ratify the Framework Convention for the Protection of National Minorities and Protocol No. 12 to the European Convention on Human Rights.<sup>16</sup>

### *C. The Forum on Minority Issues and the Special Rapporteur on Minority Issues*

The Forum on Minority Issues meets annually to discuss thematic issues on national, ethnic, religious and linguistic minorities, led by the Special Rapporteur on Minority Issues. The 13<sup>th</sup> session of the Forum—held virtually from 19 to 20 November 2020—was dedicated to the theme of hate speech and social media, and did not discuss issues

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<sup>11</sup> See the review timetables at <<http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRSessions.aspx>>.

<sup>12</sup> Report of the Working Group of the UPR on Spain, A/HRC/44/7 (18 March 2020); Report of the Working Group of the UPR on Sweden, A/HRC/44/12 (18 March 2020); Report of the Working Group of the UPR on Turkey, A/HRC/44/14 (24 March 2020), at <<https://www.ohchr.org/EN/HRBodies/UPR/Pages/CyclesUPR.aspx>>.

<sup>13</sup> Report of the Working Group of the UPR on Spain, *ibid.*, para. 150.227; Report of the Working Group of the UPR on Sweden, *ibid.*, paras. 156.252-156.254.

<sup>14</sup> Report of the Working Group of the UPR on Sweden, *ibid.*, paras. 17-18, 112-113.

<sup>15</sup> *Ibid.*, paras. 43, 156.247-248, 156.252.

<sup>16</sup> Report of the Working Group of the UPR on Turkey, *op. cit.*, note 12, para. 45.13.

of direct relevance for this paper.<sup>17</sup> The recommendations of the previous Forum were published in March 2020. Although they focused on minority language education, the importance of including linguistic minorities in policy and decision-making processes was also emphasized, and states were called on to make available administrative, legal and health services in minority languages.<sup>18</sup>

Special Rapporteur on Minority Issues Fernand de Varennes presented his annual report to the UNHRC's 43<sup>rd</sup> session<sup>19</sup> and to the General Assembly's 75<sup>th</sup> session,<sup>20</sup> respectively, summarizing the mandate holder's activities. The second year of the mandate focused on awareness-raising and increasing the visibility of minority issues, and continued the interesting venture to develop a definition of the concept of minority. As the Special Rapporteur eloquently put it, the lack of consistency in understanding who is a minority is "a recurring stumbling block to the full and effective realization of the human rights of minorities".<sup>21</sup>

Language rights remained one of the Special Rapporteur's main priorities.<sup>22</sup> He reminded state authorities of their obligation "to use proportionally a minority language where the numbers, demand and geographic concentration of its speakers" make it reasonable or justified. This is all the more important because access to public services is "most effective when offered in a minority's language", and the use of minority languages in public administration is also relevant for participation.<sup>23</sup>

The Special Rapporteur undertook two country missions in 2019, to Kyrgyzstan (the report is forthcoming) and Spain. His report on *Spain* addressed issues of particular significance for minorities, including language rights, administrative and judicial proceedings, access to public services, and the participation of minorities in public

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<sup>17</sup> See "Hate Speech, Social Media and Minorities. Thirteenth Session of the Forum on Minority Issues", at <<https://www.ohchr.org/EN/HRBodies/HRC/Minority/Pages/Session13.aspx>>.

<sup>18</sup> Recommendations of the Forum on Minority Issues at its 12<sup>th</sup> session on the theme "Education, language and the human rights of minorities", A/HRC/43/62 (22 January 2020), paras. 4e, 36, 46, 57, at <<https://undocs.org/en/A/HRC/43/62>>.

<sup>19</sup> Education, language and the human rights of minorities – Report of the Special Rapporteur on minority issues, A/HRC/43/47 (9 January 2020), at <<https://undocs.org/A/HRC/43/47>>.

<sup>20</sup> Report of the Special Rapporteur on minority issues, Fernand de Varennes – Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, A/75/211 (21 July 2020), at <<https://undocs.org/A/75/211>>.

<sup>21</sup> *Ibid.*, para. 17. For more details on the significance and scope of the four categories of national, ethnic, religious and linguistic minorities, see *ibid.*, paras. 15-70.

<sup>22</sup> Education, language and the human rights of minorities, *op. cit.*, note 19, paras. 31-66, mainly in the context of education.

<sup>23</sup> *Ibid.*, paras. 47, 49, 51.

life.<sup>24</sup> The most urgent problems are reflected in the Special Rapporteur's recommendations. Thus, he invited the Spanish government to modify the law on the judiciary in order to guarantee a more directly exercisable right to use a minority co-official language so that criminal, civil and administrative judicial proceedings can effectively be held in both the minority language and the state language. Furthermore, Spain was urged to review legislation which unduly criminalizes acts related to the exercise by minorities their democratic rights to participation in public and political life.<sup>25</sup> Due to Covid-19 related restrictions, the Special Rapporteur could not undertake country visits in 2020.

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

In 2020, the (former) Special Rapporteur on the Rights of Indigenous Peoples initiated a country visit to Denmark and Greenland, but the visit had to be interrupted due to Covid-19 restrictions.<sup>26</sup> Evaluating the six years of her mandate, Victoria Tauli-Corpuz emphasized that “despite progress made at the international, regional and national levels in many countries on legal recognition of the rights of indigenous peoples, important challenges remain”.<sup>27</sup> These challenges include, *inter alia*, the criminalization of indigenous human rights defenders;<sup>28</sup> the deficiencies within national justice systems and the access of indigenous peoples, particularly women, to justice;<sup>29</sup> and the effective participation of indigenous people in matters concerning them.<sup>30</sup> The Special Rapporteur's report devoted a separate section on indigenous consultation and consent, which represent important safeguards for many substantive rights, including participation and self-determination.<sup>31</sup> In particular, consultations should respect the forms of indigenous organizations and representation, and provide that indigenous peoples are able to influence the making of decisions that affect their rights, including

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<sup>24</sup> Report of the Special Rapporteur on minority issues on his visit to Spain, A/HRC/43/47/Add.1 (9 March 2020), paras. 33-35., 50-70, at <<https://undocs.org/en/A/HRC/43/47/Add.1>>.

<sup>25</sup> *Ibid.*, paras. 85, 88.

<sup>26</sup> UNHRC, Report of the Special Rapporteur on the rights of indigenous peoples, A/HRC/45/34 (18 June 2020), para. 6, at <<https://undocs.org/en/A/HRC/45/34>>.

<sup>27</sup> *Ibid.*, para. 13.

<sup>28</sup> *Ibid.*, paras. 13-19.

<sup>29</sup> *Ibid.*, paras. 37-40.

<sup>30</sup> *Ibid.*, paras. 42-44.

<sup>31</sup> *Ibid.*, paras. 49, 70-71.

via their own proposals.<sup>32</sup> One of the cross-cutting issues related to consultation is “the existence of effective judicial, administrative and other mechanisms to ensure that indigenous peoples can enforce their rights”.<sup>33</sup>

The new Special Rapporteur, Francisco Cali Tzay, a Mayan Cakchiquel from Guatemala, took up his role on 1 May 2020. His first report to the General Assembly focused on the impact of the coronavirus disease on the individual and collective rights of indigenous peoples, and the disproportionate impact of emergency measures on them.<sup>34</sup> Although the report has more bearing on socioeconomic rights, the Special Rapporteur emphasized the importance of indigenous participation in this context, too.<sup>35</sup>

The impact of Covid-19 on the rights of indigenous peoples was also the theme of the 13<sup>th</sup> session of the Expert Mechanism on the Rights of Indigenous Peoples, held from 30 November to 4 December 2020 in the form of four virtual regional meetings. Several contributions from European indigenous organizations and states were concerned about the negative impact of quarantine measures on the ability of indigenous peoples to participate in decision making, since most of the relevant events were organized virtually, whereas indigenous communities, especially in remote areas, have low access to online services. Many events were cancelled altogether, including sessions of the Sami parliaments. This is problematic also because participatory rights and substantive rights are indivisibly linked. Representatives emphasized that measures to combat the pandemic and its consequences need to be taken with the active participation of indigenous peoples. The right to maintain and develop transfrontier contacts was mentioned regarding the Sami, a people with territories in four states, who were seriously affected by restricted border traffic.<sup>36</sup>

The annual session of the Permanent Forum on Indigenous Issues was scheduled for 13-24 April 2020 but was postponed until further notice due to the coronavirus pandemic. The session’s theme will be “Peace, justice and strong institutions: the role of indigenous peoples in implementing Sustainable Development Goal 16”. Many

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<sup>32</sup> *Ibid.*, paras. 55-56, 69.

<sup>33</sup> *Ibid.*, para. 68.

<sup>34</sup> UN GA, Report of the Special Rapporteur on the rights of indigenous peoples, A/75/185 (20 July 2020), at <<https://www.undocs.org/en/A/75/185>>.

<sup>35</sup> *Ibid.*, paras. 43-49, 77, 99.

<sup>36</sup> Regional meeting of the Arctic; Central and Eastern Europe, Russian Federation, Central Asia and Transcaucasia. See at <<https://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/Session13.aspx>>.

preparatory documents are already available at the Forum’s website,<sup>37</sup> including a study on indigenous peoples’ autonomies,<sup>38</sup> an update on the application of the UN Declaration on the Rights of Indigenous Peoples (with a focus on the effective inclusion and participation of indigenous peoples),<sup>39</sup> and a report on the International Year of Indigenous Languages of 2019.<sup>40</sup> The strategic outcome document of the Year emphasized that “respect for indigenous languages are essential to life, well-being, and participation in all socio-cultural, educational, political, economic, environmental, and other domains”, and that “effective support for indigenous languages will require substantially and measurably enhanced involvement of indigenous peoples themselves, particularly indigenous women and youth, through their own governance structures and representative bodies”.<sup>41</sup>

### III. OSCE

#### *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 where the participating states can discuss the application of their commitments in the human dimension of security. In 2020, OSCE participating states decided to cancel the annual meeting due to circumstances caused by Covid-19.<sup>42</sup> Three Supplementary Human Dimension Meetings were held online, with no direct relevance for the themes of this paper.<sup>43</sup>

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<sup>37</sup> <<https://www.un.org/development/desa/indigenouspeoples/unpfi-sessions-2/19th-session-2020.html>>.

<sup>38</sup> UN Economic and Social Council, Study on indigenous peoples’ autonomies: experiences and perspectives, E/C.19/2020/5 (30 January 2020), at <<https://undocs.org/E/C.19/2020/5>>.

<sup>39</sup> UN Economic and Social Council: Update on the promotion and application of the United Nations Declaration on the Rights of Indigenous Peoples, E/C.19/2020/6 (3 February 2020), at <<https://undocs.org/E/C.19/2020/6>>.

<sup>40</sup> UN Economic and Social Council, Summary report on the International Year of Indigenous Languages, 2019, E/C.19/2020/9 (14 February 2020), at <<https://undocs.org/E/C.19/2020/9>>.

<sup>41</sup> UNESCO, Strategic outcome document of the 2019 International Year of Indigenous Languages, 40 C/68 (15 November 2019), Annex, 7, Conclusions II and IV, at <[https://en.iyil2019.org/wp-content/uploads/2019/11/strategic-outcome-document\\_iyil2019\\_eng.pdf](https://en.iyil2019.org/wp-content/uploads/2019/11/strategic-outcome-document_iyil2019_eng.pdf)>.

<sup>42</sup> “OSCE participating States decide the 2020 Human Dimension Implementation Meeting will not take place due to Covid-19”, 11 September 2020, at <<https://www.osce.org/chairmanship/463392>>.

<sup>43</sup> “Supplementary Human Dimension Meetings”, at <<https://www.osce.org/odihr/supplementary-human-dimension-meetings>>.



In March 2020, ODIHR published its annual report on last year’s developments. The report draws attention to the “wide range of manifestations of intolerance against Roma and Sinti, including racially motivated attacks and violence, as well as anti-Roma hate in public discourse”. In addition, “[t]hese crimes are often poorly investigated and prosecuted by law enforcement agencies and national justice systems”, which contributes to the lack of trust among Roma in state institutions and prolongs the low level of their public participation. That is why ODIHR developed a training program to support effective policing of Roma and Sinti communities, which —since its inception in 2016—was provided to 250 police officers in Hungary, Poland, Romania, Slovakia, Ukraine and Pristina.<sup>44</sup> The report also underlines that “Roma and Sinti, and in particular women and youth, are largely absent from relevant decision-making bodies and processes”. ODIHR identified creative solutions and designed training programs to foster Roma leadership, encouraging them to stand as candidates for elected bodies.<sup>45</sup>

### *B. High Commissioner on National Minorities*

The coronavirus pandemic dominated the 2020 agenda of the High Commissioner on National Minorities (HCNM), too. In his statement of 26 March 2020, Lamberto Zannier reminded OSCE participating states that when introducing emergency measures, it is vital “to include the needs of everyone in society, including persons belonging to national minorities”, and to be sensitive to their language needs.<sup>46</sup> To this end, he developed a set of recommendations, including in the fields of public administration and services, participation, crossborder cooperation and interstate relations.<sup>47</sup> For example, he called on states to: ensure that communications issued by public administrations, as well as essential public signs and announcements, are also available in minority languages; include national minority representatives in the decision-making processes related to measures affecting them; actively collaborate with each other and with local crossborder communities, including national minorities; and, where appropriate, avail of the assistance of kin-states.<sup>48</sup>

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<sup>44</sup> OSCE/ODIHR Annual Report 2019, 19 March 2020, 40, at <[https://www.osce.org/files/f/documents/c/e/448702\\_4.pdf](https://www.osce.org/files/f/documents/c/e/448702_4.pdf)>

<sup>45</sup> *Ibid.*, 46.

<sup>46</sup> “OSCE High Commissioner on National Minorities offers recommendations on short-term responses to COVID-19 that support social cohesion”, 26 March 2020, at <<https://www.osce.org/hcnm/449170>>.

<sup>47</sup> OSCE HCNM, Streamlining diversity: COVID-19 measures that support social cohesion, HCNM.GAL/2/20/Rev.1 (21 April 2020), at <<https://www.osce.org/files/f/documents/8/a/450433.pdf>>.

<sup>48</sup> *Ibid.*, paras. 1, 6, 22, 25.

Due to the pandemic, several trips of the HCNM had to be postponed. He nevertheless managed to visit Moldova, Albania and Lithuania where he discussed questions relevant for this paper with the respective governments. For instance, he called on the *Moldavian* authorities “to address the legal vacuum in the area of language use and to modernize national minority legislation”, involving the representatives of minorities at all stages of the process.<sup>49</sup> In addition, he took steps “to organize a high-level dialogue on autonomy issues to advance the successful functioning of the Gagauz autonomy”.<sup>50</sup> The HCNM found *Albania*’s legal framework on minority protection to be incomplete, and the new National Minority Council not yet functional.<sup>51</sup> In *Lithuania*, he hoped for additional efforts to promote a balanced approach to teaching of the state language and minority languages, in close dialogue with representatives of national minorities.<sup>52</sup> Although his visit to Ukraine was cancelled, the language issue there remained a priority for the HCNM. “As the State language law does not ensure sufficient legal clarity or guarantees for the protection of the linguistic rights of minorities”, he offered his assistance to Ukrainian authorities “to develop relevant legislation in close consultation with representatives of all national minorities”.<sup>53</sup>

In his address to the Plenary Meeting of the OSCE Permanent Council in June 2020, High Commissioner Zannier reminded of the importance to pay attention to language issues, as these have a “potential to divide communities and affect bilateral relations”. He has continued “observing cases in which language-related legislation sets hierarchies between the languages spoken by the various minorities and in some cases foresees punitive measures instead of incentives in an effort to promote the State or official language”. Instead, he calls for “an inclusive, incentive-based and consultative approach” to language policies.<sup>54</sup>

In 2020, the report of the conference of November 2019 commemorating the 20<sup>th</sup> anniversary of the Lund Recommendations was published.<sup>55</sup> The main message of the

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<sup>49</sup> Address by Lamberto Zannier OSCE High Commissioner on National Minorities to the 1270th Plenary Meeting of the OSCE Permanent Council, HCNM.GAL/3/20/Rev.2 (4 June 2020), 2, at <<https://www.osce.org/files/f/documents/1/1/453807.pdf>>.

<sup>50</sup> *Ibid.*, 3.

<sup>51</sup> *Ibid.*, 3.

<sup>52</sup> *Ibid.*, 4.

<sup>53</sup> *Ibid.*, 6-7.

<sup>54</sup> *Ibid.*, 7.

<sup>55</sup> The conference was discussed in Anna Barlow, “Participation, Citizenship and Transfrontier Exchanges – 2019”, 18 *European Yearbook of Minority Issues* (2019) (Brill Nijhoff, Leiden, Boston, 2021), 88-112, at 98-99.

conference was that “[t]he effective participation of national minorities in public life leads to better integration in culturally diverse societies and as such reduces the likelihood of interethnic crises and conflicts”.<sup>56</sup> Barriers to the participation of women in political life, especially if they belong to a national minority, were identified as a particular challenge. Lessons learned included, *inter alia*, that “higher levels of participation by national minorities in political, economic and social life at the local and regional level generate economic growth in regions where [they] reside”, and that building partnerships within participating states advances the meaningful participation of national minorities in political life.<sup>57</sup>

#### IV. EUROPEAN UNION

In 2020, the biggest development concerning the protection of national minorities in the European Union was the success of the Minority Safepack European Citizens’ Initiative,<sup>58</sup> which received 1,123,422 statements of support in 11 member states, and got registered by the European Commission on 10 January 2020.<sup>59</sup> The Initiative got overwhelming support (524 votes in favour, 67 against and 103 abstentions) by the European Parliament (EP) on 17 December 2020. The EP acknowledged that the protection of national and linguistic minorities is the primary responsibility of the member states, but emphasized that the EU has a powerful role to play in this field, too.<sup>60</sup> The Resolution recognized “the contribution of national and linguistic minorities to the cultural heritage of the EU” and linguistic diversity as “a valuable component of Europe’s cultural wealth”, and pointed out that “a large number of stateless people in the European Union belong to national and linguistic minorities”.<sup>61</sup> Thus, the EP reiterated its call on the Commission to draw up “a common framework of EU minimum standards for the protection of rights of persons belonging to minorities, which are strongly embedded in a legal framework guaranteeing democracy, the rule of

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<sup>56</sup> OSCE HCNM, Conference report, From Lund to Ljubljana: Promoting the Participation of National Minorities as a Pathway to the Integration of Diverse Societies (Lund, 14 November 2019), 12 March 2020, 1, at <<https://www.osce.org/hcnm/448360>>.

<sup>57</sup> *Ibid.*, 1-2.

<sup>58</sup> For details on the Initiative, see Katharina Crepaz, “The Minority Safepack Initiative – A European Participatory Process Supporting Cultural Diversity”, 17 *European Yearbook of Minority Issues* (2018) (Brill Nijhoff, Leiden, Boston, 2020), 23-47.

<sup>59</sup> “Minority Safepack Initiative”, at <<http://www.minority-safepack.eu/>>.

<sup>60</sup> European Parliament resolution of 17 December 2020 on the European Citizens’ Initiative ‘Minority SafePack – one million signatures for diversity in Europe’, 2020/2846(RSP), para. 11, at <[https://www.europarl.europa.eu/doceo/document/TA-9-2020-0370\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0370_EN.html)>.

<sup>61</sup> *Ibid.*, paras. 14, 15, 19.

law and fundamental rights throughout the EU”.<sup>62</sup> The position of the European Commission is expected before 15 January 2021.

In October 2020, the Commission presented a proposal<sup>63</sup> and a communication<sup>64</sup> on the equality, inclusion and participation of the Roma, Europe’s largest ethnic minority. Despite having relevant EU legal instruments on the ground, “overall progress in Roma integration has been limited over the past 10 years”,<sup>65</sup> the Commission regrets. Starting from the axiom that participation in shaping public affairs is a precondition of equality and inclusion, the Commission proposes that participation must be ensured in all stages of policy-making, and promoted through empowerment, cooperation and trust.<sup>66</sup> More specifically, national strategic frameworks should set out minimum compulsory aspects of Roma participation in policy development, implementation and monitoring; mobilize local Roma communities; improve local action by engaging more Roma professionals to help overcome the lack of trust between Roma and majority communities; ensure that Roma are represented in all their diversity in policy and consultation processes; promote civil society cooperation between Roma-focused and mainstream organizations; consider establishing national Roma umbrella organizations; provide regular capacity-building support and promote positive action.<sup>67</sup>

The special challenges of the Roma community were also emphasized in the Commission’s three-yearly report on EU citizenship, in the context of election processes. Regrettably, the social and economic vulnerabilities of Roma people are often exploited through vote buying and manipulation, direct pressure or threats. In turn, “[s]uccessful inclusion of Roma depends on whether their right to vote and be voted for is adequately exercised”—the report warns. Therefore, member states are called on to “put more effort into raising election awareness in order to increase the

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<sup>62</sup> *Ibid.*, paras. 5, 20.

<sup>63</sup> European Commission, Proposal for a Council Recommendation on Roma equality, inclusion and participation, COM/2020/621 final (7 October 2020), at <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0621&qid=1608470236776>>.

<sup>64</sup> European Commission, Communication from the Commission to the European Parliament and the Council: A Union of Equality: EU Roma strategic framework for equality, inclusion and participation, COM/2020/620 final (7 October 2020), at <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0620&qid=1608470236776>>.

<sup>65</sup> *Ibid.*, Introduction.

<sup>66</sup> *Ibid.*, III. 1.

<sup>67</sup> *Ibid.*, Annex 1, Promoting Roma participation. Cf. European Commission, *op. cit.*, note 63, Recommendation no. 4 (referring to participation as one of the three horizontal objectives).

participation of Roma and other disadvantaged groups – ensure that they can make free and informed choices in elections and encourage their political representation”.<sup>68</sup>

The rights of national minorities remain an important concern for the EU’s enlargement policy<sup>69</sup> and external actions, too.<sup>70</sup>

## V. COUNCIL OF EUROPE

The most important international treaties relevant to minority rights adopted under the aegis of the Council of Europe are the Framework Convention for the Protection of National Minorities (hereinafter “Framework Convention” or FCNM) and the European Charter for Regional or Minority Languages (hereinafter “the Charter” or ECRML). 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, the scope of the ECHR extends to the protection of minorities. In this section, implementation of the above treaties will be addressed.

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

Out of several minority-related cases that the European Court of Human Rights (hereinafter “the Court” or ECtHR) discussed in 2020, five have relevance for this study. Two cases concern the freedom of association, specifically, whether it was necessary in a democratic society for the Bulgarian courts to refuse to register the applicant associations which advocate the idea that there exists an oppressed Macedonian minority in Bulgaria and seek to protect that alleged minority’s rights. The ECtHR had on many occasions dealt with similar claims of Macedonian organizations in Bulgaria (including three times in relation to the United Macedonian Organization Ilinden), thus its assessment in both cases was based on previous jurisprudence. Without

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<sup>68</sup> European Commission, Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU Citizenship Report 2020: Empowering citizens and protecting their rights, COM/2020/730 final (15 December 2020), 2.1, para. 2, at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0730&qid=1608470236776>.

<sup>69</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: 2020 Communication on EU enlargement policy, COM/2020/660 final (6 October 2020), at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0660&qid=1608470236776>. Cf. the corresponding 2020 country reports at [https://ec.europa.eu/neighbourhood-enlargement/countries/package\\_en](https://ec.europa.eu/neighbourhood-enlargement/countries/package_en).

<sup>70</sup> Council of the European Union, EU Annual Report on Human Rights and Democracy in the World 2019, 8580/20 (15 June 2020), 87-90, at <https://data.consilium.europa.eu/doc/document/ST-8580-2020-INIT/en/pdf>.

taking a stance on the question of whether there is a Macedonian minority in Bulgaria or not, the ECtHR stated that the refusal to register the applicant associations no doubt amounted to a restriction. It did not examine whether the restriction was prescribed by law or pursued a legitimate aim, because it found that such a restriction was not necessary in a democratic society. Namely, the Bulgarian courts claimed that the applicant associations sought to cultivate a so far non-existent minority and were thus directed against the unity of the nation; furthermore, their goals were political and hence only capable of being pursued by a political party. The ECtHR found these grounds insufficient to justify the refusal to register the applicant organizations, and established the breach of Article 11 in both cases.<sup>71</sup>

Another peculiar case of contested minority existence relates to the Cossacks in Russia, more particularly, the refusal to register the Chelyabinsk Regional Cossack Ethnic-Cultural Autonomy. Russian authorities pointed out that ethnic-cultural autonomy is a form of ethnic-cultural self-determination, namely, an association of citizens “identifying themselves as part of a certain ethnic group constituting a[n] ethnic minority on the territory concerned”. However, pursuant to the relevant law, Cossacks are not an ethnic minority (but a historically formed cultural-ethnic group), therefore they are not entitled to establish an ethnic-cultural autonomy.<sup>72</sup> The Court accepted the interpretation of the domestic law by the Russian authorities, and declared the application inadmissible. It emphasized that “the right enshrined in Article 11 includes the right to form an association in order to act collectively in a field of mutual interest”, but it “does not guarantee the right to form a particular type of association”.<sup>73</sup> As a matter of fact, under domestic law the Cossacks may form associations<sup>74</sup>—perhaps the applicant would be happy with that, too.

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<sup>71</sup> ECtHR, *Macedonian Club for Ethnic Tolerance in Bulgaria and Radonov v. Bulgaria*, Appl. no. 67197/13, Judgment of 28 May 2020, at <

<sup>72</sup> ECtHR, *Boris Vladimirovich Melekhin v. Russia*, Appl. no. 34196/05, Decision of 11 February 2020, para. 8, at <[<sup>73</sup> \*Ibid.\*, para. 32.](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-201917%22]}>”.</a></p></div><div data-bbox=)

<sup>74</sup> *Ibid.*, para. 35.

The case of *Pudarić v. Bosnia and Herzegovina*<sup>75</sup> concerns an ethnic Serb politician residing in the Federation of Bosnia and Herzegovina, whose candidacy for the 2018 presidential elections was rejected. Pursuant to the national constitution, the Presidency of Bosnia and Herzegovina consists of three members: one Bosniac and one Croat, each directly elected from the territory of the Federation, and one Serb directly elected from the territory of the Republika Srpska.<sup>76</sup> Alas, the applicant resided in the territory of the Federation and thus was not registered in the Central Voters Register in the Republika Srpska, which led to his rejection to stand for election. The facts of the case are very similar to those of *Pilav* (no. 41939/07), *Sejdić and Finci* (nos. 27996/06 and 34836/06), and *Zornić* (no. 3681/06), where the ECtHR had already established the violation of the general prohibition of discrimination, and called on Bosnia and Herzegovina to harmonize the constitution and the Elections Act with its international legal obligations. Supported by its case law, the Court held that the applicant, although belonging “to one of the ‘constituent peoples’, is excluded from election to the Presidency as a result of the impugned residence requirement [...] [T]his exclusion is based on a combination of ethnic origin and place of residence [...], and as such amounts to a discriminatory treatment in breach of Article 1 of Protocol No. 12”.<sup>77</sup>

A violation of the prohibition of discrimination (this time based on Article 14 of the ECHR) was also found in the case of *Cegolea v. Romania*, which concerned an eligibility requirement disadvantaging national minority organizations not yet represented in the Romanian parliament. The applicant, the president of a foundation representing the Italian minority, wished to stand as a candidate in the December 2012 parliamentary elections. (The Romanian parliament has some seats reserved for representatives of national minorities, who are exempt from the electoral threshold applicable to political parties.) However, unlike the organizations already represented in parliament, Ms Cegolea’s foundation had been required to obtain charitable status in order for her to stand in the parliamentary elections on the foundation’s behalf. In turn, the foundation had been denied to be granted a charitable status, on the grounds that its

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<sup>75</sup> ECtHR, *Pudarić v. Bosnia and Herzegovina*, Appl. no. 55799/18, Judgment of 8 December 2020, at <<https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-206357%22>>.

<sup>76</sup> Bosnia and Herzegovina as a state consists of two entities: the Federation of Bosnia and Herzegovina, and the Republika Srpska. Its three ‘constituent peoples’ are the Bosniacs, the Croats and the Serbs, whereas members of ethnic minorities and persons who do not declare affiliation with any particular group are considered as ‘others’.

<sup>77</sup> ECtHR, *Pudarić v. Bosnia and Herzegovina*, *op. cit.*, note 75, para. 26, cf. with paras. 28-29.





### 1. *Judicial authorities*

Regarding the use of minority languages in judicial proceedings, the Committee of Experts of the European Charter for Regional or Minority Languages (COMEX) was most concerned about the situation in *Armenia*, where legislation does not guarantee the right to use minority languages before judicial authorities if the person has a command of Armenian. The COMEX warned that this is not in conformity with Article 9 of the Charter as ratified by Armenia,<sup>80</sup> and the Committee of Ministers called on authorities to ensure that speakers of Assyrian, Greek, Kurdish, Russian and Yezidi can use their language in contacts with judicial authorities.<sup>81</sup>

The situation is better in *Croatia*, where first instance judicial authorities are obliged to enable a citizen of the municipality in which a minority language is “in equal and official use”—this is the case where persons belonging to a national minority make up more than one third of the population—to use that language in judicial proceedings, if the citizen declares their wish to do so. The COMEX pointed out that Article 9 should also apply to those districts where the one third threshold is not met, but the minority represents a sufficient number for the purpose of the undertakings. As far as the implementation in practice is concerned, Italian and Serbian have been regularly, while Hungarian, Ruthenian and Ukrainian have occasionally been used with judicial authorities. However, Czech and Slovakian have not been used in court during the reporting period which points to the need of measures encouraging the speakers to avail themselves of the possibility to use their languages.<sup>82</sup>

The lack of practical implementation was also noted in *Montenegro*, where authorities were called on to take all the necessary measures to ensure the use of Romani by judicial (and administrative) authorities in the areas where speakers are present in sufficient numbers.<sup>83</sup> Part of the problem is that there are no qualified court interpreters of

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or-minority-languages/reports-and-recommendations>. Because of space constraint, I will specifically reference those documents only where issues relevant for this article were discussed.

<sup>80</sup> COMEX, Fifth evaluation report on Armenia, 2 July 2020, MIN-LANG(2020)3, 4, paras. 24-33.

<sup>81</sup> CoM, Recommendation CM/RecChL(2020)6 on the application of the ECRML by Armenia, 8 December 2020, para. 4.

<sup>82</sup> COMEX, Sixth evaluation report on Croatia, 10 March 2020, MIN-LANG(2019)18, paras. 39-40.

<sup>83</sup> CoM, Recommendation CM/RecChL(2020)4 on the application of the ECRML by Montenegro, 8 December 2020, para. 3.

Romani; if needed, they are usually hired from Kosovo or Albania.<sup>84</sup> The practical use of Albanian in the judicial system also needs to be encouraged.<sup>85</sup>

The COMEX was uncertain about its evaluation regarding *Sweden*. While there are online translations of relevant materials and documents, it is not clear whether it is actually possible to use the regional and minority languages before the courts regardless of knowledge of Swedish. Furthermore, there is still a great need for interpreters in the courts and availability of interpreters remains limited.<sup>86</sup>

In *Slovenia*, Hungarian and Italian benefit from a high level of legal protection, as co-official languages in the areas defined as ‘ethnically mixed’.<sup>87</sup> In turn, authorities have still not legally recognized Croatian, German and Serbian as traditional minority languages.<sup>88</sup> In the areas where the Hungarian and Italian communities live, courts shall operate in Hungarian or Italian if a party who lives in that area uses these languages. Some courts and prosecutor’s offices employ judges and prosecutors who speak Hungarian or Italian, workshops on legal terminology are organized, and many forms have been translated. Still, in practice minority languages are rarely used before courts, mainly because Hungarian and Italian speakers tend to use Slovenian, in order to expedite the proceedings. To remedy the problem, the COMEX called on authorities to continue improving the minority language competence of judges, prosecutors and court staff.<sup>89</sup>

In the *Netherlands*, only Frisian can be used before courts in judicial districts where this language is co-official, e.g. in the province of Fryslân, where more than 50% of the population are native speakers of Frisian. The language has a strong position in all areas of public life,<sup>90</sup> but shortcomings in using Frisian in courts and in contacts with law enforcement services can be noted. Many people automatically regard Dutch as the norm in the administration of justice, while the use of Frisian would accommodate them better. The provision of an interpreter is legally guaranteed free of charge in courts at

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<sup>84</sup> COMEX, Fifth evaluation report on Montenegro, 1 July 2020, MIN-LANG(2020)1, paras. 26-27.

<sup>85</sup> *Ibid.*, 4, para. 42.

<sup>86</sup> COMEX, Seventh evaluation report on Sweden, 2 July 2020, MIN-LANG(2020)4, 4, paras. 31-32, 57, 65, 73.

<sup>87</sup> COMEX, Fifth evaluation report on Slovenia, 8 November 2019, MIN-LANG(2019)17 final, 4.

<sup>88</sup> *Ibid.*, paras. 10-11.

<sup>89</sup> *Ibid.*, paras. 24-25, 41.

<sup>90</sup> COMEX, Sixth evaluation report on the Netherlands, 5 November 2019, MIN-LANG(2019)15 final, paras. 16, 34.

the Northern Netherlands district court and in the Arnhem-Leeuwarden/Ljouwert court of appeal, but in practice there is only one certified interpreter and a few Frisian-speaking court staff members available. The COMEX is concerned that the right to use Frisian before courts is becoming only formal.<sup>91</sup>

## 2. *Administrative Authorities and Public Services*

The COMEX was not satisfied with the use of minority languages in public administration in *Armenia*. To begin with, authorities tend to assign responsibility for the implementation of the Charter to the local authorities who are not aware of the rights of the minority language speakers.<sup>92</sup> Second, certain administrative texts and forms are available in Russian, but not in other minority languages, and whereas it is possible to submit written applications in Russian in certain municipalities, Assyrian, Kurdish and Yezidi are only used in oral communication. Greek is not used at all.<sup>93</sup> Another worrisome issue regards the draft law on national minorities which would introduce a 20% threshold for the oral and written use of minority languages in municipalities, and for the use of place names in minority languages. The COMEX finds this threshold too high, and instead suggests that authorities determine what absolute numbers would be sufficient to provide for the use of minority languages, and take flexible measures according to the situation of each language.<sup>94</sup> The Committee of Ministers recommended that Armenia should take steps to ensure that speakers of minority languages can use their language in contacts with administrative authorities, and promote the use or adoption of place names in the minority languages in the municipalities concerned.<sup>95</sup>

The issue of thresholds was discussed in many reviewed countries. Thus, *Croatia* was urged to review the existing (one third) ratio for the obligatory provision of minority language rights, and introduce the “equal and official” (co-official) use of minority languages in those areas where there is a sufficient number of speakers. This applies to regional and local authorities as well as local branches of the state authorities. Although some minority languages, e.g. Italian, are present in the public domain, the other minority languages should be used more often and should be more visible in the

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<sup>91</sup> *Ibid.*, para. 42.

<sup>92</sup> COMEX, Fifth evaluation report on Armenia, *op. cit.*, note 80, para. 8.

<sup>93</sup> *Ibid.*, paras. 35-45.

<sup>94</sup> *Ibid.*, 4, paras. 9, 11.

<sup>95</sup> CoM, Recommendation CM/RecChL(2020)6, *op. cit.*, note 81, 4-5.

linguistic landscape. Especially in the case of Serbian, the Cyrillic script is not sufficiently used by municipalities and in public signage.<sup>96</sup> Croatia received three recommendations on these issues from the Committee of Ministers.<sup>97</sup>

In its first interim report, the *Czech Republic* presented information on the implementation of the recommendations for immediate action, including to reconsider the 10% threshold for installing Polish place names and topographical signs. In this regard, the COMEX welcomed the fact that the Czech authorities financially supported municipalities in installing bilingual topographic signage, however regretted that no steps were taken towards the lowering of the threshold. This hampers the continuous application of the Charter, especially in municipalities where the number of speakers fell under 10% according to the last censuses but can still be considered sufficient for the application of the Charter. Once again, the COMEX called on authorities to promote the use of place names in minority languages irrespective of thresholds and census results.<sup>98</sup>

Even a seemingly low threshold can be problematic, as evidenced by the report on *Montenegro*. There, the law on minority rights was modified with the aim of declaring official status for a minority language in areas where at least 5% of the population speaks it as a mother tongue. The introduced threshold hampers the use of Romani in practice, since the number of Romani speakers is below 5% in every administrative area. In the view of the COMEX, minority languages should be used in municipalities where their speakers are present in sufficient numbers, irrespective of legal thresholds.<sup>99</sup> In local administration units, Montenegrin remains the most used language. The only exception can be noted with regard to Albanian, which is in widespread use in areas where the language is traditionally present. Positive developments include that public administration offices in Kotor and Tivat employ large numbers of Croatian speakers, and that all citizens are entitled to have their family

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<sup>96</sup> COMEX, Sixth evaluation report on Croatia, *op. cit.*, note 82, 5, paras. 11-16, 42-49.

<sup>97</sup> CoM, Recommendation CM/RecChL(2020)7 on the application of the ECRML by Croatia, 8 December 2020, 1-3.

<sup>98</sup> COMEX, Evaluation of the Implementation of the Recommendations for Immediate Action contained in the Committee of Experts' fourth evaluation report on the Czech Republic, 2 July 2020, MIN-LANG(2020)7, paras. 19-24.

<sup>99</sup> COMEX, Fifth evaluation report on Montenegro, *op. cit.*, note 84, 4, paras. 11-12, 14, 60; CoM, Recommendation CM/RecChL(2020)4, *op. cit.*, note 83, 3.

names registered in their own language script. In turn, there are shortcomings in the use or adoption of place names in minority languages.<sup>100</sup>

From the Central-Eastern European region, *Slovenia* stands out for its strong legal basis for the use of Hungarian and Italian by administrative authorities. There are several measures in place to facilitate the use of these languages, including funding, language courses for civil servants, and translation of administrative forms. In addition, knowledge of Hungarian or Italian may be required for certain positions in the administration and an allowance is awarded to civil servants using these languages. Certain shortcomings remain, however, with respect to practical implementation. For example, public servants' language skills are not sufficient to allow the use of Hungarian or Italian on a daily basis in a professional environment, and speakers are often hesitant to make use of the facilities provided, since they speak the official language and do not want to be regarded as 'trouble-makers'. Hungarian and Italian are used only to some extent in the provision of public services, especially by enterprises functioning at municipal level. The COMEX demands a more proactive approach from the authorities, including encouraging minority language speakers to make use of the available opportunities.<sup>101</sup> Regarding topographical indications, both Hungarian and Italian are regularly used. However, in the latter case, place names remain mainly Italian translations of Slovenian names introduced in the twentieth century, not the traditional names in Italian.<sup>102</sup>

The situation of minority languages in the public sphere is best in the *Netherlands*, where Frisian (the only Part III language and co-official language in Fryslân) is widely used in contacts with administrative authorities. The website of the Province of Fryslân as well as documents concerning regional Frisian issues are available in Frisian, and most staff speak the language. Municipalities respond to questions submitted in Frisian in the same language and provide Frisian content on their websites. At the municipal level, 96% of civil servants understand Frisian, 75% speak it, and 24% have a written command thereof.<sup>103</sup>

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<sup>100</sup> COMEX, Fifth evaluation report on Montenegro, *op. cit.*, note 84, paras. 28, 43-44.

<sup>101</sup> COMEX, Fifth evaluation report on Slovenia, *op. cit.*, note 87, 4, paras. 26-29, 41, 44.

<sup>102</sup> *Ibid.*, paras. 41, 44.

<sup>103</sup> COMEX, Sixth evaluation report on the Netherlands, *op. cit.*, note 90, paras. 17, 43.

*Finland* reported on the previous cycle's recommendations for immediate action, including on the effective implementation of the legislation on Sámi languages in state and local administration as well as in social and health care services. The Committee of Experts noted that the authorities recognize the importance of Sámi languages in these fields and maintain regular dialogue with Sámi representatives. It lamented, however, the lack of new measures to remedy outstanding problems such as the shortage of Sámi speaking professionals. Further action would be required to encourage Sámi speakers to make active use of their rights, and to ensure the availability of widely-used national administrative texts and forms and the use of the Sámi languages with regional and local authorities.<sup>104</sup> Regarding the linguistic rights of the Swedish speakers in the context of administrative reform, the COMEX was satisfied that the proposed "Act on organising healthcare and social welfare" generally met the expectations of Swedish speakers, and noted with interest the proposed creation of National Languages Boards. It underlined that the new institutions should be equipped with sufficient budgetary resources and decision-making powers so that they can compensate for the loss of demographic weight of Swedish speakers in the newly created counties.<sup>105</sup> Concerning the use of Swedish within regional and local authorities, a new project intends to improve the 'language climate', including raising awareness of local authorities on linguistic rights. In turn, the lack of professionals able to speak the minority language is a problem here, too.<sup>106</sup> Positive developments concerning the effective use of Swedish in social and health care facilities were welcome by the COMEX. Authorities were encouraged to continue undertaking concrete measures such as targeted recruitment and language courses.<sup>107</sup>

In *Sweden*, positive advances have been noted regarding the display and public use of place names in Sami, Finnish and Meänkieli, in particular following the codification of place names in Meänkieli.<sup>108</sup> The number of municipalities belonging to the administrative areas of these languages has regularly increased over the last reporting cycles; nonetheless a considerable number of speakers remain excluded. Thus, the

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<sup>104</sup> COMEX, Evaluation of the Implementation of the Recommendations for Immediate Action contained in the Committee of Experts' fifth evaluation report on Finland, 7 October 2020, MIN-LANG(2020)12, para. 26.

<sup>105</sup> *Ibid.*, para. 59.

<sup>106</sup> *Ibid.*, paras. 61-62.

<sup>107</sup> *Ibid.*, paras. 68-69.

<sup>108</sup> COMEX, Seventh evaluation report on Sweden, *op. cit.*, note 86, para. 35.

COMEX asked Finland to further extend the administrative areas.<sup>109</sup> It was pleased to note that the government bill “A stronger minority policy” extended the right to use a minority language in written contact with certain government agencies to also include Meänkieli. Furthermore, minority languages can now be used in writing also in relations with the Equality Ombudsman and the Swedish Public Employment Service.<sup>110</sup> In several regions, the administrative forms and information on the websites of authorities are available in Sami, Finnish and Meänkieli.<sup>111</sup> These languages can be used in communication with local authorities, too, although this possibility is seldom used.<sup>112</sup>

### 3. *Transfrontier Exchanges*

Transfrontier exchanges play an important role in promoting regional or minority languages, even if they almost never feature in the recommendations of the Committee of Ministers. Crossborder activities are regularly organized in all reviewed countries, but not for all minority languages. In *Armenia*, only Russian is commonly used in crossborder cooperation,<sup>113</sup> whereas *Croatia* has cultural cooperation programs with Hungary and Italy, but no information is available about transfrontier activities promoting the other minority languages.<sup>114</sup> The *Netherlands* strongly acts in favour of transfrontier exchanges and international projects relating to the Frisian, Limburgish and Low Saxon languages; however, in practice, transfrontier exchanges are frequent with regard to Frisian.<sup>115</sup> In *Montenegro*, municipalities with notable Albanian, Bosnian and Croatian populations are situated along the border of their kin-states, hence their international relations are mainly aimed at those countries or border regions. For instance, joint cultural, historic and gastronomic festivals have been organized in the Tivat and Kotor municipalities with counties in Dalmatia in Croatia. Crossborder exchanges of Romani speakers, on the other hand, are limited.<sup>116</sup> Numerous activities are carried out in *Slovenia*, although in some cases, they depend on the initiative of non-governmental organizations rather than on the authorities.<sup>117</sup>

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<sup>109</sup> *Ibid.*, 4, para. 13.

<sup>110</sup> *Ibid.*, para. 34.

<sup>111</sup> *Ibid.*, paras. 37-40.

<sup>112</sup> *Ibid.*, paras. 58, 66, 73.

<sup>113</sup> COMEX, Fifth evaluation report on Armenia, *op. cit.*, note 80, 4, paras. 60-61.

<sup>114</sup> COMEX, Sixth evaluation report on Croatia, *op. cit.*, note 82, paras. 63-64.

<sup>115</sup> COMEX, Sixth evaluation report on the Netherlands, *op. cit.*, note 90, paras. 29-33.

<sup>116</sup> COMEX, Fifth evaluation report on Montenegro, *op. cit.*, note 84, para. 33.

<sup>117</sup> COMEX, Fifth evaluation report on Slovenia, *op. cit.*, note 87, para. 37.

The COMEX was satisfied with developments in the countries of Northern Europe. It welcomed the initiatives in *Denmark* to increase awareness of German throughout the country, including the decision to nominate the Danish-German minority protection model in the border region to UNESCO’s Register of Good Safeguarding Practices.<sup>118</sup> In *Finland*, the Sámi Giellagáldu language centre—a project between the Sámi parliaments of Finland, Norway and Sweden—can continue its work despite the end of the EU Interreg project, thanks to increased annual state aid.<sup>119</sup> In *Sweden*, the draft of a Nordic Sami Convention has been discussed for several years. Proposals for changes requested by the Sami parliament are at present being examined in the respective government department. Furthermore, within the Nordic collaboration, a working group has recently been appointed and tasked to draw up an organizational model for a permanent Nordic Sami language body.<sup>120</sup>

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

As part of the monitoring process of the Framework Convention for the Protection of National Minorities, five periodical state reports were submitted in 2020: the fifth reports of Armenia, Liechtenstein, North Macedonia, Norway and Slovenia, respectively. The Advisory Committee on the Framework Convention for the Protection of National Minorities (hereinafter “Advisory Committee” or ACFC) adopted three advisory opinions in 2020: on Bulgaria, Hungary and Spain. Moreover, in 2020, the opinions on Cyprus, Denmark, Poland and Portugal, adopted in 2019, were published. The Committee of Ministers issued eight resolutions: on Denmark, Finland, Georgia, the Netherlands, Poland, Portugal, the Russian Federation and Ukraine.

In the following, developments in the fields of public administration and the administration of justice, participation, transfrontier cooperation and citizenship will be discussed in light of the Advisory Committee’s opinions and the Committee of Ministers’ resolutions.<sup>121</sup>

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<sup>118</sup> COMEX, Evaluation of the Implementation of the Recommendations for Immediate Action contained in the Committee of Experts’ fifth evaluation report on Denmark, 8 October 2020, MIN-LANG(2020)13, para. 15.

<sup>119</sup> COMEX, *op. cit.*, note 104, paras. 7-9.

<sup>120</sup> COMEX, Seventh evaluation report on Sweden, *op. cit.*, note 86, para. 50.

<sup>121</sup> All the state periodical reports, the opinions of the Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC) and the resolutions of the Committee of Ministers are available at <<http://www.coe.int/en/web/minorities/country-specific-monitoring>>. I will reference only those documents, where issues relevant for this article were discussed.



### 1. *Judicial Authorities, Public Administration and Public Services*

In *Bulgaria*, the present situation of minority languages is not in conformity with the FCNM: there is no comprehensive legal framework granting rights to minorities to the use of their languages in contacts with the authorities, and no measures were taken to assess the extent to which there is such a need. Minority languages are *de facto* used with local authorities in areas with a large proportion of persons belonging to minorities in the population, which in practice applies only to areas inhabited by the Turkish minority. Such use of Turkish is only oral and does not extend to written communications.<sup>122</sup> Traditional local names, street names and other topographical indications are not displayed in minority languages; furthermore, toponyms in minority languages continue to be systematically changed. In general, there continues to be a lack of appreciation for the significant symbolic value that such names have as affirmation of the long-standing presence of national minorities as a valued part of society.<sup>123</sup>

The situation is equally worrisome in Cyprus and Georgia. In *Cyprus*, although both Greek and Turkish are official languages, the use of Turkish is very limited in areas under the effective control of the government. In court proceedings, Turkish-speaking citizens can get information about the charges against them in their language and receive the free assistance of an interpreter, but the proceedings and the judgments are only in Greek.<sup>124</sup> In *Georgia*, the display of topographical signs in minority languages in regions traditionally inhabited by national minorities remains very limited, and access to the administration in minority languages lacks a clear implementation framework, thus relying on the goodwill of the civil servants. The Committee of Ministers formulated several recommendations to handle these issues.<sup>125</sup> Against a similar background, the recommendations addressed to *Russia* urged authorities to encourage the use of minority languages in contacts with the administrative authorities and in topographical indications,<sup>126</sup> whereas *Ukraine* was called on to ensure that

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<sup>122</sup> ACFC, Fourth Opinion on Bulgaria, *op. cit.*, note 71, paras. 16, 123-130.

<sup>123</sup> *Ibid.*, paras. 17, 137-144. The same remark on the symbolic value of topographical signage was made to Denmark; ACFC, Fifth Opinion on Denmark, 7 November 2019, ACFC/OP/V(2019)003, para. 115.

<sup>124</sup> ACFC, Fifth Opinion on Cyprus, 7 November 2019, ACFC/OP/V(2019)002, paras. 138-147.

<sup>125</sup> CoM, Resolution CM/ResCMN(2020)5 on the implementation of the FCNM by Georgia, 17 June 2020.

<sup>126</sup> CoM, Resolution CM/ResCMN(2020)14 on the implementation of the FCNM by the Russian Federation, 8 December 2020.

language proficiency requirements are applied fairly and proportionately to the pursued aim.<sup>127</sup>

There is no problem with the legal framework in *Hungary*; still, persons belonging to national minorities have difficulties in using their language on a daily basis with the administration or with the judiciary. The Advisory Committee urged the authorities to develop a comprehensive plan to promote the use of minority languages in the public sphere, with the effective participation of organizations representing national minorities, and encourage minority speakers to use their languages.<sup>128</sup> Regarding topographical indications, a 10% threshold applies, yet in practice, a considerable number of municipalities have not yet adopted the traditional place names in minority languages, and bilingual street signs are often limited to city centres. In many cases, the problem is that local minority self-governments are not aware of their right to request the display of bi- or multilingual signs.<sup>129</sup>

In *Poland*, the use of minority languages in contact with the administration and in topographical indications is conditional upon a 20% threshold. The number of municipalities providing this possibility slightly increased during the monitoring period, however, a highly contested administrative reform enlarging the city of Opole at the expense of surrounding municipalities with substantial German minorities deprived many persons of their language rights.<sup>130</sup> The authorities were advised to take a flexible approach also in situations where the minority population is below the legal threshold, in particular in the municipalities affected by the territorial reform. Also, they should ensure that minority rights are duly taken into account when planning and implementing such reforms.<sup>131</sup>

After three cycles of monitoring, the *Netherlands* received a generally positive assessment by the Committee of Ministers, underlying the substantial progress in the legal protection of Frisian speakers. Nevertheless, several recommendations were formulated to address outstanding issues (some of which were also mentioned by the

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<sup>127</sup> CoM, Resolution CM/ResCMN(2020)13 on the implementation of the FCNM by Ukraine, 8 December 2020.

<sup>128</sup> ACFC, Fifth Opinion on Hungary, 26 May 2020, ACFC/OP/V(2020)002Final, paras. 8, 24, 110-113.

<sup>129</sup> *Ibid.*, paras. 117-118, 120.

<sup>130</sup> ACFC, Fourth Opinion on Poland, 6 November 2019, ACFC/OP/IV(2019)003, paras. 9, 113-118, 120-124.

<sup>131</sup> *Ibid.*, paras. 119, 125, 185; CoM, Resolution CM/ResCMN(2020)12 on the implementation of the FCNM by Poland, 21 October 2020, para. 10.

COMEX when evaluating the implementation of the ECRML). Thus, authorities should ensure that the implementation of the latest Administrative Agreement on the Frisian Language and Culture results in substantial and lasting improvements; take a strategic and participatory approach in all areas of language use with a specific focus on the right to use the Frisian language in courts; ensure that the right to use the Frisian language in contacts with the administration as guaranteed by the Use of Frisian Act is fully implemented in practice in all public services and in particular in law enforcement, in courts, and at municipal level; and pay particular attention to language policies in newly merged municipalities and to the visibility of the Frisian language in public spaces.<sup>132</sup>

*Denmark* was praised for its consistent policy of support to the Germans in South Jutland, the only recognized national minority in the country.<sup>133</sup> The German language can be used in the four municipalities where persons belonging to the German minority live in substantial numbers. This practice is, however, not formally recognized in the law, which makes implementation of linguistic rights dependent on the goodwill of public servants.<sup>134</sup> Authorities were recommended to ensure that minority speakers are able to communicate fully in German with all administrative bodies, including central services, and even when public services are provided through private companies.<sup>135</sup> Furthermore, despite the significant efforts of the German minority, there are still no bilingual signs displayed at the entrance of the four municipalities where they live. The absence of a consensus to display such signs is explained by reference to the past occupation of the region by Germany.<sup>136</sup> Both the ACFC and the Committee of Ministers urged the state to take all necessary measures to promote intercultural understanding in order to create an environment conducive to the display of bilingual signs.<sup>137</sup>

*Finland* was recommended to safeguard the societal consensus on Finnish-Swedish bilingualism through awareness-raising, and engage in an open dialogue with the speakers to ensure that commitments regarding public services in the Swedish language

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<sup>132</sup> CoM, Resolution CM/ResCMN(2020)2 on the implementation of the FCNM by the Netherlands, 12 February 2020.

<sup>133</sup> ACFC, Fifth Opinion on Denmark, *op. cit.*, note 123, para. 1.

<sup>134</sup> *Ibid.*, paras. 8, 102-109.

<sup>135</sup> *Ibid.*, paras. 22, 110; CoM, Resolution CM/ResCMN(2020)11 on the implementation of the FCNM by Denmark, 21 October 2020, para. 9.

<sup>136</sup> ACFC, Fifth Opinion on Denmark, *op. cit.*, note 123, paras. 9, 112-116.

<sup>137</sup> *Ibid.*, paras. 17, 117; CoM, Resolution on Denmark, *op. cit.*, note 135, para. 4.

are realistic, effective, and matched with adequate resources.<sup>138</sup> Swedish speakers' linguistic rights in the amalgamated district courts, as well as in health care and social welfare services were singled out in a separate recommendation.<sup>139</sup> Sámi-language health care and social services should be provided in close consultation with the stakeholders, both within and—when there is a need—outside the Sámi homeland.<sup>140</sup>

*Spain* continues to apply the Framework Convention exclusively to the Roma community, excluding all other national minorities (i.e. the Catalans, Basques, Galicians and Valencians). When evaluating the implementation of Article 10, the ACFC only commented on the unclear situation of Caló as a non-territorial language and on Romani education<sup>141</sup>—issues not relevant for the respective undertaking. Similarly, *Portugal* maintains that there are no national minorities in the country, although it continues to apply the FCNM on an *ad hoc* basis to Roma persons,<sup>142</sup> and recognizes the linguistic rights of the Mirandese Community.<sup>143</sup> The Advisory Committee did not evaluate the implementation of language rights.

## 2. Participation

In *Bulgaria*, the participation of minorities in public affairs has deteriorated during the monitoring period. The National Council for Co-operation on Ethnic and Integration Issues is not considered by minority organizations as effective, thus many of them left the Council.<sup>144</sup> The Advisory Committee was also concerned about that the electoral code continues to ban the use of languages other than Bulgarian during election campaigns, and called on authorities to withdraw the ban.<sup>145</sup>

In *Cyprus*, each of the three religious groups (Armenians, Latins and Maronites) has an elected representative in the parliament, however, they cannot take the floor except in matters relevant to their communities, and do not have the right to vote. The Advisory Committee recommended extending the powers of the representatives. It further called on the authorities to consider the establishment of a state institution, with a clear

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<sup>138</sup> CoM, Resolution CM/ResCMN(2020)1 on the implementation of the FCNM by Finland, 12 February 2020, para. 4.

<sup>139</sup> *Ibid.*, para. 8.

<sup>140</sup> *Ibid.*, para. 9.

<sup>141</sup> ACFC, Fifth Opinion on Spain, 27 May 2020, ACFC/OP/V(2020)002Final, paras. 153-160.

<sup>142</sup> ACFC, Fourth Opinion on Portugal, 28 June 2019, ACFC/OP/IV(2019)002, para. 5.

<sup>143</sup> *Ibid.*, para. 17.

<sup>144</sup> ACFC, Fourth Opinion on Bulgaria, *op. cit.*, note 71, paras. 12, 193-200.

<sup>145</sup> *Ibid.*, paras. 190-192.

mandate, visibility and sufficient resources, to address effectively the needs of national minorities, Roma communities and other groups not recognized in the constitution.<sup>146</sup>

In *Denmark*, the Contact Committee of the German minority fulfils its role as an essentially parliamentary body. There is, however, no formal consultation system between the German representatives and the relevant ministries, nor does any such forum exist at municipal level.<sup>147</sup> The authorities were invited to adopt a more proactive policy towards the German minority representatives; create the conditions for more regular contacts with the national authorities; and consider a possible mechanism to more frequently and specifically address issues of concern with representatives of the German minority in the four municipalities where they live.<sup>148</sup>

In *Georgia*, problems persist in the political participation of national minorities after three cycles of monitoring. For instance, political parties of a territorial nature remain prohibited, and the representation of minorities in the parliament is not proportionate to their number in the general population. The Committee of Ministers called on the authorities to formalize the existing practice of consulting the Council of National Minorities and the Council of Religions on matters relevant for the communities they represent; and effectively consult representatives of national minorities on important infrastructural projects that may affect them.<sup>149</sup>

*Finland* received three recommendations from the Committee of Ministers to strengthen the political participation of minorities. First, it should develop, together with the Sámi, a common system for registration on the electoral roll that “strikes an adequate balance between the interest of the community in preserving its structures of self-governance on the one hand, and the principle of free self-identification on the other”.<sup>150</sup> Second, it should “significantly strengthen the participatory rights of the Sámi Parliament in legislation and practice, *inter alia* by equipping the Sámi Parliament with the necessary resources and providing training to the officials concerned at national and local levels”.<sup>151</sup> Third, it should reinforce the Advisory Board for Ethnic Relations in close consultation with representatives of all minorities, via measures such as

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<sup>146</sup> ACFC, Fifth Opinion on Cyprus, *op. cit.*, note 124, paras. 189-196.

<sup>147</sup> ACFC, Fifth Opinion on Denmark, *op. cit.*, note 123, paras. 11, 129-133.

<sup>148</sup> *Ibid.*, paras. 134-135.

<sup>149</sup> CoM, Resolution on Georgia, *op. cit.*, note 125.

<sup>150</sup> CoM, Resolution on Finland, *op. cit.*, note 138, para. 2.

<sup>151</sup> *Ibid.*, para. 3.

increasing the share of minority representatives, ensuring the transparency of the membership selection process, increasing budgetary and human resources, and considering formalizing the Board's legal status.<sup>152</sup>

*Hungary* was commended for its system of representation of national minorities, both in parliament and via self-governments. The only problem is that the structure is not adapted to the needs of the Roma, in particular due to the limited mandate of the self-governments in areas concerning social inclusion. Authorities were also called on to adjust the calculation method to allocate funds to the different minority self-governments in a way that takes greater account of the proportion of the given minority.<sup>153</sup>

There is room for improvement in the *Netherlands*, too. While Frisian minority NGOs are consulted on an *ad hoc* basis by the Province of Fryslân and they usually have good access to decision makers at provincial level, there is no institutionalized consultative body where they could regularly meet. The Committee of Ministers encouraged authorities to set up such a consultation scheme; involve minority representatives in language policies in the context of municipal mergers; and ensure the effective participation of Roma, Sinti and Travellers in policymaking.<sup>154</sup>

In *Poland*, the Joint Commission of the Government and National and Ethnic Minorities continues to meet regularly and fulfil important functions, with some flaws in its functioning.<sup>155</sup> Authorities were advised to develop a reform of the Commission, together with representatives of national minorities, “to strengthen its mandate and revisit the appointment procedure with a view to better reflecting diversity within minorities”.<sup>156</sup>

In *Portugal*, despite considerable efforts over recent years to increase the participation of the Roma communities in advisory and state bodies, the situation is not yet satisfactory.<sup>157</sup> The state should take further measures to ensure the effective participation of Roma, such as increasing the number of their representatives among the members of the Commission for Equality and Against Racial Discrimination;

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<sup>152</sup> *Ibid.*, para. 15.

<sup>153</sup> ACFC, Fifth Opinion on Hungary, *op. cit.*, note 128, paras. 9, 146-154.

<sup>154</sup> CoM, Resolution on the Netherlands, *op. cit.*, note 132.

<sup>155</sup> ACFC, Fourth Opinion on Poland, *op. cit.*, note 130, paras. 18, 165-168.

<sup>156</sup> *Ibid.*, para. 169; CoM, Resolution on Poland, *op. cit.*, note 131, para. 9.

<sup>157</sup> ACFC, Fourth Opinion on Portugal, *op. cit.*, note 142, paras. 119-127.

providing Roma representatives with sufficient information and economic means to attend meetings, and building their capacity to negotiate.<sup>158</sup>

The Committee of Ministers called on *Russia* to guarantee the effective participation of indigenous peoples in matters concerning them, including the use of land and resources; secure effective participation of national minorities in consultative bodies at all levels and make sure that their composition genuinely represents their various views; develop and implement in consultation with Roma representatives a multi-year action plan on equality in all relevant areas, including participation.<sup>159</sup>

In *Spain*, the participation of Roma in public affairs and in decision-making processes is still low at central, regional and local levels. Authorities should address this problem through affirmative measures for recruitment, retention and promotion, including internships, training and scholarships. The functioning of the State Council for the Roma People as well as its cooperation with the Autonomous Communities should also be improved.<sup>160</sup>

*Ukraine* was reminded that when redrawing administrative boundaries, minority rights cannot be restricted through the alteration of the proportions of the population. Furthermore, the legislative framework should contain effective means for the adequate representation of national minorities in elected bodies at all levels so that they may participate fully in public affairs.<sup>161</sup>

### *3. Bilateral and Multilateral Cooperation*

Transfrontier exchanges are usually provided for in bilateral treaties between mutually interested states ('kin states' and 'host countries'), and sometimes via multilateral agreements between a handful of state parties. When evaluating the implementation of Articles 17 and 18 of the FCNM (mostly under the same heading), the Advisory Committee takes note of the existence of these treaties, but seldom makes any recommendations—apart from encouraging the authorities to implement these agreements and continue to promote bilateral cooperation in a consistent manner and in a spirit of good neighbourliness, while respecting the role of multilateral standards and

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<sup>158</sup> *Ibid.*, paras. 128-129.

<sup>159</sup> CoM, Resolution on the Russian Federation, *op. cit.*, note 126.

<sup>160</sup> ACFC, Fifth Opinion on Spain, *op. cit.*, note 141, paras. 180, 189-190.

<sup>161</sup> CoM, Resolution on Ukraine, *op. cit.*, note 127.

procedures.<sup>162</sup> The Committee of Ministers adopted no recommendations in this field in 2020, and only very rarely did so previously.

A welcome development in *Bulgaria* was the adoption (in August 2017) and ratification (in January 2018) of a treaty on friendship and good neighbourly relations with North Macedonia. This and formerly concluded bilateral treaties with Greece, Romania and Turkey provide for exchanges in the fields of culture, education and science.<sup>163</sup>

In *Cyprus*, there are many examples of bilateral cooperation for the Armenian, Latin, and Maronite communities. Authorities were further encouraged to pursue bilateral contacts with Armenia and Lebanon aimed at supporting the Armenians and Maronites, and develop cooperation with other states in the field of Roma policy implementation, involving members of the Cypriot Roma communities.<sup>164</sup>

*Denmark* has enhanced cultural exchanges with Germany, and a new strategy attempts to strengthen bilateral economic cooperation. The Advisory Committee advised the authorities to pursue their efforts in promoting a free cultural space in the Danish-German border region, and to reinforce consultation mechanisms with regional and municipal authorities as well as representatives of the German minority, when modifying the scope and nature of border controls.<sup>165</sup>

A number of activities demonstrate the links between the national minorities in *Hungary* and their kin states. Bilateral treaties operate under the supervision of joint committees, with the representation of the relevant national minorities. However, such bilateral cooperation platforms are not always effective enough, and meetings of the joint committees should be held on a more regular basis.<sup>166</sup> Similar to Hungary, *Poland* has also concluded a large number of bilateral agreements with neighbouring countries, however, the implementation of these is often made conditional to progress on similar

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<sup>162</sup> ACFC, Fourth Opinion on Bulgaria, *op. cit.*, note 71, para. 214. See more on this issue in Noémi Nagy, “A kelet-közép-európai államok által kötött kétoldalú kisebbségi szerződések a Nyelvi Karta és a Keretegyezmény monitoringja tükrében: látszateszközök vagy valódi elköteleződés?”, in Vizi Balázs (ed.), *Magyarország és szomszédai. A kisebbségvédelem kérdései a kétoldalú szerződésekben* (Társadalomtudományi Kutatóközpont Kisebbségkutató Intézet, L’Harmattan, Budapest, 2021), 80-101.

<sup>163</sup> ACFC, Fourth Opinion on Bulgaria, *op. cit.*, note 71, paras. 212-213.

<sup>164</sup> ACFC, Fifth Opinion on Cyprus, *op. cit.*, note 124, paras. 210-216.

<sup>165</sup> ACFC, Fifth Opinion on Denmark, *op. cit.*, note 123, paras. 136-142.

<sup>166</sup> ACFC, Fifth Opinion on Hungary, *op. cit.*, note 128, paras. 195-199.



issues in neighbouring countries. The Advisory Committee recalled that such an approach is not in line with the spirit of the Framework Convention.<sup>167</sup>

The ACFC welcomed *Portugal's* efforts to promote Roma-related cooperation initiatives, especially with Spain, with the effective participation of persons belonging to the Roma communities.<sup>168</sup> *Spain* also takes part in several cooperation programs for the Roma, including being the EURoma Network's coordinator since 2006. Authorities were encouraged to strengthen bilateral contacts with Portugal on such projects, and further develop cooperation with other states, involving members of the Spanish Roma community.<sup>169</sup>

### 3. *Citizenship*

Citizenship as such is not a right provided in the FCNM, however, states frequently use it as a precondition when implementing certain minority rights. Namely, a person belonging to a national minority is often required to be a citizen in order to benefit from the protection of the Framework Convention. This practice has been consequently disapproved by the ACFC,<sup>170</sup> including in the 2020 opinions on Spain, Cyprus and Hungary. The Advisory Committee reiterated, that the application of citizenship criteria may have “a restrictive and discriminatory effect and should therefore be avoided in favour of an inclusive approach that considers whether there is a legitimate ground to differentiate access based on citizenship for each right separately”. It also recalled that “citizenship is not a basis upon which a priori to exclude the enjoyment of minority rights. Indeed, both the philosophy and international law of human rights confer minority rights on the bases of specific differentiated needs and desires which relate to all human beings within the jurisdiction of the State, precisely in contradiction to the citizen/alien distinction”.<sup>171</sup>

## VI. CONCLUDING REMARKS

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<sup>167</sup> ACFC, Fourth Opinion on Poland, *op. cit.*, note 130, paras. 186-189.

<sup>168</sup> ACFC, Fourth Opinion on Portugal, *op. cit.*, note 142, para. 160.

<sup>169</sup> ACFC, Fifth Opinion on Spain, *op. cit.*, note 141, paras. 214-219.

<sup>170</sup> Cf. ACFC, Thematic Commentary No. 4: “The Framework Convention: a key tool to managing diversity through minority rights The Scope of Application of the Framework Convention for the Protection of National Minorities”, 27 May 2016, ACFC/56DOC(2016)001, para. 29.

<sup>171</sup> ACFC, *op. cit.*, note 12, paras. 30, 34-35; ACFC, Fifth Opinion on Cyprus, *op. cit.*, note 124; para. 33; ACFC, Fifth Opinion on Hungary, *op. cit.*, note 128, paras. 31-44, especially 31 and 40.

In 2020 minority issues were high on the agenda of international organizations, even with the impediments caused by Covid-19 on their day-to-day functioning. The global pandemic aggravated the vulnerability of minorities, and deepened the already existing inequalities in many states. Especially the Roma communities and indigenous peoples have faced serious challenges. This current situation makes the cooperation of the international community and states in the protection of minorities more important now than ever.

The actual circumstances of minorities are very different in the various European countries, ranging from exemplary practices (Finland, Sweden, the Netherlands) through theoretically good solutions (Hungary, Slovenia) to dismal conditions (Bulgaria, Cyprus, Georgia). This is mainly because minority rights are still considered as primarily belonging to the states' competence. This age-old attitude might change if the European Union would get wider powers in the field of minority protection, taking action on the basis of the Minority SafePack Initiative.

Whereas monitoring bodies have continued their vigorous efforts to promote minority rights, sometimes it seems they have been swimming against the tide. In 2020, the European Court of Human Rights dealt with cases almost identical to previous ones (obviously with no effective solutions within the domestic framework), whereas expert committees of the ECRML and the FCNM were repeating tirelessly the very same observations, making the very same recommendations as in previous monitoring cycles.<sup>172</sup> Recurring issues include, *inter alia*, the absence of practical implementation of rights provided on paper, the need for a flexible application of numerical thresholds, the possible dangers that territorial reforms may entail for minority speakers, and the necessity of awareness-raising and involving stakeholders in decision-making. The developments in 2020 show that although moderate optimism is not groundless,

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<sup>172</sup> A telling example is the frequent misinterpretation by states of the term 'need' to use the minority language in the public sphere. The ACFC several times explained that 'need' in this context does not imply the inability of persons belonging to minorities to speak the state language. On the contrary, "one of the preconditions for the preservation of a minority language as an essential element of the identity of a national minority and its transmission is that the given language remains fully functional in all areas of daily life". Therefore, "a threat to the functionality of the minority language as a communication tool" is sufficient to constitute a need. Cf. ACFC, Fourth Opinion on Bulgaria, *op. cit.*, note 71, para. 128; ACFC, Fifth Opinion on Cyprus, *op. cit.*, note 124, para. 143; ACFC, Fifth Opinion on Denmark, *op. cit.*, note 123, para. 106; ACFC, Fifth Opinion on Hungary, *op. cit.*, note 128, para. 111.

minority rights should be taken much more seriously in order to ensure the survival of minority communities and their cultures which make Europe as we know it today.