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The effectiveness of the European legal framework concerning the protection of linguistic minority rights from a transitional point of view: case-study of Croatia

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for the
Degree of Master of European Studies

Academic Year 2013-2014

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Abstract

Since the implosion of USSR and the collapse of Yugoslavia, one may observe a growing interest in minorities. Among a whole range of minorities, an accurate attention should be given to linguistic minorities, whose protection differs from state to state. At both international and European levels, legal instruments have been adopted in order to protect them. In this regard, the Framework Convention for the protection of National Minorities and the European Charter for regional or minority languages are particularly relevant.

Language is one of the expressions of someone's identity. The latter is related to several notions such as culture, traditions, or history. Thus, the right to use its own language should be protected and a breach of this right should be considered as a violation of someone's dignity. Throughout Europe, to a less a large extent, linguistic rights are protected. Furthermore, the respect of minorities including linguistic minorities has become a precondition in order to join the EU. We consider that the respect of minorities is more than just a "value". It represents a still not-recognized "general principle of Union law".

One aspect of the linguistic rights concerns the right to introduce bilingual or multilingual topographical signs. This right is interpreted differently in Europe and gives rise to several issues.

Croatia joined the EU on July 1st 2013. As a testimony of its transition toward a fully-integration, it approximated its legal framework on minorities with EU standards. As a consequence, even before its accession, Croatia provided effective instruments to protect and promote its minorities.

Nevertheless, the recent events that took place in Vukovar highlight a loophole in the Croatian system. Indeed, the current conditions of use of the referendum represent a threat to minorities' rights.

The purpose of this paper is to define how EU may protect its values, namely the protection of minorities. In order to answer this question, the European legal system will be analysed. Also, attention will be paid to certain member states, which are also facing with minority issues.

Keywords

Minorities’ linguistic rights

European values

Referendum

Accession to the European Union

Acquis communautaire (acquis de l’Union)

Topographical signs

Substantial number

Table of Contents

List of Abbreviations

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CFNM	Framework Convention for the Protection of national Minorities
CLNM	Constitutional Law on the rights of linguistic Minorities
EC	European Community
ECJ	European Court of Justice
EU	European Union
UN	United Nations

1 Introduction

As HAGEGE Claude wrote « *Europe is a breeding-ground of countless idioms, diverse, muddled, throughout the chaotic lives of Humans*[1] ». Language has always been a means for unification used to create, strengthen or to express the belonging to a given group.

Apart from the fact that they serve communication skills, languages can be considered as the witnesses of values, history and culture. Accordingly, the *verbis* "language" and "nation" are in a large extent interdependent since a language represents one of the expressions of a given nation and the nation, for its part, contributes, by the use of the given language, to the preservation of the latter.

In today's Europe, languages form a comprehensible crucial issue at both political and social levels. Indeed, among the official, working, regional, minority's languages and numerous dialects, Europe resembles at a "Spaghettis bowl". Several attempts have been highlighted to find an accepted and acceptable solution. Two theories deserve to be underlined. The first one is the adoption of a common language: English. The use of a "one language Europe" such as English would be an advantage in terms of communication and financial rationalization but its spread would inevitably result in the weakening of other languages and could lead in medium/long term to "*cultural genocide*[2]". The second one is the institution of a neutral language: Esperanto. However, its implementation has been a complete failure[3].

The European Union preferred to stick to its fundamental values, in particular to the principle of equality, and instead of choosing the "easy way", it decided to dive into a path of pitfalls, trying to respect and promote national identities. Thus, as JENSDOTTIR Regina wrote "*the cultural unity of Europe can solely be constituted on the right to be different*[4]". Accordingly, it can be affirmed that cultural diversity in Europe is expressed by the prism of

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[1] Claude HAGEGE, *Le souffle de la langue : voies et destins des parlers d'Europe*, ODILE JACOB, 1992, p.8.
[2] Niamh Nic SHUIBHNE, *EC Law and Minority Language Policy, Culture, Citizenship and Fundamental Rights*, KLUWER LAW INTERNATIONAL, 2002, p.35.
[3] Dario CASTIGLIONE & Chris LONGMAN, *The Language Question in Europe and Diverse Societies: Political, Legal and Social Perspectives,* HART PUBLISHING, 2004, p.250.
[4] Regina JENSDOTTIR, *La contribution de la Charte européenne des langues régionales ou minoritaires à la protection de l'héritage culturel en Europe*, in : *La construction européenne : aspects juridiques et linguistiques*, Isolde BURR & Gertrud GRECIANO, NOMOS, 2003, p.149.

language diversity. The European motto "*United in diversity*" is of special relevance when apprehending the language field of the European Union.

However, we can observe the setting-up of a hierarchy of languages, if not *de jure*, then *de facto*. This outcome is the result of the combination of numerous parameters such as the diffusion of the language in the world or the number of speakers. As a consequence, without appropriate measures, minority languages, which are in a less favorable situation, can be threatened.

Aware of this risk, measures have been adopted at the international, regional and national levels in order to promote and protect minority languages. The notion of minority has been several times defined. As KYRIAKI Topidi points out, the definitions can be divided into two groups. The first one includes traditional definitions, which "*is oriented only towards groups that maintain links of citizenship with the state*[5]". The second one includes a more liberal definitions "*that abandon the requirement of citizenship*[6]".

However, in order to appreciate linguistic minority rights, a singular definition of "linguistic minority" has to be stemmed from the general definition of minority. The article I of the European Charter for Regional or Minority Languages defines "regional or minority languages" as languages that are "*traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population*". It is stressed out, that the notion doesn't include dialects of the official language or the languages of migrants.

As a general rule, the idea that everyone should have the right to speak and to use his/her language is a common shared principle in Europe. Nevertheless, the reception of this general principle in legal terms still remains an issue to be addressed. Indeed, there is no specific and direct legal basis in the treaties referring to linguistic minorities. Article II TEU[7] recalls that the "*Union is founded on the values of […] equality […] and the respect of human rights, including the rights of persons belonging to minorities […]*". This article gives fewer answers than it raises questions. Indeed, it remains silent on the rights and the

[5] Topidi KYRIAKI, *EU Law, Minorities and Enlargement*, INTERSENTIA, 2010, p.15.
[6] *Ibid.*
[7] *Consolidated version of the Treaty on European Union*, Official Journal of the European Union, 30.03.2010, C-83/15.

minorities concerned. The comprehension of these terms is thus vague and difficult to enforce. As it will be developed, this lack of clarity did not prevent the EU and its institutions to act in the field of rights of linguistic minorities.

The respect of minority rights has always been for Croatia, since its independence, of crucial importance. Its recognition as a State by the international community was, among other requirements, conditioned by its compliance to the respect of these rights.

Nevertheless, after its accession to the European Union, Croatian citizens called on a growing interest for the use of the referendum. Indeed, after a first referendum on the definition of marriage, a second initiative has been launched in December 2013, conducted by the Committee for the Defense of Croatian Vukovar, in order to redefine linguistic minority rights. The aim of the referendum would be to restrict the use of minorities' languages and lettering in public. This initiative has been taken forward after the introduction, in the city of Vukovar, of Cyrillic signs, which were aimed at strengthening the protection granted to minorities, especially the Serbian linguistic minority.

A contradiction then appears. How to conciliate on the one hand the European pro-minority widening protection framework with the Croatian opposite action on the other hand consisting of restricting minority rights? Is such an inconsistency, from a legal point of view, not only possible, but even thinkable?

Croatia, as a new Member State of the EU, was forced, even before its accession, to accept and to implement the constantly evolving *"acquis communautaire"*. The protection of linguistic rights is undoubtedly a part of the *acquis*. The question arises to what extent are the rights of linguistic minorities, as being an expression of European values, protected. What are their pith and substance and to what extent European law allows, or at least tolerates to circumvent to its common shared values?

We believe that the European Union, as a supranational entity, does provide remedies which prevent the Member States of introducing measures aimed at restricting the rights of linguistic minorities.

In order to answer these questions a comparative study shall be of certain interest. To this end, the protection of linguistic rights of minorities will be viewed in their transitional dimension. The comparators will be Austria, Lithuania and Serbia since they joined or will join the Union and are all three facing with internally minorities issues. Furthermore, since linguistic rights cover many different areas, we decided to mainly focus on one aspect: the right to introduce bilingual topographical signs as an expression of the right to use a minority language.

This paper will be presented as follows: first of all, the Croatian legislation on minority rights and the issue Croatia is currently facing will be presented. It will then be given a particular attention to the International and European law framework. In a third part, consideration will be given to systems of protection offered by Austria, Lithuania and Serbia. Some pertinent issues will also be addressed. Finally, it will be tried to suggest national and European remedies, which could be used in order to solve the Croatian issue.

2 Problem setting: A referendum aiming at restricting the rights of minorities

In order to understand the stakes and tensions at play in Croatia concerning the introduction of a measure aiming at restricting the rights of minorities, one must first of all give an emphasis to the current Croatian legal framework and observe its evolution from a transitional point of view.

2.1 Croatian legal framework from a pre-accession perspective

Croatia declared its independence on the 25.06.1991. Nevertheless, its recognition by the international community, and in particular the European Communities, was subjected to its compliance with the respect of human rights, including minority rights[8]. Pursuing an objective of Europeanization, which would finally lead to an integral integration, Croatia attached importance to the respect of its minorities. It was however strongly recommended by the European Union since the European Council adopted the Copenhagen Criteria which entailed that *"Membership requires that the candidate country has achieved […] respect for and protection of minorities […][9]"*.

The evolution of the rights granted to minorities can be supported by the several changes made to the Croatian Constitution. The issue of the language, as a crucial testimony of the Croatian identity, is considered in the article 12. It stresses out that the official language of Croatia is Croatian and Latin script. Nevertheless, the second sentence permits, under conditions provided by law, to introduce another language and the Cyrillic script in some municipalities. Furthermore, the article 15 guarantees to the persons belonging to minorities, the right to use freely their language and script.

The Constitution of 1990 made reference to 8 minorities: "*Serbs, Muslims, Slovenes, Czechs, Slovaks, Italians, Hungarians, Jews and others[10]*". In 2000, after an amendment, while deleting on the one hand two before mentioned minorities (Muslims and Slovenes), Croatia added to the list on the other hand four minorities: Austrians, Germans, Ukrainians

[8] EC, *Declaration on Yugoslavia and on the Guidelines on the recognition of new States*, 16.12.1991, 31I.L.M.1485 (1992) ; Commission d'arbitrage, *Conférence pour la paix en Yougoslavie*, Avis n°5, 11.01.1992, in: Réneo LUKIC, *La politique étrangère de la Croatie, de son indépendance à nos jours*, PUL, 2006, p.149.
[9] European Council, *Conclusions of the Presidency*, 21-22.06.1993, SN-180/1/93 REV-1, p.14.
[10] *Ustav Republike Hrvatske*, Preamble, 22.12.1990, NN-056/1990.

and Russians[11]. The most recent amendment in 2010 extended the category of minorities to 22 groups[12], including Vlachos and Roma.

These improvements have been strongly encouraged by the Advisory Committee on the Framework Convention for the protection of national minorities (hereinafter: CFNM). Indeed, in its opinion[13] from 2001, it pointed out the fact that not all minorities were listed in the preamble[14] of the Constitution, while a larger number of minorities were listed in the Constitutional law[15]. As a consequence, this discrepancy placed the groups, who were not listed in the Constitution, in a less favourable situation, since they could not rely on the provisions of the Constitution. The Committee recalled its position in 2010[16] while also welcoming the progress made towards the Roma minority by the adoption of the National Action Plan for the Decade of Roma Inclusion 2005-2010[17].

The Constitutional law provides that minorities have the right to use their language in private and public sphere[18]. Furthermore, it states that a second official language will be introduced in municipalities where a minority forms the majority of the population[19] and that a second official language could be introduced by the local government even if the minority does not represent the major part of the population[20].

In the same vein, Zagreb adopted an Act on the use of language and script of national minorities[21]. It foresees the way the language and script of a minority should be used. According to the article 5, an equal use of Croatian and the language of a minority is made in the administration field. It follows from the above that some civil servants have to be able to understand, answer and provide services in the language/script of the given minority. Thus, the Croatian legal system enshrines not only rights in "horizontal relations" (between individuals) but also in "vertical relations" (between an individual and the State). The article

[11] *Ustav Republike Hrvatske* Preamble, 25.04.2001, NN-28/2001.
[12] *Ustav Republike Hrvatske*, Preamble, 06.07.2010, NN-76/2010.
[13] Council of Europe, *Advisory Committee on the FCNM*, 6.04.2001, ACFC/INF/OP/I(2002)003.
[14] *Ibid.*, pt.3.
[15] *Constitutional Law on Human Rights and Freedoms and Rights of Ethnic and National Communities or Minorities in the Republic of Croatia*, 31.05.2000, NN-51/00, Art.3.
[16] Council of Europe, *Advisory Committee on the FCNM*, 27.05.2010, ACFC/OP/III(2010)005, pt-38-41.
[17] *Ibid.* pt 34-35.
[18] *Supra* note 15, Art.6.c.
[19] *Ibid*. Art.7.2.
[20] *Ibid.* Art.8.
[21] *Zakon o uporabi jezika I pisma nacionalnih manjina*, NN-51/00.

10 provides that road signs, names of streets and places, names of the towns, should be written both in Croatian Latin script and in the language of the given minority.

Last but not least, a Constitutional law on the rights of national minorities (hereinafter: CLNM)[22] was adopted in 2002. This legislation implements the Croatian international obligations and foresees the conditions, under which minorities may enjoy their rights.

The article 5 of the CLNM defines a national minority as "*group of Croatian citizens whose members have traditional domicile in territory of the Republic of Croatia and whose ethnic, linguistic, cultural and/or religious traits differ from the rest of the population, and who are motivated by the desire to preserve these traits*".

The most interesting article for the purpose of this paper is the article 12.1. It provides that "*Equality in the official use of a minority language and script shall be exercised in the territory of a local self-government unit in which the members of a national minority compose a minimum of one third of the population [*33, 33%]". The article 12.2 states that this equality should be "*practiced when so envisaged in international treaties to which the Republic of Croatia is a party*". Croatia is among other, bound to the CFNM and to the European Charter on minority language. It also concluded an Agreement with Serbia-Montenegro in 2004[23].

The census of population is of significant importance to determine the percentage that a minority represents in a given territory of a local self-government unit. According to the census of 2011[24], Croatian is spoken by 95.60%[25] of the population. The most relevant minorities' languages are Serbian (1,23%), Italian (0,43%) and Hungarian (0,24%)[26]. If we take the example of the Serbian minority, which is heavily represented in Croatia, according to the Census[27] the following cities/municipalities come into the scope of the article 12.1 of the CLNM:

[22] *Ustavni zakon o pravima nacionalnih manjina*, 13.12.2002, 01-081-02-3955/2.
[23] *Sporazum između Republike Hrvatske i [Srbije] o zaštiti prava hrvatske manjine u [Srbiji] I srpske manjine u Republici Hrvatskoj*, 15.11.2004, entered into force : 01.06.2005, NN-MU 003/2005.
[24] Croatian Bureau of Statistics, *Census of population, Households, and Dwellings 2011, Population by Citizenship, Ethnicity, Religion and Mother Tongue*, STATISTICAL REPORTS, 2013.
[25] *Ibid.*, p.78.
[26] *Ibid.*, pp.78-79.
[27] *Supra* note 24.

County of	City/Municipality	Percentage of the Serbian Minority
Sisak-Moslavina	*Donji Kukuruzari*	34,82%
	Dvor	71,90%
	Gvozd	66,53%
	Krnjak	68,61%
	Plaški	45,55%
	Vojnić	44,71%
Primorje-Gorski Kotar	*Vrbovsko*	35,22%
Lika-Senj	*Donji Lapac*	80,64%
	Udbina	51,12%
	Vrhovine	80,23%
Zadar	*Gračac*	45,16%
Osijek-Baranja	*Erdut*	54,56%
	Jagodnjak	65,89%
	Šodolovci	82,58%
Vukovar-Sirmium	***Vukovar***	**34,87%**
	Borovo	89,73%
	Markušica	90,10%
	Negoslavci	96,86%
	Trpinja	89,75%
Šibenik-Knin	*Biskupija*	85,46%
	Civljane	78,66%
	Ervenik	97,19%
	Kistanje	62,22%

As it can be seen, Croatian and the minority language should be on the same footing in these above-mentioned municipalities/cities.[28].Nevertheless, it is not the case. *A contrario*, in the county of Istria, bilingualism was introduced in municipalities/cities where the Italian minority did not represent one third of the population. It should be recalled that the introduction of another language is a "*right to*" and that it becomes a duty for the State to ensure the implementation of the provisions related to minority rights from the moment when a given minority expresses it will to enjoy its rights.

From a legal point of view, it has brought up its legal system on minorities to EU standards and absorbed the so-called *pre-accession acquis* before its accession on the 1st July 2013. The respect of the rights granted to minorities is one of the key objectives for the EU and represents a quasi-condition for a potential accession[29].

However, one may raise the question of knowing what criteria a given State must comply with, when in a first case, it joined the EU before the emergence of an "*acquis communautaire* on minorities' rights" and in a second case, when it first joined the EU after having absorbed the above mentioned *acquis*. As an example, the FCNM, which is part of the *Acquis of the Council of Europe* but integrated in the *Acquis Communautaire* was neither signed nor ratified by France[30]. On the other hand, all new Members ratified it. It highlights a certain discrepancy between old and new Member states and challenges the continuity and the intensity of the European conditionality. Should the accession be considered as a threshold, which once reached, permits to a Member State to release from its engagement? If the answer is "yes", such an affirmation would have an impact on the content of the wording "European values" since they should be shared by all Members. On what should/could be the possibility for the EU to prevent its conditionality to decline will be addressed later in this paper.

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[28] *Supra* note 24, p.107.
According to the Census of 2011, Italian language and script should be solely introduced in the town of Buje-Buie (33,25%) and in the municipalities of Brtonigla-Verteneglio (39,79%) and Grožnjan-Grisignana (56,52%).
[29] José WOEHRLING, *Les trois dimensions de la protection des minorités en droit constitutionnel comparé*, 2003-2004, 34 REVUE DE DROIT DE L'UNIVERSITE DE SHERBROOKE, p.115.
[30] Council of Europe, *Framework Convention for the Protection of National Minorities*, 1.02.1998.
Geographical reach of the FCNM:
(http://www.coe.int/t/dghl/monitoring/minorities/1_AtGlance/PDF_MapMinorities_bil.pdf) 26.03.2014.

2.2 *Croatian legal framework from a post-accession perspective: minority rights in danger.*

Before Yugoslavia collapsed, the Serbian ethnic group represented 37,35% of the municipality (*Općina*) of Vukovar[31]. In 2001, they represented 32,87% of the population[32] and this percentage increased to 34,87%, what triggered the article 12.1 of the CLNM.

In order to circumvent the obligations arising out of the law, the City Council (*Gradsko Vijeće*) adopted a Statutory decision related to the Statute of Vukovar. First of all, it introduced an article 2.1 to the City Statute, which states that "*as being a victim of the Homeland's war (Domovinski rat) the territitory of the city Vukovar is a place of special piety*[33]". Then, it changed the article 61.3 of the City Statute. This article provides that the Law on the use of language and script of minorities and *de facto* the article 12.1 does not apply in the territory of Vukovar"[34].

After an escalation of tensions, and at the initiative of the Council of the Serbian national minority (*Vijeće srpske nacionalne manjine u Gradu Vukovaru*), the Ministry of Public Administration suspended the application of the article 22 of the Statutory Decision and brought the case to the Government of the Republic of Croatia, whose task was to judge whether this article complies with the Constitution and with the CLNM[35].
Another attempt was also made through the referendum procedure.

2.3 *The issue forming the subject of the referendum*

The article 86.1 of the Constitution states that "*the Croatian Parliament may call a referendum on proposals to amend the Constitution, a bill or any such other issue as may fall within its purview*" and the article 86.2 states that "*the President of the Republic may, at the proposal of the Government and with the countersignature of the Prime Minister, call a referendum on a proposal to amend the Constitution or any such other issue as he/she may*

[31] Savezni zavod za statistiku i evidenciju FNRJ i SFRJ, Popis stanovništva 1948, 1961, 1971, 1981 i 1991, za teritorijalnu organizaciju, opštine i pripadajuća naseljena mesta, 1991. (http://pod2.stat.gov.rs/ObjavljenePublikacije/G1991/pdf/G19914018.pdf) 26.03.2014
[32] Državni zavod za Statistiku, *Stanovništvo prema Narodnosti, po gradovima/općinama*, 2001. (http://www.dzs.hr/Hrv/censuses/Census2001/Popis/H01_02_02/H01_02_02.html) 26.03.2014
[33] Gradsko Vijeće Grada Vukovara, *Statutarnu odluku o izmjenama i dopunama statuta grada Vukovara*, 04.11.2013, Art. I.1.
[34] *Ibid.,* Art.22.
[35] Ministarstvo Uprave, *Decision on the suspension of the article 22 of the Statutory Decision*, 21.11.2013, No-515-02-02/1-13-2.

deem to be of importance to the independence, integrity and existence of the Republic of Croatia". Finally, the article 86.3 prescribes that a referendum will be held on the matters concerning the articles 86.1/2 if "*ten percent of the total electorate of the Republic of Croatia*" requests it.

The Committee for the defense of Croatian Vukovar succeeded to gather more than 600.000 signatures in order to establish a referendum. The question asked during the referendum is formulated as follow:

"Do you agree that Article 12, clause 1, of the CLNM be changed so that it reads: Equal official use of the language and script used by members of national minorities is realised in the area of local government, state government and judiciary when members of individual national minority make up at least ***one half*** *(*emphasis added*) of the population of that area*[36]*"*.

The referendum was not yet held and as Vesna Škare-Ožbolt pointed out, the Constitutional Court will certainly have to judge the constitutionality of the issue[37].

The issue concerning the referendum is relevant for the purpose of this paper. Croatia has constantly moved forwards by granting rights and protection to its minorities. In the field of linguistic matters, it adopted several legislations, aimed at preserving minorities' cultural traits. It embodied in its legal order European values and committed, by its accession, to respect them. Needless to say that a raising of the threshold up to 50% would have an effect on the rights guaranteed by law to national minorities, if not *de facto* (since local self-government units may still introduce bilingualism if the threshold is not reached), then *de jure*. While Zagreb is about to step backward, one may well wonder how the European Union could act, if that is possible, in order to protect its values, in particular the protection of minorities. It should also be kept in mind that the outcome of the referendum would not only affect the Serbian minority but also the other 21 minorities, which are listed in the Constitution.

[36] Ina VUKIĆ, "Croatia : about Cyrillic in Vukovar*"*, 2013. (http://inavukic.com/2013/12/27/croatia-about-cyrillic-in-vukovar/) 27.03.2014

[37] Vesna ŠKARE-OŽBOLT, "Cyrillic and the triumph of Prime Misnister Milanovic's will", 18.12.2013, in: Ina VUKIĆ, "*Croatia : about Cyrillic in Vukovar"*, 2013.

After having examined the Croatian legal system, attention now needs to focus on the international framework on minorities' rights.

3 The international and European legal framework.

It has been tried to create a framework of rights intended to protect minorities at both international and regional levels. As it will be demonstrated, international provisions, even if they give a good basis for protecting minorities, are inadequate in order to provide a proper and effective protection. Thus, it appears that the creation of a framework at regional level is not only desirable but also necessary.

3.1 The International legal framework

For the purpose of tackling the protection of linguistic minorities at international level, a special attention will be first of all given to the framework provided by the United Nations. Then, through an analysis of some relevant case-law, the pith and substance of the rights afforded to linguistic minorities will be considered.

3.1.1 The UN legal framework and the protection of linguistic minorities

In the early 1950s a closest attention was given to the principles of non-discrimination and human dignity. These two concepts could be, at least as a first step, relevant when apprehending linguistic minorities' rights. The preambles of the Charter of the United Nations[38] and the Universal Declaration of Human Rights[39] refer to the principle of dignity. The article I of the Declaration provides that all *"human beings are […] equal in dignity and rights"*. Furthermore, the article II highlights the principle of non-discrimination saying that the rights and freedoms set forth in the Declaration are enjoyable by all *"without distinction of any kind, such as […] language"*. In the Oslo recommendation[40], dignity and language were linked. It stated that *"Equality in dignity and rights presupposes respect for the individual's identity as a human being. Language is one of the most fundamental components of human identity. Hence, respect for a person's dignity is intimately connected with respect for the person's identity and consequently for the person's language"*. In that case, the question arises of how to deal with the respect of language.

[38] UN, *Charter of the United Nations*, 24.10.45, 1 UNTS XVI.
[39] UN, *Universal Declaration of Human Rights*, 10.12.1948, A/RES/217 A(III).
[40] UNESCO, *Explanatory note to the Oslo recommendations regarding the linguistic rights of national minorities*, 1.02.1998.

A first answer to this question may be found in the International Covenant on civil and political rights (hereinafter: the Covenant)[41]. It recalls first of all the "*inherent dignity of the human person*[42]". Then, a relevant article, if not the most relevant one for the purpose of this paper, is the article 27, which refers directly to linguistic minorities' rights. It provides that *"in those States in which […] linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture […] [and] to use their own language"*. However, this general provision lacks of clarity.

Indeed, there are no legal definitions of crucial concepts at international level of notions such as "minority", "language" and "persons belonging to such minorities". It has been several attempts to define a minority[43]". Trying to understand what the concept of "minority" entails may not be an easy feat. It contains and intersects various components and as REHMAN Javaid wrote "*Minorities come in all forms and sizes and indeed each and every individual in one form or another belongs to a minority*[44]". Despite several attempts[45], it has been and would be in vain to try to give a unique definition of this general universal conception. For the purpose of this paper, a minority will be understood as *"[…] a linguistic group numerically smaller than the rest of the population of the State to which it belongs and possessing cultural, […], a religion or a language different from those of the rest of the population*[46]".

The notion of "*language*" is also unclear and it cannot benefit from a mere legal definition. It would be a somewhat narrow view to claim that the mutual intelligibility forms a threshold, which permits to distinguish two languages, or a language from a dialect[47]. For these reasons, and despite the reluctance of a part of the doctrine, Croatian and Serbian will

[41] UN, General Assembly Resolution, *International Covenant and Civil and Political Rights*, 16.12.1966, 2200A(XXI).
[42] *Ibid.* Preamble.
[43] The PCIJ gave a definition of what a "community" is. *See*:
PCIJ, *Interpretation of the Convention between Greece and Bulgaria respecting reciprocal emigration*, Advisory Opinion, 31/08/1930, pt. 30
[44] Javaid REIHMAN, *The weaknesses in the international protection of Minority Rights*, KLUWER LAW INTERNATIONAL, 2000, p.14.
[45] For the concepts of a Minority and the proposed definitions: Francesco CAPOTORTI, *Study in the rights of persons belonging to ethnic, religious and linguistic minorities*, United Nations, 1979, E/CN.4/Sub.2/384/Rev.1, pt.20-27.
[46] *Ibid.,* pt.28.
[47] Robert DUNBAR, Minority Language Rights in International Law, in: *International and Comparative Law Quaterly*, Vol.50, BRITISH INSTITUTE FOR INTERNATIONAL AND COMPARATIVE LAW, 2001, p.96.

be here considered as forming two different languages. Thus, given their different "*culture, linguistic history and literature*[48]", the *verbis* "Serbo-Croatian" will be avoided.

Last but not the least, the expression "*persons belonging to such minorities*" sets important conditions for article 27 to be applicable. First of all, a minority must exist, and hence be recognized as a minority. As emphasized above, all minority groups cannot be considered as a minority. Then, the person who claims the applicability of the article 27 must be a member of that minority. The question arises of how to evaluate the membership of a person claiming to belong to a linguistic minority. Is the language requirement sufficient or other criterion must be taken into account such as the nationality, the religion or even the culture?

The UN Declaration on the Rights of Persons Belonging to National Minorities is also relevant[49]. Addressed to Member States, it imposes obligations on them. The declaration is not enforceable as such, but may be considered as a useful source for the states when considering minorities' rights. In this way, the article I puts an emphasis on the responsibility of the States regarding the protection and the promotion of the "*linguistic identity of minorities*". They shall take measures in order to "*create favourable conditions to enable [*minorities*] to express their characteristics and to develop their [...] language*[50]*"* and must act in "*good faith*[51]". Nevertheless, the rights afforded to persons belonging to minorities are not absolute. As recalled in the Declaration, the rights have to be exercised "*in a manner compatible with national legislation*[52]".

After having exposed the International framework on linguistic minorities' rights, the way the latters have been putted into practice should be considered.

3.1.2 Linguistic rights in practice

As a general rule, the right no to be discriminated against on grounds of the belonging to a linguistic minority is understood as the right to use his/her own language.

[48] Hrvatski jezični portal, Hrvatski jezik – poseban slavenski jezik, 1996. (http://hjp.novi-liber.hr/index.php?show=povijest&chapter=34-poseban_jezik) 20.03.2014.
[49] UN, *Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities*, 18.12.1992, DOC-A/RES/47/135.
[50] *Ibid.* Art.4.2.
[51] *Ibid.* Art.8.
[52] *Ibid.* Art.2.3.

However, is this right absolute, or could it be limited and restricted without creating discrimination? This issue was raised in two cases[53][54] concerning the use of Bretton before the Court.

During a criminal proceeding, the defendants claimed to be discriminated on grounds of belonging to the Bretton linguistic minority in France. In support of their argument, they putted forth that the French State violated the articles 14.1 (right to a fair hearing), 19 (freedom of expression), 26 (the right not to be discriminated on ground of language) and 27 (the right to use its own language) of the Covenant[55] by not allowing them the right to use Bretton in Court instead of French.

The crucial point was to establish to what extent and under which conditions, the refusal made by the Court not to allow them to express themselves in Bretton, could be considered as not discriminatory. The claimants submitted that the notion of "fair trial" implies the right to "*express itself in the language in which they normally express themselves"* [56] ". Nonetheless, the Committee stated that if the person in question is *"sufficiently proficient in the Court's language, there is no need to take into account whether it would be preferable for the person to express itself in a language other than the court language[57]".*

It follows that the right to use its own language can be subjected to restrictions, especially if the person does speak the official language. Does it then mean that all persons belonging to linguistic minorities should be denied the right to use their language in case they also master the official language? Such a conclusion would be somewhat reductionist. Indeed, it should be borne in mind what the purpose of international legislations such as the Covenant is. It is first of all intended to protect and promote minorities' rights. The protection should be granted in cases where a person belonging to a linguistic minority and who do not master the official language, find himself/herself in a less favourable situation compared to a person who do not belong to such a minority. The promotion of the rights is closely tied to the preservation of their culture and identity. In the cases cited above, it was

[53] HRC, *Yves Cadoret, Hervé Le Bihan v France*, Communication No. 323/1988, U.N.Doc.CCPR/C/41/D/323/1988(1991).
[54] HRC, *Dominique Guesdon v France*, Communication No.219/1986, UN Doc.CCPR/C/39/D/219/1986(1990).
[55] *Ibid.* pt.2.3.
[56] *Supra* note 54, pt.10.2 *; Supra* note 53, pt.3.1.
[57] *Supra* note 33, pt 5.7.

pointed out that *"criminal proceedings are not an appropriate venue for expressing demands linked to the promotion of the use of regional languages*[58]".

In the same vein, in a case concerning the right to be assisted in Court by an interpreter in Serbian language, the Supreme Court of the Republic of Croatia set aside the judgment of a Court of Instance, which decided that the procedure in question should be addressed to the defendant in his native language by the mean of an interpreter.[59].

The case Ballantyne and others v. Canada[60] is an example which demonstrates how difficult it could be to define what a minority is. It dealt with the prohibition to use English on commercial signs. This prohibition was legitimated by the Charter of the French Language as amended by the Bill No.178. The 58th section stated that "*Public signs and posters and commercial advertising […] shall be solely in French […]".* The claimants felt discriminated against because they were denied to use their own language. *Inter alia,* they invoked the applicability of the article 27 of the Covenant. Nonetheless, the Committee argued that the latter was not applicable in relation with the situation in question. It supported that a group of persons belonging to a linguistic minority does come within the scope of article 27 solely if it represents a minority at the states' level[61]. The situation in Canada is quite ambiguous because English represents a majority at the federal level but a minority in the Province of Québec and *vice-versa*.

The case here-above mentioned highlights the lack of the article 27. A minority, by definition, is a group "*numerically smaller*". Obviously, the English speaking people does represent a minority in the Province of Québec. Nevertheless, since the reference-point is "the State" as a whole, they are not recognized as a minority as such and are precluded to benefit from the provisions laid down in article 27. In order to guarantee an effective protection to minorities, without regard to the fact that they represent a minority at states' level or not, one may raise the question of whether the concept of minority and the scale used to calculate its proportion should not be based on a case-by-case approach. Indeed, as explained, minorities are plural. As a consequence, trying to define them in a standard and common way can only be unrealistic and utopian.

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[58] *Supra* note 54, pt.8.2.
[59] Vrhuvni Sud Republike Hrvatske, *N.P & M.P*, 1.09.1999, I-Kž-548/1999-3, pt.11.
[60] HRC, *Ballantyne, Davidson, McIntyre v. Canada*, 05.05.1993, Communication Nos.359/1989 and 385/1989, U.N Doc.CCPR/C/47/D/359/1989 and 385/1989/Rev.1(1993).
[61] *Ibid.*, pt.11.2.

After having considered the international framework and relevant case laws referring to linguistic minorities' rights, attention should be now given to the European framework.

3.2 The European legal framework

Originally, the European Union was not the appropriate arena, in which human rights and, by extension, minority rights issues, were discussed. In 1957, the EEC, by its very nature and by its ambitions had solely economic purposes. At the same time, the Council of Europe, created on May 5th 1949 was intended to protect the fundamental freedoms and to promote democracy. In this respect, the European Convention on Human rights, whose interpretation is left to the European Court of Human Rights (hereinafter: ECourtHR), is of significant relevance.

In this part, an attempt will be made to understand how the Union came to touch linguistic issues and how it intends to protect linguistic minorities' rights. As well as that, an attention will be given to protection of linguistic minorities' rights in the framework of the Council of Europe.

3.2.1 The European Court of Human Rights

By its very nature, it is hardly surprising that the Council of Europe came to act in the field of minorities. Even if the European Convention of Human Rights (hereinafter: ECHR) represents the cornerstone of the actions led by the Council, it is mainly through two other instruments that linguistic minorities' rights were apprehended: the European Charter for Regional or Minority Languages (hereinafter: the Charter) and the Framework Convention for the protection of National Minorities (hereinafter: FCNM). As it will be examined, in particular through the jurisprudence, the Court was, and still is, a major actor in guaranteeing the respect of linguistic minorities' rights.

3.2.1.1 The European Charter for Regional or Minority Languages

The Convention for the Protection of Human Rights and Fundamental Freedoms is rather silent on linguistic rights. The principle of non-discrimination on grounds of *"[…] language [and] association with a national minority"* is evoked in article 14.1, but applies solely to the rights and freedoms provided in the Convention.

In 1992, the Council adopted the Charter[62]. It entered into force on March 3rd 1998 after having been ratified by 11 States. It was adopted during a crucial pivotal moment for Europe. Indeed, the implosion of the USSR and the beginning of the war in Yugoslavia required a greater support toward minorities, regardless of the fact if they constituted ethnic, religion or linguistic minorities. Since the respect of national minorities was a precondition for Croatia to be recognized as a sovereign State, it comes as no surprise that it signed and ratified it on November 05th 1997[63].

First of all, the preamble recalls the importance of minority languages in Europe since they contribute to the "*maintenance and development of Europe's cultural wealth and traditions*" and considers the right to use a minority language as an "*inalienable right*". This affirmation strengthens the view that this right may be perceived as a fundamental right, since, directly linked to the human being, it forms a part of its identity, and to a larger extent, its dignity.

The article I defines a regional or minority language as a language *"traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population and different from the official language(s) of that State*". For Croatia, this definition applies for Czech, Italian, Ruthenian, Serbian, Slovakian, Slovenian and Ukrainian. The article II informs that the Parties should apply the article 7 of the Charter, which is related to the recognition of languages, their promotion and the prohibition of discrimination. It also provides an "opt-in / opt-out" provision related to the implementation of the third part of the Charter. The third part lays down provisions related to education (article 8), judicial authorities (article 9), media (article 11) or economic and social life (article 13).

Finally, articles 15 and 16 put in place, on the basis of periodical rapports, a dialogue between the states and a Committee of experts. The state has to submit it every three years. Then, the examination of the reports permits to formulate remarks and recommendations

[62] Council of Europe, *European Charter for Regional or Minority Languages*, Strasbourg, 5.11.1992, entered into force: 01.03.1998, ETS-148.

[63] At this time, the Charter was ratified by 25 States. It should be noted that on January 28th 2014, "the French National Assembly voted, in favour of a Constitutional amendment permitting the ratification of the Charter". (http://www.coe.int/t/dg4/education/minlang/default_EN.asp) 11.04.2014.

aiming at strengthening and guaranteeing linguistic minorities' rights. Until now, the Republic of Croatia, submitted four rapports[64].

3.2.1.2 The Framework Convention for the Protection of National Minorities.

The FCNM[65] was opened for signature on February 01st 1995. Croatia signed it on October 11th 1997 and it entered into force on February 01st 1998.
In the same vein as the Charter, the CFNM encourages the States to promote the traits of their minorities and to ensure them rights in a range of fields such as in the fields of education (article 12), information (article 9), or oral and written expression (articles 10 and 11).

The articles 10.2 and 11.3 are of specific relevance for this paper. Indeed, article 10.2 provides that *"in areas inhabited by persons belonging to national minorities traditionally or in* ***substantial number*** (emphasis added) *[…] the Parties shall endeavor to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities"*. The article 11.3 requires also a minority to represent a substantial number in order to enable them to "*display traditional local names, streets and other topographical indications […]"*. Nevertheless, what a "substantial number" is, is not defined. Either inadvertently or with the intention of avoiding the establishment of a "threshold of substantiality", this should be likely understood as the possibility for the Member States to delimit of their own this threshold. As it has already been stated, Croatia, implemented this Convention by the adoption of the CLNM and according to the article 12.1 of the law, the so-called "substantial number" represents 33% of a given local unit. This threshold will vary with countries. The Finish government considers for example that a minority representing 8% or at least 3.000 inhabitants[66] in a given municipality can be considered as forming a substantial number of the population. In Poland, the Act on national and ethnic minorities[67] foresees in its article 12.7.1 that linguistic rights

[64] Submitted on March 19th 1999, January 14th 2003, October 12th 2006 and January 18th 2010. (http://www.coe.int/t/dg4/education/minlang/Report/default_en.asp#Croatia) 11.04.2014
[65] Council of Europe, Framework Convention for the protection of National Minorities, 01.02.1995, entered into force on 01.02.1998, ETS 157.
[66] Council of Europe, Report submitted by Finland, received on December 10th 2004, ACFC/SR/II(2004)012E, p.70.
[67] Ustawa o mniejszościach narodowych i etnicznych oraz o języku regionalnym, 06.01.2005. (http://mniejszosci.narodowe.mac.gov.pl/mne/prawo/ustawa-o-mniejszosciac/6492,Ustawa-o-mniejszosciach-narodowych-i-etnicznych-oraz-o-jezyku-regionalnym.html) 13.04.2014

will be afforded if the minority represents at least 20% of the municipality residents. Furthermore, it should be noted that the Polish legislation did not provide, until 2005, an instrument aiming at the protection of its minorities. Poland joined the EU in 2004 and adopted a law on minorities one year after its accession. This step forward demonstrates how European values are embodying in national legal systems even after the accession of a Member State to the EU. In Slovakia, the same threshold was adopted in 1999[68].

Despite some failure to transpose this provision in some States[69], it can be noticed that the majority of States, which have signed the CFNM, consider that the requested substantial number vary from one tenth of the population to one third of the population. Not surprisingly, the more tensions with minorities there are, higher the threshold will be. According to the reports given by the Committee, the chosen threshold has never been contested. Nevertheless, in case of this threshold increases to such an extent that it does not correspond anymore to the requirement of "substantiality", one may raise the question what tools the Council may adopt in order to remedy the situation. This interrogation will be answered later.

After having presented the Charter and the Convention respectively, it should be now given interest to the case-law of the ECHR related to the protection of linguistic minorities' rights.

3.2.1.3 Linguistic rights in practice

At the time, there are no judgments of the Court, which deal with the right to introduce bilingual signs in municipality. As it will be seen later, these issues are rather solved internally.

Nevertheless, one case dealing with the right to use a minority language should be presented. Not surprisingly, a first step toward the delimitation of linguistic minorities'

[68] Zákon o používaní jazykov národnostných menšín, 01.09.1999, 184/1999, Art.2.1 and Art.4.
[69] Council of Europe, Advisory Committee on the FCNM, *Third report on Albania*, 23.11.2011, ACFC/OP/III(2010)009, p.24.
Council of Europe, Advisory Committee on the FCNM, *Second report on Bulgaria*, 18.03.2010, FCNM/II(2012)001, p.32.

rights was made concerning a Belgian case[70]. The applicants, who were French-speaking nationals and usually expressed themselves in French but living in the Flemish part of Belgium, wanted their children to be taught in French also. Nevertheless, the municipality they lived in did not provide French-language education. This case allowed the Court to delimit the scope of linguistic rights. The question was to establish whether the provisions of the ECHR allowed someone to receive education in a language of his/her own choice. The Court answered that the principle of non-discrimination on grounds of language, read in conjunction with the right to education, simply indicates that the right to education could not be denied on grounds of someone's language[71]. In other words, the access to Flemish-language educational system cannot be denied to children whose mother tongue is French. Furthermore, the Court stated that the aim, which was to *"achieve linguistic unity within the two large regions of Belgium"* was of public interest, proportionate and therefore did not constitute a discrimination contrary to article 14 of the Convention[72]. In the same vein, the Court did not find the refusal of a municipality to enroll the daughter of a person belonging to the Turkish minority, contrary to provisions laid down in the Convention[73].

3.3 The European Union legal framework

The Treaties do not provide neither specific provisions related to the protection of linguistic minorities nor a list of rights conferred to them. These matters were therefore appreciated indirectly, especially via the European Institutions by adopting several non-binding instruments in the linguistic field. Furthermore, linguistic rights were also tackled through, among others, the Freedom of movement of workers and persons.

3.3.1 Linguistic rights: promotion rather than protection

The European Parliament expresses very early its concern about linguistic minorities. In the Arfé resolution[74], after having pointed out the importance it affords to the preservation of languages, it recommended to the Member States to adopt language policies in the field of education, communication, public life and social affairs[75]. It also urged the Commission to "*review all Community legislation or practices which discriminate against minority*

[70] ECHR, *Relating to certain aspects of the laws on the use of languages in education in Belgium v Belgium*, 23.07.1968, 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64.
[71] *Ibid.,* pt.11.
[72] *Ibid.,* pt.7.
[73] ECHR, *Skender v FYROM*, 10.03.2005, 62059/00.
[74] European Parliament, *Resolution on a Community charter of regional languages and cultures and on a charter of rights of ethnic minorities*, 16.10.1981, [1984] OJ C287/106.
[75] *Ibid.* Art.1.a-c.

languages[76]". It recalled its position and its interest in the matter in a second resolution adopted in 1983[77] without mentioning if such actions would come or not within the scope of competence of the Community[78]. In the Kuijpers Resolution[79] it recommended to the States to "*recognize their linguistic minorities in their laws and thus to create the basic condition for the preservation and development of regional and minority cultures and languages*[8081]". Nonetheless, all these recommendations were non-binding instruments.

Linguistic rights were then appreciated through the prism of culture. The area of culture is cited at the article 6 TEU, which states "*the Union shall have competence to carry out actions […] [in the area of culture]"*. The Union shall be aimed at "*developing the European dimension […] through the dissemination of language*[82]" and shall "*contribute to the flowering of the cultures of the Member States*[83]". In their decision establishing the European Year of Languages[84], the Parliament and the Council highlighted that "*all European languages […] form an integral part of European cultures*[85]" and that languages "*must be recognized to have equal cultural value and dignity*" (Article I). On this basis, the Council adopted a resolution[86] and the Commission a Communication[87] on the promotion of linguistic diversity. However, it should be borne in mind that EU action in this matter is limited by its duty to respect the cultural, linguistic, national and regional diversity of the Member States[88]. Furthermore, it should be added that all these measures were rather aimed at the promotion of cultural diversity (including language diversity) than at the protection of linguistic minorities' rights as such.

[76] *Ibid.,* Art.6.
[77] Parliament, *Resolution on measures in favour of minority languages and cultures*,11.02.1983, OJ-C68/103.
[78] *Supra* note 2, pp.66-67.
[79] Parliament, *Resolution on the Languages and Cultures of Regional and Ethnic Minorities in the European Community*, 30.10.1987, Doc-A2-150/87.
[80] *Ibid.* pt 2.
[81] For more details: *Supra* note 2, pp.61-71.
[82] Art.165.2TFEU.
[83] Art167TFEU.
[84] Parliament and Council, *Decision on the European Year of Languages*, 17.07.2000, No-1934/2000/EC.
[85] *Ibid.,* Preamble, pt.4.
[86] Council, *Resolution on the promotion of linguistic diversity and language learning in the framework of the implementation of the objectives of the European Year of Languages 2001*, 14.02.2002, 2002/C 50/01.
[87] Commission, *Communication Promoting Language Learning and Linguistic* Diversity : An Action Plan 2004-2006, 24.07.2003, COM(2003)449 final.
[88] Art.165.1TFEU ; Art.167.1 TFEU.

3.3.2 Minority linguistic rights and the "four freedoms" of the European Union

The lack of enforcement of EU instruments is due to the vagueness of certain EU provisions, which prevent the Union from adopting clear and defined measures toward linguistic minorities. The article 2 TEU states that the Union "*is founded on the values […] of respect of human rights, including the rights of persons belonging to minorities*". However, this provision remains silent on the minorities concerned and on the rights afforded to them. Moreover, this article is not aimed to create further competence in the field of minorities. The reference to the "values" on which the EU is founded allows the EU solely to act "*as an influence on the interpretation to be given to EU's various aims, including those of peace, unity and security*[89]".

The article 3.3TEU states that the Union shall "*combat social exclusion and discrimination […] and [that] it shall respect its […] linguistic diversity*". Once again, it is not explained what kind of discrimination are concerned and how the diversity of languages should be respected. Without a clear definition of what a "minority" is, it is for the State to consider which groups can be identified as a linguistic minority. Even if the article 21 of the Charter, which has "*the same legal value as the treaties*[90]" provides that "*any discrimination based on […] language […] or membership of a national minority*" shall be prohibited, it remains a matter of the state to consider which groups do form or not a national minority. However the absence of clarity and substantial legal basis did not prevent the Court to position on linguistic rights issues.

The Groener[91] case is relevant when assessing the implication of the ECJ in minority language issues. Mrs. Groener, a Netherlands national, applied for a permanent full-time post as an art-teacher in Dublin. In order to be recruited, applicants had to master the Irish language. However, the applicant in the procedure did not pass the exam. She sued the Minister of Education and the city of Dublin in Justice claiming that this requirement represented an infringement to the free movement of workers. *De jure*, Irish language was considered in Ireland as a national language and the first official language while English as the second. However, *de facto*, Irish was a minority language, since "*it was not spoken by the*

[89] Ahmed TAWHIDA, *The impact of EU Law on Minority rights*, Hart Publishing, 2011, p.61.
[90] Art.6.1TEU.
[91] CJEC, *Groener v Minister of Education and the city of Dublin Vocational Educational Committee*, 28.11.1989, C-379/87.

whole population[92]". The Court, according the aims pursued by the Irish government, namely the maintaining and the promotion of the culture and Irish identity, decided that such a requirement was proportionate and was therefore justified. This case illustrates how the Court, in some extent, gave precedence to a minority linguistic matter over one of its fundamental objective, namely, the free movement of workers enshrined in the current article 45TFEU.

In another case[93] it even extended the rights accorded to linguistic minorities to citizens of the Union when exercising their right of free movement and their right to receive services. Mr. Franz & Mr. Bickel, German and Austrian nationals respectively, were denied the right, during their criminal proceedings, to have the proceedings conducted in German, while it was granted for the linguistic minority established in the Province of Bolzano (Italy). The Court recalled that even if national rules *"which govern the language of the proceedings are matters for which the Member States are responsible,*[94]" it did not prevent the Court from setting some limits to these rights. It judged that a limit had to be drawn when a measure discriminates persons coming from other Member States by denying them the right to enjoy the same rights as the nationals of the State, namely, the right to have the proceedings conducted in German[95].

As these two cases demonstrate, the Court of Justice is not completely unarmed in face of linguistic minorities. However, these judgments also illustrate that linguistic minority rights cannot be seen as proper independent rights. In order to come within the scope of the EU, they should be linked to other rights. Furthermore, it implies the presence of a cross-border element. It should also be noted that these two cases did not define linguistic minorities' rights, but rather defined what rights one may enjoy in comparison to a given linguistic minority. The tough then arises that EU may not be competent to act more deeply and actively in the sphere of the protection of linguistic minority rights.

3.3.3 Minorities, linguistic rights, and the EU: toward a greater involvement

A contradiction appears. On the one hand, the protection of persons belonging to minorities, including linguistic minorities, is unquestionably part of the *acquis*, at least

[92] *Ibid.*, pt.18.
[93] CJEC, *Bickel & Franz*, 24.11.1998, C-274/96.
[94] *Ibid.*, pt.17.
[95] *Ibid.,* pt. 31.

indirectly, and shall be protected by EU law. On the other hand, on grounds of, among others, the principle of conferral of competence and subsidiarity, enshrined in article 4 and 5 TEU, the Union cannot become more proactive in this matter. Nonetheless, one may think that some new tracks may be relevant in the future in order to involve the Union more in linguistic rights matters. First of all, the "*Acquis de l'Union*" may evolve concomitantly with the integration process of the Union. Since its creation, the Union was constantly marked by the enlargement of its competences. It may be explained by the "*spill-over*" effect which involves a "*gradual reduction in the power of national government and a commensurate increase in the ability of the center to deal with sensitive, politically charged issues*[96]". In a medium to long term period, one may expect that the actual and sensitive topic of minorities will completely fall within the competence of the Union.

Then, one may imagine that the Court will consider linguistic rights as fundamental rights. Originally, the Court of Luxembourg did not guarantee the protection of fundamental rights. Its lack of implication in this field was denunciated in several cases such as the well-known "Solange I" case. In 1970, it stated that "*the respect of fundamental rights forms an integral part of the general principles of law protected by the Court*[97]". In the Nold case, it added that *"in safeguarding these [fundamental] rights, […] constitutional traditions, […] international treaties […] can supply guidelines which should be followed within the framework of Community law*[98]". When mentioning "international treaties", the Court even mentioned directly the ECHR[99].

Furthermore, the article 6.3 TEU states that "*fundamental rights, as guaranteed by the [ECHR] […] shall constitute general principles of the Union's law*". It is taken for granted that rights such as the right to a fair trial/hearing or the right not to be discriminated against on grounds of belonging to a national minority do constitute fundamental rights.

Until now, the Court of Justice did not rule on the question as whether linguistic rights represent fundamental rights, but as far as it considers the interpretation and the jurisprudence given by the Court of Strasbourg, an accurate attention should be given to the

[96] Judge LODGE, "The European Community and the Challenge of the Future", Printer, 1992, *in* : Ahmed TAWHIDA, *The impact of EU Law on Minority Rights*, Hart Publishing, 2011, p.55.
[97] CJEC, *Internationale Handelsgesellschaft*, 17.12.1970, 11/70, pt.4.
[98] CJEC, *Nold v Commission*, 14.05.1974, 4/73, pt.13.
[99] CJEC, *Baustahlgewebe v Commission*, 17.12.1998, C-185/95, pt.20 ; CJEC, *Rutili v Minister for the Interior*, 28.10.1975, C-36/75, pt.32.

framework provided by the latter. The fact that linguistic rights may be considered as a general principle of the Union is disputed by the doctrine, and the majority of it does not consider them as general principle[100]. Nevertheless, a general principle is defined as such if it constitutes a common shared principle among the constitutional traditions of the Member States. Even some similarities in the area of minority linguistic rights among the Member States may suffice to grant them the Status of general principle. Even if the half of the Member States ratified the Charter on minority languages, most of them ratified the FCNM. Moreover, we believe that minorities' rights do include linguistic rights. Conferring them the status of general principle would certainly ensure a more effective level of protection and would encourage the most recalcitrant states to act more promptly in the field of linguistic minorities. Of course, this recognition should in no way be understood as a conferral of "absolute rights", and linguistic rights should be somewhat limited. As the Court has already mentioned, when two rights are in collision, it should be tried to conciliate them[101]. A general principle could therefore be restricted on grounds of objectives of general interest[102]. We believe that this step has still not been taken by the Court more for political rather than for legal reasons. Indeed, it goes without saying that constitutional traditions of bigger or founding Member States, which do not recognize their minorities, and even less their rights, may hamper to a large extent a courageous and offensive action from the ECJ.

[100] Theodor SCHILLING, "Language Rights in the European Union" - Part II/II, 9 German Law Journal, 2008, 991230-1239.
[101] CJEC, *Smidberger*, 2001, C-112/00, pt.77.
[102] *Ibid.*, pt.79.

4 Linguistic minorities' rights in Europe: the case of Austria, Lithuania and Serbia.

Our statement is that linguistic rights are indirectly linked to the *acquis* and that Member states of the EU should therefore be a model for minorities' linguistic rights protection. We will focus on this statement and seek to confirm or reverse it. This analysis will be led from a transitional point of view. In order to ensure this, three States, which are at different stage of their transitional processes and which are confronted with linguistic minorities issues, will be examined: Austria, Lithuania and Serbia.

4.1 Austria

4.1.1 Austria's legal framework

The article 8.1 of the Austrian Constitution states that ""*German is the official language of the republic without prejudice to the rights provided by Federal law for linguistic minorities*". The article 8.2 continues by linking the language and the culture to "*the autochthonous ethnic groups*" *(Volksgruppen).* Furthermore, it adds that the Republic, at all levels, meaning the Federation, the Länder (regions) and the municipalities, safeguards, protects and promotes the protection of these ethnic groups.

Ethnic groups are defined by law[103]. The article I.1 of the Ethnic Groups Act defines them as "*groups of Austrian citizens living in parts of the Federal territory and having a language other than German as mother tongue and having traditions of their own*[104]". Nevertheless, it does not specify which minorities are concerned. In order to distinguish which groups constitute ethnic groups, one must look at article III of the law which institutes ethnic advisory boards. The Regulation on Ethnic Groups Advisory Board[105] highlights the establishment of six Advisory Boards, corresponding *ipso facto* to the ethnic groups recognized by Austria. It follows that the Croatian, Slovenian, Hungarian, Czech, Slovak and Roma[106] ethnic groups are recognized by the State. Apart from the Roma group, which was

[103] Volksgruppengesetz, 07.07.1976, StF: BGBl.Nr-396/1976 (original version) ; Fassung vom 18.04.2014
[104] Original: *"Volksgruppen […] sind die in Teilen des Bundesgebietes wohnhaften und beheimateten Gruppen österreichischer Staatsbürger mit nichtdeutscher Muttersprache und eigenem Volkstum".*
[105] Verordnung der Bundesregierung über die Volksgruppenbeiräte, 18.01.1977, BGBl. Nr-38/1977.
[106] *Ibid.,* Art.1.

recognized in 1993[107], the other enjoyed their status from 1977. Furthermore, it should be also noted that three of them, according to article 13 enjoy a special status since their language can be recognized as "official language" by some municipal authorities (*Gemeinde Behörden* and *Gemeindedienststellen*), district courts *(Bezirksgerichte)* and administrative bodies (*Verwaltungsbehörden*). Nonetheless, this recognition prevails solely in specified geographical areas[108], namely Carinthia, Styria and Burgenland.

The article 12 deals with the introduction of topographical signs. Road signs and other signs of topographic nature should be worded in German but also in the language of the ethnic group. The localities concerned are listed in the Annex I of the Regulation. As an example, municipalities of "*Drassburg*", "*Oberpullendord*" and "*Potschach*" should also be worded "*Rasporak*" (Croatian), "*Felsőpulya*" (Hungarian) and "*Potoče*" (Slovenian), respectively. Two regulation have also been adopted in order to enforce the provisions laid down in the article 12[109].

It should also be noted that Austria signed the Charta on minority languages in 1992 and ratified it in 2001. It entered into force on October 01st 2001. Austria is also Partie to the Convention on national minorities since March 01st 2001.

Nonetheless, despite the numerous instruments adopted in order to safeguard minorities' rights, one may observe that because of political considerations, linguistic rights are flouted. Striking examples could be found in the *Carinthian Cases*, which will be presented below.

4.1.2 Linguistic rights in practice: the Carinthian cases

Carinthia (German: *Kärnten*, Slovenian: *Koroška*) is a region located in the south of Austria and borders Slovenia. This region faces several issues concerning the rights of the Slovenian linguistic minority. A particular dispute concerning the installation of bilingual road signs permitted the Constitutional Court to strengthen the protection of its minorities.

[107] Änderung der Verordnung über die Volksgruppenberäte, Bundesgesetzblatt, 23.12.1993, St.232.
[108] *Supra* note 103, Annex I and Annex II.
[109] Topographieverordnung-Kärnten, 01.07.2006, BGBl.II Nr- 245/2006 ; Topographie-Burgenland, 21.06.2001, BGBl.II Nr-170/2000.

The Austrian State Treaty[110] contains in article 7 provisions concerning the rights of Croatian and Slovenian minorities. The article 7.2 provides that in municipalities containing a mixed-population, bilingual topographical signs should be introduced. In order to implement this provision, the law on ethnic groups was adopted. The article 2.1.2 provided that bilingual topographical signs should be introduced in municipalities where a given minority represents a substantial number of 25% of the population[111].

Nevertheless, on December 13th 2001[112] the Constitutional Court stated that this provision was unconstitutional (*Verfassungswidrig*). This case was about an Austrian citizen who belonged to the Slovenian minority. He was prosecuted on grounds of having exceeded the speed limit. He did not deny his fault but considered that he should not be punished because of the fact that the bilingualism was not introduced in the locality where the infringement took place (the village of St-Kanzian[113]). The Court, after having taking into account the population census of 1991, which stated that the Austrian citizens whose mother tongue was Slovenian represented 14,5% of the population[114] decided that a village (*Ortschaft*) where a minority represents at least 10% of the population has to be considered as an administrative district of mixed-population (*Verwaltungsbezirk mit gemischter Bevölkerung*)[115]. It based its judgment on the goal and purpose (*Ziel und Zweck*) of the article 7 of the State Treaty, which was aimed to preserve and maintain the linguistic minorities (*Bewahrung und Pflege der eignen (Minderheiten-) Sprache*)[116]. The Court recently confirmed its decision in a case law concerning the municipalities of Bleiburg (*Pliberk*) and Ebersdorf (*Drveša vas*)[117].

This decision of the Constitutional Court was more than welcomed by the Advisory Committee on the Framework Convention[118] which considered that such an interpretation was in the vein of the article 11.3 of the Convention.

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[110] Staatsvertrag betreffend die Wiederherstellung eines unabhängigen und demokratischen Österreich, 15.05.1955, BGBl.Nr-152/1955.
[111] *Supra* note 103, Art.2.1.2 : "*Wegen der verhältnismässig beträchtlichen Zahl (ein Viertel) der dort wohnhaften Volksgruppenangehörigen*".
[112] Verfassungsgerichtshof, *Ortstafelentscheidung*, 13.12.2001, G213/01.
[113] *Ibid.,* pt.1.2.
[114] *Ibid.,* pt.2.1.(e).
[115] *Ibid.,* pt.4.2.
[116] *Ibid.,* pt 2.1.(a).
[117] Verfassungsgerichtshof, *Bleiburg-Ebersdorf*, 12.12.2005, V64/05-11.
[118] Advisory Committee on the FCNM, 16.05.2002, ACFC/INF/OP/I(2002)009, pt.50.

Nevertheless, even if the Constitutional Court made a step forward in minorities' linguistic rights, the enforcement of its decision is deficient. As it has been pointed out[119], four more additional decisions, which resulted in the introduction of bilingual signs in Bleiburg in 2010 were necessary to enforce the decision of 2005. This demonstrates the lack of effectiveness of the constitutional jurisprudence. Furthermore, one may regret that the Slovenian minority issue was resolved at the political level and not at the legal one. Indeed, without any legal basis, a consensus was found in 2011. It has been agreed that the threshold would not be 10% but rather 17,5%, which implies the introduction of bilingual signs in 164 municipalities of Carinthia[120]. One may note that such a consensus challenges the authority of the highest Court of Austria and recalls how linguistic issues are sensitive.

Finally one may observe that, since its accession to the EU, Austria involved to a large extent in minorities' rights protection. The fact that it did not only ratified the Convention and the Charter but also introduced a reasonable threshold for considering minorities' rights (from 25% to 10%), indicates the strong interest it affords to its minorities. Despite some disputes of political nature, Austria can be considered as a good model for other European States.

4.2 Lithuania

4.2.1 Lithuania's legal framework and practice

Lithuania is one of the three Baltic States, which obtained their independence after the collapse of the Soviet Union. In 2011, the two biggest minorities were the Poles and Russians, who represented 6,6% and 5,8% of the population, respectively[121]. One may observe a decline of their representation, since they represented 9,9% and 8,2%[122] of the population in 1997, what stresses out the need to protect and safeguard their rights.

Lithuania signed the CFNM in February 1995, ratified it on March 2000 and it entered into to force on July 2000. At the same time, it is interesting to highlight that Lithuania signed the Europe Agreement with the EU in June 1995, which entered into force

[119] Bundeskanzleramt Österreich, 3. Bericht der Republik Österreich, May 2010, p.112.
[120] Parlamentskorrespondenz, 06.07.2011, No.693.
[121] Official Statistics Portal, *Population and Social Statistics, Ethnicity, mother tongue and religion*, Press releases, 15.03.2013.
(http://www.osp.stat.gov.lt/en/web/guest/pranesimai-spaudai?articleId=223122) 20.04.2014
[122] Council of Europe, *Report on the FCNM submitted by Lithuania*, 31.10.2001, p.11.

on February 01st 1998. Lithuania finally joined the EU with nine other States on May 01st 2004. Nevertheless, to date, it did not sign the Charter on regional and minority languages. Three articles of the Constitution[123] are relevant for the purpose of this paper. The article 29 provides that *"the rights of the human being may not be restricted, nor may he be granted any privileges on grounds of […] language*". Furthermore, the article 37 states that *"citizens belonging to ethnic community shall have the right to foster their language, culture and customs"* and that "*ethnic communities of citizens shall independently manage their affairs […]"* (article 45.1).

Following the here-above, one may raise three questions: how to become a citizen of Lithuania? Which ethnic communities are concerned? And which tools are provided in order to foster the language of a minority?

According to the law on citizenship[124], citizens of Lithuania are persons who were citizens or habitually resident in the present-day territory of Lithuania prior to 1940[125]. The article 12, which is related to the grant of citizenship, sets out requirements, which have to be fulfilled in order to become a citizen of the Republic. Among others, they need to pass an examination in the state language, prove that they have been residing in the territory of Lithuania for the last ten years and pass an examination on the basic provisions of the Constitution[126].

Lithuania adopted a Law on ethnic minorities in 1989[127], which was amended in 1991. It provides in its article 4 that *"in offices and organizations located in areas serving substantial numbers of a minority with a different language, the language spoken by that minority shall be used in addition to the Lithuanian language".* The article 5 pursues by extending the right to introduce a second language not only to offices and organizations but also to the *"signs"*. Nevertheless, as the Committees' report emphasized in 2003[128], a discrepancy occurred between the Law on Ethnic Minorities and the Law on the State

[123] Constitution of Lithuania, 25.11.2002, entered into force on November 2nd 1992.
[124] Republic of Lithuania, *Law on Citizenship*, 5.12.1991, No-VIII-391, I-2027; amended: 17.09.2002, No-IX-1078.
[125] *Ibid.,* Art.1.1-2.
[126] *Ibid.,* Art.12.1.1)-5).
[127] Supreme Soviet of the Lithuanian Soviet Socialist Republic, *Law on ethnic minorities*, 23.11.1989, NoXI-3412.
(http://www.litlex.lt/litlex/Eng/Frames/Laws/Documents/215.HTM) 14.04.2014.
[128] Council of Europe, Advisory committee, *Report of Lithuania*, 21.02.2003, ACFC/INF/OP/I(2003)008, pt.58.

Language[129]. Indeed, the latter recalls that Lithuanian is "*the state language*" (article II) and that "*public signs shall be in that language*" (article 17). In the article 18.1, the Law provides that solely the *"names of organizations of ethnic communities may be rendered in another language along with the state language*". Such a restrictive interpretation was considered as contrary to the spirit of the article 11.3 of the CFNM which encourages the introduction of bilingual topographical signs to *"local names, street names and other topographical signs"*. However, the Highest Administrative Court repeatedly gave precedence to the Law on State Language over the Law on ethnic minorities and quashed on two occasions the decisions of the self-government authority of the region on Vilnius, which allowed the introduction of signs both in Polish and Lithuanian[130].

Furthermore, on what should constitute a "substantial number", the Government of Lithuania indicated that an ongoing project should introduce a provision aiming at introducing bilingual signs in *"residential zones where a minority represents 70% of the permanent residents[131]".* It goes without saying that such a threshold would not be in the spirit of the CFNM, since it would require from a minority to represent an overwhelming majority in a given territory. According to the fragile position of minorities and taking into account the decrease of their number or even the risk of loss of their culture and traditions due to inappropriate protection they may benefit from the state, we consider that a threshold of 70% is too high and do not comply with the article 2.1 of the Convention, which informs that the states should act in good faith. Furthermore, the article 138 of the Constitution informs that *"international treaties ratified by the Seimas […] shall be a constituent part of the legal system of the Republic of Lithuania*". Lithuania ratified the CFNM, which is a legally binding instrument, and should therefore take the appropriate measures to ensure a proper application of the provisions laid down in the latter.

Recently, a particular outcome seemed to be found to the minority question. A new bill should be adopted replacing the former one, which is not in force anymore since 2010. This bill would allow the introduction of bilingual signs *"in areas where national minority*

[129] Republic of Lithuania, *Law on the State Language*, 31.01.1995, No.I-779.
[130] Union of Poles in Lithuania, *Implementation of the Council of Europe's Framework Convention for the Protection of National Minorities in Lithuania*, p.3.
[131] Council of Europe, *Comments of the Governor of Lithuania on the Report of the Advisory Committee*, 23.09.2003, GVT/COM/INF/OP/I(2003)008, pt.58.

make at least 25% of the local population[132]*"*. However, at the moment, the bill has not yet been adopted.

The Convention entered into force in 2000 and Lithuania joined the EU in 2004. After almost 10 years of "Europeanization", Lithuania seems recalcitrant to implement properly the CFNM, despite of it legally-binding effect. By conserving deficient legislations and without providing to its minorities a solid framework of rights, Lithuania does not comply with European standards. Its obstinacy not to fully apply the CFNM, especially the article 10 and 11.3, by depriving its Law on ethnic minorities to live up its full potential (in particular, by giving precedence to the Law on State Language), Lithuania overtly challenges the reports and recommendations made by the Committee. In this contest of strength going on between Lithuania and the Council of Europe, it is not only the supremacy of supranational law which is challenged, but also the respect of Human rights as laid down in article 2 TEU. While before its accession to the EU Lithuania engaged in a path of recognition and protection of its minorities, one may just deplore its lack of further implication after its accession. By acting in this manner, Lithuania has succeeded in making what might seem impossible possible: to become a member of the EU and to simultaneously offer less protection to its minorities.

4.3 Serbia

4.3.1 Serbia's legal framework

This part will deal with the protection granted to linguistic minorities in Serbia, and especially in the Autonomous Province of Vojvodina (*Аутономна Покрајина Војводина*). As it will be presented below, Serbia offers a more than reasonable framework for the protection of its minorities.

The Constitution[133] foresees several provisions and devotes a specific chapter to the rights and freedoms of Humans and minorities. These rights should be protected at state,

[132] The Lithuania Tribune, "Lithuanian PM : National minority bill will be amended", 18.02.2014. (http://www.lithuaniatribune.com/63524/lithuanian-pm-national-minority-bill-will-be-amended-201463524/) 16.04.2014

[133] Устав Републике Србије, 30.10.2006, РС-Бр.37. (http://www.parlament.gov.rs/upload/documents/Ustav_Srbije_pdf.pdf) 20.04.2014.

provincial and municipal levels[134]. The establishment of national minorities' councils is also foreseen[135].

The first article states that the Republic is the State of "*Serbian people and all citizens who live in it*". It continues saying that the Republic is based *"on the Humans and minority rights and freedom, and commitment to European principles and values"*. By this wording, Serbia accepts in some manner to integrate the *acquis* in its legal system and, what forms therefore a part of its transition toward a fully integration to the Union. In the previous Constitution[136] (1990), such a reference to European principles and values was absent. Furthermore, the current Constitution establishes a distinction between Serbian people and other citizens, while the previous one stated that the Republic was the State of "*all its citizens*" without distinction (article I).

The article 10 informs that other official languages, apart from the Serbian language and the Cyrillic script, *"shall be regulated by the law based on the Constitution"*. The most relevant provisions can be found in the articles 75-79 of the Constitutions. While the article 76 deals with the principle of non-discrimination, the article 79 highlights the rights to preservation of specificity. It follows that national minorities have the right to *"[…] use of their language and script, […] use of their traditional local names, names of streets, settlements and topographic names also written in their languages, in areas where they make a* ***significant majority of population*** (emphasis added) (*значајна популација) […]".* It should be noted that the list of rights accorded to minorities in the Constitution is not exhaustive, since "*additional rights may be determined by provincial regulations*".
Moreover, Serbia distinguishes itself from its neighbors (Croatia) by the article 108, which deals with the right to referendum. It precludes explicitly the use of a referendum if it concerns *"laws pertaining to human and minority rights"* and therefore makes these rights quasi-inviolable. As it will be presented later, the introduction of such a provision in the Croatian Constitution, modelled on the article 108 of the Serbian Constitution, could be a remedy to preserve minorities' acquired rights.

[134] *Ibid.,* Art.183 and Art.190.
[135] Zakon o nacionalnim savetima nacionalnih manjina, 11.09.2011, SG-RS, Br-72/09.
[136] Ustav Republike Srbije, 28.09.1990.
(http://mojustav.rs/wp-content/uploads/2013/04/Ustav-iz-1990.pdf) 20.04.2014.

The law on protection of national minorities [137] was aimed to implement the provisions of the Constitution and of the FCNM which Serbia has been a party since May 11th 2001. Serbia also ratified the Charter for European Languages in February 2006, which entered into force on June 2006. While Serbia is on her path to the EU, the accession to these two instruments appears not only preferable, but also necessary.

The article II of the Law defines what a national minority is and is similar to the definitions given at international level [138]. In Vojvodina the main minorities are the following:

Main national minorities in Vojvodina[139] - 2011		
Hungarians	253899	**3,53%**
Croatians	57900	**0,81%**
Slovaks	52750	**0,73%**
Romanians	29332	**0,41%**

The article 11 which deals with the official use of languages highlights the notion of "significant majority of the population", by introducing a threshold of 15%. The article 11.5 permits the use of an additional language for the name of *"administrative bodies, local self-government units, towns and villages, squares and streets and other toponyms".* The same provisions are laid down in articles 11.2 and 11.4 of the Law on the official use of language and script[140]. One may observe that the Serbian legislation, contrary to the Lithuanian one, coordinated these two instruments in order to avoid experiencing any problems. It should also be pointed out that the Assembly of Vojvodina went even further by permitting the use of a minority language in local communities /districts (*mesna zajednica*) where a minority represents 25% of the population.[141]

[137] Zakon o zaštiti prava i sloboda nacionalnih manjina, 27.02.2002, Sl.list SRJ, Br-11/2002.
[138] *Supra* note 45.
[139] Statistical Office of the Republic of Serbia, *Census of population per ethnicity*, Beograd, 2011, p.14-15.
[140] Zakon u službenoj upotrebi jezika I pisma, SG-RS-Br-45/91, 101/05 i 30/2010
[141] Pokrajinska skupština odluka, O bližem uređivanju pojedinih pitanja službene upotrebe jezika I pisama nacionalnih manjina na teritorij APV, Sl. list APV Br-8/2003, 9/2003 - ispr. i 18/2009.

In Vojvodina, Hungarian is in official use in 31 municipalities (*Opština*), Slovaks in 13 and Romanian in 10[142]. Here below are some examples of bilingual local names:

Bavanište	Homokbálványos *(Hungarian)*
Bajmok	Bajmak *(Croatian)*
Ečka	Ecica *(Romanian)*
Ljuba	L'uba *(Slovakian)*

Nevertheless, this generous framework did not prevent the emergence of disputes.

4.3.2 Linguistic rights in practice

The *Srbobran*[143] case concerned the translation of local names into a minority language and the compatibility between the two laws on the use of languages.

Srbobran is a commune with a Hungarian minority. In this case, the claimant submitted that the Hungarian national council erred by not translating the name of the Commune properly. Indeed, it translated it "*Szenttamàs*", a denomination used during the Austro-Hungarian monarchy, instead of "*Szrbobran*". It should be added that Srbobran means *"the protector of Serbian people"*. This raised the question of what does the "right to use its language" mean?

The Court pointed out that the wording "*Szrbobran*" did not exist in the Hungarian language and that it was replaced by the wording "*Szenttamàs*" (*Sentomaš* in Serbian*)*". Furthermore, the Court recalled that article 5.5 of the Serbian and Hungarian agreement[144], which is an international instrument, states that topographical signs should be introduced in the *"mother tongue of the minority"*. The article 11.5 of the Law on ethnic minorities informs that attention should be given to the "*traditions and grammar*" of the minority.
It follows that the translation of *Srbobran* in *Szenttamàs* was part of the expression of the rights accorded to the Hungarian minority in Vojvodina.

[142] Jezici i pisma u službenoj upotrebi u statutima gradova i opština na teritorij APV, Novi Sad, 2010. (http://www.puma.vojvodina.gov.rs/mapa.php) 20.04.2014.
[143] Ustavni Sud Republike Srbije, 22.06.2010, IY=394/2005.
[144] Zakon o Ratifikaciji Sporazuma između Srbije I Mađarske o zaštiti prava mađarske manjine koja zivi u Srbiji I srpske nacionalne manjine koja živi u Mađarskoj, Sl. list SCG - Međunarodni ugovori", br-14/2004,

The Constitutional Court had also to decide whether the article 6.3 of the Law on the official use of minority languages in Vojvodina, which allows that minorities' official inscriptions could be **first** (emphasis added) written in this language and then in Serbian, was in conformity with article 7.1 of the Law on the official use of the Language, which provides the opposite. The Court, considering that giving precedence to the Serbian language over minority languages did not constitute a breach of minorities' rights, judged that the article 6.3 did not comply with the Law on official use.

In another case[145], it has been tried to exclude all forms of scripts except for the Cyrillic. The applicant claimed that the article 10.1 of the Constitution, which provides that "*Serbian language and Cyrillic script should be in official use in the Republic of Serbia*", was imperative and enjoyed a direct effect. He submitted also that Serbian was directly linked to the Cyrillic script. On grounds of these statements, he argued that all provisions relating to the use of Latin Script and use of minority languages should be inapplicable. The Court rejected its arguments and refused to undertake a control of constitutionality on grounds that the Constitution itself, in other provisions, foresees the right to use other scripts and other languages (article 10.1; 75.2 or article 79 of the Constitution).

[145] Ustavni Sud Republike Srbije, 08.12.2011, ИУз-883/2010.

5 Referendum in Croatia: remedies to address the issue.

The outcome of the referendum may have a negative impact on the rights of linguistic minorities in Croatia. This part will focus on the possible remedies which could be taken at both Internal and European levels.

5.1 European legal and political remedies

From a legal point of view, it seems that the EU may not oppose the holding of the referendum, and whatever the outcome, even if it will lead to a restriction of minorities' rights, may not penalize Croatia. According to the right to display bilingual topographical signs will be restricted. Legally speaking, the fact that a state requires a minority to represent 50% (and not 33,3%) of a given territory in order to enjoy a right is not *contra legem*. As it has been explained, the FCNM deliberately did not impose a threshold, but leave the matter to the states. That is how Austria considered that 10% was sufficient and that Lithuania, in its draft law, considered a threshold of 70% as being more appropriated. It is not the issue of what the threshold should be, but rather of "what for". Indeed, increasing the threshold by means of referendum would definitely have as a consequence a threatening of minorities' rights. Such a behavior should therefore be condemned.

Even if the EU is more and more concerned about minorities' matters, one must admit that its legal framework is still weak, vague and it does not provide a reliable protection. As it has been explained, article II TEU lacks of clarity. Even if we reached the conclusion that linguistic minorities do come within the scope of the notion of minority as evoked in article II TEU, the fact remains that it is not (yet) possible to list the rights conferred to linguistic minorities and even less possible to determine how and to what extent these rights may be used. Nonetheless, it appears that a growing interest in minorities concerns takes shape. We consider that the protection of the latter is even part of the *pre-accession acquis* since the introduction of the Copenhagen criteria, and doubtlessly a part of the *post-accession acquis*. The EU Charter, which can be considered as a *constitutional acquis* of the EU[146] also deals, briefly, with minorities (article 21) when affirming the principle of non-discrimination. We believe that, since minorities represent a special group of (European) citizens, whom a special attention should be dedicated, their status, their

[146] Jëno CZUCZAI, *The notion of the acquis communautaire in the EU Eastward enlargement process*, WARSAW, 2005, p.6.

rights, and the use of the latter should be defined in a specific legal instruments, or at least, in a particular chapter of one of the existing instruments. In this regard, the European Charter seems to be appropriate.

Nevertheless, in addition to the social dimension of minorities' integration, other aspects should be taken into consideration. In should be borne in mind that the question of minorities is first of all a political issue: some Member states are still reluctant to recognize their minorities and *de facto*, refractory to recognize their rights. Minorities may also be considered as a threat to the state's unity and integrity. Furthermore, the implementation of minorities' rights involves an economical dimension since it implies a financial assistance, especially in the area of education. All these reasons remind us that minorities' issues are first and foremost a domestic matter, which at the moment prevents the Union to become more proactive.

From a political point of view however, the margin for manoeuver could be somewhat greater. Indeed, article 4TEU highlights the principle of sincere cooperation. The Member states and the EU should "*assist each other in carrying out tasks which flow from the treaty*" and must also "*take appropriate measure to ensure fulfilment of the obligations arising out of the Treaties*". The respect of the rights of persons belonging to minorities (article II TEU) and the respect of the cultural and linguistic diversity (article 3.3.4 TEU) represent such obligations.

Furthermore, the article II of the FCNM provides that the Convention should be applied in good faith in conformity with the principle of good neighborliness. It goes without saying that such a referendum is contrary to the provisions laid down in this article. It should also be mentioned that the monitoring report system organized within the Council of Europe is efficient. As a general rule, one may observe a greater involvement from the part of the contracting Parties as regards the protection of minorities. In this respect, the advices provided by the advisory Committees are usually followed by the states. Croatia should have submitted its report on February 2014. Nevertheless it did not. One may legitimately expect from the Committee to politically condemn the events which take currently place in Croatia.
As explained, EU does not really have legal tools to prevent a restriction of minorities' rights in Croatia, at least not in regard to the specific matter treated in this paper. The Croatian national system may then perhaps provide a suitable solution.

5.2 Internal legal remedies

It appears that, at this time, the Constitutional court is the sole body that has the possibility to prevent the holding of the referendum. According to the article 125 of the Constitution, it has to verify, *lega artis*, the constitutionality of a referendum. It will have to consider the provisions related to minorities as laid down in the treaty and to take into account the Croatian responsibility as regard its appurtenance to the EU and the International instruments the latter is bounded to (e.g: the CFNM and the Charter for Minority Languages). The purpose of this paper is not to decide whether this referendum complies with the constitutionality requirement but rather to identify how minorities' rights may be secured.

Furthermore, this referendum is not about taking away minorities' rights. Indeed, the right to introduce bilingualism will not be "abolished", just the conditions of use will be changed. In other words, this referendum tends to change "*the rules of the game*".
The CFNM is a binding instrument that Croatia implemented in its internal system and does not provide a reciprocity requirement. Thus, one may not justify an increase of the threshold by submitting comparative data or by arguing that some states did not implement the Convention.

Another possibility would also be feasible. Minorities' rights may be guaranteed by amending the Constitution. The exercise of this power belongs to the Parliament (article 80 of the Constitution), which should decide by the 2/3 (Croatia has currently 151 representatives[147]) to amend or not the Constitution. It may then learn from the Constitution of Serbia and limit the use of the referendum for matters that do not concern human or minority right. By acting this way, the possibility for the majority to decide on the rights of a minority will be restricted. It goes without saying that such an amendment would comply with EU expectations and would be a testimony of Croatia's commitment to fully comply with EU values and objectives. Another possibility would be to amend the article 86.3 of the Constitution, which foresees a referendum may be held if 10% of the voters ask for it. From our point of view, minority rights, as being of very specific importance for EU, should be afforded a quasi-inviolable protection. In this regard, the 10% requirement seems to be a too

[147] Hrvatski Sabor, *Zastupnici 7. Saziva Hrvatskoga sabora*. (http://www.sabor.hr/zastupnici) 22.04.2014.

low threshold. On matters tackling such sensitive issues, we recommend to increase this threshold to 66,6%, namely two third of the voters.

6 Conclusion

The past few decades were marked by a growing interest in minority concerns and it has been recognized, at both International and European levels, that a special attention should be granted to minorities. To the question where does this concept situate itself within the EU, our answer will be "everywhere but nowhere".

Indeed, several instruments have been adopted expressing the commitment to further protect minorities and respect their rights. In this respect, the CFNM and the Charter on regional and minority languages represent prominent examples. The respect of this value was also recently perceived as a requirement a country must comply with in order to become a member of the EU. Therefore we consider the "minority condition" as being a part of the *pre-accession acquis*.

On the other hand, several reasons prevent the EU from becoming more proactive in this matter. One of the reasons concerns the broad scope of the notion of minority. As explained, there is no unique definition of what a minority is. In its very essence, it contains a wide range of concepts which are subject to countless interpretations. Therefore the perception of what a minority is and how it should be protected is a matter left to the states.

One then understands that the EU provides at the moment a quite vague framework of what constitutes minorities' rights and does not own the necessary tools which would ensure a proper implementation of the latter. It then appears that the influence and the pressure of the EU expresses itself above all during the pre-accession period and tends to diminish in the post-accession period.

Minorities' issues have become a hot topic. There are no shortage examples concerning the recognition of minorities' rights. In this regard, the events that had taken place in South-Ossetia, Kosovo, or more recently in Crimea, call for awareness from the EU side. Short-term policies and limited measures may not suffice anymore to contain the threat minorities are facing with.

Despite the fact that it is a state's duty to own responsibilities and to ensure in its internal legal system the implementation of the engagements it takes, the EU should conduct

a soul searching by reconsidering the objectives it pursues and by redefining its policies toward minorities.

Finally, instead of being protected, it seems that minorities are currently the victim of the show of strength between an unarmed Union on the one hand and ambivalent States on the other hand.

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