



Anna Parkhouse

Does speed matter?

The Impact of the EU Membership Incentive on Rule Adoption in
Minority Language Rights Protection

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SWEDISH SUMMARY

Parkhouse, Anna (2013). *Does speed matter? The impact of the EU membership incentive on rule adoption in minority language rights protection.* (Spelar hastigheten någon roll? Effekten av EU-medlemskapet som incitament för minoritetsspråkslagstiftning). Skriven på engelska med en sammanfattning på svenska.

Denna avhandling tar sin utgångspunkt i ett ifrågasättande av effektiviteten i EU:s konditionalitetspolitik avseende minoritetsrättigheter. Baserat på den rationalistiska teoretiska modellen, *External Incentives Model of Governance*, syftar denna hypotesprövande avhandling till att förklara om tidsavståndet på det potentiella EU medlemskapet påverkar lagstiftningsnivån hos stater som omsluts av EU:s konditionalitetspolitik avseende minoritetsspråksrättigheter. Mätningen av nivån på lagstiftningen avseende minoritetsspråksrättigheter begränsas till att omfatta icke-diskriminering, användning av minoritetsspråk i officiella sammanhang samt minoriteters språkliga rättigheter i utbildningen. Metodologiskt används ett jämförande angreppssätt både avseende tidsramen för studien, som sträcker sig mellan 2003 och 2010, men även avseende urvalet av stater. På basis av det "mest lika systemet" kategoriseras staterna i tre grupper efter deras olika tidsavstånd från det potentiella EU medlemskapet. Hypotesen som prövas är följande: ju kortare tidsavstånd till det potentiella EU medlemskapet desto större sannolikhet att staternas lagstiftningsnivå inom de tre områden som studeras har utvecklats till en hög nivå.

Studien visar att hypotesen endast bekräftas delvis. Resultaten avseende icke-diskriminering visar att sambandet mellan tidsavståndet och nivån på lagstiftningen har ökat markant under den undersökta tidsperioden. Detta samband har endast stärkts mellan kategorin av stater som ligger tidsmässigt längst bort ett potentiellt EU medlemskap och de två kategorier som ligger närmare respektive närmast ett potentiellt EU medlemskap. Resultaten avseende användning av minoritetsspråk i officiella sammanhang och minoriteters språkliga rättigheter i utbildningen visar inget respektive nästan inget samband mellan tidsavståndet och utvecklingen på lagstiftningen mellan 2003 och 2010.

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LIST OF ABBREVIATIONS

ACFC	Advisory Committee of the Council of Europe
ADP	Albanian Democratic Party
BiH	Bosnia and Herzegovina
CARDS	Community Assistance for Reconstruction, Development and Stabilisation
CEE	Central and Eastern Europe
CFSP	Common Foreign and Security Policy
CLNM	Constitutional Law on the Rights of National Minorities
CoE	Council of Europe
CPSU	Communist Party of the Soviet Union
CREDO	Resource Centre for Human Rights
ECRI	European Commission against Racism and Intolerance
ECRML	European Charter for Regional or Minority Languages
ECtHR	European Court of Human Rights
EED	Employment Equality Directive
ENP	European Neighbourhood Policy
ESDP	European Security and Defence Policy
EU	European Union
EULEX	European Union Rule of Law Mission in Kosovo
EUSR	EU Special Representative
FCNM	Framework Convention on National Minorities
FRA	Fundamental Rights Agency
FRY	Former Republic of Yugoslavia
FYROM	Former Yugoslav Republic of Macedonia
GAF	General Framework Agreement for Bosnia and Herzegovina
GDP	Gross Domestic Product
HCNM	High Commissioner on National Minorities
HDZ	Croatian Democratic Union
HNS	Croatian People's Party
HSLs	Croatian Social Liberal Party
HSS	Croatian Peasant Party
ICISS	International Commission of Intervention and State Sovereignty
ICTY	International Criminal Tribunal for the former Yugoslavia
IDP	Internally Displaced Persons

IDS	Istrian Democratic Assembly
IMF	International Monetary Fund
IR	International Relations
JNA	Yugoslav National Army
KLA	Kosovo Liberation Army
LDK	Democratic League of Kosova
LS	Croatian Liberal Party
MASSR	Moldovan Autonomous Soviet Socialist Republic
MEST	Ministry of Education, Science and Technology
MRGI	Minority Rights Group International
NATO	North Atlantic Treaty Organisation
NCHR	Norwegian Centre for Human Rights
NGO	Non-governmental Organisation
OFA	Ohrid Framework Agreement
OHR	Office of the High Representative
OSCE	Organisation for Security and Cooperation in Europe
PDP	Albanian Party for Democratic Prosperity
R2P	Responsibility to Protect
RED	Racial Equality Directive
RSFSR	Russian Soviet Federative Socialist Republic
SAA	Stabilisation and Association Agreement
SAP	Stabilisation and Association Process
SDP	Social Democratic Party
SEEU	South East European University
SFRY	Socialist Federal Republic of Yugoslavia
SHR	Kingdom of Serbs, Croats and Slovenes
SPSEE	Stability Pact for South Eastern Europe
SRSG	Special Representative of the Secretary General
UK	United Kingdom
UN	United Nations
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNITAR	United Nations Institute for Training and Research
UNMIK	United Nations Interim Administration Mission in Kosovo
UNPROFOR	United Nations Protection Force
UNSC	United Nations Security Council
US	United States
USSR	Union of Soviet Socialist Republics

VMRO-DPMNE Internal Macedonian Revolutionary Organisation –
Democratic Party for Macedonian National Unity
WW World War
YAP Yeni Azerbaijan Party

INTRODUCTION TO THE STUDY

“Language is culture. And language is power.”¹

Framing the problem

Norms have become the buzz-word in IR-studies as well as in European Union studies. One explanation for the avalanche of studies on how norms impact or influence political outcome is linked to the end of the Cold War, which paves the way for a new dimension of morality in international relations. I argue that this dimension of morality is two-fold. On the one hand, there is an emphasis upon common liberal norms to guide how international relations ought to be conducted between states. On the other hand, there are emerging supranational norms on how states should behave towards their populations, within the domestic jurisdiction of states. This has consequently entailed that international norms and ideational phenomena are argued to have an increasing impact on state behaviour and political outcome.

As a consequence of the incapacity of the international community to stop, let alone prevent, the violent interethnic conflicts in the Western Balkans and the genocide in Rwanda, the prescriptive norm of the Responsibility to Protect² (R2P) was launched in the beginning of the 2000s. The promotion of the R2P was made in an attempt to bridge the contradicting norms of the protection of universal human rights with the traditional conception of sovereignty, based on non-interference. Thus, by

¹“Opening Statement by Mr Jonas Gahr Støre, Foreign Minister of Norway” in “Linguistic Rights of National Minorities ten years after the Oslo Recommendations and beyond. Safeguarding Linguistic Rights: Identity and Participation in Multilingual Societies”, Conference Report, Organised by the OSCE High Commissioner on National Minorities (HCNM) and the Norwegian Centre for Human Rights (NCHR), University of Oslo 18-19 June 2008, Annex 1, p. 28.

² The Responsibility to Protect-norm was endorsed by the UN General Assembly in 2005; cf. GA Resolution 60/1, 2005 World Summit Outcome, October 24, 2005, paragraphs 138-139. The R2P norm has also been endorsed by quite a number of regional security organisations.

adding a conditionality criterion to state sovereignty, linked to the notion of responsibility, this would legitimise intervention from the international community should the state in question fail to guarantee the protection of its population. (ICISS 2001: 7-8) Apart from difficulties as to implementation the problem of the R2P norm is that it is exclusively based on the protection of universal human rights *tout court* and fails to address the issue of minority rights protection. This shortcoming raises several challenges as to the prevention of future violent conflicts seeing as how “conflicts over the handling of ethno-cultural diversity are no doubt the main threat to regional security in the Western Balkans” (Tsilevich in Kymlicka & Opalski 2001: 169).

Already in the beginning of the 1990’s European organisations had, however, responded to the new security threats not only in the Balkans but also in the Caucasus by elevating minority rights protection to “a matter of legitimate international concern...” as articulated by the OSCE Copenhagen Declaration of 1990 (Kymlicka 2007: 173). Thus, minority rights protection would no longer constitute an exclusively internal affair of the respective States but was increasingly becoming part of a responsibility of the international community. A few years later both NATO and the EU made membership in their respective organisations conditional upon minority rights protection in the candidate states³. The norm of minority rights protection, not part of the EU *acquis*, however, imposed as a political condition in the Copenhagen convergence criteria of 1993, has often been “singled out as a prime example of the EU’s positive impact on democracy in Central and Eastern Europe” (Sasse 2008: 842). This has resulted in a situation where there seems to be almost a consensual understanding that the EU exerts strong and multifaceted influence on states on track of EU-accession. (Keukelaire & MacNaughtan 2008: 228)

Most research on EU political conditionality have been based on the perspective of conditionality as a bargaining process and have primarily been focused on explaining conditionality-compliance from territorial

³ Minority rights protection was included in the Copenhagen criteria, adopted in 1993, and was made conditional upon the acceding states for becoming EU members. Cf. European Council, “Conclusions of the Presidency”, DOC SN 180/1/93 REV, Copenhagen, 21-22 June 1993, p. 13, http://ec.europa.eu/bulgaria/documents/abc/72921_en.pdf, 2011-02-21.

and functional perspectives. Consequently, variations in norm compliance and policy change have largely been explained by national preferences, domestic costs (Moravcsik 1998; Schimmelfennig et al. 2002; Schimmelfennig & Sedelmeier 2002; Schimmelfennig 2003; Schimmelfennig & Schweltnus 2006) but also by the nature of the policy areas as well as the size and speed of rewards. (Schimmelfennig; Kelley 2004; Grabbe in Featherstone & Radaelli 2003) In the External Incentives Model of Governance, which is based on the strategy of reinforcement by reward, the size and speed of reward dimension has proven successful in explaining norm compliance. (Schimmelfennig et al. 2002; Schimmelfennig & Sedelmeier 2002; Schimmelfennig 2003; Schimmelfennig & Schweltnus 2006; Kelley 2004) However, since the results are largely limited to research pertaining to the candidate states of Central and Eastern Europe (CEEs), which were at least initially assumed to acquire EU membership at the same time, the explanatory power of the speed dimension has never been properly investigated since it has always been overshadowed by the size of reward dimension. Furthermore, in the former candidate states of the Eastern enlargements, the explicit promise of EU membership and its subsequent benefits can be argued to have been a forceful incentive for norm compliance and policy change. In addition, even though the deadline for accession was not stated until late in the accession negotiations, it has been argued that the timetables set by the EU Commission or the “instruments of temporality played a key role in driving institutional action and political decisions in the process of expansion of the EU” (Avery 2009: 256).

However, one can only speculate on its effectiveness since no systematic analysis has been carried out as to how the “instruments of temporality” of the membership incentive in fact impacts on norm compliance in the area of minority rights protection in states “on track” of EU accession but with neither explicit promise of EU membership nor any specified temporal location associated with it. Furthermore, since there can be noted considerable reluctance on the part of some EU states⁴ to accept

⁴ Reluctance towards future enlargement, “at least additional expansion eastwards” has for instance been recurrent statements in both France and Italy although there seems to have been a reorientation at least in the French policy towards a more positive stance since 2008. (Berglund et al. 2009: 94) However, at the same time France along with Austria have both stated that future EU-enlargements might become cause for national referenda,

further enlargements in the near future, one could assume that the membership incentive is a less forceful instrument to make states comply with EU political conditionality. In fact, it has been convincingly argued that for norm compliance to be effective “target states need to be certain that they are rewarded with significant steps toward accession (soon) after complying with the EU’s political conditions” (Schimmelfennig 2008: 920). Furthermore, in some of the current states on track of EU accession, state-minority relations are more securitised than was the case in the candidate states of the Central and Eastern European enlargements of 2004 and 2007. This in turn would suggest that norm compliance and domestic change most likely would entail higher adaptation costs to the recipient states thus rendering norm compliance and policy change more costly than was the case in the former candidate states of Central and Eastern Europe. However, since there has been no systematic analysis carried out as to how the temporal dimension of the membership incentive in fact impacts on the current recipient states’ propensity to comply with EU minority rights conditionality we can still only make assumptions about this.

Research objective

My doctoral dissertation is anchored in the nexus between International Relations and International Law with the purpose to investigate how effective the EU membership incentive is on recipient states’ propensity to comply with EU minority rights conditionality. More specifically this will be done by examining to what extent the speed of the prospective EU membership reward impacts on norm compliance in the area of EU minority language rights conditionality in states on track of EU accession. Minority language rights are investigated pertaining to three categories, the non-discrimination norm, the use of minority languages in official contexts and minority language rights in education. Based on the External Incentives Model of Governance, the study departs from a rationalist account of international relations which posits that actors are rational and driven by a motivation to act to maximise their power and welfare. In the states constituting our empirical base, enlargement preferences are assumed to be strong which consequently means that the prospect of the EU membership reward is argued to be a strong incentive for compliance

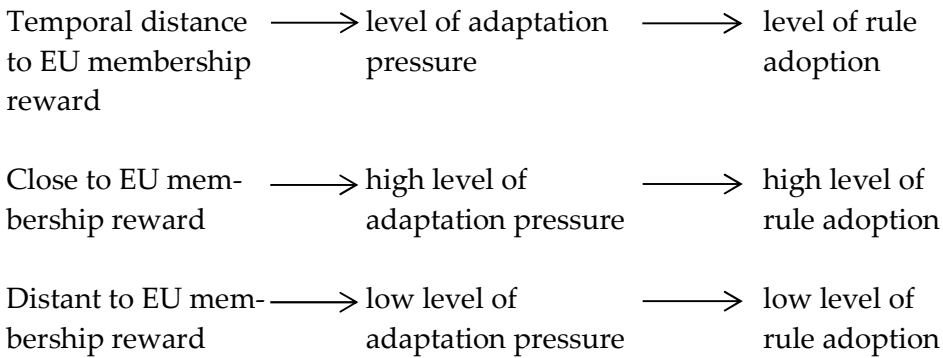
however these statements have more been related to discussions on future Turkish EU membership.

with EU norms and rules in the area under investigation. However, since the states under investigation have a much more cumbersome and uncertain trajectory of becoming EU-members than was the case in the former candidate states of the CEEs, however, differing as regards to their temporal distance to the prospective EU membership reward, the efficiency of the EU membership incentive is argued to be heavily influenced by how speedily the prospective reward is distributed. Based on the rationalist perspective, the speed of the prospective EU membership reward is understood as a constraint and an opportunity and is argued to constitute the main driving force of adaptation pressure in the conditionality-compliance process. On the basis thereof, it is claimed that the nearer recipient states are to the prospective EU membership reward, the higher the adaptation pressure and the more likely recipient states will comply with EU norms and rules. Vice versa, the further away from EU accession, the lower the adaptation pressure and the more likely norm compliance will be low.

Another central claim in this study is that there has been an increasing legalisation of international norms and rules, which are argued to constitute an important mechanism to make recipient states comply with diffused norms and rules. Legalisation is to be understood as a particular type of institutionalisation, imposing international legal constraints on recipient states thereby facilitating and constraining states into compliance. Norm compliance is solely equated with legislation adopted, which consequently means that the impact of the speed of the prospective EU membership reward is measured against the level of rule adoption in the area of minority language rights in the recipient states forming the empirical base. This furthermore entails that the level of rule adoption is assumed to vary according to how speedily the prospective EU membership reward is distributed.

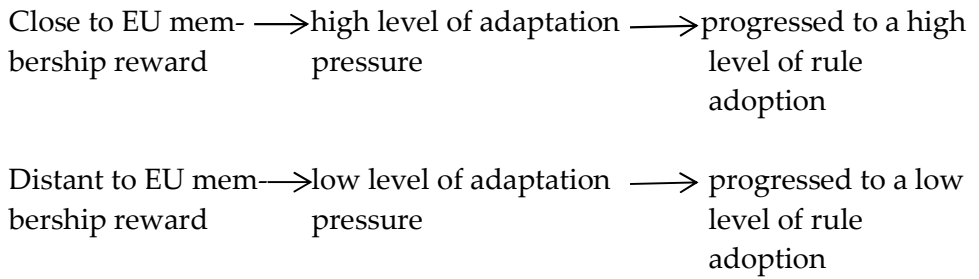
On the basis of these claims it is argued that the nearer the recipient states are to the prospective EU-membership reward the higher the adaptation pressure and consequently the more likely the level of rule adoption would be high. Vice versa, the further away from the prospective EU membership reward, the lower the adaptation pressure thus the more likely the level of rule adoption would be low (speed of reward hypothesis).

Fig. 1.1. Speed of reward hypothesis and level of rule adoption



Methodologically, the research question presupposes a comparative approach, both in terms of the temporal distance to the prospective EU membership reward, but also in terms of the time-frame of the analysis. By using the most similar systems design, the selection of states has been made according to a set of similar criteria, considered crucial for the investigation, where the only divergence is the recipient states' temporal distance to the prospective EU membership reward. Croatia, the Former Yugoslav Republic of Macedonia (FYROM), Bosnia and Herzegovina, Kosovo, Serbia, Moldova, Georgia, and Azerbaijan are all aspiring towards EU membership but are temporally situated at very different stages in the EU conditionality process. In order to measure the explanatory power of the speed dimension's impact on the level of rule adoption, a comparative approach in terms of the time-frame of the analysis has also been required. This consequently entails that, on the basis of the recipient states' temporal location from the prospective EU membership reward, the impact of the speed dimension is measured against the progress made in the level of rule adoption in the recipient states during the time-frame of the analysis which has been confined to 2003 – 2010. It is thus hypothesised that the nearer the recipient states are to the prospective EU membership reward the more likely they are to have progressed to a high level of rule adoption. Vice versa, the further away the recipient states are to the prospective EU membership reward, the more likely their progression in the level of rule adoption will be lower.

Fig. 1.2. Speed of reward hypothesis and progression in the level of rule adoption



Although this investigation focuses exclusively on the impact of the speed of the prospective EU membership reward on variations in the level of rule adoption, it needs to be stressed that the author does in no way adhere to mono-causality as an explanation of political outcome. Pertaining to the investigation at hand, there is no doubt that several other factors most probably have a bearing on the level of rule adoption. For instance, Grabbe has accounted for dimensions of uncertainty from the perspective of recipient states as regards the nature of the policy areas, which is assumed to undermine the effectiveness of norm compliance. (Grabbe in Featherstone & Radaelli 2003: 318-323) The uncertainties surrounding the policy agenda recipient states should undertake is particularly blatant as regards to the softer forms of norms, like minority rights protection, where the international legal framework is limited and furthermore displays inconsistencies in comparison with the more encompassing human rights framework. Subsequently, this could entail unclear formulations, on the part of the international organisations, both in terms of standards to be adopted as well as thresholds to be attained which could ultimately have a hampering effect on norm compliance simply because recipient states are uncertain which measures need to be adopted.

Uncertainties surrounding the policy agenda could also relate to situations of contested policy advice where an international organisation could advance conflicting norms as to conditions to be adopted or where conditions advanced have not fully been adopted by the member states themselves. Grigorescu for one has shown that the EU has experienced difficulties in promoting norms that existing member states had not fully adopted themselves. (Grigorescu 2002: 482) Domestically, the size of

adoption costs could vary in relation to what impact rule adoption would have on welfare costs and power costs and how these are distributed between domestic actors, both public as well as private. Furthermore, since rule adoption is carried out by the government in place, variations in government preferences as well as preferences of “veto-players” are likely to have an impact on as to what extent legislation is adopted. (Schimmelfennig & Sedelmeier 2004: 675) Thus, having in mind that other factors, both domestic as well as international, are likely to have an impact on rule adoption, the research at hand however is only focused upon investigating the impact of the speed of the prospective EU membership on the level of rule adoption in the selected states, on track of EU accession.

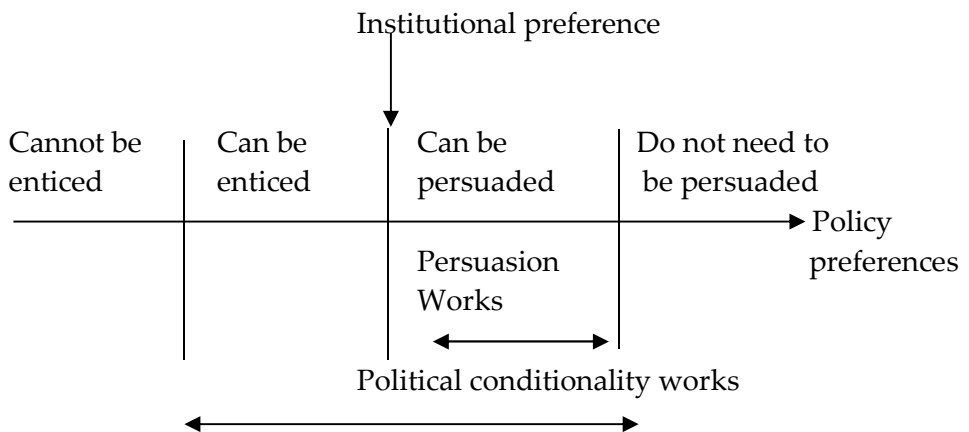
A note on the theoretical framework

Questions on what makes actors comply with rules and norms have occupied IR researchers and EU scholars alike and whether you adhere to sociological institutionalism or rationalist institutionalism, the underlying rationale is based on questions of social control, however differing on what types of mechanisms make states comply with external requirements. Thus, a great number of contemporary studies on compliance can be categorised as either being based on the rational choice model or on the sociological model. Compliance according to the sociological model works through the mechanisms of persuasion and socialisation which entails that in order for compliance to succeed the recipient actor needs to have internalised the norm thereby creating a change in the belief system. (Finnemore & Sikkink 1998; Checkel 2000, 2001, 2005) Compliance is then equated with when a norm “will become legitimate to a specific individual, and therefore become behaviourally significant, when the individual internalizes its content and re-conceives his or her interests according to the rule” (Hurd 1999: 388).

On the other side of the spectrum, the rationalist perspective has not been concerned with the legitimacy of norms *per se* since compliance is looked upon solely from the perspective of states as being rational actors that, based on cost-benefit calculations, either choose to comply out of self-interest or out of coercion. The rationalist perspective then pays no interest to whether there has been any belief change or not but equates compliance with behavioural change. More and more there have been

efforts to bridge the sociological-rationalist divide by cross-fertilising the two perspectives in order to better be able to explain what makes states comply with rules and norms imposed from the outside. Based on the argument of increasing complexity of international relations, this would in turn necessitate that researchers employ both paradigms since each “generates a different set of variables for analyzing the breach and compliance with international norms” (Hirsch cited in Pulkowski 2006: 515). On the basis of my research aim and as much research on EU conditionality show, however, the perspective taken here is that incentive-based methods are more effective than methods based on persuasion in motivating state governments to comply with the conditions set. (Schimmelfennig 2002; 2003; 2006; Kelley 2004) As shown by Kelley for instance, the sociological model has only limited explanatory power to account for why states comply with external requirements and make policy changes (see figure below).

Fig. 1.3. Receptivity of policymakers to external requirements (Kelley 2004: 432)



However, even though this investigation is actor-oriented and premised on the assumption that states are rationally-driven actors, motivated by self-interested goals, normative values are considered embedded in the self-interested calculations that states make. The example of minority rights is particularly interesting because of the controversial nature of these norms. Indeed, minority rights have been perceived, and acted out on, as highly securitised and as a matter of the highest national security interest in the states under investigation, having resulted in violent ethnic

conflicts. Thus, minority rights demands have been perceived of as challenging the very survival of states and consequently have been an inhibiting factor as to why recipient state governments have been adamantly opposed to granting specific collective rights to national minorities inhabiting the state territory. So if the minority rights norms are not considered legitimate it would not be in the interest of the recipient state government to abide by the external requirements set by an international actor. In that case, neither persuasion, nor external incentives will produce norm compliance because the recipient state cannot be enticed by the conditions set or by the institutional preference diffused by the international actor (EU). Cost-benefit calculations would then result in a lack of norm-compliance and result in no policy changes because no matter what the stakes, the costs to comply would be calculated as too high. At the same time, it could be argued that however illegitimate the recipient state government would perceive the granting of collective rights to minority groups, norm compliance and policy change could take place if the prospective benefits to be reaped were calculated as higher than the costs to be paid because then it would be in the interest of the state to comply. A central claim of this study is that the enlargement preferences of the states under investigation are strong foreign policy determinants, making the prospective EU membership reward an effective mechanism to induce non-member states to comply with EU norms and rules.

Norms, rules and policies are usually understood as institutions which are social phenomena “that can create stable patterns of collective and individual behaviour” (Mörth cited in Featherstone & Radaelli 2003: 161). At the same time, international rules and norms are seldom clear and incontestable which subsequently creates room for interpretation both from the point of view of the recipient states but also from the perspective of the international actor that sets the conditions. This in turn makes norms and rules not only as constraining and facilitating actors’ behaviour but “they can also form actors’ preferences and interests” (Mörth cited in Featherstone & Radaelli 2003: 161). The assumption of this study is that norms are held collectively and that state action is rule governed, on the basis of norms laid down in treaties, conventions and declarations. That state action is rule governed means that norms and rules are understood as action-guiding devices. The controversial nature of the norms of minority rights has led to that these norms have been

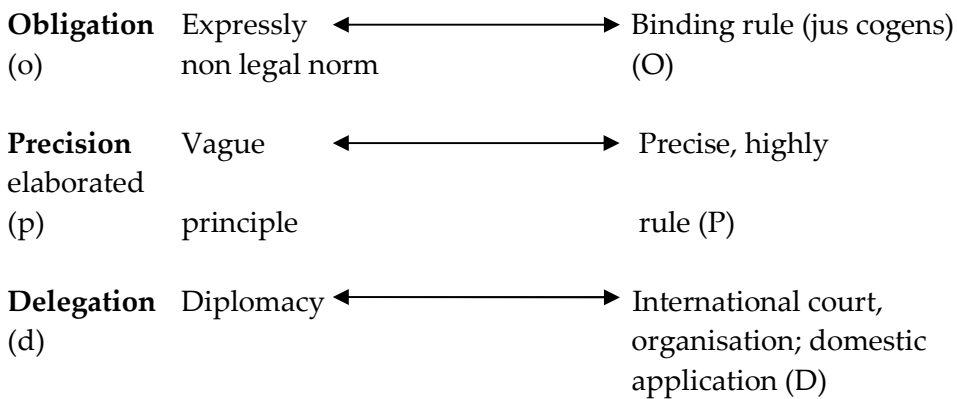
both inconsistent and incoherent and have displayed weaknesses in both clarity as well as legality making it at times unclear to the recipient states what kind of changes are deemed necessary to adjust to EU norms and rules. (Mörth in Featherstone & Radaelli 2003: 160)

Schimmelfennig et al. have argued that compliance with norms is facilitated by how determinate the norms set as conditions are. Determinacy of norms would refer to both the clarity and legality which would entail that “the clearer the behavioural implications of a rule, and the more ‘legalized’ its status, the higher its determinacy” (Schimmelfennig & Sedelmeier 2004: 672). Whether legalised norms create a specific compliance pull of their own, different to the softer forms of norms is an issue of controversy and can only be established by empirical investigation. However, I argue that the increasing legalisation of international norms has meant that both legally as well as non-legally binding norms have an impact on states’ behaviour. Subsequently this would entail that the distinction between “vertical” (EU directives) and “horizontal” (suggestion of best practice) (Harcourt in Featherstone & Radaelli 2003: 181) institutionalisation or hard law as opposed to soft law might not be theoretically relevant any longer.

I argue that it is theoretically more relevant to categorise norms and rules according to a legal continuum where international norms display varying degrees of legalisation. Taken in this study, legalisation is understood as “a particular form of institutionalization characterized by three components: obligation, precision and delegation” (Abbott et al. 2000: 401). Therefore, international norms can be defined as being harder or softer according to the various dimensions such as degrees of precision, obligation and delegation where each end of the legal continuum should be understood as ideal types. Inspired by Abbott et al., the concept of legalisation in this study is understood as encompassing “a multidimensional continuum, ranging from the “ideal type” of legalization, where all three properties are maximized; to “hard” legalization, where all three (or at least obligation and delegation) are high; through multiple forms of partial or “soft” legalization involving different combinations of attributes; and finally to the complete absence of legalization, another ideal type” (Abbott et al. 2000: 401-402).

Legal obligation refers to when states or other actors are “legally bound by a rule or commitment in the sense that their behaviour there under is subject to scrutiny under the general rules, procedures, and discourse of international law, and often of domestic law as well” (Abbott et al. 2000: 401). The dimension of precision refers to the status of the norm, in terms of how unambiguous and coherent the norm is; precision would then refer to rules which “unambiguously define the conduct they require, authorize, or proscribe” (Abbott et al. 2000: 401). Delegation finally, refers to when “third parties have been granted authority to implement, interpret, and apply the rules; to resolve disputes; and (possibly) to make further rules” (Abbott et al. 2000: 401).

Fig. 1.4. Dimensions of legalisation (Abbott et al. 2000: 404)



ANALYTICAL FRAMEWORK

The External Incentives Model of Governance: theoretical assumptions and expectations

The terminology surrounding conditionality can come in many disguises; researchers use terms, sometimes interchangeably, like political conditionality, democratic conditionality, membership conditionality and conditionality *tout court* to describe an asymmetrical bargaining situation in which a donor actor sets conditions upon which the recipient states either comply and get the conditional rewards or fail to comply and don't get the rewards. Whereas conditionality usually refers to a "strategy whereby a reward is granted or withheld depending on the fulfilment of an attached condition" (Tocci 2007: 10), political conditionality is specifically narrowed down to mean "the linking, by a state or international organisation, of perceived benefits to another state, to the fulfilment of conditions relating to the protection of human rights and the advancement of democratic principles" (Smith cited in Tocci 2007: 10).

The External Incentives Model of Governance is based on the strategy of reinforcement by reward and the material bargaining mechanism where recipient states are offered material benefits or other "tangible political rewards in return for compliance" (Schimmelfennig 2003: 497). Reinforcement is then a form of "social control by which pro-social behaviour is rewarded and anti-social behaviour is punished" (Schimmelfennig et al. 2002: 2). Reinforcement as a means of social control then enables the EU to choose different reinforcement strategies should the recipient state not comply with the conditions set. In the empirical investigations on conditionality-compliance in the candidate states of the Eastern enlargements of 2004 and 2007, Schimmelfennig's analytical framework is based on a unidirectional relationship where the EU sets conditions upon which the recipient states either comply and get rewarded or don't comply thus causing the EU to withhold the rewards (reactive reinforcement). (Schimmelfennig et al. 2002: 3)

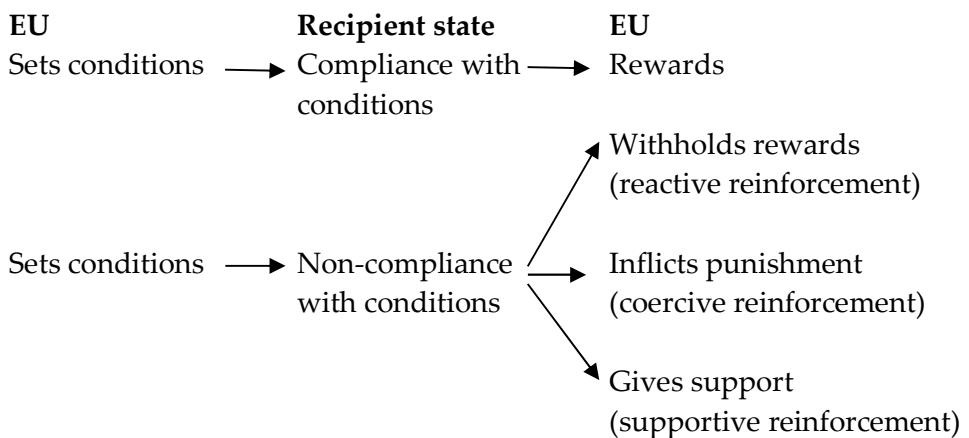
The asymmetry in the conditionality-compliance process was evident in the negotiations leading up to the Eastern enlargements of 2004 and 2007 since the EU had all the benefits to offer, in the form of trade and aid but primarily the explicit promise of EU-membership, and the recipient states had little to bargain with. According to Grabbe, this “asymmetry of interdependence allows the European Union to set the rules of the game in the accession conditionality” (Grabbe in Featherstone & Radaelli 2003:318). The asymmetrical bargaining situation is possibly even more pertinent as regards the states under investigation and places the EU in a powerful bargaining situation since the current states on track of EU-accession have even less, at least economically, to bargain with. However, as regards primarily the states of the Western Balkans, it is at the same time argued that the EU also has an interest in that these states can integrate into the EU. EU interests are primarily security-related in nature since concerns over regional instability, especially the unfolding of the Kosovo conflict, are to be understood as the main driving forces behind the EU decision to offer these states the prospect of EU membership. (Friis & Murphy 2000: 767) Thus, although the bargaining situation is based on the logic of asymmetrical interdependence⁵, the instability of the applicant states, primarily grounded in challenging minority-majority relations, is argued to have an impact on the bargaining process.

Hence, EU strategy is presumed to be more proactive in nature which can be seen in that conflict resolution mechanisms have accompanied EU political conditionality. Proactive reinforcement, according to Schimmelfennig, can be both coercive and supportive. Coercive reinforcement is defined as when an international organisation “not only withholds the rewards but inflicts extra punishment on the non-compliant state in order to increase the costs of non-compliance beyond the costs of compliance” and if the punishment is effective the state will comply. (Schimmelfennig et al. 2002: 3) Supportive reinforcement is also proactive however distinguished from coercive reinforcement in that it is used to give “extra support to the non-compliant state in order to decrease the costs of compliance or to enable S (state) to fulfil the conditions” (Schimmelfennig et al. 2002: 3). If the support outweighs the costs of compliance, the state will comply.

⁵ The term was first introduced in IR literature by Robert O. Keohane and Joseph S. Nye; cf. Keohane, R., O. & Nye, J., S. (1977) *Power and Interdependence*. Boston: Little, Brown.

The distinction between supportive, i.e. the *carrot* and coercive reinforcement, i.e. the *stick*, is however not clear-cut, neither is the distinction between reactive and proactive reinforcement. In fact, they are all based on the two mechanisms of social control, coercion and self-interest. Indeed, according to my line of reasoning the two mechanisms of coercion and self-interest are interrelated in that they are both forms of utilitarianism in which recipient states are presented with some sort of sanction, be it threat or reward. Hurd, for example has stated that “when an actor is presented with a situation of choice that involves threats and reprisals or where the available choices have been manipulated by others, the self-interest and coercion model will follow the same logic and predict the same outcome” (Hurd 1999: 385). However, since the bargaining situation between the EU and the recipient states is presumed to entail higher stakes both for the recipient states as well as for the EU, than was the case in the negotiations leading up to the Eastern enlargements of 2004 and 2007, the EU reinforcement strategy is however assumed to be more proactive, entailing a more dynamic bargaining situation, however asymmetrical this bargaining process may be.

Fig. 2.1. Strategies of conditionality (Schimmelfennig et al. 2002: 3)



The most general proposition of the external incentives model of governance based on the strategy of reinforcement by reward is that based on the reward incentive recipient states' choose to comply with EU rules and norms set as conditions if the benefits to be had are calculated as exceeding the domestic costs to be paid. Thus, the bigger the

prospective rewards the more likely recipient states are to comply with EU conditionality. In the EU strategy of reinforcement by reward, sources of variation pertain to the determinacy of conditions, the credibility of conditions, the size of adoption costs in the recipient states as well as the size and speed of rewards. To reiterate, this dissertation only concerns itself with investigating the explanatory power of the speed of the prospective EU membership reward and consequently leaves out the other sources of variation.

The size of EU rewards as an incentive of norm compliance

Even though rewards can be both social (pertaining to the normative power of the EU) as well as material and political (financial assistance, trade relations and institutional ties), the investigation at hand only concerns itself with the latter. Thus, although the author does recognise that the symbolic value of the EU, i.e. being part of the European club and adhering to European values and norms, might have an effect on states' willingness to comply with EU norms and rules, this value-based incentive is assumed to be of little significance. It is therefore claimed that the promise or the prospect of political and material rewards is more effective in making external states abide by the rules and norms set by the EU.

Material and political rewards can come as two kinds of benefits, namely assistance and institutional ties. Assistance can be both technical and financial in nature and mostly come as EU-funding of different projects and establishment of EU trade relations with the recipient states. These are furthermore normally established as a way of facilitating recipient states' compliance with EU political conditionality. Institutional ties come in the form of different trade and cooperation agreements which later are followed by association agreements. The next stage of the association agreements is accession agreements which are automatically expected to lead to full EU-membership which is the ultimate and strongest institutional tie. Primarily due to divergent interests of the EU member states on finding common strategies as to how to deal with the security challenges of the Western Balkan states, since unanimity in the Common Foreign and Security Policy (CFSP) pillar⁶, the Stability Pact for South

⁶ The three pillar construct was established by the Maastricht Treaty, ratified in 1993, but was formally made obsolete in December 2009 by the ratification of the Lisbon Treaty.

Eastern Europe (SPSEE) and the Stabilisation and Association Process (SAP), launched in 2000, was developed outside of the framework of a common strategy. (Keukelaire & MacNaughtan 2008: 156)

The European Neighbourhood Policy (ENP) was launched in 2004 as an incentive of associating both the neighbouring Mediterranean states as well as the Eastern European states into a contractual relationship with the aim of tying the signatory states, both politically as well as economically, to the EU. It is evident that one of the primary rationales behind linking particularly the Eastern European states but also the states of the Western Balkans into this type of conditionality-compliance process is the increased possibility to exert pressure on these recipient states in order to prevent future violent conflicts on the doorstep to the EU. Furthermore, although the Eastern European states “are not likely to be EU candidates in the foreseeable future” (...) several of the eastern neighbours have EU membership as an explicit aim” (Berglund et al. 2009: 92).

On the basis of Alderson’s categorisation of four different socialisation mechanisms international organisations have to exert influence on external states, Bauhr & Nasiritousi have constructed a theoretical framework with the aim of analysing the effectiveness and the shortcomings inherent in each of the four mechanisms. The four mechanisms are: Inter-state competitive pressures; Conditions on economic assistance; Interaction with transnational actors and finally, Enlargement of international communities. (Bauhr & Nasiritousi 2009: 16-17)

Table 2.1. How International Organisations promote norm diffusion (revised chart on the basis of the theoretical framework provided by Bauhr & Nasiritousi 2009: 16-17)

Mechanisms	Means of norm diffusion	Intended Effects
A: Interstate competitive pressures	A: Governance rankings B: Competition for foreign direct investment	A: Governments enact reforms to improve state image B: Governments enact reforms to attract investment
B: Conditions on economic assistance	Structural adjustment and aid conditionality	Governments enact reforms to receive aid or loans
C: Interaction with International organisations	IO-led workshops, capacity-building, knowledge-sharing, meetings, etc.	Socialisation
D: Enlargement of international communities	Membership process of certain IOs	Prospective members enact governmental reforms in order to increase their chances of membership

The categorisation of the four mechanisms made by Bauhr and Nasiritousi is interesting and one could quite easily identify that the mechanism used by the EU as regards the Stabilisation and Association Process (SAP) of the Western Balkans pertains to the enlargement of international communities whereas the European Neighbourhood Policy would rather pertain to conditions on economic assistance. However and as rightly noted by the authors, in practice the different mechanisms are not easily separable since economic assistance usually is linked to institutional ties and vice versa. The interaction of the different mechanisms was clear in the previous enlargement rounds of 2004 and 2007 and is also blatant as concerns the Western Balkan states. In effect, in

order to facilitate the road to the prospective EU membership SA-conditionalities is not only based on the stabilisation and association agreements through which the EU sets conditions on a bilateral basis for each recipient state. The framework is also based on trade concessions and different aid programmes, especially the Community Assistance for Reconstruction, Development and Stabilisation programme (CARDS), established with the aim of furthering peace and stability in the region. The interdependence of the mechanisms is also blatant regarding the European Neighbourhood Policy where economic assistance and aid conditionalities are closely tied to political conditionalities.

Since enlargement preferences are assumed to be strong determinants in the recipient states' foreign policy goals, the EU membership reward is argued to be the ultimate benefit and therefore it is assumed that the nearer recipient states are to the prospective EU membership, the more likely it is that recipient states comply with EU requirements. Accordingly, "the promise of enlargement should be more powerful than the promise of association or assistance, and the impact of the EU on candidates for membership should be stronger than on outside states not considered potential EU members" (Schimmelfennig & Sedelmeier 2004: 673). According to the same logic it is thus argued that the level of rule adoption is closely associated with how speedily the prospective EU membership reward is likely to be distributed.

The speed of EU rewards as an incentive of norm compliance

The temporal dimension in research on European governance has been almost non-existent up until recently. Apart from research by Ekengren, who investigated the social construction of temporality in European governance (Ekengren 2009), little has been done in research pertaining to EU political conditionalities and what impact the temporal dimension has on norm compliance. Even though Schimmelfennig et al. do integrate speed of rewards as one source of variation under the strategy of reinforcement by reward, this dimension is little explored and "overshadowed" by the size of the reward incentive⁷. The little focus on the temporal dimension is however remarkable seeing as how the entire

⁷ In Schimmelfennig's analysis on the previous enlargements, the little focus on the speed incentive is easily explained by the fact that all states under investigation were in fact candidate states and apart from Romania and Bulgaria had the same time horizon as to deadlines and accession dates.

EU project is a constantly moving colossus, sometimes moving in an *ad hoc* unpredictable fashion, both in terms of an evolving integration process but also in terms of the gradual process of enlargement. According to Ekengren, the reference to the EU as a project is mainly explained by the “significant lack of actual experience that characterises the European governance language”, which entails that the project is constantly referred to as being based on the present. (Ekengren 2009: 49) At the same time, the “temporalisation process prevails owing to the fact that the pure forms of European political processes and decision-making are expected to develop at an accelerating tempo. The ‘project’ is in European governance made an *empty vehicle for political movement*” (Ekengren 2009: 49). This “vehicle for political movement” can be seen both in the evolving integration process but is particularly blatant in the enlargement process which can be conceived as a gradual process on the basis of which the dynamic process of conditionality-compliance is closely anchored.

Already in 1998, Schmitter and Santiso (Schmitter & Santiso 1998) introduced the study of political time as an important dimension in the study of democratisation. In their pioneering work, the authors convincingly argued that “*When* something happens, as well as in *what order* and with *what rhythm*, can be even more important in determining the outcome than whether something happens or what happens” (Schmitter & Santiso 1998: 69). On the basis of the work by Santiso and Schmitter, Goetz et al. dedicate an entire issue of *Journal of European Public Policy* 16 (2) in 2009 to political time, claiming that this ignored dimension in the study of European governance is in fact crucial in understanding not only how something happened by also why it happened. Goetz and Meyer-Sahling treat time as an institution, and, on the basis of the three dimensions developed by Schmitter and Santiso, they argue that the policy cycle is made up of four different temporal categories: the temporal location (when something happens); the sequence (in what order things happen); speed (how quickly things happen); and duration (how long things take) (Goetz & Meyer-Sahling 2009: 180-182).

Timing is also raised by Grabbe as constituting one dimension of uncertainty in the conditionality process, having an impact on the cost-benefit calculations as regards adoption costs of compliance in relation to future benefits. Since the “ultimate reward of accession is far removed

from the moment at which adaptation costs are incurred, so conditionality is a blunt instrument when it comes to persuading countries to change particular practices" (Grabbe in Featherstone & Radaelli 2003: 320). Hence, even though it is assumed, that the nearer recipient states are to prospective benefits "temporal devices", especially timetables, with fixed dates and sequences, have been argued to be effective instruments of compliance. Although temporal devices are presumably more important in cases where "there is a long time gap between action and likely effects", which Goetz labels "transtemporal policy problems" (Goetz 2009: 208), they are argued to be important devices also as regards creating "temporal consistency" in states which have a shorter trajectory to prospective benefits. On the contrary, Avery has argued that timetables and the setting of dates can have negative effects on compliance and policy change, since this could cause "an applicant country to relax, while uncertainty would cause it to try harder to meet the EU requirements" (Avery 2009: 262). However, at the same time, in the negotiations leading up to the accessions in 2004 and 2007, candidate states argued that in the absence of timetables and firm deadlines the EU could not expect domestic ministers and ministries to implement "difficult and costly parts of the *acquis*" (Avery 2009: 262).

Although it has been asserted that the future of the Western Balkan states lies in Europe, thus giving some kind of assertion that, not only candidate states but also potential candidate states will eventually gain EU membership, conditional upon compliance with EU rules and norms, the temporal distance to the prospective EU membership reward is argued to be a strong incentive as to what degree recipient states are willing to comply with EU norms and rules. Based on the rationalist perspective, political time is here conceived of as "temporal institutions (that) act as opportunities and constraints on actors' strategies, affecting both when and how to act" (Goetz 2009: 193). According to the rationalist perspective, "the more Europeanization provides new opportunities and constraints (high adaptational pressure), the more likely a redistribution of resources is, which may alter the domestic balance of power and which may empower domestic actors to effectively mobilize for policy change" (Börzel & Risse in Featherstone & Radaelli 2003: 70). Taken in this study, the speed of the prospective EU membership reward is understood as a constraint and an opportunity and is argued to constitute the main

driving force of adaptation pressure in the conditionality-compliance process.

NORMATIVE FRAMEWORK

EU Minority rights conditionality

The reluctance to internationally provide for collective rights to sub-state groups became blatant in the international legal system that ensued after World War II. Due to the destabilising effects international protection of minorities had had on international security prior to World War II⁸, there was consensus amongst the architects of the UN Charter that minority rights were to be substituted by universal human rights. Substitution, however, did not mean that minority rights were becoming invalid but rather that these were henceforth considered as being protected within the larger human rights framework.⁹

Thus, when minority rights protection became part of EU conditionality in 1993 there was almost no international legal framework to fall back upon. In fact, up until the Lisbon Treaty of 2009¹⁰, minority rights protection was not part of EU Treaty law and did neither provide for any clear standards nor any clear benchmarks on what minority rights to protect and, subsequently, what minority rights to monitor. Hence,

⁸ The treaties regulating the rights of minorities of the interwar period were seen as potentially destabilising. In fact, one devastating example of this could be seen in the justifications made by Germany when invading Poland and Czechoslovakia since these had been given “on the grounds that these countries were violating the treaty rights of ethnic Germans on their soil” (Kymlicka 2007: 29).

⁹ One single provision in international law texts during the Cold War period can be said to have asserted minority rights protection. The International Covenant on Civil and Political Rights of 1966 stated that “In those states in which ethnic, religious or 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, to profess and practice their own religion, or to use their own language”. Cf. International Covenant on Civil and Political Rights, Article 27, UNGA, Res. 2200A (XXI), December 16, 1966.

¹⁰ The Lisbon Treaty, sometimes referred to as the Reform Treaty, was ratified in December 2009. For the first time in the history of the EU, minority rights protection is integrated into the legal framework, making them internal policies. Cf. “Consolidated Versions of the Treaty of European Union and the Treaty on the Functioning of the European Union” in *Official Journal of the European Union*, 2010/C/83/01, Vol. 53, http://europa.eu/documentation/official-docs/index_en.htm, 2011-02-03.

minority rights conditionality was established more as a political construct, premised on conflict prevention, which left the EU with the task of both setting the conditions as well as monitoring compliance with the conditions in the candidate states. Integrated as a political condition in the Copenhagen criteria, minority rights protection became an integral part of the pre-accession requirements conditional upon EU membership. However, since the “guidelines” for minority protection in fact were limited to vague formulations, stating that applicant states should have systems, providing for “stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities”¹¹, other standard-setting documents were also integrated as benchmarks of EU minority rights conditionality.

On the one hand, a contextualised security-based minority rights track, conceived of and established as a conflict preventive instrument, was developed within the Organisation for Security and Cooperation in Europe (OSCE). Thus, concomitantly to the introduction of minority rights protection as conditional upon EU accession, the OSCE institutionalised the High Commissioner on National Minorities (HCNM), established and mandated as a conflict prevention mechanism. The HCNM became pivotal not only to its own organisation but was also linked to EU minority rights conditionality since the EU repeatedly has declared that “countries seeking accession to the EU are expected to follow the HCNM’s advice” (Kymlicka & Opalski 2001: 375). The merit of the contextualised security-based approach is apparent since it is based on the country-specific context which, consequently, allows for formulations of different standards of minority rights protection.

On the other hand, there was the development of a universal justice-based minority rights track, exemplified by the development of the Framework Convention of National Minorities (FCNM), adopted by the Council of Europe in 1995 and ratified in 1998. The FCNM is

¹¹ The Copenhagen criteria were adopted in June 1993 and consist of four criteria which are conditional upon accession to the EU. The minority rights criteria is part of the political criterion, the other criteria refers to economic criteria and the functioning of a market economy as well as the transposition of the whole EU *acquis* as well as the obligatory adherence to the aims of the political, economic and monetary union. Cf. European Council, “Conclusions of the Presidency”, DOC SN 180/1/93 REV, Copenhagen, 21-22 June 1993, p. 13.

groundbreaking in that it is the first legally binding, to the States parties, multilateral instrument which is aimed at the protection of national minorities. However, since the vagueness of many of the articles in this universal justice-based system allows for competing interpretations, depending upon context, it can in fact be argued that the difference between the context-based recommendations of the HCNM and the “universal-based” articles of the FCNM in fact is minor. However, in terms of linkage to EU conditionality, although the recommendations of the HCNM are important, the impact of the FCNM is even greater. Indeed, ratification of the Framework Convention constitutes “the main indicator of meeting the Copenhagen criteria in relation to minority rights” (Bokulic et al. 2006: 68).

Minority rights provisions within the EU would, however, develop from the late 1990s. When accession negotiations were to start with the Eastern and Central European states, the legally enshrined non-discrimination norm, part of the EU *acquis*, was extended to the minority relevant area by the prohibition of discrimination on the grounds of race and ethnic origin. Thus, whereas the reluctance of granting legal collective rights to national minorities would persist, EU law would henceforth provide the protection of individual rights irrespective of ethnic origin. Indeed, in the Charter of Fundamental Rights¹², it is stated that the Charter prohibits “any discrimination based on any ground such as (...) ethnic or social origin (...) language, religion or belief (...) membership of a national minority” (Art. 21.1)¹³. Although the Lisbon Treaty also integrates “collective provisions”¹⁴ into Treaty law, it does not give any clear guidance as to what specific minority rights the Union is referring to.

¹² The Charter is binding to all signatories. Poland and the United Kingdom have not signed the Charter thus it is not binding upon them.

¹³ European Council (2010) “Charter of Fundamental Rights of the European Union” in *Official Journal of the European Union*, 2010/C/83/02, Vol. 53, Brussels, 30 March 2010, http://europa.eu/documentation/official-docs/index_en.htm, 2011-02-03.

¹⁴ In fact, these collective provisions are more based on the individual rights approach since the Treaty refers to the “respect for human rights including the rights of persons belonging to minorities” and that “these values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail” (Art. 2). Cf. European Council (2010) “Consolidated Versions of the Treaty of European Union and the Treaty on the Functioning of the European Union” in *Official Journal of the European Union*, 2010/C/83/01, Vol. 53, Brussels, 30 March 2010. Second, it is stated that the EU “shall respect its rich cultural and linguistic

The reluctance of granting collective rights to national minorities, anchored in the intractable relationship between state-minority relations, can also be seen in the fact that most international organisations have refrained from giving a definition of what a national minority is. Consequently, even though the EU, the OSCE and the Council of Europe declare that national minorities have rights that need protecting, none of these organisations actually defines what a national minority is. In the OSCE, the first organisation on the European continent to make an official declaration on the necessity to protect national minorities¹⁵, the organisation has absented from giving a definition of a national minority. In fact, the first High Commissioner of National Minorities (HCNM), van der Stoep, stated that “The existence of a minority is a question of fact and not of definition.”¹⁶ This statement may seem odd, but in relation to the HCNM’s mandate, which is to “provide ‘early warning’ and as appropriate, ‘early action’ at the earliest possible stage ‘in regard to tensions involving national minority issues’”¹⁷, it has not been considered important to define which groups need protecting, but rather what minority rights *situations* are endangering to peace. The Council of Europe’s Framework Convention for the Protection of National Minorities (FCNM) follows suit and “contains no definition of national minorities, none having received the consent of all Council of Europe member states” (Capotorti 1996: 147). Although minority rights protection would become even more emphasised in the conditionality process of the Western Balkan states in the 2000s, the EU has persisted in refraining from providing a definition of the groups whose rights need protection and promotion.

diversity” (Art. 22). Cf. Charter of Fundamental Rights of the European Union in *Official Journal of the European Union*, 2010/C/83/02, Vol. 53, Brussels, 30 March 2010.

¹⁵ The Copenhagen Document of 1990 and the Geneva Document of 1991 were the first documents after the end of the Cold War to recognise the importance of the issue of national minorities in terms of conflict resolution on the Eurasian continent. Cf. (Ghébal 1996: 451-453, 509-514).

¹⁶ The High Commissioner on National Minorities, van der Stoep, in his keynote address at the opening of the OSCE Minorities Seminar in Warsaw in 1994, <http://www.osce.org/hcnm>, 2010-12-14.

¹⁷ Cf. <http://www.osce.org/hcnm>, 2010-12-14.

Conditionality in the Western Balkans and in the states of the European Neighbourhood Policy

Whereas the guaranteeing of political stability was the primary foundation of minority rights conditionality prior to the large Eastern enlargement of 2004, it would become even more emphasised in light of the prospective EU membership for the states of the Western Balkans. The success of conditionality as an effective tool of domestic change, both in terms of securing internal stability, as well as a guarantor of functioning market economies, would contribute to both its broadening as well as its deepening. The broadening would entail that conditionality was to develop into a tool of providing guarantees of stability, not only to the candidate states of the EU, but also to the states not directly linked to enlargement. Indeed, with the introduction of the European Neighbourhood Policy (ENP) in 2004, the strategy of conditionality was introduced to the Eastern European neighbours as well as to the adjoining states of the Union's Southern periphery. The deepening of conditionality, and the greater emphasis put on minority rights protection, would become introduced with the conditionality linked with the prospect of integrating the Western Balkan states into the structures of the Union. In fact, "ever since the Copenhagen criteria and the 'SAP conditionality'¹⁸ were adopted, the EU has emphasised the role of minority protection in its political accession criteria, directly linking minority protection with EU membership, albeit to varying degrees" (Bokulic et al. 2006: 67). In fact, one of the lessons drawn by the Commission from the pre-accession conditionality of the Eastern enlargement was to retain "the principle of differentiation", both in terms of the conditions set, as well as in terms of the rewards granted. (Kelley 2006: 49) This became particularly manifest in the SAP-conditionality encompassing the Western Balkan states.

The framework of SAP-conditionality was established by the European Council in 1997¹⁹, complementing the Copenhagen criteria with

¹⁸ The Stabilisation and Association Process (SAP) was launched in 2000 establishing a contractual relationship between the EU and the states of the Western Balkans. Distinctive of the SAP is that the EU recognised the special status and the different prerequisites of these states "which had experienced war and conflict" (Bokulic et al. 2006: 50).

¹⁹ European Commission (1997) "Council Conclusions on the Application of Conditionality with a view to developing a Coherent EU Strategy for the Relations with

additional minority rights protection conditions. Although more emphasis is put on minority rights protection, applicable on a general level, these conditions continue to be held very generally, requiring the states' "credible commitment to democratic reforms and progress in compliance with the generally recognised standards of human and minority rights" (Bokulic et al. 2006: 66-67). However, since SAP-conditionality also encompasses the peace treaties, signed with the individual states of the Western Balkans, which in turn form the basis of each state's obligations towards minority protection, the contextualised approach is blatant also in the field of minority rights protection. (Anastasakis & Bechev 2003: 7-8) Thus, even though the Copenhagen criteria apply to all states, SAP-conditionality is based on a country-specific approach, which is "geared towards reconciliation, reconstruction and reform" (Anastasakis & Bechev 2003: 7-8).

Although SAP-conditionality, initially, was not automatically linked to the explicit promise of enlargement, it is at the same time true that the launching of SAP-conditionality in 2000, would ultimately commit the EU in 2005 to reiterate its support for the Western Balkan states, re-emphasising "that the future of the Western Balkans lies in the European Union"²⁰. Indeed, the European Partnerships set up in 2004, "with all the countries of the Western Balkans, focus on their preparation for EU membership" (Bokulic et al. 2006: 51). The prospect of membership is furthermore furthered by the pre-accession agreements concluded by the signing of the Stabilisation and Association Agreements (SAAs), which on the basis of the country-specific approach, further define the conditions set for each state as well as define EU support to help meet the requirements of the Copenhagen criteria.²¹

the Countries in the Region" in *Bulletin EU*, 4, Brussels, 29 April 1997, <http://ec.europa.eu/archives/bulletin/en/bullset.htm>, 2011-02-15.

²⁰ European Council (2005) "Presidency Conclusions", 10255/1/05 REV 1, Brussels, 15 July 2005, p. 12, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/85349.pdf, 2012-07-20.

²¹ The SAAs "include the asymmetric liberalisation of trade between the signatory and the EU, with the EU market opening more rapidly, a number of obligations by the state, EU support towards fulfilling the Copenhagen Criteria, and specific post-conflict measures" (Bokulic et al. 2006: 54).

However, the graduated approach of SAP-conditionality, based on the diversification of the individual states and their respective capacities to comply with the conditions set, has entailed that the states have been categorised into two groups of prospective future EU member states. The categorisation into candidate states (with a higher level of compliance) and potential candidate states (with a lower level of compliance) became blatant in 2004 and 2005, when Croatia and Former Yugoslav Republic of Macedonia, respectively, acquired status as candidate states. The group composed of the potential candidate states, considered to have a more cumbersome road to prospective EU membership, encompasses Albania, Bosnia and Herzegovina, Kosovo, and Serbia. The distinction made between the two categories is relevant, not only as concerns their distance to prospective EU membership, but is also dependent upon the level of EU financial aid granted to the states. Indeed, compared with the Europe Agreements of the CEEs, the SAAs provide for little financial aid which is very much restricted to applicant states having reached the last phase of the conditionality process, thus limited to states having acquired status as candidate states.

ENP-conditionality, at least as regards the Eastern European neighbours, is based on the same legal and political underpinnings as SAP-conditionality, and ultimately pre-accession conditionality. (Kochenov 2008: 15) Just like SAP-conditionality, ENP-conditionality is based on the principle of differentiation, and the country-specific approach, both in terms of the conditions set, as well as in terms of the rewards linked to compliance. However, the graduated approach of SAP-conditionality has not been applied to ENP-conditionality which consequently means that no categorisation, based on the level of compliance in relation to prospective EU membership, has been made. Thus, the Eastern European signatories of the ENP, Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine, are all, formally at least, equally as far away from the prospective EU membership. Indeed, even though SAP-conditionality, at least initially, was not explicitly linked to enlargement, the *finalités géographiques* of ENP states' compliance are even more left in the vague. Indeed, although premised on the strategies of conditionality, the Commission has stated that the goal of the ENP framework is to provide for, "the development of a *new relationship* which would not, in the medium-term, include a perspective of membership or a role in the Union's institutions" (Kochenov 2008: 15). However, although

enlargement is not envisioned in the medium-term perspective, since ENP-conditionality is not directly linked to the incentive of accession, “the path dependency of the ENP is strong. Its *raison d'être* is enlargement” (Kelley 2006: 31).

Just like SAp-conditionality, on a general level, ENP-conditionality is based on “a shared commitment to ‘common values’, and aim to support structural change or consolidation in the direction of democracy, rule of law, good governance, respect for human rights and market economy principles” (Keukelaire & MacNaughtan 2008: 271). Furthermore, even though ENP-conditionality is not as tightly geared towards minority rights as SAp-conditionality, conditions related to respect of “fundamental freedoms, including freedom of media and expression, rights of minorities” are also integrated within the ENP-framework. (Kelley 2006: 42). The general norms are promoted concomitantly to the country-based specific conditions in the Action Plans, which form the “pre-accession” agreements of ENP-conditionality. In the same vein as the SAp, financial aid and support are linked to compliance with the conditions set.

Even though the Copenhagen criteria and the *acquis*-related conditionality is not part of ENP-conditionality *per se*, parts of the EU *acquis* are integrated within ENP-conditionality as well. Indeed, since all ENP states have signed the Council of Europe Framework Convention, where obligations to meet the requirements of non-discrimination as well as the principles regulating minority language rights are formulated, these rights are part of ENP-conditionality as well. Indeed, and based on the philosophical underpinnings of both the EU and the Council of Europe, which is that minority communities need to be protected both from exclusion and assimilation, these two approaches require that minority rights protection, in fact, be based both on non-discrimination (protection from exclusion), as well as the promotion of collective minority rights (protection from assimilation).

Setting the conditions for minority language rights protection

Minority language rights constitute one of the three types of minority rights, deemed crucial in the prevention of violent ethnic conflict. Indeed,

“rights pertaining to the protection of identity”, of which language protection is a part; “rights guaranteeing economic and social well-being”, as well as “rights linked to participation”, in which national minorities should be allowed to participate in “all issues of public interest”²², are all part of the minority rights template. Identity pertains to the cultural markers of minority groups, which means that the culture, language, and religion can be practiced without discrimination, and should furthermore be “recognized and supported by the authorities” (Baldwin et al. 2007: 5). Even though all aspects of the cultural identity of a person of ethnic origin are important, “two that are often at stake in situations of violent conflict, are language and religion” (Baldwin et al. 2007: 8). Furthermore, although language rights are normally referred to as being an integral part of a person’s cultural identity, it is at the same time, a vital component of both “rights guaranteeing economic and social well-being”, as well as “rights linked to participation”. Indeed, the consequences of direct and indirect discrimination of minority languages and their users, will not only have negative effects upon a person’s cultural identity, the social and political consequences of language discrimination will further accentuate alienation of minority groups from decisions that affect them, both politically as well as socially, thus excluding them from the society in which they live. Extinction of minority languages, as the most radical form of discrimination and subordination, is thus, not only, related to linguistic loss, and a loss of a person’s cultural identity, it is also, a loss of power and social mobility. As May contends, “language loss is not only, perhaps not even primarily, a linguistic issue – it has much more to do with power, prejudice, (unequal) competition and, in many cases, overt discrimination and subordination” (May 2000: 368).

The importance given to the protection of minority languages is blatant both in the OSCE recommendations on the treatment of minority issues in the OSCE area²³, but also and primarily, as stipulated by the legally

²² United Nations Institute for Training and Research (2007) “Preventing Genocide” in *UNITAR Peace and Security Series*, New York, 2-3 April 2007, p. 3, http://www.responsibilitytoprotect.org/files/Summary_Report_with_contacts.pdf, 2010-10-15.

²³ Cf. The Hague Recommendations on Education Rights of National Minorities (1996); the Oslo Recommendations on Linguistic Rights of National Minorities (1998); The Lund Recommendations on Effective Participation Rights of National Minorities (1999), www.osce.org/hcnm, 2011-11-17.

binding articles of the Council of Europe's Framework Convention. The importance of guaranteeing minority language rights protection is, furthermore, emphasised by the establishment of the Council of Europe's special instrument, the European Charter for Regional or Minority Languages (ECRML), adopted in 1992.²⁴ Even though the ECRML stipulates, that the protection and promotion of minority languages, should not be considered to "be an act of discrimination against the users of more widely used languages" (Art. 7, para. 2), minority language rights protection is by no means uncontroversial. Indeed, minority language rights protection is oftentimes perceived of as a challenge, not only to the state language, but also to the national cohesion of the state.

The ECRML does not distinguish between a regional and a minority language, but uses the two terms interchangeably. According to the Charter, "regional or minority languages" are languages that are: "(i) 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 (ii) different from the official language(s) of that State" (Art. 1a). Furthermore, this would entail that this "does not include either dialects of the official language(s) of the State or the language of migrants" (Art. 1a). The nationality requirement of this definition is, however, problematic since it would then exclude the Roma minority who oftentimes lacks nationality. Furthermore, since the exclusion of the Roma, especially pertinent in the states of the Western Balkans, has been one of the EU's prioritised issues in minority rights protection, the nationality requirement would consequently leave them out. Hence, on the basis of the definition provided for by the Fundamental Rights Agency (FRA), in this study linguistic minorities are peoples "whose first language is not the language of the majority of people in the country in which they live"²⁵. The majority is defined as the group of people which is not only the numerically strongest but also holds the tools of the state's

²⁴ Council of Europe (1992) "European Charter for Regional or Minority Languages" in *European Treaty Series. No. 148*, Strasbourg, 5 November 1992, http://www.coe.int/T/E/Legal_Affairs/Local_and_regional_Democracy/Regional_or_Minority_languages, 2011-11-25.

²⁵ Fundamental Rights Agency (2010) *The impact of the Racial Equality Directive – Views of trade unions and employers in the European Union. Strengthening the fundamental rights architecture in the EU IV*. Luxembourg: Publications office of the European Union, http://www.fra.europa.eu/fraWebsite/attachments/Racial-equality-directive_conf-ed_en.pdf, 2011-03-04.

nation-building, thereby being in control of the state, its institutions, and its language policies. (Kymlicka 2001: 49) This consequently entails, that a minority language in the context of this investigation pertains to:

A language traditionally used within a given territory of a State by minority groups, numerically smaller than the rest of the State's population, and perceived by the minority groups themselves, as different both from the official language, as well as from the dialects of the official language of that State.

The sensitivity of the language issue, or the dilemma between national cohesion concerns (integration) and protection of minority languages (accommodation), is blatant in the articles of the Framework Convention. In fact, just like minority rights provisions, in general, are still highly challenging, not only to the states that have to adopt them, but also to the international organisations that set the conditions for their compliance, so are minority language rights provisions. Indeed, and based on the philosophical underpinnings of not only the Council of Europe but also the EU, minority communities need to be protected both from exclusion and assimilation. This, in turn, entails that minority language rights protection, in fact, is based on two approaches: non-discrimination (protection from exclusion), as well as the promotion of collective minority rights (protection from assimilation). Subsequently, minority language rights' conditionality forms part of both the *acquis*-related conditionality (based on non-discrimination), as well as on collective language rights granted to minority groups.

The distinction between the two approaches has been further developed by Dunbar who has divided minority language rights into two broad categories. On the one hand, linguistic rights can be based on a regime of linguistic tolerance, which includes "measures which aim to protect speakers of minority languages from discrimination and procedural unfairness" (Dunbar 2001: 91). The principle of non-discrimination refers to clauses in the general human rights framework, stipulating that every person has the right not to be discriminated against, on the basis of the equality principle. In the category of linguistic tolerance, Dunbar also integrates the principle of protection and non-assimilation, as well as basic civil and political rights. The principle of protection and non-assimilation refers to that every person, regardless of ethnic belonging,

has a right to her own language and culture. Rights pertaining to basic civil and political rights entail that every person, regardless of ethnic belonging, has the right to a fair trial, freedom of expression and freedom of assembly and association. (Dunbar 2001: 100-107)

On the other hand, linguistic rights can be based on a regime of linguistic promotion, which includes “measures which create certain ‘positive’ rights to key public services, such as, education and public media through the medium of minority languages” (Dunbar 2001: 91). In the category of linguistic promotion, these positive rights include educational rights, i.e. that national minorities have the right both to learn their mother tongue, as well as to be instructed in the minority language. Educational rights are, however, not limited to linguistic rights proper, but also pertain to the fact that States have a responsibility to take measures to “promote knowledge of the history, traditions, language and culture of minorities among the general population” (Art. 34 of the OSCE Copenhagen Declaration cited in Dunbar 2001: 109). Integrated in the regime of linguistic promotion are provisions related to rights of linguistic minorities to use their minority languages in official contexts, as well as the right to use the minority language in personal and place names. Limitations as to how far these positive minority language rights can be promoted refer to national sovereignty considerations, and the fact that minority language rights protection, should in no way, compromise the territorial integrity of the state. (Dunbar 2001: 109-115)

This would consequently entail, that linguistic rights of tolerance, based on non-discrimination, are premised on negative rights, i.e. that minority groups, or rather individuals of ethnic belonging, have a right not to be treated in a discriminatory way. Linguistic rights of promotion, on the other hand, are based on promotion of certain collective rights, more premised on positive rights, where specific positive measures to promote linguistic rights, are created for linguistic minorities of a State. (Dunbar 2001: 91-92) The distinction of the two linguistic regimes is also highly relevant in the realm of the codification of minority language rights conditionality. Indeed, whereas EU codification of minority language rights is limited to the regime of linguistic tolerance, based on the non-discrimination *acquis*, the articles of the FCNM encompass both the norm of non-discrimination, as well as provisions based on linguistic promotion. Indeed, in the FCNM, positive rights, and the promotion of

collective language rights provisions, are also enshrined in articles, pertaining to the area of the use of minority languages in official contexts, as well as in the area of minority language rights in education.

Non-discrimination

Non-discrimination is a key principle in EU legislation, and as part of the *acquis communautaire*, legally binding upon member states, but also upon applicant states to the EU. By the end of the 1990s, when accession negotiations were to start with the Central and Eastern European states, the non-discrimination norm was extended to the minority relevant area, with the addition of Article 13 TEC, regarding the fight against racism and xenophobia, and the adoption of the Racial Equality Directive (RED)²⁶ in 2000, implementing the prohibition of discrimination on the grounds of *race and ethnic origin*. Concomitantly, the Employment Equality Directive (EED)²⁷ was adopted that same year, prohibiting discrimination on the grounds of “religion or belief, age, disability, sexual orientation” (Bokulic et al. 2006: 80). Even though both Directives form part of the Race Directives, and contain definitions of discrimination that necessitate transposition into the national legislations, of both member states as well as applicant states, the Racial and Equality Directive is specifically applied to the prohibition of discrimination, based on ethnic belonging, at the same time as it is the most encompassing. Indeed, the Racial and Equality Directive sets out to prohibit discrimination in the areas of employment, education, social protection and housing, and sets minimum standards of how the Directive should be transposed into Member states’ as well as applicant states’ national legislations. Part of the minimum standards is the transposition of the definitions of direct discrimination, indirect discrimination as well as harassment contained by the Directive.

Direct discrimination is defined as occurring when, “one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin” (Art. 2(2)(a), Race Directive). Indirect discrimination is defined as occurring when, “an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other

²⁶ Council Directive 2000/43/EC, *Official Journal L180*, Vol. 43, 19 July 2000.

²⁷ Council Directive 2000/78/EC, *Official Journal L303*, Vol. 43, 2 December 2000.

persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim is appropriate and necessary” (Art. 2(2)(b), Race Directive). Harassment finally is deemed to be discriminatory, “when an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment” (Art. 2(3), Race Directive). Apart from the obligatory transposition of the established definitions into the national legislations, pertaining to the specified areas, part of the minimum sets of standards obliges member states, as well as applicant states, to set up Equality Bodies whose primary mandate is to provide “independent support to victims” (Bokulic et al. 2006: 80-81).

Although the non-discrimination norm, as part of the EU *acquis*, displays a high degree of legality, especially in terms of both obligation as well as delegation, since in the case of legal dispute judicial interpretation would be ruled by the European Court of Justice, in terms of the level of precision, it is more problematic. Indeed, there have been cases where some member states have implemented incorrect definitions of both discrimination as well as harassment in their respective national legislations.²⁸ Furthermore, the level of precision, as regards the agents of protection of the norm itself, i.e. persons of ethnic belonging, remains problematic since the EU has persisted in abstaining from giving a definition of what a person of ethnic origin actually means. In addition, since “discrimination on the basis of nationality/citizenship is excluded from the Directive”, this consequently means that individuals of ethnic belonging, who lack citizenship, are excluded from protection against discrimination. (Bokulic et al. 2006: 83) This is particularly problematic in cases involving the Roma minority, who often lack citizenship, but also as concerns groups of national minorities, who, as a consequence of the violent ethnic conflicts, have become refugees. In fact, the relevance of the individualistic approach of the non-discrimination norm in minority rights protection has been seriously questioned, as “its emphasis on individual action seriously limits the ability to respond effectively to, and redress, deeply-rooted exclusion and inequalities, suffered by various groups” (Bokulic et al. 2006: 83). The limitations of the individualistic

²⁸ Cf. <http://www.eubusiness.com/topics/employment/race-equality>, 2011-03-04.

approach have, in fact, been acknowledged also by the EU Commission, which has stated that, “there is a need to go beyond anti-discrimination policies designed to prevent unequal treatment of individuals” (Bokulic et al. 2006: 84).

The non-discrimination norm is also part of the Council of Europe’s Framework Convention for the Protection of National Minorities (FCNM), and although not as specific and encompassing as the minimum criteria, stipulated by the EU, the content and purpose of Article 4 of the FCNM is, “to ensure the applicability of the principles of equality and non-discrimination for persons belonging to national minorities” (FCNM 1995b: 16). However, whereas the EU Racial and Equality Directive is more based on negative rights, i.e. to protect individuals of ethnic belonging *from* discrimination, the article pertaining to non-discrimination within the FCNM is more based on positive rights, i.e. to *promote* equality. Article 4 of the FCNM stipulates that the States parties have an obligation to “guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited” (Art. 4(1), FCNM). The promotion of equality is further stressed in the consecutive paragraph which underlines that, “where *necessary*, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority, and those belonging to the majority”, should be taken by the State authorities. (Art. 4(2), FCNM, emphasis added) It is further accentuated, that these “positive” measures, “adopted in accordance with paragraph 2, shall not be considered to be an act of discrimination” (Art. 4(3), FCNM).

The level of legality of Article 4 is quite low, even though formally displaying a high level of both obligation, as well as delegation. Indeed, the level of precision of Article 4 seriously inhibits the level of legality. Not only does the low level of precision pertain to the scope of application of the norm, where the Council of Europe, in the same vein as the EU, has refrained from giving a definition of the agents, whose effective equality rights should be promoted. Furthermore, and more serious, is the fact that, even though the State parties, are “obliged” to promote “effective equality between persons belonging to a national minority, and those belonging to the majority”, the wording “where

necessary”, must be considered as seriously harming, not only to the level of precision of the norm, but consequently also, to the level of obligation, and logically following from this, the level of delegation. Indeed, the diffuseness of certain wordings gives great flexibility of interpretation as to the duties that befall the State authorities. The vagueness of certain formulations are, in effect, consistently employed in the articles regulating minorities’ language rights, and viewed the flexibility of interpretation given to the State authorities, consequently heavily curtail the rights that are promoted.

Minority language use in official contexts

The Articles regulating minorities’ rights to use minority languages in official contexts are quite general in character, both as concerns the content of the norm, as well as the duties that befall the State authorities, signatories of the FCNM. Articles 10 and 11 of the FCNM set the conditions for the use of minority language rights in official contexts. The paragraphs of Article 10 both enshrine the universal justice-based right, that national minorities have an inherent right to freely use their minority languages, both in private and in public, but also set conditions that are context-based, dependent upon more specific criteria, however left vague since undefined. Indeed, paragraph 1 stipulates that “every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing” (Art. 10(1), FCNM). Whereas paragraph 1 is relatively uncontroversial, the infringement on the State authorities is more important in paragraph 2, which regulates the rights of national minorities to communicate in their minority languages with the public institutions. This is also blatant in the conditions set up for this right, which are defined according to rather vague formulations. In fact, paragraph 2 stipulates that “in areas inhabited by persons belonging to national minorities, *traditionally or in substantial numbers*, if those persons so request, and where such a request corresponds to a *real need*, the Parties shall endeavour 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” (Art. 10(2), FCNM, emphasis added).

Whereas the criterion of “traditionally” is never specified, it is even more aggravating that the condition of “substantial numbers”, is left in the

vague. Indeed, the lack of providing for a numerical threshold, in fact, makes the very vague formulations of “real need”, and “as far as possible”, problematic, since interpretation of these formulations are left to the discretion of the State authorities. Whereas paragraph 2 is left highly imprecise, which in turn makes enforcement a difficult task, paragraph 3 is more precise. Indeed, pertaining to the protection of civil rights, the rights enshrined in this paragraph are of universal application. Hence, it is stipulated that the State authorities are obliged to “guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter” (Art. 10(3), FCNM).

Article 11 pertains to the right of minorities to use their personal names, as well as signs, and other topographical indications in their own minority languages. Whereas the two first paragraphs contain rights, which are granted on a universal basis, the third paragraph is more contextualised, depending upon the numerical size of the minority communities, which once again is not specified, thus curtailing the possibilities of enforcement. Paragraph 1 enshrines the right of minorities to “use his or her surname (patronym) and first names in the minority language, and the right to official recognition of them, according to modalities provided for in their legal system” (Art. 11(1), FCNM). Paragraph 2 stipulates that minorities have a right “to display in his or her minority language signs, inscriptions and other information of a private nature, visible to the public” (Art. 11(2), FCNM). Paragraph 3, finally, enshrines rights of minorities to “display traditional local names, street names and other topographical indications, intended for the public also in the minority language, where there is a *sufficient demand* for such indications” (Art. 11(3), FCNM, emphasis added). However, not only is this right conditional upon “sufficient demand”, which is left unspecified, it is also conditional upon the criteria of “traditionally”, “substantial numbers”, but also on the framework of the State parties “legal system, including, where appropriate, agreements with other States, and taking into account their specific conditions” (Art. 11(3), FCNM). Hence, the many conditions integrated in paragraph 3 make the legal validity of this paragraph problematic since the possibilities of enforcement are highly reduced.

Minority language rights in education

Whereas the right to use the minority language in contacts with official authorities is important, not only as a guarantor of preserving the cultural identity, but also as a guarantor of protecting the civil and political rights of linguistic minority communities, the right to learn to speak one's own minority language constitutes the very essence of preserving one's own cultural identity. Indeed, as stipulated by Article 14 of the FCNM, "the obligation to recognise the right of every person belonging to a national minority to learn his or her minority language concerns one of the principal means by which such individuals can assert and preserve their identity. There can be no exceptions to this" (FCNM 1995b: 21-22). However, at the same time, it should be underlined that diffuse wordings are present in the articles pertaining to minority education as well, and the dilemma between accommodation (promotion of minority language rights in education), and integration (the importance that minorities learn the State language in relation to concerns of national cohesion), is blatant. Indeed, since the learning of the state language is seen as paramount to the preservation of the national cohesion of states, minority language rights in education, "shall be implemented without prejudice to the learning of the official language or the teaching in this language" (Art. 14(6), FCNM). Furthermore, another condition that regulates minority language rights in education, which is underlined by the FCNM, is that "in particular, there must be "sufficient demand" from persons belonging to the relevant national minorities" (FCNM 1995b: 21-22).

The principles regulating the right to learn one's own minority language as well as the right to be instructed in the minority language are included in Articles 12, 13 and 14 of the FCNM. Article 12 does not pertain to minorities' right to be instructed in, or of their minority languages, *per se*, but is more focused on promotion of measures facilitating inter-cultural education. Thus, paragraph 1 stipulates that State parties should, "*where appropriate*, take measures in the fields of education and research, to foster knowledge of the culture, history, language, and religion of their national minorities and of the majority" (Art. 12(1), FCNM, emphasis added). Just like other vague formulations, "appropriate", is not defined and leaves much room for interpretation. Following from paragraph 1, should there be appropriateness of inter-cultural education, States parties are also obligated to "provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of

different communities” (Art. 12(2), FCNM). Paragraph 3, finally, obliges State parties to, “undertake to promote equal opportunities for access to education, at all levels, for persons belonging to national minorities” (Art. 12(3), FCNM).

As regards minority language rights in education proper, Article 13 enshrines the right for minorities to, “set up and to manage their own private educational and training establishments” (Art. 13(1), FCNM). However, this right should be recognised by the State parties, “within the framework of their education system”, and “the exercise of this right shall not entail any financial obligation for the Parties” (Art. 13(1, 2), FCNM). Article 14, finally, regulates minorities’ rights both to be taught the minority language, but also to have the right to be instructed in the minority language. Indeed, as stipulated by paragraph 1, “the Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language” (Art. 14(1), FCNM). Whereas paragraph 1 institutes an inherent right of universal applicability, the rights enshrined in paragraph 2 are context-based, and in the same vein as the previous context-based articles, these conditions are left unspecified, consequently, making enforcement more difficult. Indeed, paragraph 2 stipulates that, “in areas inhabited by persons belonging to national minorities, *traditionally* or in *substantial numbers*, if there is *sufficient demand*, the Parties shall endeavour to ensure, *as far as possible*, and within the framework of their education systems, that persons belonging to these minorities have *adequate opportunities* for being taught the minority language, or for receiving instruction in this language” (Art. 14(2), FCNM, *emphasis added*). However, apart from the conditions already stipulated in paragraph 2, the above rights do not take away the importance of learning the state language, “or the teaching in this language” (Art. 14(3), FCNM).

The dilemmas between, not only integration (necessity of learning the State language for national cohesion concerns) and accommodation (provisions enshrined for minority education), but also between the goals (political), and the means (capacity), are blatant. Indeed, even though minority language rights in education are generously provided for, since the FCNM does declare that minorities have the right to set up and to run their own educational establishments, at the same time, it is added that the State in question has no responsibility in funding such establishments

(Art. 13). Furthermore, even though minorities are granted rights to learn their mother tongue, as well as rights to be instructed in their minority languages, provisions as to “the learning of the official language, or the teaching in this language”, are made concomitantly (Art. 14(3)).

METHODOLOGICAL CONSIDERATIONS

The comparative design

Methodologically, the research question presupposes a comparative approach, both in terms of the temporal distance to the prospective EU membership reward of the recipient states, constituting the empirical base, but also in terms of the time-frame of the analysis. By using the most similar systems design, the selection of states, that constitutes the empirical base, has been made according to a set of similar criteria, considered crucial for the investigation, where the only divergence is the recipient states' temporal distance to the prospective EU membership reward. First, enlargement preferences in each state under investigation are assumed to be strong. Second, the selected states are all European, which means that, in principle, they all qualify for EU-membership. To claim that all states under investigation are European is controversial, since the term European is elastic and pertains not only to geographical delimitations, but also to cultural borders. In fact, whereas it would be unproblematic to label states like Moldova, Ukraine and Belarus as being European, the "European merits of Caucasian states like Georgia, Armenia, and Azerbaijan are more questionable" (Berglund et al. 2009: 70). However, since all states under investigation are part of the EU political conditionality, and at least as concerns the Eastern European states of ENP-conditionality, could be argued not to be excluded from the European hemisphere, the merits of the Caucasian states in the investigation at hand are argued to qualify as European.

Third, all states are post-communist states, having constituted parts of two larger federal political systems, whose societies are multi-ethnic in character, thus, composed of significant segments of national minorities. Fourth, all states have been involved, to a greater or lesser extent, in violent ethno-political conflicts since the end of the Cold War, and the demise of communism, which means that all states can be described as states with powerful "minority nationalisms" (Kymlicka 2007: 194). This means that the selection of states has been based on the criterion that there has to be significant conflict, or policy misfit, between the EU

minority language rights conditions, and the domestic policies in the respective recipient states, prior to becoming part of EU conditionality. Thus, in the states under investigation, it is assumed that minority rights provisions are generally viewed upon as illegitimate, and that state governments at the receiving end, would not go about changing minority rights policies, if there would not be any EU external incentives. This criterion is deemed crucial for methodological reasons, since it is argued that difficult cases will call for stronger and more visible reactions from the EU. This, in turn, is argued to facilitate the measurement of how the speed of the prospective EU membership reward, in fact, impacts on the progress made in the level of rule adoption, pertaining to the area of minority language rights in the recipient states. The states under scrutiny, however, differ in one important aspect: how close or distant they are to EU membership. Since the level of rule adoption is assumed to vary in relation to the speed of the prospective EU membership reward, we can categorise the states accordingly.

The first category includes Croatia and the Former Yugoslav Republic of Macedonia, states that acquired status as candidate states, in 2004 and 2005, respectively. Turkey, Iceland, and Montenegro are also candidate states, but for different reasons, have not been included in this study. Turkey, a candidate state since 1999, is perhaps the most difficult case in terms of having been excluded; the most obvious reason being the issue of the strong Kurdish minority nationalism, and the conflictive nature of relations with the Turkish government. In fact, the Turkish government's lack of protecting rights of national minorities, and especially the Kurdish one, was one of the reasons²⁹ not to accept continued negotiations on the Turkish EU membership application. However, even though the nature of the ethno-political conflict, at times, has been violent, Turkey does not qualify in terms of the fact that it is not a post-communist state. The

²⁹ Even though Turkey did not comply with the political criteria, the controversy over the Turkish candidature is not only limited to Turkey not having successfully complied with human rights and the protection of national minorities. The question of Turkish EU-membership, which splits the European Council into those who are in favour and those who are against, has much more to do with questions related to power struggles where the very size of Turkey would decrease the political influence of especially the big three: France, Germany and the UK. In the vivid debates within the Council there is also the controversy of religion; since Turkey is an Islamic state with one part in Europe and the bigger part in Asia, the issue concerns whether Turkey could actually be considered European at all, or rather whether Turkey could be qualified as a state of European values.

omission of Iceland is in no way controversial, since it only qualifies as against the criterion of being a European state, and having strong enlargement preferences. Montenegro, on the other hand, does qualify in all respects, except for the fact, that the temporal dimension of the candidature of Montenegro places limits on whether the newly independent state should, in fact, be integrated in the study. Since the material collected for the analysis is confined to the period 2003 – 2010, and Montenegro acquired status as a candidate state as late as in 2010, for natural purposes there are no annual progress reports available as concerns Montenegro. Since the research question presupposes the measuring of the progress made in the level of rule adoption, consequently, Montenegro has also been omitted from the study.

The second category includes Bosnia and Herzegovina, Kosovo³⁰, and Serbia, which all acquired status as potential candidate states in 2003, when signing the Stabilisation and Association Agreements (SAA). The SAAs were established with the specific aim of integrating the Western Balkan States into the European framework, with possible EU-membership, conditional upon the EU *acquis* and the Copenhagen criteria. Whereas Serbia can be considered an independent state, according to the Westphalian model of sovereignty, as defined by the exclusion of external actors from exercising authority or effective control within the borders of a given state (Krasner in Krieger 2006: 71), both Bosnia and Herzegovina and Kosovo can be considered semi-protectorates (Noutcheva 2006: 1-4). This is particularly blatant in the sense that international organisations, still to a considerable extent, exert authority over both the civil administration and the military, since there is still international deployment of both civil and military staff for the maintenance of peace and security. In the case of Bosnia and Herzegovina, this means that, even though the state does enjoy

³⁰ The Kosovo status as defined in UNSC resolution 1244. Cf. UN, S/RES/1244 (1999), New York, 10 June 1999, <http://www.un.org/DOCS/scres/1999/sc99.htm>, 2010-12-12.

international legal sovereignty³¹, both Westphalian as well as domestic sovereignty³² is undermined by the presence of international bodies.

The Kosovo status is even more problematic, and even though Kosovo has its own Constitution since 2008, following the unilateral proclamation of independence, not even half of the states in the international society recognise the independence of Kosovo, which means that Kosovo does not even enjoy international legal sovereignty to its fullest. However, just like Bosnia and Herzegovina, Kosovo is part of the Stabilisation and Association Process (SAP) and under review from the monitoring of the EU annual Progress Reports since 2005, which subsequently means that progress can be measured on the basis of the same monitoring procedure as the other states under scrutiny. Albania is also a potential candidate state, since it is part of the SAA; however, Albania is not integrated in the study on the grounds that it has not experienced violent ethnic conflict since the demise of communism, and does not characterise as a state with strong minority nationalism.

The last category includes Azerbaijan, Georgia, and Moldova, states which neither are candidate states nor potential candidate states, but where a closer cooperation, based on political conditionality, was established with the signing of the European Neighbourhood Policy (ENP) in 2004 (Moldova), and 2006 (Azerbaijan and Georgia). However, in the states forming this third category, there have been no statements from the EU as to whether these states would possibly ever qualify for EU-membership. States that have signed the ENP conditionality package are bordering states to the EU, both in the Southern hemisphere, with the Northern African states, as well as the states bordering the EU on the Eurasian continent. Since the investigation presupposes that the states, forming the empirical base, are part of the European hemisphere, the states of Northern Africa have been excluded. Apart from Azerbaijan, Georgia, and Moldova, three other Eastern European states have signed

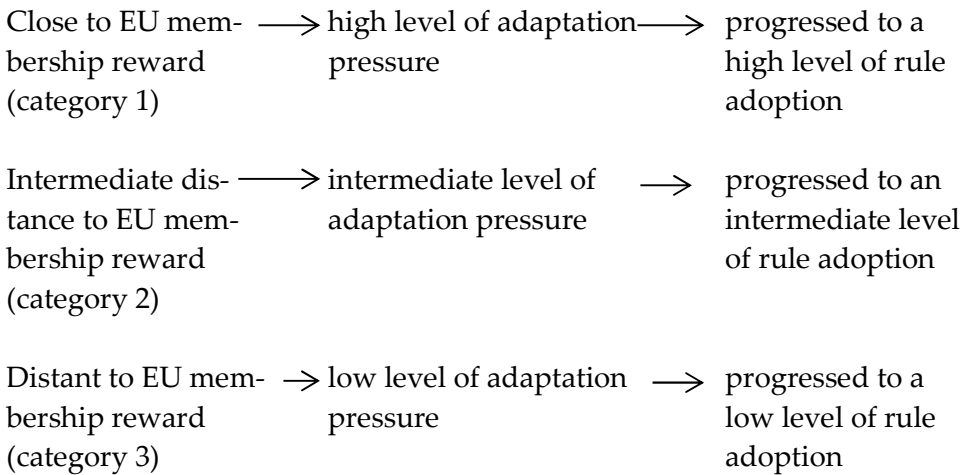
³¹ Krasner categorises sovereignty according to four different types: Westphalian sovereignty, domestic sovereignty, interdependence sovereignty and international legal sovereignty. The latter refers to the “mutual recognition of states or other entities” (Krasner in Krieger 2006: 77-90).

³² According to the typology provided by Krasner, domestic sovereignty refers to “the organization of public authority within a state and to the level of effective control exercised by those holding authority” (Krasner in Krieger 2006: 77).

the ENP conditionality, namely Belarus, Ukraine, and Armenia. Belarus does not qualify, since the state has not experienced violent ethnic conflict since the end of the Cold War, and cannot be characterised as a state with strong minority nationalism. The exclusion of Ukraine is more controversial, since the state did experience a dispute over Crimea. However, since that dispute did not develop into a violent ethno-political conflict, but was resolved in a rather peaceful manner, Ukraine has been considered not to qualify as against the criteria set. Furthermore, even though the state has conflictive divisions, between the western and the eastern parts, the state does not qualify against the criterion set for strong minority nationalisms. Armenia has been omitted from the study on the grounds that it is a highly mono-ethnic state. Thus, even though Armenia would qualify in accordance with the other criteria set for this study, the development of Armenia into a highly mono-ethnic society disqualifies the state, in terms of the investigation at hand. The last category is thus distinct from the first two since there is little prospect of EU membership, at least in the foreseeable future.

On the basis of our empirical base, and according to our categorisation, it is thus expected that by 2010, the level of rule adoption would have progressed to be the highest in Croatia and the Former Yugoslav Republic of Macedonia (category 1: candidate states), to have acquired an intermediate level in Bosnia, Kosovo, and Serbia (category 2: potential candidate states) and to have progressed the least in Azerbaijan, Georgia, and Moldova (category 3: ENP states).

Fig. 4.1. Speed of reward hypothesis and categorisation of the empirical base



The pitfall of the categorisation lies in the enlargement process itself, namely that the process is constantly moving, which means that it is a challenge to construct static categories. Thus, the dynamics of the enlargement process could, in turn, entail that one recipient state which is, at the time of writing, categorised as a candidate state could become a member state during the process of investigation. In fact, Croatia, a candidate state since 2004, has made strong progress in the accession negotiations and has already entered the final phase³³, which subsequently means that Croatia has the potential of becoming a member state in the not too distant future.³⁴ The dynamics of the enlargement process could also potentially mean that Serbia, as having advanced³⁵ in the category “potential candidate states”, could very well migrate into the category of the candidate states. The possible fluctuation of recipient states from one category to another, could become a methodological problem, however, if we limit the temporal dimension of the study to 2010, then the current categorisation would still be valid. In the following,

³³ European Commission (2010) *Croatia 2010 Progress Report*, SEC (2010) 1326, Brussels, 9 November 2010.

³⁴ The rapid development of the negotiations on accession coincides with the Croatian government’s revised position on the ICTY and its acceptance since 2010 to release the Croatian war criminals to be put on trial in the Hague Tribunal.

³⁵ On 22 December 2009, Serbia handed over the application for EU membership, cf. European Commission (2010) *Serbia 2010 Progress Report*, SEC (2010) 1330, Brussels, 9 November 2010.

the investigation is limited both in time and in space. The time frame of the study is limited to the period 2003 (when Serbia, Bosnia and Herzegovina and Kosovo acquired status as potential candidate states), and 2010, which would then safeguard against any possible fluctuations during consecutive years. Rule adoption in minority language rights legislation have been limited to the areas of non-discrimination, minority language use in official contexts, and minority language rights in education.

Measuring progress in minority language rights legislation

Measuring the progress in the level of rule adoption in the area of minority language rights is a complex endeavour, since rights pertaining to minority rights protection have been lacking in EU internal consistency, displaying weaknesses in both clarity, and legality and, therefore, lacking in clear benchmarks. Furthermore, a second weakness emanates from the difficulty in isolating the EU impact from domestic incentives as concerns the legal changes, made in connection to the EU set objectives. However, as stated previously, given the securitised minority-majority relations left by the legacies of war, in the states forming our empirical base, it is assumed that recipient states' governments would not go about changing legislation in the area of minority language rights protection, would there not be any EU external incentives. In view of these challenges, and as underlined by Sasse, the way forward seems to be to measure compliance, "against the domestic follow-up on the actual complaints and recommendations, including legal changes, made by the EU" (Sasse 2008: 843).

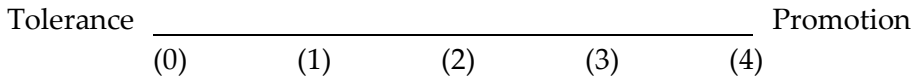
Norm compliance in this study is equated solely with rule adoption, i.e. legislative behaviour of recipient states' governments. The argument why I have chosen to equate norm compliance with rule adoption of legislation is, primarily, due to the fact that legislative behaviour and legislative change are easier to measure. Furthermore, since the measurement of the progress made in the level of rule adoption will be based on the monitoring reports of both the EU, and the Council of Europe (CoE), which are both based on measuring legislative behaviour, since "this approach ensures equal treatment for all countries and permits an objective assessment of each country in terms of its concrete progress

in preparing for accession" (EU 2005 Progress Report on Croatia: 4), legislative behaviour is argued to facilitate comparison. It is important to stress, however, that rule adoption of legislation does in no way equate implementation thereof. This means that the study is not concerned with analysing whether the legislation adopted, in fact, is implemented in practice or not.

On the basis of both Dunbar's categorisation, as well as Schweltnus operationalisation of rule adoption in five issue areas of minority rights protection (Schweltnus et al. 2009: 6-7), minority language rights will be investigated pertaining to three categories, namely: non-discrimination; minority language use in official contexts, and minority language rights in education. Since the investigation hypothesises that the progress made in the level of rule adoption, is assumed to vary according to the temporal distance of the recipient states, which have been categorised accordingly, the progress made in the level of rule adoption will be measured on the basis of the progress reports of both the EU, as well as on the basis of the Opinions of the CoE's Advisory Committee. Thus, the closer the recipient states are to becoming EU members, the more likely the progress in the level of rule adoption is assumed to be high. Following from this, it is argued that the candidate states are likely to have progressed to a higher level of rule adoption than the potential candidate states, which are temporally more distant to the prospective EU membership reward. In the category the furthest away from the prospective EU membership, progress in the level of rule adoption is assumed to be the least rapid.

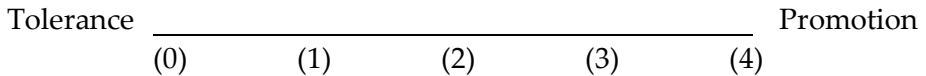
Each category is based on a continuum, varying from the least tolerant to the most promoted. Hence, on the basis of each category and the two ideal-types, three ordinal scales can be established, enabling the measurement of progress, on the basis of the values given to each indicator. The progress will be measured individually, on the basis of each category, which will determine values for each recipient state for each category. Measurement will also be carried out by putting together all three categories, giving each recipient state a total value, based on the progress made.

Fig. 4.2. Ordinal scale: Non-discrimination



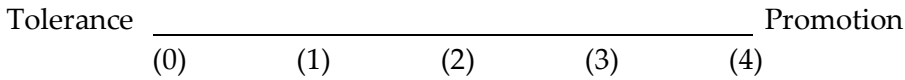
- (0): Absence of any non-discrimination norm;
- (1): General provisions such as an equality clause in the Constitution;
- (2): Non-discrimination laws are inserted in specific laws (language laws for instance) which entails a partial transposition of the EU Directives;
- (3): Comprehensive anti-discrimination legislation which then means that there has been a complete transposition of the EU anti-discrimination *acquis*;
- (4): Non-discrimination laws exceed the minimum requirements of the Directive.

Fig. 4.3. Ordinal scale: Minority language use in official contexts



- (0): No recognition of minority languages;
- (1): The right to use the minority language in official contexts (before judicial and administrative authorities; i.e. the right to a translator);
- (2): The minority language can be used in Personal and Place Names (public signs);
- (3): The minority language can be used in official documents;
- (4): Minority language having status as official language.

Fig. 4.4. Ordinal scale: Minority language rights in education



- (0): No education of or in minority language;
- (1): Children belonging to minorities have the right to learn their mother tongue in school;
- (2): At least parts of the curriculum (e.g. history or religion) are taught in the minority language;
- (3): Minorities have the right to educate their children completely in the mother tongue, either in state schools with a complete syllabus taught in the minority language or in specific minority schools;
- (4): Minorities have their own universities.

The research question has presupposed a methodological design, where the categorisation of the recipient states, is based on their temporal distance to the prospective EU membership reward. Therefore, in order to be able to analyse the progress made, the status of each recipient state upon gaining status as candidate state, potential candidate state, and ENP state respectively, will be determined on the basis of the assessments of both the EU Commission, and also the Advisory Committee of the Council of Europe. Thus, on the basis of the values each recipient state will be given upon accession to the different statuses, this will, consequently, permit an analysis of the subsequent progress made, enabling us to determine the explanatory power of the speed dimension's impact upon the progress made in the level of rule adoption.

The material

The material used to analyse how the speed dimension impacts on the progress in rule adoption, pertaining to the three categories of minority language rights in the eight cases under investigation, ranges from official reports and documents of the EU, primarily through the Stabilisation and Association Process (SAp), the Stabilisation and Association Agreements (SAA), and the respective bilateral negotiations, which are formalised in the European Partnerships for each state, and which all set the objectives and the conditions for the candidate states, as well as the potential

candidate states, under investigation. Furthermore, the bilateral Action Plans, which define the objectives for the states in the European Neighbourhood Policy (ENP), will be analysed. Other non-EU documents, that constitute the basis of the material, is the Council of Europe's Framework Convention (FCNM), which will be evaluated first, on the basis of whether the states under investigation have signed and ratified the legally binding document, but also on the basis of the reports provided for by the CoE Advisory Committee on the Framework Convention for the Protection of National Minorities and the Committee of Ministers, which will inform of how the states have progressed in relation to the articles pertaining to the minority language rights provisions under investigation.

For the sake of objectivity and comparability, the primary source for analysing the impact of the speed dimension on progress in rule adoption in the respective states under investigation, is mainly based on the EU Commission's annual progress reports as well as the opinion reports prepared by the Advisory Committee of the Council of Europe. Even though the EU Progress Reports are written by the Commission, coordinated by the Directorate General of Enlargement, the reports are based on material gained from various sources. Thus, information is provided by the annual State Reports from the recipient state governments, from EU members, from International organisations like the CoE, OSCE, UNHCR, ICTY etc. The Progress Reports are also based on information gained from NGOs. Apart from the official documents and reports, case study literature from the disciplines of both political science as well international law will be used, as well as reports from minority rights NGO's³⁶.

³⁶ Especially Minority Rights Group International is an NGO that publishes up-to-date analyses on the current minority rights situations in the states under investigation.

THE YUGOSLAV TRAGEDY

From construction to deconstruction

The history of the Balkans, in general, and the former Yugoslavia in particular, is one of the complex patterns of national groupings that, early on, constituted the battleground for imperial expansionism and conquest. After centuries of competition between the Byzantine Empire and the Roman Empire, the ensuing long-lasting conflict in the Balkans was to be the one between the Eastern Ottoman Empire and the Western European powers and more specifically the Habsburg Empire. Whereas Croatia and Slovenia were never completely colonised by the Ottomans and thus remained part of the Christian western hemisphere, the present-day territories of Serbia, Former Yugoslav Republic of Macedonia³⁷, Montenegro, Bosnia and Herzegovina and Kosovo were subjugated to Ottoman rule for centuries. At the Congress of Berlin both Serbia³⁸ and Montenegro became independent and as a consequence of the Serbian victory in the Balkan wars of 1912 and 1913 both Kosovo and Macedonia “were annexed to the Kingdom of Serbia” (Briza 2000: 7). The Balkan wars had constituted the final blow to the Ottoman Empire and a few years later with the end of World War I the demise of the Austro-Hungarian, German and Russian Empires was inevitable.

The idea about the necessity of constructing a state assembling all South Slavs³⁹ already emerged in the nineteenth century especially among Croat and Serbian intellectuals since “the economic and cultural advancement made South Slavs increasingly aware of their ethnical and linguistic kinship” (Bilandzic 1972: 13). However, the new state in the making remained an idea in an embryonic form until the outbreak of World War I

³⁷ The Former Yugoslav Republic of Macedonia will hereinafter be labelled Macedonia.

³⁸ The principality of Serbia had had *de facto* independence since the Serbian uprising in 1804 and the subsequent conquest of Belgrade in 1806. Cf. (Lukic in Ramet 2010: 45).

³⁹ The people that constituted the South Slavs were apart from the Croats, Serbs and Slovenes also the Bulgarians. Whereas the Slovenian national identity developed as late as the 19th century, the collective memories of nationhood and statehood of the Serbs, Croats and Bulgarians reach back to Medieval times and that’s why they belong to the old South Slavs. Cf. (Banac 1988: 23).

where exogenous factors (the fall of Empires) along with particularly Serbian but also Croatian interests made possible the promotion of a union between the South Slavs. Hence, in December 1914, the Serbian Prime Minister, Nikola Pasic, “obtained parliamentary approval of a statement that declared Serbia’s principal war aim to be the liberation and unification of Serbs, Croats and Slovenes” (Dragnich 1983: 5). After 1918, when the peoples of the former Empire were granted the freedom to decide their own fate, the Serbs, Croats and Slovenes chose to stay together and form a common state.

Based on the Treaty of Corfu⁴⁰, the first Yugoslav state was proclaimed in December 1918 as the Kingdom of Serbs, Croats and Slovenes, comprising also of Bosnia and Herzegovina, Montenegro and Macedonia. As a consequence of the new Yugoslav state, the two Kingdoms of Serbia and Montenegro ceased to exist. On the basis of the Corfu Declaration, the Constitution was enacted on June 28 in 1921, establishing the new state as a constitutional parliamentary democracy, providing for “a democratically elected unicameral parliament (Skupstina), with ministers responsible to it and to the king” (Dragnich 1983: 25). The Corfu Declaration, furthermore, stated that the monarchy was going to be headed by the Serbian ruling house, Karadjordjevic. (Dragnich 1983: 7) Even though the first Yugoslav state was established on the principle of the legal equality of the Serbs, Croats and Slovenes, the Constitution “adopted the concept of the single “Serbo-Croatian-Slovenian” nation which then acted as justification for establishing a nation-state based on the principle of one nation – one state. Not only was the artificial construction of the one nation-state a futile endeavour, it was seen as an outright blasphemy especially of the Croatian nation and only aggravated an already sensitive inter-nationality problem, especially as concerned the Croat animosity towards the Serbs.⁴¹ Since the quintessence of the state

⁴⁰ The Corfu Declaration consisted of fourteen points and declared that the Yugoslav state “was to be a constitutional, democratic, and parliamentary monarchy headed by the Serbian ruling house, Karadjordjevic. It was to be a unitary state, and the constitution for the new union was to be framed by a constituent assembly and adopted by a numerically qualified majority” (Dragnich 1983: 7). Serbia having been invaded during World War I, the Serbian government was in exile on the Greek island of Corfu.

⁴¹ Already in 1915 a leading Croatian member of the Yugoslavia Committee, in the deliberations on the new Kingdom, had raised concerns as to the nature of the new State in that “the Croats wanted a common state with the Serbs, he said, but at the same time they desired to preserve their individuality in that state” (Dragnich 1983: 8).

was the unity of both state and nation, the division of the Yugoslav state into 33 regions was therefore not based on any ethnic criteria but was pursued according to the “natural, social and economic conditions” of the regions. (Bilandzic 1972: 27)

Even though the nationality problem overshadowed existing social and economic divisions, it is nevertheless true that the gaps between the industrialised⁴² North and the agrarian South became particularly acute with the interwar recession. (Dragnich 1983: 72) Ethnic strife had culminated in 1928, with the assassinations in parliament which led to an enduring political crisis that the fragile democratic institutions were incapable of handling. As a consequence thereof, King Alexander assumed personal rule on the 6th of January in 1929. Although the dictatorial regime was softened in 1931, the ethnic tensions between primarily Croats and Serbs only augmented. The culmination of the tensions reached its peak in 1934, when on the instigation of Croat nationalists a Macedonian nationalist assassinated the Serbian King. (Briza 2000: 7) The political instability and the interethnic tensions of the first Yugoslavia facilitated the invasion of the Axis powers which finally brought an end to the regime in 1941. In 1941, Germany, Bulgaria, and Italy invaded Yugoslavia which disintegrated into its constituent parts and came under the tutelage of the Axis powers during WW II. In 1941, Croatia established the Independent State of Croatia⁴³ on the territory of both Croatia and Bosnia and Herzegovina, a fascist state within the sphere of influence of the Axis powers which adopted the genocidal policy of the Nazi regime. This resulted in extermination campaigns, not only against the Jews and the Roma, but also and primarily against the Serbs⁴⁴, in order to “purge Croatia of foreign elements” (Lattimer 2003: 7). During the fascist regime, the Partisan insurgency, in majority composed

⁴² Even though there was a division between the richer, more industrialised North and the poorer, agrarian South, the industrial sector was little developed in the 1920s. Cf. (Dragnich 1983: 72).

⁴³ The Independent state of Croatia is also called Ustashi which refers to the fascist nature of the Croatian regime. Cf. (Briza 2000: 7).

⁴⁴ During 1941-1945 and the Croatian genocidal campaigns, some 500 000 Serbs are believed to have been killed; some 250 000 expelled and another 200 000 who were made to convert into Roman Catholicism. Cf. (Lattimer 2003: 7). Not only Serbs were the targets during the Ustashi regime; the purge was also directed at Croatian insurgents and it has been estimated that approximately 192 000 Croats were killed along with 103 000 Moslems. Cf. (Ramet 2006: 161).

of Croats and Montenegrins, was led by Tito, the Croat who was to become the strong man of the second Yugoslavia.

The Federal People's Republic of Yugoslavia was proclaimed on the 20th of November 1945. Being fully aware that the root cause of the failure of the first Yugoslavia had been the nationality question, the second socialist state was based on a federative structure where the equality of all six constituent republics would be guaranteed. Thus, on the basis of the Federal Constitution, each of the six republics enacted their own "autonomous" Constitutions. Even though the autonomy of the People's Republics was from the beginning heavily restrained by the centralistic policies of the Federation, the individuality of each nation, displaying characteristics of individual statehood, was reflected in the fact that each Republic "had their own national flag and coat of arms, which expressed their national individuality and historical traditions" (Bilandzic 1972: 60). At the outset, although it was clear that the communists did constitute an important unifying factor⁴⁵, the "integrative force" of socialism never succeeded in erasing the nationality problem in the Socialist Federal Republic of Yugoslavia.

Already from the beginning of the 1960s, the nationality problem came to the fore, indicating that the coexistence between the two foundational components⁴⁶ of the communist platform in fact cohabited uneasily. Indeed, the centralistic foundation of the Communist Party was contrary to the autonomy concerns, based on the equality of the constituent nations, of the Republics. The paradoxical effect was that, however opposed to the policy of unitarism that had been "characteristic of pre-war bourgeois Yugoslavia", Tito, and the chief ideologists of the Communist Party, in fact, attempted to preserve the same ideology of unitarism. (Bilandzic 1972: 92) This, consequently, led to the ever present problem of the separation of powers, both legally as well as politically. Thus, from the 1960s and onwards, "the conflict between the centrifugal

⁴⁵ The unifying factor of the Communist Party in the first decade of the Federal Republic's existence is primarily explained by the role the Communists played in liberating Yugoslavia from both the external invaders but also from the internal perpetrators in the form of the Croat Ustasis and the Serb Chetniks. Cf. (Sekulic et al. 1994: 86).

⁴⁶ Apart from the revolutionary component and the establishment of a new political system, the platform of the Yugoslav Communist Party was also based on the nationality component and the establishment of the equality of all constituent nations. Cf. (Bilandzic 1972: 47).

and the centripetal forces” was at the core of the numerous Constitutional amendments and revisions the Socialist Republic underwent. (Dragnich 1983: 86)

Legally, the balance between the centrifugal and the centripetal forces can be connected to several federal stages during the existence of the SFRY. Characteristic of all stages is, however, the imbalance in the separation of powers between the federal and the republican level. From the beginning, the heavy imbalance in favour of the centripetal forces would constantly evolve towards a heavy imbalance in favour of the centrifugal forces. By the end of the 1980s, this had led to a situation where the Republics had gained the status of sovereign states, which entailed that the political system of the SFRY was legally more of a confederation than a federation. Politically, however, due to the centralistic policies of the Communist Party, the imbalance had partly remained in favour of the centripetal forces. Consequently, when the crumbling of the communist system began in the late 1980s, the Republics had the legal right to both national self-determination as well as the right to secession. Despite the fall of communism, the legal right soon became a political problem, both internally, as well as externally.

The demographic dimension

The historical legacies of the Balkans had entailed a myriad of nations inhabiting the states and nations which were to form the first Yugoslav state in 1918. Although there were similarities between the Serbs, Croats and Slovenes, mainly ascribed to the fact that they largely spoke the same language, the divisions were greater. The internal divisions were a direct consequence of the long-lasting imperial conquests of the Ottomans and the Habsburgs respectively, which had left their traces on the societal constructions of the different nations to varying degrees. The differences were mainly religious, although other societal differences prevailed as well. While most Serbs adhered to the Orthodox Church⁴⁷, Croats and Slovenes had early on converted to Roman Catholicism. In Bosnia and Herzegovina, the impact of the imperial conquests was the most blatant.

⁴⁷ The impact of the Ottomans and the Islamic faith had had little impact on the Serbs whose religious affiliation early on was consolidated in the Orthodox Church; the latter becoming an important driving force in the development of Serbian nationalism especially in the 19th and 20th centuries. Cf. (Lukic in Ramet 2010: 44-45; Briza 2000: 8).

Its territorial setting, in between Serbia (under Ottoman tutelage between the 14th and 19th century), and Croatia (under Hungarian and Habsburg rule between 12th and 20th century), had entailed important migratory movements of especially Serbs and Croats, as well as an enduring impact of Islam that many Bosnians converted to early on. Furthermore, the early settlements of Albanians in the Serbian region of Kosovo-Metohija had entailed that the majority of the population of Kosovo adhered to the Islamic faith. In consequence, the future six constituent republics of the Socialist Federal Republic of Yugoslavia were heavily multi-ethnic in character⁴⁸.

The nationality problem, as it was to develop in the two Yugoslavias, does pertain to the North-West – South-East cleavage and particularly centres around the conflict between the two most numerically important South Slav nations, the Serbs and the Croats. However conflictive the relationship developed in the first Yugoslavia, relations had started out rather peacefully to counter a common enemy, the infidels from the Ottoman Empire. In fact, in the 16th century, and due to the advancing Turks, who had made territorial conquests as far as Dalmatia in present-day Croatia, the Habsburg rulers had “invited the Serbs to escape their own subjugation under Turkish rule and join them in Croatia, where, in return for land, they could help guard the border - Krajina⁴⁹ - between Christendom and the infidel” (Swain & Swain 2003: 258). Concomitantly, however, the Serb mercenaries were also used to hold down any nationalistic strife from the Croat and the Hungarian feudal peasants. Apart from land, the Serb minority also acquired other privileges and national rights⁵⁰, which meant that, “as border guards, Serbs enjoyed the

⁴⁸ Except for Slovenia that remained highly mono-ethnic in character. This furthermore explains why the secession of Slovenia from the Federation in 1991 never constituted a real problem since there were no national minorities to complicate the situation. Cf. (Swain & Swain 2003: 258).

⁴⁹ In the 16th century, Croatia virtually became the centre of the battlefield between Christendom and the advancement of the Infidels of the Ottoman Empire. When the Turks had advanced as far as Dalmatia in the Krajina region of the southern parts of Croatia, the Krajina region became an important military outpost to protect the further advancement of the Ottomans into the heartland of the Habsburg Empire. Cf. (Lattimer 2003: 6).

⁵⁰ The Serb community in Croatia acquired national self-government including educational autonomy from the Austrian Habsburg Emperors between late 17th to mid-18th century. Cf. (Lattimer 2003: 6).

status as free farmers excluded from Croatian parliamentary rule” (Lattimer 2003: 6). This meant that Croatia came to have a historically settled and numerically⁵¹ important Serb minority, with extended autonomy, in the southern parts of present-day Croatia, bordering on Bosnia and Herzegovina.

The nation-building processes of the Serbs and Croats, respectively, bore similarities in that they both had experienced early and strong nation-building processes, where both nations “maintained a collective memory of their medieval statehood, and this memory survived in various forms” (Banac 1988: 23). The importance of the historic autonomy of Croat statehood⁵², and its individuality, would become a constitutive identity marker, especially pertinent from the late 18th century in the Croat national revival and onwards. The collective memory of the Serbs was fertilised by a glorious past of the Serbian Empire, which had peaked during the 14th century, before the expansionist policies of the Serbian Empire were momentarily stopped by the Ottomans on the battlefield at Kosovo Polje in 1389.⁵³

The successful Serbian opposition to the Ottomans subsequently led to the early forming of the Serb nation-state, *de facto* since 1806 during the Belgrade uprisings⁵⁴, and *de jure* since 1878. The Croats, however, never constituted a nation-state, but were living under semi-independent

⁵¹ Before the Yugoslav war of Succession in the beginning of the 1990s the Serb minority in Croatia amounted to approximately 12%. Cf. (Ramet 2010: 266).

⁵² The Croatian Kingdom was formed already in 925 and even though the Kingdom early on became intermingled with, or subjugated to, the Hungarian Kingdom (1102-1527) and the Habsburg Empire (1527-1918), at least the collective memory of Croat statehood remained. There is controversy over whether Croatian statehood was preserved under the union of the Kingdoms of Hungary and Croatia (1102 – 1527) where some claim that the union was more of a Hungarian conquest than a union based on unanimity of mutual interests. Furthermore, even though the Habsburg Empire gave extensive autonomy to Croatia during 1527 – 1868, it is still debatable whether Croatian statehood can be labelled as independent, at least in the Westphalian sense of the term. For a discussion on the controversy over Croatian statehood, cf. (Bellamy 2003: 36).

⁵³ The symbolic legacy of the Kosovo territory as the cradle of the Serb nationhood became an important tool in the Serbian aggressive nationalist policies in the 1980s and 1990s. Cf. (Trix in Ramet 2010: 359).

⁵⁴ Serbia had in fact been a *de facto* independent state since the Serbian revolt against the Ottoman tutelage in 1804 and the conquest of Belgrade in 1806 which “mark the beginning of the construction of the Serbian nation-state” (Lukic in Ramet 2010: 45).

circumstances in multinational polities. This, in turn, constituted the breeding ground for two opposing nationalisms. Whereas Croatian nationalism was based on self-determination and separatism, the Serbian nationalism, on the other hand, favoured centralism and hegemony, formulated in “the concept of Greater Serbia”, which was to become particularly articulate in the 19th century and the beginning of the 20th century. (Bilandzic 1972: 161) Furthermore, religious affiliation became an important identity marker in the national development of both Croats, and particularly the Serbs. Thus, where Croat nationalism, early on, was consolidated in the Roman Catholic Church, the conversion of the Serbs to the Orthodox Church⁵⁵, was to become a constitutive characteristic of Serb nationalism. Indeed, “the Roman Catholic and the Orthodox churches were driving forces in the national development of the Croatian and Serb nation” (Baltic 2007: 8).

The domineering size of both Croats but particularly the Serbs in the two Yugoslavias indicates a problematic demographic situation, considering the incompatibility of the two nations, especially as concerned their opposing visions of Yugoslav statehood. Furthermore, with neither nation ever approaching a majority status, in parallel to the fact that Serbs and Croats, in particular, were heavily territorially dispersed, the multi-ethnic character of the Republics and Provinces rendered the inter-republican territorial divisions complicated. Indeed, apart from Serbia proper⁵⁶, the Serbs were living in four of the other Republics⁵⁷, as well as in the two Autonomous Provinces. The dispersion of the Croats was also important and encompassed three Republics⁵⁸ and the Serbian province of Vojvodina. This, in turn, meant that five of the six Republics contained pockets of national minorities which were territorially concentrated in the

⁵⁵ The Orthodox Church played an important part in the violent nationalistic policies during the Serbian leadership of Milosevic during the 1980s and the 1990s. Cf. (Briza 2000: 10).

⁵⁶ Serbia proper refers to the Serbian mainland territory exempting the Serbian Autonomous provinces, Vojvodina and Kosovo-Metohija.

⁵⁷ The Serbs accounted for 31.2% in Bosnia and Herzegovina, 12.2% in Croatia, 9.4% in Montenegro and 2.1% in Macedonia. Cf. (Baltic 2007: 36-41)

⁵⁸ Apart from Croatia, Croats were territorially settled in Bosnia and Herzegovina (17.4%), in Serbia they were primarily settled in the Autonomous Province of Vojvodina (7.1%) and also in Slovenia (2.8%). Cf. (Dragnich 1983: 3).

various regions of the Republics.⁵⁹ From 1918 to 1991, there was a sharp increase in the size of the population from 12 to 20 million. The changes in the national structure within the two Yugoslavias during the 20th century are primarily explained from migratory movements, as well as from varying fertility rates between the various nations.

Table 5.1. The development of the size of nations and nationalities in the SHS and the Socialist Federal Republic of Yugoslavia according to the censuses in percentages from 1918 to 1991 (data retrieved from Banac 1988: 58 and Baltic 2007: 25)

Nationality	1918 in %	1948 in %	1961 in %	1971 in %	1981 in %	1991 in %
Serbs	38.8	41.5	42.1	39.6	36.3	36.2
Croats	23.8	24.0	23.1	22.0	19.7	19.7
Slovenes	8.5	9.0	8.6	8.2	7.8	7.5
Muslims	6.1	5.1	5.2	8.4	8.9	10.0
Macedonians	4.9 ⁶⁰	5.1	5.6	5.8	6.0	5.8
Albanians	3.7	4.8	4.9	6.4	7.7	9.3
Montenegrins	⁻⁶¹	2.7	2.8	2.5	2.6	2.3
Bulgarians	-	0.4	0.3	0.3	0.2	-
Czechs	⁻⁶²	0.2	0.2	0.1	-	-
Others	14.2	7.2	7.2	6.7	10.8	9.2
Total	100	100	100	100	100	100

Furthermore, apart from the constitutive nations of the SFRY, the two recognised nationalities of the Hungarians and the Albanians also constituted ethnically concentrated minorities in the Republics. The Hungarian minority was historically settled in Croatia and in the Serbian Autonomous Province of Vojvodina, and the Albanian minority came to constitute an overwhelming majority in Kosovo, but also a significant portion of the population in Macedonia. Therefore, when the internal

⁵⁹ Except for Bosnia and Herzegovina where no internal borders partitioned the Croats, Serbs and Bosniaks. Cf. (Swain & Swain 2003: 258-259).

⁶⁰ In the 1918 census the Macedonians and the Bulgarians were categorised as one. Cf. (Banac 1988: 58).

⁶¹ Montenegrins were not categorised in the 1918 census. Cf. (Banac 1988: 58).

⁶² Czechs were not categorised separately in the 1918 census. Cf. (Banac 1988: 58).

territorial demarcations were drawn between both the Republics, as well as the Provinces, the assumption was that these divisions would be “intra-national, administrative divisions to help run a multinational state in an area where history had laughed at the notion of a nation state (Swain & Swain 2003: 258). With the dissolution of Yugoslavia in the 1990s, these divisions, both intra-Republic as well as inter-Republic, were one of the main factors why the ensuing violent interethnic conflicts became particularly bloody.

Minority language rights protection in the former Socialist Federal Republic of Yugoslavia

Language is one of the most fundamental identity markers in the building-blocks of creating a common identity, which was apparent throughout the nation-building processes of the 18th and 19th centuries in Europe. When the South Slavs were coming together in the Kingdom of Serbs, Croats and Slovenes, it was the linguistic kinship that became the determinant around which the three nations, at the outset, attempted to create the fundament of the new state. However, the linguistic kinship was a fragile bond since there wasn't one South Slav language but in fact a myriad of languages or rather dialects. In fact, during the Croatian national revival in the 18th century, the linguistic issue was to become the battleground on which Croats⁶³ and Serbs were defining their respective linguistic specificities, at the same time as there were efforts to determine which one of the dialects would constitute the common language of the South Slavs. (Banac 1988: 75-84)

The Stokavian dialect was used by an overwhelming majority of Serbs and also a majority of Croats. The Slovenes, however, used an idiom which was very similar to the second biggest Croatian dialect, the Kajkavian. The major conflict, however, was not the one between Stokavian and Kajkavian, it was the cleavage between the Orthodox Slavs

⁶³ There were also divisions within the Croat camp as concerned which linguistic branch was to become the Croat national language. In fact, Croats spoke three different dialects which were fairly divergent and belonged to three specific language zones. In the Northwest around Zagreb, the Kajkavian dialect was in use, very similar to the Slovene language. Whereas in Istria, forming parts of littoral Dalmatia and the Adriatic islands, Croats spoke Cakavian (in decline and in little use) and finally in the rest of Croatia, Croats spoke the Stokavian dialect which is also the spoken language of an overwhelming majority of Serbs. Cf. (Banac 1988: 77).

(predominantly Serb), adhering to the Cyrillic alphabet, and the Roman Catholic Slavs (predominantly Croat and Slovene), using the Latin alphabet. Hence, the division between the Serbo-Croat (Cyrillic) and the Croat-Serbian (Latin) “languages” was to remain a conflict line. In the first Yugoslavia, Serb hegemony violently discriminated against any linguistic diversity and in the second Socialist Yugoslavia, although recognising all constituent nations’ languages as being “in official use at the federal level” (Baltic 2007: 34), nationalist strife based on linguistic issues was prevalent.

National rights and minority rights⁶⁴ were legally protected through the general non-discrimination norm where individuals were protected from discrimination, as stipulated in articles 13 and 21 of the 1946 Federal Constitution. Article 21, section III stated that, “acts privileging or restraining persons based on nationality, race or confession of faith were unconstitutional and punishable” (Baltic 2007: 31). Furthermore, the non-discrimination norm was also confirmed in the “Law on the Prohibition of Provocation of National, Racial or Religious Hatred and Disruption” (Baltic 2007: 31). Based on the “liberation of nationalities’ component”, Yugoslavia under communist rule did not have one official state language, but seven languages had an equal legal status as being official languages. These languages were, respectively, the Serbo-Croat (Cyrillic), the Croatian literary language (Latin), Serbo-Croat or Croat-Serbian (Cyrillic and Latin), Macedonian (Cyrillic), Slovene (Latin), as well as two languages of the nationalities, namely Albanian and Hungarian. (Baltic 2007: 34) This, in turn, implied that language rights were naturally extensive and provided for in different administrative regulations. In the Code of Procedure of the Federal Assembly, provisions were made so that each deputy had the right to use his mother tongue in his daily work. Also, the use of language in Public Courts, gave the right to “any party that did not have mastery of the procedural language, to use its own mother tongue, as well as to access to the procedural material provided by an interpreter, if necessary” (Baltic 2007: 31-32).

⁶⁴ In fact, the term minority was hardly in use during the SFRY regime since it was considered pejorative. Instead, the term nationality, referring to “the members (of) the people that (were) organized into a nation, with (their) own written language and other features and which had a “native nation” outside the borders of Yugoslavia” was used. Cf. (Baltic 2007: 25).

Minority language rights were also extensively provided for in the Federal Constitution, as article 43 codified the rights of minorities to the free use of the language, as well as guaranteed the right of minorities to be instructed in the minority languages in education. Minority languages were specified as being either the mother tongue or the second language. Hence, and depending on the size of minorities at the local level, schools could be bilingual where minority languages “could be the language of instruction or the subject of instruction” (Baltic 2007: 36).

Even though much of the rights and regulations concerning minority rights had increasingly been transferred to the Republican level, the basic principles were regulated on the Federal level and had to be adopted by the respective Republics. In accordance with the federal level, the Republican constitutions were henceforth regulating minority rights provisions and their implementation locally. (Baltic 2007: 33) On the Republican level, national rights and minority rights were increasingly⁶⁵ provided for, especially in the Republics and Autonomous Provinces with concentrated sizeable minority groups. In the Federal Constitution of 1963, the strengthening of language rights was confirmed in article 41 and the guaranteeing of “the free use of language to all citizens”⁶⁶ (Baltic 2007: 32). Also, the 1963 Constitution, article 42, stressed the equality of the languages, including the equality of the alphabets, of “the *nations of Yugoslavia*” (Baltic 2007: 32).

Linguistic rights in Education were guaranteed by the Constitution, both on the Federal, as well as on the Republican level. Implementation of the laws regulating education and the guaranteed right of education in minority languages were carried out on the local level which, in turn, meant that “the school models in nationally mixed regions throughout Yugoslavia differed from one to another” (Baltic 2007: 36). Therefore and paradoxically, where education generally is a forceful instrument of creating a common identity, the effect became the reverse in the SFRY regime since the education systems were based on “republic-level control

⁶⁵ Since the 1963 Constitution meant a federalisation of Yugoslavia this is also visible pertaining to minority rights which were extensively provided for in the cultural and educational fields. Cf. (Baltic 2007: 32).

⁶⁶ The equality of the languages of nations and nationalities consequently meant that in the highly multi-ethnic Vojvodina “there were municipalities where proceedings were conducted in up to five or six different languages” (Baltic 2007: 35).

of curriculum content and the teaching of separate national histories in each republic" (Seculic et al. 1994: 94). This, in turn, meant that national specificities were enhanced to the detriment of creating a common history and, what is more, a common language. Consequently, the different educational systems became a breeding-ground for nationalistic sentiment, since all could develop their own understanding of history, as well as develop their own national specificity.

The deconstruction of the former Socialist Federal Republic of Yugoslavia

In the second Yugoslavia, the nationality problem was anticipated to naturally die out due to the "integrating force" of socialism. After 35 years of communist rule, however, interethnic strife had slowly, but surely, been allowed to develop in the country, which consequently meant that when the communist system started to disintegrate in the late 1980s, it was to become replaced by nationalism. The economic breakdown of the Yugoslav economy which had nurtured ethnic rivalry and tensions, subsequently leading to the unilateral secessions of both Slovenia and Croatia in 1991, followed by the Bosnian and Macedonian proclamations of independence in 1992, all rapidly endorsed by the EU, propelled Yugoslavia into civil war. Even though the War of Succession, fought between 1991 and 1995, did not include Kosovo, the Kosovo issue dominated the nationalistic agenda of the Serbian political leadership in the late 1980s.

Tensions in the Serbian Autonomous Province of Kosovo had been building up ever since the death of Tito in 1980. The tensions were based on the Kosovo Albanian claims for further autonomy, on the one hand, and on the other, resentments from Serbia and the continuous exodus of the Kosovo Serb minority.⁶⁷ In 1981, riots broke out in Kosovo which exacerbated Serb nationalistic sentiment, of which the famous Memorandum of the Serbian Academy of Sciences and Art, a document

⁶⁷ Even though human rights violations against the Serb minority in Kosovo have been attested by observers, the primary reason of the exodus is however argued to be due to economic reasons. Over 30 000 Serbs and Montenegrins are believed to have left Kosovo during 1971 – 1981. Cf. (Briza 2000: 12).

produced by former nationalist dissidents, opposed to Titoism⁶⁸, expressed the quintessence of the Serbian nationalistic project. The Memorandum declared that the constitutional order from 1974⁶⁹ denied the Serbs their right to their own state and that, not only Kosovo, but “the western Yugoslav republics, were exploiting Serbia economically, and that the regime was acquiescing in the Albanian “genocide” of Serbs in Kosovo, as well as in Croatia’s assimilation of its Serb population” (Hoare in Ramet 2010: 115). When Slobodan Milosevic came to power in 1987, he endorsed the conclusion of the Memorandum, which stated that the status of Kosovo was primordial to the very survival of the Serb nation. Thus, logically following from this, the autonomy of Kosovo was suppressed in 1989, later manifest in the Serb Constitution of 1990, which lowered the Province of Kosovo to the rank of District and renamed it Kosovo-Metohija.

Later that same year, ethnic tensions propagated to other Republics, heavily spurred by the disastrous economic situation, and in 1990, the tensions had taken on “a clear Croat-Serbian dimension” (Swain & Swain 2003: 225). Even though the Yugoslav war of Succession included all the Yugoslav Republics, except Macedonia, it was primarily a war which was fought between Serbs and Croats in Slovenia, Croatia and later in Bosnia and Herzegovina. The on-going Kosovo issue in the beginning of the 1990s, characterised by the pacifist resistance of the Kosovo-Albanians to the violent discriminatory policies of the Serbs, was to explode into a full blown war in between the Serb-dominated Yugoslav National Army (JNA) and the Kosovo Liberation Army (KLA) between 1996 and 1999. Finally, the early successes of the conflict preventive missions of the UN and the OSCE in Macedonia would prove insufficient, as the repercussions of the Albanian issue in the Kosovo war were to spill over to Macedonian territory in 2001.

The run-up to the war of Yugoslav Succession, apart from its structural conflict dimension, was activated by the Croatian elections, held on 22

⁶⁸ Serbian opposition to Titoism and the constitutional order implemented by the 1974 Constitution accelerated after Tito’s death. Cf. (Hoare in Ramet 2010: 115).

⁶⁹ In the 1974 Constitution Kosovo was upgraded to the status of federal unit equivalent to that of Vojvodina. This in turn led to that both Autonomous Provinces, since constituting federal units were almost on the same legal footing as the Republics which considerably increased their independence vis-à-vis Belgrade. Cf. (Ramet 1984: 158-159).

April and 6-7 May 1990. On a highly nationalistic programme, Franjo Tudjman⁷⁰ won the elections and on the 30th of May, “was elected president of the Croatian presidency” (Swain & Swain 2003: 227). The following year, the culmination of three specific events, taking place in the time-span of 11 days in 1991, catapulted the region into civil war and bloodshed. The first event took place on the 8th of May, when Slovenia declared its intention to secede from the SFRY, subsequently proclaiming independence on the 25th of June. Second, on the 12th of May, the self-proclaimed Serb ‘Autonomous Region of Krajina’ in the Croatian Republic⁷¹ voted in a regional referendum to remain part of Yugoslavia. Third, in a referendum on the 19th of May, 90% of the population in Croatia voted for secession and on the same day as Slovenia, 25th of June 1991, unilaterally withdrew from the FRY. (Swain & Swain 2003: 227)

Whereas the war in Slovenia was almost over before it had begun (the war lasted 10 days), the war in Croatia lasted for 4 years, in between 1991 – 1995. The war in Slovenia was short because, in reality, the independence of Slovenia was posing few problems to the Serbs since the republic was almost exclusively constituted by ethnic Slovenes with almost no national minorities to complicate the situation. The situation in Croatia was the reverse. With a numerically important, and a highly concentrated Serb minority, especially in the Krajina region, the self-proclaimed secession of Croatia was violently reacted on by the large Serb community. In fact, even before the unilateral secession of Croatia was proclaimed, fighting between the Krajina Serb insurgents and Croats had started out in Eastern Slavonia. The fighting between Serb insurgents in Croatia⁷², who wanted to stay part of the SFRY, and Croats, thus started at the border between Serbia and Croatia which, in turn, meant that “the issues of Croatian independence and the rights of the Serb minority within Croatia became intertwined” (Swain & Swain 2003: 260).

⁷⁰ Franjo Tudjman had played an important part in the autonomy strives of Croatia during the Tito regime. In fact, having heavily criticised the centralistic policies of the Communist Party he was sentenced to prison on the charge of being a menace to the Yugoslav state. Cf. (Baltic 2007: 16).

⁷¹ The build-up of ethnic tensions between Croats and Serbs played out in the Serb towns of Knin and Benkovac where the Serb minority had set up blockades against Croatian police in October 1990, subsequently declaring an independent Serb enclave. Cf. (Swain & Swain 2003: 227).

⁷² The Croatian Serbs were in fact one of the ethnic groups “the most loyal to the communist regime in the entire federation” (Swain & Swain 2003: 460).

Although concentrated from the start to the North-East, where Serb insurgents, with the help of the Yugoslav National Army, took rapid control of approximately 30% of Croatian territory, the war between Croats and Serbs soon developed into all of Croatia. By the end of 1991, the successes of the Serb contingents, having killed and expelled Croats from their homes, had created a pseudo-state consisting of Serbs in Croatia which had been *de facto* annexed to Serbia between 1991 and 1995. (Lukic in Ramet 2010: 51-52)

When Bosnia and Herzegovina declared independence in 1992, much of the Serb-Croat conflict moved to Bosnia and Herzegovina, beginning as an open war between the two primary antagonists, Croats and Serbs, and continued as a proxy war before it was ended by the international community 3 ½ years later. (Swain & Swain 2003: 259) Thus, just like in the war in Croatia, the Serbian political leadership was using community leaders in Bosnia and Herzegovina to stir up resistance. (Lukic in Ramet 2010: 51-52) However, since Bosnia and Herzegovina consisted of three constituent nations which were highly dispersed, the Bosnian war became particularly violent and was to constitute one of the worst battlegrounds of ethnic cleansing on European soil since World War II. The Yugoslav War of Succession lasted for 4 years and was terminated by the Dayton Peace Agreement in 1995. One year later, in 1996, when the peaceful resistance of the Kosovars did not show any sign of success⁷³, the Kosovo conflict developed into a proper war in 1998, subsequently ended by the NATO intervention in 1999.

I think it is fair to say that the Kosovo conflict has been the most symbolically value-laden conflict of all the ethnic conflicts played out in the region. The division between Serbs and Kosovo-Albanians, although separated by the two most important identity markers, language and religion⁷⁴, is primarily rooted in a conflict over a common territory over which both peoples claim exclusive authority. The international law

⁷³ The resistance of the Kosovars had not succeeded in ameliorating their situation but rather the contrary, worsening the discriminatory situation that became untenable. Cf. (Trix in Ramet 2010: 362-363).

⁷⁴ Where the religious affiliation was not central to the Albanian national identity, the linguistic marker is. Cf. (Roux 1992: 205). For the Serbs however, the religious identity was the very core of the Serb national identity thus Serb aversion towards the Albanians is explained by a classical religious antagonism which dates back to the Islamic infidels of the Ottoman Empire. Cf. (Radic in de Nebojsa 1998: 137-138).

dimension of the Kosovo conflict became acute when the Kosovo Albanians started to declare their right to national self-determination, responded to by the Serbs who advocated the principle of territorial integrity. Thus, on the one hand the Albanians referred to the UN Charter, and the principle on the basis of which every nation living under colonial domination or other types of guardianship, i.e. foreign occupation or racial discrimination, have a legitimate right to exercise their right to self-determination. The Serbs, however, refused to recognise the existence of any type of colonial domination in Kosovo, thus promulgating the counter-argument that international law does not allow the right to secede, neither to national minorities, nor to nations.

The right to secession was, however, not a problem in the Macedonian case, since its withdrawal from the SFRY in 1992, went practically unnoticed. In fact, Macedonia became the only former Yugoslav Republic to have succeeded in seceding from the SFRY without bloodshed as a consequence. However, due to the numerically important Albanian minority in Macedonia, and primarily due to the possible spill-over of the Kosovo “issue” into Macedonia, the former Macedonian President Gligorov invited the OSCE and the UN⁷⁵, to deploy conflict preventive missions on Macedonian territory in the first years of Macedonian independence.

Even though the conflict preventive missions were largely successful⁷⁶, the Kosovo war, and its effects, started to have repercussions on the hostilities between the numerically large Albanian minority and the ethnic Macedonians. Thus, the escalation of the Kosovo war, in 1998-1999, eventually resulted in the spill-over of the conflict and the outbreak of increasing conflict between ethnic Macedonians and the Albanian

⁷⁵ The UN Mission was the first mission of preventive diplomacy with a fairly large military contingent. By UN resolution 983 of 31 March 1995, the Security Council made the preventive detachment, UNPROFOR, an operation of maintenance of peace in its own right as the UN Preventive Deployment Force. Cf. United Nations, S/RES/983 (1995), New York, 31 March 1995, <http://www.un.org/Docs/scres/1995/scres95.htm>, 2011-09-12.

⁷⁶ Success is however a controversial term to use in relation to conflict preventive actions since there is an inherent limit in the validity of measurement of conflict preventive action since one never knows whether the hostilities that are prevented would ever have escalated into a violent conflict had there not been preventive action. Cf. Pioppi, D. (2001) “Conflict Prevention: Measuring the Unmeasurable?” in *The International Spectator*, Vol. 36, No. 2, April-June 2001.

minority in Macedonia. Even though the demilitarisation of the Kosovo Liberation Army and the establishment of the Kosovo Protection Corps were a direct consequence of the NATO-intervention in Kosovo, and the subsequent UN resolution 1244, of June 10th 1999, the KLA had remained active. After 6 months of conflict between the Macedonian security forces and the Macedonian Albanian rebels, the conflict ended with the Ohrid Peace Agreement, brokered in August 2001 by EU and US envoys.

Thus, the violent dissolution of Yugoslavia had produced new states, with varying records of democracy-building and interethnic hostilities, consequently entailing various degrees of intervention and supervision from the international community (EU, NATO and UN). What is common to them, however, is that all successor states under investigation, Croatia, Macedonia, Serbia, Bosnia and Herzegovina, and Kosovo are on track of EU-membership and that all, therefore, have to comply with EU conditionality and the criteria set up for minority language rights protection.

CROATIA AND MINORITY LANGUAGE RIGHTS PROTECTION

Croatian independence

Croatian political history is a history of a nation which has been living in different multinational settings⁷⁷ with varying degrees of autonomy but always being reminiscent of the sovereign Croatian Kingdom (925 – 1102). Croatian political history is also one of constant fluidity of both territorial borders as well as the malleability of borders between political communities. Subsequently, cohabitation with different nations and nationalities throughout the centuries became a constant. Whereas the development of interethnic relations went rather smoothly with the Muslims, Slovenes, Hungarians and the Italians, the relationship with the large Serb community on Croatian soil was to develop according to increasing hostility, exploding in genocidal policies both during the Ustashi regime (1941-1945), and eventually in the wars of Yugoslav dissolution in the 1990s. During the SFRY regime, the cohabitation between Serbs and Croats was however managed since it was tightly controlled by communist rule. Indeed, although Croat animosity towards Serb hegemony was manifest in the cultural, political and economic domains and demands for increased autonomy were continuously voiced from the 1960s, the legal standing of the Serbs in the multinational Socialist Republic of Croatia was prominent. The Croatian Constitution defined Croatia as “the national state of Croats, Serbs in Croatia and other nationalities” (Lattimer 2003: 7-8).⁷⁸

⁷⁷ The multinational context in which Croats found themselves started already in 1102 when the Hungarian conquest led to a forced union, under Hungarian royalty, of the two Kingdoms. From 1527 the Croats acquired a semi-autonomous status under the Habsburg rule and in 1868 acquired autonomy from Budapest with the signing of the “Compromise” by Hungary and the Triune Kingdom, composed of Croatia, Slavonia and Dalmatia which “created a new sort of political community” (Lukic in Ramet 2010: 43).

⁷⁸ The particular legal status of the Serb nation was due both to its considerable numerical size (12.2% according to the 1991 census) and also due to the protected status of the Krajina Serbs which had gained extensive autonomy under the Habsburgs in the 17th and 18th centuries. Cf. (Lattimer 2003: 38).

With the crumbling of the communist order and the subsequent proclamation of Croatian independence, the latent interethnic hostilities between Croats and Serbs exploded into outright war. The threat towards the newly independent state came both from within the newly established international borders (from the unilaterally proclaimed Croatian Serbs Krajina Republic), as well as from the Socialist Republic of Serbia. The Constitution of 1990, adopted on the 22 December 1990, established Croatia as a unitary state with a semi-presidential system and a parliamentary form of government. (Art. 1 of the Constitution) Hence, the executive power was divided between the Prime Minister and his government and the President, with the legislative power invested in the bicameral Parliament (*Sabor*), the directly elected House of Representatives and the indirectly elected House of Counties. The elections of April and May 1990 were held in a climate of nationalistic euphoria, which paved the way for the newly established party, the Croatian Democratic Union (HDZ) which, on a highly nationalistic party programme gained the majority of the votes. Franjo Tudjman, the founder of the HDZ, as well as the symbolic figure of the Croatian Spring movement⁷⁹, “was elected president of the Croatian presidency” (Swain & Swain 2003: 227).

The following year, in a popular referendum on the 19th of May 1991, 90% of the population in Croatia voted in favour of independence, which subsequently led to the unilateral withdrawal of Croatia from the SFRY on the 25th of June 1991. The Tudjman rule, which lasted from 1990 to 1999⁸⁰, was naturally coinciding with Croatia’s homeland war, which only exacerbated, as well as legitimated, Tudjman’s rule and popularity. The extensive powers which the Constitution granted to the presidential office were effectively used by Tudjman, which, in turn, meant that political power during this period was more or less monopolised in the hands of a charismatic leader. Mate Granic, a close associate and Foreign minister of the Tudjman government (1993 – 2000), described the

⁷⁹ Initially the “Croatian Spring” movement was an organised resistance against the dominance of the Serbian language and an attempt to restore the independence of the Croatian language. What started as a movement for linguistic independence was however to become a movement for more generalised autonomy demands. Cf. (Baltic 2007: 16).

⁸⁰ Tudjman died in office but rumours had it that Tudjman had been planning to make changes to the Constitution in order for him to have the right to be re-elected for a third time. Cf. (Ramet 2010: 268)

omnipotence of Tudjman in his memoirs, noting that “Tudjman had complete control over the ministries of defence, foreign affairs, and police, as well as over the information services, and for a while he also controlled the Ministry of Finance” (Granic cited in Ramet 2010: 259).

Tudjman was then well placed to capitalise on the strong nationalistic currents and had, more or less, “carte blanche” to implement his nationalistic agenda. The core of Tudjman’s successful strategy was to convince the electorate that the survival of the Croatian nation was threatened and this necessarily meant the restoration of Croatia as a state of the Croatian nation. The strategy had three components: “(1) identify and stigmatize a national enemy; (2) unite the nation against this threat; and (3) call for resistance” (Duffy & Lindstrom 2002: 78). In parallel to stigmatising the other (the Serbs), which also meant massive redundancies of Serbs from official positions (especially from the judiciary), as well as the prohibition of using the Cyrillic alphabet, the government also “initiated a campaign of Croatian symbolism, renaming the streets named after notable Serbs or anti-Fascists, or Serbian towns” (Vladisavljevic 2004: 7).

As a precondition⁸¹ for gaining international recognition of Croatian independence, the Croatian Parliament had adopted the Constitutional Law on Human Rights and Freedoms of National and Ethnic Communities in December 1991. (Lattimer 2003: 19) However, the lack of commitment to implement the law, as well as the HDZ’s stronghold of Parliament, meant that the political rights of particularly the Serbs could cleverly be juggled with. In fact, each of the parliamentary elections of 1990, 1992, 1993, 1995, 2000 and 2003, were effectively carried out according to different electoral laws, and the electoral law, passed prior to the 1995 elections, “annulled certain rights granted to Croatia’s Serb minority under the 1990 constitution and, accordingly, reduced the number of parliamentary seats reserved for them to three” (Ramet 2010: 269).

⁸¹ The preconditions were formulated by the Badinter Commission and included amongst other things “the inviolability of borders and guarantees for the rights of ethnic groups and minorities” (Hoffmann in Ullman 1996: 99). Diplomatic recognition of Croatian independence was made by the EU member states on the 15th of January 1992. Cf. (Lattimer 2003: 9).

Even though the cult of Tudjman persevered after his death in 1999, there was a reorientation in Croatian politics from 2000, when the country entered a new transitional stage towards democratisation and the start towards EU integration. In fact, in the elections of the 3rd of January 2000, the HDZ was voted out of government and during 2000 – 2003⁸², a coalition of six parties⁸³, headed by the Social Democratic Party (SDP), reoriented the country on a path towards democratic reform. In order to come to terms with the extended powers of the Presidency, the amendments to the Constitution, passed in 2000 and 2001, downgraded the powers of the presidency and made the Office of Prime minister “the most powerful political office in Croatia” (Ramet 2010: 269). Thus, the semi-presidential system was abandoned and replaced by a parliamentary system, where the governmental powers were strengthened to the detriment of the presidential ones. The bicameral parliament was reformed into a single chamber by a constitutional amendment in 2001. (Art. 146) Furthermore, in order to strengthen local self-government and come to terms with prior restrictions on the competencies of the local units (towns, municipalities and counties)⁸⁴, the Law on Local and Regional Self-Government was adopted by the Croatian Parliament in 2001. (Lattimer 2003: 19)

However, even though there was a reorientation of Croatian politics with a path towards democratisation, taking place in parallel with the road towards European integration with Croatia’s application for EU membership in February 2003⁸⁵, this reorientation has not been without its problems. In fact, the legacies of the wars and the undemocratic regime under the Tudjman rule had left marks on Croatian politics even

⁸² However, a reformed, less nationalistic HDZ, regained power in the 2003 elections “capturing 66 seats in the *Sabor*, against 34 for the SDP” (Ramet 2010: 270). The same result was confirmed by the 2007 parliamentary elections whereby Sanader formed a coalition government with the Croatian Peasant Party (HSS) and the Croatian Social Liberal Party (HSLs). (Ramet 2010: 272)

⁸³ Apart from the Social Democratic Party, the other political parties in government were: The Croatian Social Liberal Party (HSLs), the Croatian People’s Party (HNS), the Croatian Peasant Party (HSS), the Liberal Party (LS) and the Istrian Democratic Assembly (IDS). The IDS, formed in 1990 to “defend the interests of the people of Istria” later left the coalition government. Cf. (Ramet 2010: 268-269).

⁸⁴ The local units in Croatia are the 426 municipalities, the 121 towns and the 20 counties. Zagreb has the status of a county. Cf. (EU Report 2004: 14).

⁸⁵ Croatia applied for EU membership on the 21st of February 2003 which was accepted by the Council of Ministers on the 14th of April that same year. Cf. (EU Report 2004: 4).

after 2000 and effectively slowed down Croatia's path to EU integration. Indeed, the problematic relationship between the Croatian government and the International Criminal Tribunal for the former Yugoslavia (ICTY) has been complicated and, at times, hostile due to the government's unwillingness to extradite war criminals to the Tribunal⁸⁶. Thus, however pro-Western and pro-European the Croatian policy since 2000 at times this reorientation has seemed to have been made rather reluctantly.

The demographic dimension

Croatia is a multinational state with a landmass stretching over 56.542 km² bordering on Slovenia and Hungary in the north and Serbia, Bosnia and Herzegovina, and Montenegro to the southeast. The population of Croatia amounts to 4,456,096 according to the 2011 census⁸⁷. Before the war in 1991, Croats in Croatia amounted to approximately 78% of the population with the most important national "minority" being the Serbs who exceeded 12%. Due to the historic legacy of Croatia, the Serbs had constituted the majority of Eastern Slavonia, quite an important Croatian landmass neighbouring Serbia as well as having constituted an important community in the Krajina region. Thus, prior to the wars of Yugoslav Succession and Croatian independence, the territorially concentrated Serbs had acquired extensive autonomy and their legal status was not one of national minority but one of nation. Prior to the outbreak of the war, in the 1991 census, Croatian citizens declared themselves to be members of 23 nationalities of which 22 are today recognised as having legal status as national minorities. In the 1991 census, apart from the most numerous Serb minority amounting to 12.2% and those identifying as Yugoslavs⁸⁸, the numerically biggest minorities were the Muslims (0.9%), Slovenians (0.5%), Hungarians (0.5%) and Italians (0.4%) (see Table 6.1.).

The ethnic wars in both Croatia and Bosnia and Herzegovina had resulted in both ethnic cleansing as well as massive refugee movements

⁸⁶ The complicated relationship is grounded in the fact that whereas the ICTY has viewed these persons as war criminals the media and especially the state television have oftentimes depicted the indicted as war heroes. Cf. (Lattimer 2003: 28-29).

⁸⁷ The figures have been accessed from the Croatian Bureau of Statistics, http://www.dzs.hr/default_e.htm, 2011-10-09.

⁸⁸ The construction of a Yugoslav identity largely failed and was from its inception, officially at least, constructed as a category in the census of 1961 pertaining to those "nationally non-committed persons" (Sekulic et al. 1994: 84).

which had drastically changed the demographic structure of the Croatian society. According to the 2001 census, the share of Croats had increased from 78.1% to 89.6% at the same time as the proportion of Serbs had become significantly decimated, from 12.2 to a mere 4.5%. Furthermore, the Bosniaks, a national minority which was not recorded in the 1991 census, had become the second largest minority group in Croatia after the war, amounting to 0.5%. Two national groups who had identified as Yugoslavs and Muslims, having been respectively the 3rd and 4th largest minority groups prior to the war had completely vanished⁸⁹ from the 2001 census. Apart from the Serbs and the Bosniaks, the Italians constituted the 3rd largest group (0.4%), followed by the Hungarians (0.4%), and the Albanians (0.3%). (See Table 3) Consequently, the wars in both Croatia and the neighbouring Bosnia and Herzegovina had created more ethnically homogenous territories.

The changes in the demographic structure not only refer to a numerical decrease in the number of ethnic minorities, especially the Serb one, but also pertain to a decrease in territorially-bound minorities. In fact, as opposed to the pre-war situation, Croatia of today is a state where ethnic minorities are dispersed (and not ethnically concentrated), which subsequently means that no minority groups are “able to demand power-sharing as a form of regulating their status” (Lattimer 2003: 12). Thus, minorities that do enjoy a certain level of territorial autonomy, like the Serb minority in Eastern Slavonia, “insist on their rights, preferring identity protection rather than power-sharing” (Lattimer 2003: 12).

⁸⁹ Of course the entire groups had not vanished but preferred to be labelled as Bosniaks.

Table 6.1. Ethnic structure of the population in Croatia according to the 1991 census and the 2001 census (data retrieved from Lattimer 2003: 5 and Croatia Bureau of Statistics, http://www.dzs.hr/default_en.htm, 2011-10-09)

Nationality	1991 number	1991 %	2001 number	2001 %
Albanians	12.032	0.3	15.082	0.3
Bosniaks	-	-	20.755	0.5
Croats	3.736.356	78.1	3.977.171	89.6
Czechs	13.086	0.3	10.510	0.2
Germans	2.635	0.1	2.902	0.1
Hungarians	22.355	0.5	16.595	0.4
Italians	21.303	0.4	19.636	0.4
Macedonians	6.280	0.1	4.270	0.1
Montenegrins	9.724	0.2	4.926	0.1
Muslims	43.469	0.9	-	-
Roma	6.695	0.1	9.463	0.2
Ruthenians	3.253	0.1	2.337	-
Serbs	581.663	12.2	201.631	4.5
Slovaks	5.606	0.1	4.712	0.1
Slovenes	22.376	0.5	13.171	0.3
Ukrainians	2.494	0.1	1.977	-
Yugoslavs	106.041	2.2	-	-
Others	7.102	0.1	25.215	0.6
Regional affiliation	45.493	0.9	9.302	0.2
Non-determined	73.376	1.5	89.130	2.0
Unknown	62.926	1.3	17.975	0.4
Total	4.784.265	100	4.437.460	100

The sociolinguistic dimension

Although Croatia has always been a multinational state, apart from the Serbs, the other national minorities were rather small in their numerical sizes. The most commonly spoken languages in Croatia have been, and still are, Croatian, Serbian and Hungarian. (Lattimer 2003: 4) However, since Italian “stands out as a regionally strong and generally prestigious

language with some degree of official and public use" (Bugarski 2004: 197), it certainly deserves mentioning as well.

Even though the language policy of Croatia under communist rule was based on the equality of all nations and national minorities inhabiting Croatia, the Serbo-Croat language had a particular legal standing as it was not only the most used, but also the most widely disputed. In fact, although the Croatian language with its Latin alphabet, and the Serbian with its Cyrillic alphabet, displayed such similarities as to be called the Serbo-Croat language, a generalised dispute over the Serbo-Croat language erupted in the 1960s by Croatian intellectuals who complained about the predominance of the official use of the Serbian language. What started as a conflict over the predominance of the Serbian language soon became a mass movement which had spread to all areas. (Baltic 2007: 16). The magnitude of the demonstrations in time and in space can be seen in that in 1972, 427 persons, including the Croatian president to be, Franjo Tudjman, were arrested and sentenced for "offences against the people and the state" (Baltic 2007: 16). Hence, in the Croatian Constitution of 1974, in the aftermath of the Croatian Spring, recognition of the Literary Croatian language was made and defined as a "standard form of the national language of the Croats and Serbs in Croatia, named Croatian or Serb (language)" (Art. 138 section II, cited in Baltic 2007: 37).

The serious dismantling of the Serbo-Croat language (administratively that is), was, however, actively pursued in Croatia in the run-up to its independence when the necessity of defining the Croatian linguistic specificity, and its superiority, became vital in the state-building process. In fact, in the 1990 Constitution this became evident since it was stated that: "The Croatian language and the Latin script shall be in official use in the Republic of Croatia. In individual local units, another language and the Cyrillic or some other script may be introduced into official use along with the Croatian language and the Latin script under conditions specified by law" (Art. 12). During the Tudjman regime, and still prevailing today, much of the language policy in Croatia has been focusing on "directing the Croatian language away from Serbian and their common Serbo-Croatian heritage by means of purging it from actual or perceived Serbisms and of internationalisms, combined with reviving Croatian archaic and regional forms and creating neologisms" (Bugarski 2004: 197). As concerns the other minority languages, it is true that the

dominance of the Croatian language has been emphasised to the detriment of minority languages. This has been implemented rather easily due to a general decrease of national minorities, and in particular the Serb one, in parallel with the fact that the territorially concentrated minorities that earlier constituted pockets of minorities are today dispersed in a more homogenous Croatian society.

This, along with the implementation of quite high thresholds for the right to use the minority language in official contexts, paves the way for the Croatian language to pervade the whole of Croat society, or at least the very vast majority of it. However, one minority language which stands out as particularly strong and which has successfully escaped the Croatian linguistic “purge” is Italian. In fact, the Italian minority has been “able to use its language in contacts with authorities in a number of towns and municipalities in Istria” (Lattimer 2003: 24). The prestigious status of the Italian language is also seen in the educational system. In Istria, where the majority (approximately 85%) of the Italian minority lives, Italian is widely used in the educational establishments, from nursery school up to secondary schools.

During the SFRY regime, the education system in Croatia was bilingual and Croatia provided “education in the first language and extensive learning of the second language (...) throughout primary and secondary education” (Lattimer 2003: 8). If instruction in the first language was not possible, usually for organisational problems, provisions were made for the pupils to take the minority language as a subject according to a “programme for cherishing minority language and culture” (Lattimer 2003: 8). This minority language right was successfully provided for as concerned education in the Czech, Hungarian, Italian, Ruthenian, Slovakian and Ukrainian languages.

Due to the nationalistic agenda under the Tudjman regime, but also due to changes in the demographic structure, the implementation of minority rights in education was restricted in the first decade of Croatian independence. The numerical decrease of national minorities enabled the government to juggle with the legal rights of minorities by introducing high thresholds which made it practically difficult for minority communities to demand their education rights. However, as concerned the Serb community, which had been downgraded from a constituent

nation to the status of national minority, one of the preconditions of the Erdut Agreement⁹⁰, elaborated simultaneously with the Dayton Peace Agreement, provided for extensive minority rights protection and guarantees of Serb autonomous organisations in Eastern Slavonia.⁹¹ All the other national minorities of Eastern Slavonia also enjoy extensive minority educational rights. (Lattimer 2003: 14) In the rest of Croatia, from the beginning of the 2000s, however varying greatly from municipality to municipality, instruction in minority languages are provided for usually from nursery school up to secondary schools. Apart from Italian and Serbian, instruction in the mother tongue is provided for the Czechs⁹² and the Hungarians. (Lattimer 2003: 13) With the orientation towards European integration, minority language rights protection, as part of EU minority rights protection conditionality, became a precondition in Croatia's path to EU integration. On the 24th of November 2000, Croatia started negotiations on the Stabilisation and Association Agreement and in 2004, acquired status as a candidate state.

Legislation in minority language rights protection upon gaining status as candidate state

As early as the late 1990s, Croatia had started the process of complying with the EU requirements by signing and ratifying the Council of Europe's Framework Convention on National Minorities (FCNM) on the

⁹⁰ The Erdut Agreement was signed by the governments of Croatia and Serbia on the 12th of November 1995. The Agreement consisted of three parts: the first contained provisions for the establishment of a UN Transitional Administration; the second made provisions for extensive minority rights guarantees and the third inaugurated a system of minority rights monitoring. Cf. United States Institute of Peace, "The Erdut Agreement" in *Peace Agreements Digital Collection*, New York, 14 February 2000, http://www.org/files/file/resources/collections/peace_agreements/croatia_erdut_11121995.pdf, 2011-10-11.

⁹¹ Article 6 of the Erdut Agreement states that: "The highest levels of internationally recognized human rights and fundamental freedoms shall be respected in the Region", cf. United States Institute of Peace, "The Erdut Agreement" in *Peace Agreements Digital Collection*, New York, 14 February 2000. After a transitional period of being under UN administration, Eastern Slavonia was finally reintegrated into Croatian governance in 1998. Cf. (Lattimer 2003: 10-11)

⁹² The Czechs migrated into Croatia in the 19th century during the great migratory movements that took place under the Habsburg Monarchy. Cf. (Lattimer 2003: 13).

11th of October 1997.⁹³ One month later, on the 5th of November, even though not part of the EU conditionality package, Croatia also signed and ratified the Council of Europe's European Charter for Regional and Minority Languages (ECRML).⁹⁴ The legal basis of minority rights protection in Croatia is particularly regulated by the Constitution of 1990 and its amendments (last amendment prior to 2004 was made in 2001), the Constitutional Law on the Rights of National Minorities (CLNM), adopted in 2000, and the Law on the Use of Language and Script of National Minorities and the Law on Education in the Language and Script of National Minorities, both adopted in 2000.

Non-discrimination

In the equality clause the Croatian Constitution prohibits discrimination on the grounds of "race, gender, language, religion, political or other belief, national or social origin, property, birth, education, social status or other characteristics" (Art. 14 of the Constitution). The penalisation of discrimination is also enshrined in the Criminal Code, which was amended in 2003 and 2004. Henceforth, the Criminal Code "provides for criminal liability for those who, on the basis of difference in race, sex, colour of skin, nationality or ethnic origin violate basic human rights and freedoms" (EU Report 2004: 21). The amendment to the Labour Code in 2003, furthermore, integrates the prohibition of both direct as well as indirect discrimination in the area of employment. (CoE Report 2004: 13) As regards the Constitutional Law on the Rights of National Minorities, the legal document regulating all areas of minority rights, provisions are made for the protection against both direct and indirect discrimination. (Lattimer 2003: 20) The Human Rights Ombudsman could be argued to be equivalent to the Equality Body required by the Racial and Equality Directive. (EU Report 2004: 87)

The monitoring reports of both the EU as well as the Council of Europe, both published in 2004, conclude that although Croatia has made some progress and has "adopted improved guarantees against discrimination and intolerance" (CoE Report 2004: 13), there are important shortcomings

⁹³ Information accessed via the Council of Europe's website on the FCNM, http://www.coe.int/t/dghl/monitoring/minorities/1_AtGlance/PDF_MapMinorities_bil.pdf, 2011-10-10.

⁹⁴ Information accessed via the Council of Europe's website on the European Charter of Regional and Minority Languages (ECRML), <http://conventions.coe.int>, 2011-10-10.

that need to be addressed for a complete transposition of the EU anti-discrimination *acquis*. The shortcomings which are specifically highlighted are the lack of specific legislation as well as the lack of implementation. (EU Report 2004: 87; CoE Report 2004: 13; 16) Therefore, however positive the introduction of non-discrimination in both the Criminal Code and the Labour Code, the “lack of detailed legislation against discrimination persists in certain key fields, such as education and housing” (CoE Report 2004: 13). This is furthermore aggravated, as pointed out by the CoE Advisory Committee Report, by the scope of application of national minorities which is limited to citizens of Croatia and which then excludes national minorities which lack citizenship. Indeed, Article 5 of the CLNM defines a national minority as “a group of *citizens* whose members traditionally inhabit the territory of the Republic of Croatia, its members having ethnic, linguistic, cultural and/or religious characteristics different from other citizens and are led by the wish to preserve these characteristics” (Art. 5 cited by the CoE Report 2004: 11, emphasis added). The narrow scope of application is especially problematic as regards non-discrimination in education, “especially taking into account that a number of Roma and other persons affiliated with national minorities reside in Croatia without a confirmed citizenship and have had difficulties in acquiring citizenship” (CoE Report 2004: 11).

The lack of specific legislation in housing is also addressed by the monitoring reports of the EU and the CoE, especially in regards to the repossession of property and refugee returns of particularly Croatian Serbs. Indeed, implementation of the Housing Care Programmes⁹⁵, which guarantee the rights of former tenancy holders, needs to be speeded up⁹⁶ in order to “facilitate the return of Serb refugees from Serbia and Bosnia and Herzegovina” (EU Report 2004: 119). Furthermore, even though non-discrimination provisions are integrated in the Criminal Code, the Commission criticises the lack of implementation of non-discrimination in this domain, particularly as concerns discrimination against the Serb

⁹⁵ The Housing Care Programmes were introduced by the Croatian government in 2000 to guarantee the rights of the former tenancy holders in order to facilitate the return of the Croatian Serbs. Cf. OSCE Mission to Croatia Report, “Croatian Government holds information session on housing solutions for former occupancy tenancy rights holders”, November 2006, <http://www.osce.org/zagreb/23615>, 2011-10-14.

⁹⁶ As of the end of 2002, the number of Croatian Serb returnees was poor in that less than 1/3, 96.534 of the refugees had returned to their homeland. Cf. (Lattimer 2003: 32).

community, both generally, as well as pertaining to war criminals. In fact, the Commission points to discrimination against Serbs in the judicial proceedings where Serbs are disadvantaged compared to Croats. In fact, in the judicial proceedings pertaining to extradition of war criminals to the ICTY, “statistical data suggest that a single standard of criminal responsibility is not yet applied equally to all those who face war crime charges before Croatian courts” (EU Report 2004: 31). Furthermore, as regards citizens’ rights to enrol in Croatian higher education institutions, the Commission points out that, “on grounds of nationality laid down in Article 12 of the Treaty, Croatia should take measures to ensure that EU nationals have the right to enrol in its higher education institutions under the same conditions as nationals, without needing to be permanent residents in Croatia, and without having to pay different tuition fees” (EU Report 2004: 59).

Even though Croatia is on their way of complying with the non-discrimination *acquis* pertaining to the Racial and Equality Directive, and has made “some progress in tackling discrimination”, substantial progress needs to be made in order for a complete transposition of the EU anti-discrimination *acquis*. (EU Report 2004: 87). Although Croatia has integrated specific legislation in the areas of employment and the judiciary, the poor record of implementation is troublesome. In fact, the recommendations of the Commission in the area of the judiciary, is complemented with the recommendations of the CoE as regards implementing non-discrimination in the area of employment. In this regard, the Advisory Committee recommends Croatia to “introduce special measures, aimed at guaranteeing persons belonging to national minorities’ full and effective equality in the field of employment” (CoE Report 2004: 16). Furthermore, the lack of specific legislation in key areas, such as education and housing, calls for specific legislation in these areas as well as a redefinition of the CLNM’s narrow scope of national minorities. The recommendations from the Advisory Committee in this regard is that “Croatia should consider amending the CLNM in so far as it provides an *a priori* exclusion of non-citizens from its scope” (CoE Report 2004: 11). Taken altogether, and based on the non-discrimination index, Croatia upon gaining status as a candidate state has well complied with level 1 (having an equality clause in the Constitution). It becomes a question of interpretation whether Croatia should be considered to having complied with level 2.0, namely that non-discrimination have

been integrated in specific laws. Croatia does have specific laws in the areas of employment and the judiciary but lacks non-discrimination in specific laws such as education and housing (RED). It seems unfair to situate Croatia on the level of 1.0 and equally unfair to position her on level 2.0. Consequently, it is argued that Croatia has gained an intermediate position, levelling on 1.5, in between tolerance and promotion.

Fig. 6.1. Croatia and level of rule adoption in non-discrimination upon gaining status as candidate state



- (0): Absence of any non-discrimination norm;
- (1): General provisions such as an equality clause in the Constitution;
- (2): Non-discrimination laws are inserted in specific laws;
- (3): Comprehensive anti-discrimination legislation which then means that there has been a complete transposition of the EU anti-discrimination *acquis*;
- (4): Non-discrimination laws exceed the minimum requirements of the Directive.

Minority language use in official contexts

Legislation pertaining to the use of minority languages in Croatia is provided for in the Constitutional Law on the Rights of National Minorities (CLNM), adopted in December 2002, and the Law on the Use of Languages and Scripts of National Minorities, adopted in May 2000. The special rights of minority language use are specified in the CLNM in articles 7, 9, 10, 12, 13 and 14 and provide for “the use of their language and script, private and public, as well as official use” (Art. 7, para. 1). Official use also pertains to minorities’ rights to use minority languages “in procedures before administrative bodies of local and regional self-government units, in first-instance procedures before government bodies, in first-instance court proceedings, in procedures conducted by the Public Attorney’s Office, notaries public and legal persons with public powers” (CLNM Art. 12, para. 3). Furthermore, guarantees are given to minorities’ use of signs and symbols (Art. 7, para. 3). The right to freely use the

minority language and script, both in private, and in public, is further elaborated in Art. 10 which states that “Members of national minorities shall have the right to freely use their language and script, in private and in public, including the right to display signs, inscriptions and other information in the language and script of their use, in accordance to law” (Art. 10).

However, these rights are limited by numerical thresholds, as articulated by Article 12 of the CLNM that states that, “Equality in the official use of a minority language and script shall be exercised in the territory of a self-government unit where the members of a national minority make at least one third of the population” (CLNM Art. 12, para. 1). Even though the CoE Report acknowledges the positive developments of Croatia in the lowering of the threshold, from a previous obligatory majority to one third, the numerical threshold is still problematic since “it excludes a number of municipalities with a substantial number of persons belonging to national minorities” (CoE Report 2004: 24). The Advisory Committee particularly raises the issue of the Serb minority in the regions of especially Vukovar but also Knin. Whereas the Serb minority amounts to 20.83% in Knin, the Serbs’ share of the population in Vukovar amounts to 32.88% and just falls short of the numerical threshold. (CoE Report 2004: 24) However, the critique of the Advisory Committee is problematic inasmuch as the articles of the FCNM don’t establish any numerical thresholds, given that CoE member states have not reached a consensus on where to set the bar. However, according to indications previously given by the CoE, thresholds around 10-20% would seem reasonable. (Lattimer 2003: 24) A real bone of contention, however, is in regions where the thresholds are met but where problems of implementation have been noted. In fact, “eight units of local self-government have failed to meet their obligation to introduce the official use of a minority language by September 2004, i.e. almost two years after the entry into force of the Constitutional Law on 23 December 2002” (CoE Report 2004: 24-25).

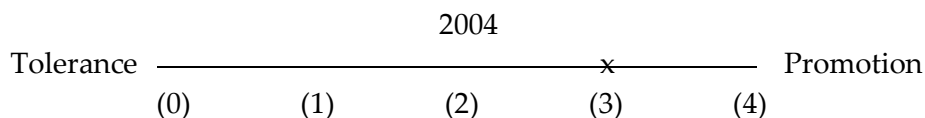
Pertaining to the free use of signs and symbols, these are also conditioned by the statutes of local self-government units which regulate the “official use and the manner of using the flag and the symbols of a national minority” (Art. 14, para. 3). While providing for the free use of minority symbols, they are at the same time conditioned or restricted by the

obligatory concurrent displaying of “the corresponding insignia and symbols of the Republic of Croatia” (CLNM Art. 14, para. 2). As concerns the equal official use of minority languages, which “also encompasses the obligation to provide bilingual or multilingual topographical indications”, as defined by Article 11 of the FCNM, the Advisory Committee notes the positive developments incurred by the amendments to the CLNM. (CoE Report 2004: 25) However, there is a lack of implementation and therefore the Croatian authorities, and especially the self-governing units, need to ensure that the legal provisions are implemented, as noted by the Advisory Committee. (CoE Report 2004: 25) Even though the EU Commission does not make specific recommendations on the official use of minority languages, the Commission does point out in general terms that the implementation of the CLNM needs to be speeded up. (EU Report 2004: 119)

Croatia has made extensive legal provisions in the area of minority language use protection, and just like the Advisory Committee points out: “Members of national minorities in Croatia exercise their right to use their mother tongue officially on an equal basis on the territory of cities/municipalities and counties, *if their share of population is at least one third or if so provided by international agreements*” (CoE Report 2004: 25, emphasis added). The contentious issue is the one related to the numerical threshold and what would constitute a reasonable threshold. Neither the EU nor the CoE have formulated any criteria as regards what would constitute a just threshold. Even though the CoE has given indications on reasonable numerical thresholds, these are only indications and do not, at present, constitute more than opinions on a matter that few organisations are willing to touch upon. However important the discussion on thresholds, this problem only concerns the issue at stake indirectly and does not have a real impact on the measurement at hand. The Advisory Committee, furthermore, adamantly stresses the importance that the legal guarantees are properly implemented when the thresholds have been met. Thus, the recommendations are that “the authorities at all levels should take more proactive measures to ensure that throughout Croatia local statutes and practices are in full compliance with the law” (CoE Report 2004: 8). In fact and as already pointed out by the Advisory Committee, the implementation at the local level needs to be ameliorated in order to ensure that the legal provisions on the equal official use of minority language are guaranteed. Since the measurement

limits itself to adoption of the legal provisions, and not their implementation, it must therefore be noted that Croatia has inaugurated extensive minority rights protection as concerns the official use of minority languages. Thus, having in mind the shortcomings of implementation, as regards the investigation at hand, and based on the index of minority language use, Croatia is positioned on the level of 3.0.

Fig. 6.2. Croatia and level of rule adoption in minority language use in official contexts upon gaining status as candidate state



- (0): No recognition of minority languages;
- (1): The right to use the minority language in official contexts (before judicial and administrative authorities; i.e. the right to a translator);
- (2): The minority language can be used in Personal and Place Names (public signs);
- (3): The minority language can be used in official documents;
- (4): Minority language having status as official language.

Minority language rights in education

The CLNM as well as the Law on Education in Languages and Scripts of National Minorities, adopted in 2000, provide extensive education rights to national minorities. These legal provisions pertain both to the right of national minorities to learn their mother tongue, but also that “members of national minorities shall have the right to education in the language and script used by them” (CLNM Art. 11, para. 1). Furthermore, “the syllabus and curriculum of education in the language and script of a national minority shall, along with its general part, comprise minority-specific subjects (native language, literature, history, geography and cultural tradition)” (CLNM, Art. 11, para. 4). These rights encompass schooling from nursery school up to secondary school and “all organizational costs of instruction in minority languages (maintenance, material costs, salaries, school construction) are financed by the Ministry of Education and Sports, following the same standard as those applied to Croat-language schools” (Lattimer 2003: 25). For purposes of minority education, minorities are furthermore entitled to set up their own private

schools, from kindergarten up to higher education institutions, “in the manner and under the conditions stipulated by law” (CLNM Art. 11, para. 8).

On a general level, the provisions made in the area of minority rights in education are extensive and are in line with the FCNM and the articles that regulate education rights of minorities. Furthermore, specific regulations are provided concerning Eastern Slavonia which was re-integrated into Croatia in 1998 after a three-year period of UN transitional administration. On the basis of the Erdut Agreement, signed in 1995, educational autonomy is provided, not only for the numerically large Serb minority, but also for other national minorities. (Lattimer 2003: 25) According to the EU, the legal provisions, established by Croatia, are sufficient and “consistent with the basic principles contained in the Croatian legislation in the Council of Europe Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages” (EU Report 2004: 25). However, at the same time, it should be noted that the EU pays little attention to educational rights of minorities since these are not even addressed in the Chapter on Education but are limited to very sparse formulations in the chapter on Minority rights. Thus, even though the EU concludes that Croatia has complied with the CoE’s Framework Convention on National Minorities, the more comprehensive assessment carried out by the CoE Advisory Committee reaches a more nuanced conclusion.

In fact, the Advisory Committee notes that the Croatian Law on Education in Languages and Scripts of National Minorities does not “provide clear conditions and procedures for the implementation of educational models envisaged in the law, including the establishment of schools with education in minority languages” (CoE Report 2004:8). Thus, even though the CLNM does address the issue of minority language education in Article 11, it is addressed in general terms. Hence, the problem at hand is that “no clear criteria that would trigger the introduction of instruction in minority languages have been introduced in the Croatian legislation” (CoE Report 2004: 28). The problem of the legal uncertainty had already been pointed out by the Advisory Committee in a previous report as constituting the main barrier towards successful implementation of the rights granted by the Law. Indeed, as re-emphasised in the 2004 Report, the lack of legal provisions as to the

respective responsibilities of state, county, and municipality for implementing the minority-specific educational models have impaired the implementation of Article 3 of the Law on Education in Languages and Scripts of National Minorities. (CoE Report 2004: 28) By referring to the problematic situation in Vukovar in Eastern Slavonia, where the Serb minority has encountered difficulties in establishing schools to conduct education in the Serb language, the Advisory Committee stresses that Croatia needs to clarify the “applicable rules and responsibilities”, in order to fill the vacuum and to ensure effective implementation. (CoE Report 2004: 8). Apart from the Serb minority, the Advisory Committee also points to the problematic situation of the Roma. Even though the Croatian National Programme for the Roma⁹⁷, adopted in 2003, recognises their right to minority language education, these rights are not currently provided for and the Advisory Committee urges the Croatian authorities to increase “the valuable educational initiatives”, promoted in the National Programme. (CoE Report 2004: 28-29)

At the same time, it should be stated that the lack of clear rules and responsibilities does not cause problems of implementation on a general level. For some minority groups, like the Italian, Czech, Hungarian and Slovak minorities, positive developments can be noted in the area of providing minority language education. (CoE Report 2004: 29) In fact, not only the Hungarian but also the Italian minorities successfully run language schools in Eastern Slavonia and Istria respectively. (Lattimer 2003: 25) Thus, in conclusion, the Advisory Committee strongly recommends Croatia to ensure that “the Law on Education in Languages and Scripts of National Minorities is implemented in respect of all national minorities without any discrimination” (CoE Report 2004: 29).

Another contentious issue, raised by the Advisory Committee as inhibiting implementation of the legal provisions, is the “lack of up-to-date textbooks in some minority languages” (CoE Report 2004: 8). This is problematic especially in secondary schools and the concern voiced by the Advisory Committee is that this could become a “factor in the decisions of some pupils not to opt for minority language teaching” (CoE

⁹⁷ The Croatian National Programme for the Roma was adopted in October 2003 as a systematic effort to increase inclusion of the Roma people into the Croatian society. The National programme is in turn part of a wider regional strategy, “The Decade of Roma Inclusion 2005 – 2015”. Cf. (EU Report 2005: 23).

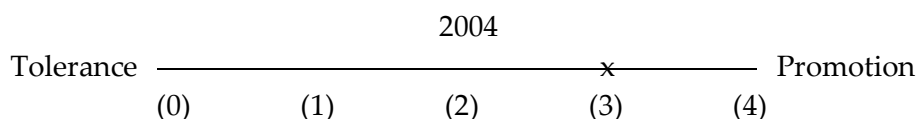
Report 2004: 26). Subsequently, the recommendations of the Advisory Committee are that the Croatian authorities should take the issue of the lack of minority educational material seriously and provide for an “adequate domestic production of textbooks” in order not to hamper the educational rights given to the national minorities of Croatia. (CoE Report 2004: 27)

The educational rights of minorities are extensively provided for in the Croatian legislation which furthermore is strongly endorsed by the EU in their Report. Thus, national minorities have the right to learn their mother tongue, to receive education in the minority language from kindergarten up to secondary school, according to a curriculum which provides for instruction of minority-specific subjects. Furthermore, national minorities have the right to set up their own private educational establishments. However, as pointed out by the Advisory Committee these rights are not fully implemented in regards to all national minorities which is primarily explained by certain loopholes in the legislation. These loopholes consist of a lack of clear rules as concerns both the criteria of implementation as well as on which level of authority the responsibility for implementation lays. This legal uncertainty then hampers full implementation and allows for discrimination against certain national minorities of the Croatian society. Thus, even though the Advisory Committee does not explicitly urge Croatia to provide for more specific legislation, this can be argued to be implicit in their critique of the generality of legislation which produces legal uncertainty. On a more practical level, the other hampering factor towards full implementation of the educational rights of minorities is the shortcomings of the production of up-to-date minority textbooks which could become a decisive factor as to why minorities would decide against minority education.

Turning to the measurement of the index on educational rights of minorities, the problem is that the legislation adopted is sufficient for some national minorities but not for others, i.e. the Serb minority and the Roma people, which would call for more specific legislation in order for a successful implementation. However, since the assessment of the Advisory Committee does not explicitly call for more specific legislation and that the lack of clear guidelines and responsibilities is assessed as being more of an implementation problem, I have chosen to argue that the Croatian legislation is well advanced in promoting educational rights

for national minorities. Furthermore, the EU Report confirms compliance of the legal provisions which is also an argument why Croatia is argued to be in compliance with all criteria except the minority university criterion. Having in mind that the legal uncertainty has resulted in disputes over particularly Serb minority education, based on the investigation at hand, these implementation difficulties are not taken into consideration and hence Croatia is positioned on the level of 3.0.

Fig. 6.3. Croatia and level of rule adoption in minority language rights in education upon gaining status as candidate state



- (0): No education of or in minority language;
- (1): Children belonging to minorities have the right to learn their mother tongue in school;
- (2): At least parts of the curriculum (e.g. history or religion) are taught in the minority language;
- (3): Minorities have the right to educate their children completely in the mother tongue, either in state schools with a complete syllabus taught in the minority language or in specific minority schools;
- (4): Minorities have their own universities.

FORMER YUGOSLAV REPUBLIC OF MACEDONIA AND MINORITY LANGUAGE RIGHTS PROTECTION

Macedonian independence

Part of the prestigious kingdom of Alexander the Great in the 4th century B.C, very early in the first centuries of Christendom, Macedonia became a place of continuous discord between the territorial expansionisms of both Bulgaria and Serbia. By the end of the 10th century, Macedonia was annexed to the first Bulgarian Empire and became the cultural and political centre of this Empire. In the mid-14th century, Macedonia was incorporated into the first Serbian Empire which, however, became short-lived since it came under Ottoman tutelage in 1380 under which it stayed for more than 500 years. Macedonia was liberated from the Ottoman Empire after the first Balkan war in 1912, a war which was instigated by Bulgaria, Greece, Montenegro, and Serbia to free their ethnic populations from the Ottomans. Due to a dispute over the division of Macedonia between Bulgarians and Serbs, the second Balkan war erupted in 1913, during which Bulgaria was defeated. The final distribution of Macedonia was made in favour of Greece and Serbia and Bulgaria had to settle for a very small area that represented the Pirin Macedonia, 10%. (Desobre 1994: 49) Incorporated without special status within the Kingdom of Serbs, Croats and Slovenes, Macedonia (also called Southern Serbia) became one of the six constituent republics of the Socialist Federal Republic of Yugoslavia in 1945. Due to the centuries' long subjugation under Bulgarian, Serbian and Turkish rules, Macedonia became a place where "ethnic Macedonians" lived side by side with other nationalities.

Characteristic of the Macedonian independence, in comparison with the other former Republics of Yugoslavia, was that their proclamation of independence was not violently reacted to. In fact, Macedonia had no real interest in becoming independent in the sense that the maintenance of the SFRY constituted its best protection towards both Serbia and Bulgaria.

However, confronted with the secessions of both Croatia and Slovenia in June 1991, Macedonia was all of a sudden left without any counterbalance towards Serbia and was hence resigned into proclaiming its independence which took place after a referendum on the 8th of September 1991, a referendum which the Albanian community boycotted⁹⁸. (Irwin in Ramet 2010: 334-335)

The Constitution was adopted in November 1991, proclaiming Macedonia as a unitary and democratic parliamentary state based on a multiparty system and with “safeguards against authoritarianism”⁹⁹ (Irwin in Ramet 2010: 335). Up until the early 2000s, the Macedonian state was heavily centralised and the right to local self-government was limited. However, with the Ohrid Framework Agreement which also engaged in emphasising the importance of a “decentralized government, along with political and financial authority” (Irwin in Ramet 2010: 329), provisions were made to further the functions and responsibilities given to the local self-governing units by amendments to the Constitution, made in 2001 and 2003. In the same vein as in the other former Republics of Yugoslavia, with independence came the necessity of establishing “a state in which sovereignty resides with a particular nation” (Hayden 1992: 656). The constitutional nationalism of Macedonia was blatant since the Constitution stated that Macedonia was the “national state of the Macedonian nation (*narod*), founded on the sovereignty of the nation” (Hayden 1992: 659-660). At the same time, however, it was repeatedly emphasised that the majority nation was living in peaceful cohabitation with the national minorities of Macedonia. (Hayden 1992: 659-660)

⁹⁸ The Albanians, with an increasing sense of being discriminated against, boycotted the referendum on Macedonian sovereignty and threatened to hold their own referendum on territorial autonomy which would also include the Kosovo Albanians. The threat never materialised and the problem of the constituent nation status would prevail until the settlement agreed to in the Ohrid Framework Agreement of August 2001. Cf. (Irwin in Ramet 2010: 334-335).

⁹⁹ The Constitution limited the five-year mandate period to two terms (Art. 80) and since the presidential elections and the direct elections to the Assembly were held separately “the president was obligated to appoint a government from the party or parties which has/have a majority in the parliament” (Art. 90) (Irwin in Ramet 2010: 335). Another constitutional safeguard was the definition of a state of national emergency which was limited to “major natural disasters or epidemics” (Art. 125) where the Constitutional Court would maintain its mandate of upholding the protection of constitutionality and legality “for the duration of the state of war or emergency” (Art. 128).

The reference to peaceful cohabitation did nothing to settle especially the large Albanian community, making up almost a quarter of the population of Macedonia, which was claiming status as constituent nation and for whom the reference to “the national state of the Macedonian People” only confirmed their second-class status. Thus, even though the Albanian political parties “have participated in all the governments”¹⁰⁰ (EU Report 2005: 12) since independence, this could not prevent the increasing ethnic hostilities between the two largest communities. In fact, according to a human rights study delegation, sent by the US Department of Justice to Macedonia in 1994, the Report concluded that “the fact that ethnic Albanians are reasonably well represented in Parliament and the Government does not eliminate this (anti-Albanian thinking) or prevent discriminatory treatment and sometimes repressive government policies from being followed, particularly at the local level” (Report cited in Irwin in Ramet 2010: 336).

Apart from threats to the internal political stability, Macedonia was, early on, confronted with problems of a regional order connected to the recognition of the Macedonian state and the Macedonian nation. In January 1992, Bulgaria was the first country to recognise Macedonia as a state but not as a separate Macedonian nation since Bulgaria didn’t “recognize Macedonian as a nationality distinct from Bulgarian”¹⁰¹ (Irwin in Ramet 2010: 329). The real contentious issue, however, and which would cause far greater problems to the newly formed state, was the reaction of Greece. In fact, due to Greek memories of a turbulent history, and the fear of Macedonian expansionist ambitions against the Greek province of Macedonia, Greece made recognition conditional upon

¹⁰⁰ The Albanian political parties have been represented in government ever since independence. During the governance of the Social Democratic Party (1991-1998), the plurality was assured by the Albanian Party for Democratic Prosperity (PDP). The change of government in 1998 and the dissatisfaction from the Albanian community against the slow pace of reforms in connection with Albanian claims resulted in a division of the PDP into a moderate and a radical faction. The more radical faction, the Albanian Democratic Party (ADP) was to form a coalition with the Macedonian nationalist party, the VMRO-DPMNE. Cf. (Irwin in Ramet 2010: 336-338).

¹⁰¹ Up until 1999, Macedonian was described as a dialect of Bulgarian; however in 1999 the Bulgarian Government officially recognised Macedonian as an independent language. Cf. (Bugarski & Hawkesworth 2004: 201).

amendment of the Macedonian Constitution.¹⁰² Even though Macedonia rapidly amended the Constitution, by declaring that “The Republic of Macedonia has no territorial pretensions towards any neighbouring state” (Amendment 1), the Greek government declared a trade embargo on Macedonia in February 1994, which put the already disastrous Macedonian economy on the brink of economic strangulation. Most of the initial difficulties with Greece were resolved with the Interim Agreement in September 1995, which subsequently paved the way for Macedonian membership in the Council of Europe, the OSCE and in NATO Partnership for Peace. Two years earlier, in April 1993, Macedonia had become a member of the United Nations under the provisional name of the Former Yugoslav Republic of Macedonia (FYROM). The Interim Agreement provided for the recognition of Macedonia by Greece, namely the establishment of diplomatic relations, the lifting of the trade embargo, and the changing of the flag of Macedonia. The question of the name of the Republic was however not resolved and negotiations pertaining to the name issue is still, after 20 years, to be resolved under the UN umbrella.¹⁰³

The missions of preventive deployment, invited at the instigation of the then Macedonian President, Kiro Gligorov, did not succeed in preventing tensions from escalating between the Albanians and the Macedonians. A series of clashes between Macedonian security forces and the Albanians, in parallel with the Kosovo crisis spilling over onto Macedonian territory, resulted in open armed conflict at the beginning of 2001. Under pressure from the EU and NATO, anxious not to see another violent ethnic conflict develop in the Balkans, the international community brokered the Ohrid Framework Agreement, signed on the 13th of August that same year. Three years later, on the 22nd of March 2004, Macedonia applied for EU membership which was endorsed by the Council of Ministers two months later on the 17th of May. (EU Report 2005: 4) The country acquired

¹⁰² In fact, in the Macedonian Constitution, Articles 3 and 49 had implied land claims that the Greek government perceived as a threat to the territorial integrity of Greece. In 1992, the first amendment to the Constitution was made and it was emphasised that “the Republic of Macedonia has no territorial pretensions towards any neighbouring state” (Amendment 1 to the Constitution). Cf. (EU Report 2005: 12).

¹⁰³ The dispute over the name issue still prevails since Greece adamantly is opposed to that the Republic be called Macedonia because of the historic legacy and the Macedonian region of Greece. Internationally, the Republic is therefore still referred to as the Former Yugoslav Republic of Macedonia (FYROM). Cf. (Irwin in Ramet 2010: 335-336)

status as a candidate state on the 9th of November 2005. (Irwin in Ramet 2010: 348)

The demographic dimension

In the SFRY, Macedonia had the “second largest number of nationalities after SR Serbia, altogether 516,814 people according to the census of 1981” of a total population of slightly over 1.9 million inhabitants. (Baltic 2007: 38) Apart from the numerically large Albanian community, Turks, Serbs, Roma, Vlachs and Bosniaks constitute primarily the other nationalities of Macedonia. For fear of Bulgarian claims on Macedonia, Tito had actively encouraged the development of a distinct Macedonian national identity, including the creation of a specific language, as distinct as possible from Bulgarian. For Tito the policy had the advantage of weakening any Bulgarian claims on the territory at the same time as limiting the power of Serbia within the Yugoslav federation. However, prior to 1945 the Macedonian “national consciousness did not exist among the ordinary people” but was limited to smaller pockets of intellectuals and party communists in society. (Brunnbauer 2004: 582) One strategy to construct a national identity which would permeate the whole of the Macedonian society was to construct “an essentially ethnic Macedonian administration” giving employment exclusively to Macedonians. (Brunnbauer 2004: 582). Furthermore, in order to cement the nascent national identity, it became indispensable to define it against other groups of people, consequently, it came to develop externally against the Bulgarians, Greeks, Serbians, and Albanians and internally naturally against the large Albanian community. (Brunnbauer 2004: 565)

The multinational state of Macedonia is one of the poorest states of former Yugoslavia, bordering on Serbia and Kosovo to the North, Greece to the South, Albania to the West, and Bulgaria to the East. According to the latest census of 2002, the population amounts to 2,022,547, inhabiting a landmass of 25.713 km². The population of Macedonia is partitioned into the majority group of ethnic Macedonians (64.2%), the Albanian community amounting to a numerically large 25.2%, the Turks (3.9%), the Roma (2.7%), the Serbs (1.8%), the Bosniaks (0.8%) and the Vlachs (0.5%). The other minorities which include amongst others Croats, Montenegrins and Bulgarians amount to a mere 1.0%. (EU Report 2005: 28)

Under the SFRY regime, the segregation between the ethnic Macedonians and the Albanians had already become blatant. Constituted, on the one hand, by the majority group of Macedonian language and of Orthodox religion¹⁰⁴, and, on the other, by the largest nationality made up of Albanians who speak Albanian and practice Islam, the divisions and imbalances in the political, economic, social and cultural spheres were important. For instance, with the rapid urbanisation process, starting in the 1960s, the ethnic division was reinforced, since the majority of ethnic Macedonians left the countryside for white-collar jobs in the towns, whereas the Albanians “remained attached to their land and continued to subsist mainly in farming” (Brunnbauer 2004: 582). Hence, even though the increasing interethnic hostilities in the 1990s were to be centred around issues concerning rights pertaining to minority education and minority language use, typical in minority conflicts, the hostilities were rather “the expression of the deep social gulf which divides Macedonians and Albanians in the Republic of Macedonia” (Brunnbauer 2004: 589-590). When Macedonia became independent in 1991, and the new Constitution stated that Macedonia was “the national state of the Macedonian nation” (Hayden 1992: 659-660), the Albanians were demoted from the status of constituent nation to that of a national minority. This was perceived as a great injustice since the mere size of the Albanian population was an argument for not being treated as a minority. Therefore, ever since independence the core of the Albanian claims has been to “recapture” the status of constituent nation which especially their numerical size would justify. Just as the numerical size is the primary justification for the Albanian claims, the reluctance of the Macedonian government to abide by these claims is also explained in demographical terms. However, from the Macedonian perspective, the numerical size of the Albanian population is more problematic.

The demographic fear of the Macedonians of becoming a minority in their own country, in the not too distant future, is explained by the high birth rate of the Albanians, which, by far, outnumbers the birth rate among the Macedonians. (Brunnbauer 2004: 569) The demographic fear was

¹⁰⁴ In the promotion of a Macedonian national identity, apart from constructing a distinct Macedonian language, in parallel the creation of a self-governing Macedonian Orthodox Church which further “reinforced (the) national identity” was made (Irwin in Ramet 2010: 331).

reactivated in 1998-1999, when the massive refugee flows¹⁰⁵ of the Kosovo Albanians crossed the border into Macedonia. This consequently contributed to destabilising the already strained ethnic tensions between Macedonians and the Albanian community, which, finally, led to open armed conflict in the beginning of 2001. The demographic fear was furthermore aggravated by the fact that the numerically large, and increasing, Albanian community is heavily territorially concentrated. In fact, particularly in the North-western and Western parts of the country, bordering on both Kosovo and Albania, the Albanians make up the majority of the Macedonian population. Indeed, “fifteen out of 121 municipalities, enlisted in the 2002 census, had populations more than 90% Albanian, seven even more than 98%. In two municipalities, the share of the Albanian population was between 75 and 90%, and in eleven, between 50 and 75%. Thus, 28 municipalities had an outright Albanian majority in 2002, up from 25 in 1994” (Brunnbauer 2004: 568). As opposed to the case of Croatia, where the war not only meant a heavy decrease in the number of the Serb minority but also entailed a de-concentration of their territorial settlements, the result has been the opposite in the Macedonian case. In fact, after the violent conflict in 2001, the tendency “to form mono-ethnic settlements” has increased. (Brunnbauer 2004: 569) The fact that the Albanians constitute a majority in an increasingly significant number of municipalities, and that these concentrations are located on the border of Albania and Kosovo, has fuelled concerns for secessionist demands making the Macedonian authorities reluctant to give in to the Albanian claims. (Brunnbauer 2004: 568)

¹⁰⁵ Due to the war in Kosovo, approximately 300 000 Kosovo Albanians crossed the border and sought refuge in Macedonia. Cf. (Irwin in Ramet 2010: 329).

Table 7.1. The development of the numerical sizes of the Albanians and the ethnic Macedonians during 1948 – 2002 (data retrieved from Brunnbauer 2004: 568)

Year	Total population in 1000	Macedonians in %	Albanians in %
1948	1.115	68.5	17.1
1953	1.303	66.0	12.4 ¹⁰⁶
1961	1.406	71.2	13.0
1971	1.647	69.3	17.0
1981	1.909	67.0	19.8
1991 ¹⁰⁷	2.034	65.3	21.7
1994	1.946	66.6	22.7
2002	2.023	64.2	25.2

The number of the Albanians has also constituted a point of contention in the censuses carried out by Macedonia. Indeed, Macedonia is a case in point as regards contestations on the numerical sizes of ethnic minorities in ethnically divided societies. In the censuses carried out in Macedonia from 1991, the Albanian community has contested the census results of the Macedonian State Statistical Bureau, claiming that their share of the population by far supersedes the figures from the Macedonian authorities. In fact, due to contestations of the 1991 census, international monitoring bodies assisted Macedonia in the census of 1994.¹⁰⁸

¹⁰⁶ The sharp decrease of the Albanian community between 1948 and 1953 is explained by “the fact that in 1953 many Albanian-speaking Muslims identified themselves as “Turks” in order to be able to immigrate to Turkey” (Brunnbauer 2004: 568).

¹⁰⁷ The census of 1991, which was the last census carried out within the SFRY, was boycotted by a large majority of the Albanians in the SFRY as a whole, including those of Macedonia. The result, pertaining to the Albanian community, was thus based on estimations and extrapolations and consequently heavily contested by the Albanian community. Cf. (Brunnbauer 1994: 568)

¹⁰⁸ The international monitoring was conducted under the supervision of the EU with the assistance of the OSCE and the Council of Europe. The national census was taking place from the 25th of June to the 11th of July, 1994. Although the census was internationally monitored, the results were immediately disputed by the Albanian community who claimed that their share of the population was around 35-40% and not 22.7%, which was displayed by the census results. (Cf. Brunnbauer 2004: 567)

Table 7.2. Ethnic structure of the population in Macedonia according to the 1994 census and the 2002 census (data retrieved from the Macedonian State Report submitted to the Advisory Committee of the Council of Europe, 2003: 9 and CoE Report 2004: 9)

Nationality	1994 number	1994 %	2002 number	2002 %
Macedonians	1.295.964	66.6	1.297.981	64.2
Albanians	441.104	22.7	509.083	25.2
Turks	78.019	4.0	77.959	3.9
Romani	43.707	2.2	53.879	2.7
Serbs	40.228	2.1	35.939	1.8
Muslims	15.418	0.8	2.553	0.1
Bosniaks	6.829	0.3	17.018	0.8
Montenegrins	2.318	0.1	2.003	0.1
Croats	2.248	0.1	2.686	0.1
Vlachs	8.601	0.4	9.695	0.5
Bulgarians	1.682	0.1	1.417	0.1
Others/unspecified	9.814	0.5	14.887	0.7
Total	1.945.932	100	2.015.245	100

The sociolinguistic dimension

During the SFRY, as one of its constituent Republics, the existence of the Macedonian nation and the specificity of the language were called into question from neighbouring states. In fact, the Macedonian language did not exist independently from Bulgarian prior to the forming of the SFRY in 1945. For fear of particularly Bulgarian claims on Macedonia, Tito decided to construct a Macedonian national identity, as distinct as

possible from the neighbouring and potentially threatening Bulgaria, but also as a counterpart to the domineering Republic of Serbia. Hence, the construction of the Macedonian language was actively pursued from the mid to the late 1940s with the introduction of its official grammar and lexicon. As a consequence, contestations of the Macedonian language came to have repercussions on the language policy of the newly formed Macedonian state, as well as on the socio-linguistic relations with particularly the numerically considerable Albanian community. (Bugarski 2004: 196) Apart from Albanian, the most widely used minority languages are Turkish, Romani, Serbian and Vlach. The Turkish language “still enjoys some prestige although its actual use is apparently decreasing, while the visibility of Romani and Vlach¹⁰⁹ has increased perceptibly since independence” (Bugarski 2004: 196).

In the 1991 Constitution, the Macedonian language and its Cyrillic alphabet was declared the official language of the newly formed State. (Art. 7) Justified by the considerable size of the Albanian-speaking population, the Albanians’ reaction was to demand official language status for the Albanian language. Just as constituent nation status was turned down by the Macedonian government, the status of official language for Albanian was never considered an option by the Macedonian authorities. The right to education in minority languages, especially in higher education, became another contentious issue which remained highly politicised throughout the 1990s. In fact, due to the poor education record of the Albanians, the insufficiencies of minority education were perceived as a core element of the more generalised discrimination against the Albanians. In fact, the majority of the Albanian population never accedes to the level of secondary schooling which subsequently means that an insignificant part enrol at university level (see Table 7.3. below).

¹⁰⁹ The Vlach minority is both a nationality and a specific linguistic category which refers to both “Daco-Romanian speakers inhabiting eastern Serbia and to Aromanians and Megleno-Romanians in Macedonia” (Bugarski & Hawkesworth 2004: 215). The religious affiliation of the Vlachs is Orthodox.

Table 7.3. Participation of Macedonians and Albanians in primary, secondary and tertiary education, 1998 - 1999 (data retrieved from Brunnbauer 2004: 588)

	Primary education	Secondary education	Tertiary education
	Percentage of all students		
Macedonian	59.0	79.2	89.2
Albanian	30.2	15.6	5.5

Education in minority languages, confined to primary and secondary public schools, was provided for in the Constitution, where it stipulates that, minorities “have the right to instruction in their language”, as determined by law, but where teaching of Macedonian is also compulsory. (Art. 48) As determined by law, means that minority language teachers have to be Macedonian citizens who know the Macedonian language with its Cyrillic alphabet.¹¹⁰ However, what is more controversial, is that teachers, who “do not know the minority language, are allowed to teach on the ‘subject of nationality’ in primary schools” (Vetterlein 2006: 9). The fact that teachers, involved in minority education, do not need to have any qualifications in the area of their teaching raises concerns connected to quality assurance. Consequently, it is not surprising that not only Albanians but also Turks have attempted to set up their own educational institutions, which instantly have been closed down by the Macedonian authorities. (Vetterlein 2006: 8)

Normally, legal provisions related to minority language rights in education are limited to secondary school level. This was also the case in Macedonia where no legal provisions in minority languages were provided for in higher education. Adamant claims from the Albanians, of setting up their own Albanian-speaking university, were however to become the central issue of division, causing a number of clashes between the Macedonian security forces and the Albanians. The persistent claims were, in fact, related to the discriminatory policies imposed on the

¹¹⁰ In order to show a sufficient level of Macedonian, the Law postulates that teachers have to pass a language test. Cf. (Vetterlein 2006: 8).

Kosovo Albanians by the Serbian political leadership, of which one was to shut down the University in Pristina. In fact, prior to 1990, a non-negligible share of the Macedonian Albanians had enrolled at the Albanian-speaking University in Pristina, Kosovo. With the closing down of the Pristina University in 1990, the resort of the Macedonian Albanians was shut, which led to increasing demands for an Albanian-speaking university.

In December 1994, the Albanians established their own university in Tetovo, which became an important symbolic sign of Albanian cultural autonomy. The reaction of the Macedonian government was to declare the university illegal under Macedonian law; i.e. the teaching in Albanian was illegal as were privately run higher education institutions. (Vetterlein 2006: 11) In February 1995, when the Albanians wanted to give their first Albanian-speaking courses, serious incidents took place when the Macedonian police closed down the university premises by force. During the clashes, the death of one Albanian and some twenty injured persons were recorded. (Ramelot & Remacle 1995: 54) Due to the diplomatic skills of the OSCE High Commissioner on National Minorities, Max van der Stoel, tensions calmed down and the activities of the Tetovo University were more or less condoned. However, the calm was treacherous and incidents broke out again “when in July 1996 the ‘dean’ of the university was arrested” (Swain & Swain 2003: 251). Up until 1998, and the regime change, President Gligorov had adamantly refused to legalise the Albanian-speaking University.

The new government, however, confronted with internal instability, fuelled by rising unemployment, the repercussions from the Kosovo war, as well as the successful silent diplomacy from the High Commissioner on National Minorities, finally made the Macedonian Parliament, in 2000, accept “an OSCE sponsored proposal to establish a private college in Tetovo”, with tuition in Albanian. (Swain & Swain 2003: 252). This was confirmed by the new Law on higher education in 2001, which finally legalised private and non-Macedonian speaking universities, and made “the establishment of the trilingual (Albanian, Macedonian and English) South East European University (SEEU) in Tetovo possible” (Vetterlein 2006: 12). Even though the Ohrid Framework Agreement did put an end to the violent conflict in 2001, by establishing a comprehensive and extensive legal framework for minority rights, specifically focusing on

Albanian rights, in parallel to paving the way for further integration into the EU, conflicts remain.¹¹¹ Paradoxically, the implementation of extensive minority language rights, as well as minority education rights, has created a situation where increasing bilingualism has accentuated the ethnic division. In fact, the separation between the two communities, especially in predominantly Albanian areas, has produced a situation where Albanians become less and less fluent in the state language, which, consequently, has put the Albanians “in a position of linguistic and professional ghettoisation” (Caca cited in Vetterlein 2006: 18). On the basis of the Ohrid Framework Agreement, Macedonia applied for EU membership on the 22nd of March 2004, an application which was endorsed two months later on the 17th of May by the Council of Ministers. (EU Report 2005: 4) The country gained status as a candidate state on the 9th of November 2005. (Irwin in Ramet 2010: 348)

Legislation in minority language rights upon gaining status as candidate state

As a consequence of the violent conflict that broke out between the ethnic Albanian community and the Macedonian security forces, early in 2001, the international community brokered the Ohrid Framework Agreement (OFA), signed on the 13th of August the same year. The Agreement was a package, aiming to further the integration of Macedonia into the structures of both the EU and NATO, in parallel with resolving the conflict between the Albanian minority and the ethnic Macedonians. The OFA is particularly centred on the status of the Albanian community, with a specific focus on their language rights. Furthermore, many of the regulating principles of the Framework have been centred on launching Macedonia on a decentralisation process. Full implementation of the regulating principles in the Framework Agreement was stipulated to be the “main condition for the process of integration of the Republic as a candidate for membership in the EU” (Vetterlein 2006: 7). After an initial period of hesitation, it was concluded that the Macedonian Parliament “has passed all the new laws” (Vetterlein 2006: 7). In fact, according to the

¹¹¹ Education-related conflicts emerged already in 2002 between Albanian and Macedonian students where the “provocative changing of names of schools, from former Slavic names to Albanian ones and the placing of controversial monuments, especially in the western part of the country, are increasing interethnic tensions” (Vetterlein 2006: 16-17).

EU Report, the broad legislative programme of the Framework Agreement had been completed by July 2005. (EU Report 2005: 12) Already in April 1997, Macedonia had ratified the CoE's Framework Convention on National Minorities (FCNM), and the European Charter for Regional and Minority Languages (ECRML). (EU Report 2005: 24)

Non-discrimination

The centrality of anti-discrimination legislation, as part of minority rights legislation, is accentuated by the Ohrid Framework Agreement, in which the principles of non-discrimination and equitable representation are incorporated. The non-discrimination norm is provided for in the equality clause of the Macedonian Constitution, which stipulates that "Citizens of the Republic of Macedonia are equal in their freedoms and rights, regardless of sex, race, colour of skin, national and social origin, political and religious beliefs, property and social status" (Art. 9). Even though amendment XI to the Constitution states that, "the Public Attorney shall give particular attention to safeguarding the principles of non-discrimination and equitable representation of communities in public bodies at all levels and in other areas of public life" (Amendment XI), there is no penalisation of discrimination as such. Hence, even though the Criminal Code incorporates some anti-discrimination provisions, the Commission Report points out that "there is no specific criminal provision forbidding acts of xenophobia (...) and non-discrimination on grounds of sexual orientation is not prescribed as such" (EU Report 2005: 27). In July 2005, a new Law on Labour Relations was adopted, which incorporates and forbids discrimination on the basis of "race, colour of skin, gender, age, state of health, religious, political or other beliefs, sexual orientation or on the grounds of any other personal circumstances" (EU Report 2005: 27). However, as stated by the EU Commission, in order for anti-discrimination measures to be effectively implemented in labour relations, the Law needs to be supplemented with "the adoption of anti-discrimination legislation" (EU Report 2005: 27).

Furthermore, although the equality clause does provide for some anti-discrimination provisions, it is not encompassing enough since it leaves out "age, disability and sexual orientation" (EU Report 2005: 96). The lack of specific legislation is also pointed out by the Advisory Committee, which notes that particularly "some areas (such as housing, health care, access to services) are not covered by specific anti-discrimination

legislation" (CoE Report 2004: 10). It is also stressed by the Advisory Committee that the Roma minority is especially vulnerable, and that they "are often the victims of discrimination and prejudice", especially in the social field, "in terms of access to social assistance and health care" (CoE Report 2004: 10). Pertaining especially to the Roma, the Advisory Committee also raises the issue on the scope of application of the citizenship criteria in relation to non-discrimination. In the revised preamble to the Constitution, amended in accordance with the Ohrid Framework Agreement, the scope of application of the citizenship criterion is stipulated to include "the Macedonian people, as well as citizens living within its borders who are part of the Albanian people, the Turkish people, the Vlach people, the Serbian people, the Roma people, the Bosniac people and others" (Preamble to the Constitution cited in CoE Report 2004: 8). Macedonia acknowledges, on the basis of the use of national minorities, made by the FCNM, that a national minority is equivalent to the term "nationalities", and, on the basis of this interpretation, recognises "Albanian, Turkish, Vlach, Roma and Serbian national minorities" (CoE Report 2004: 8). Why the Macedonian government does not include the Bosniaks in their enumeration is astonishing, since they are specifically enumerated as one of the peoples of the Republic.

The Advisory Committee is, however, more concerned with the lack of recognition of the Egyptian minority. In fact, as reported by the Advisory Committee, the Egyptian minority feels discriminated against since the authorities usually equate them with the Roma minority. Indeed, efforts of asserting themselves as distinct from the Roma, and the effort to enjoy the status of a separate national minority, on the basis of the Framework Convention for National Minorities, have met "with a negative response at various levels of government" (CoE Report 2004: 9). The Advisory Committee has, in general terms, drawn attention to the importance of recognising the numerically smaller communities. (CoE Report 2004: 7) In regards to particularly the Egyptian minority, the Advisory Committee "urges the Government to ensure that the identity of these people is respected by the authorities, and to examine the possibility of them being granted protection under the Framework Convention in their own right" (CoE Report 2004:9).

The Advisory Committee is, furthermore, concerned with the citizenship criterion, in relation to the naturalisation process, which causes “some problems (...) for some minority groups” (CoE Report 2004: 9). In fact, even though the Citizenship law of 1992¹¹² was amended in December 2003, and meant a relaxation of the naturalisation requirement, from 15 years to 8 years of continuous residence, especially Albanians and Roma have experienced difficulties of obtaining the citizenship. (CoE Report 2004: 12) The situation of the Roma minority is highlighted as particularly problematic, and, according to the Advisory Committee, the Roma minority is subjected to “*de facto* discrimination” (CoE Report 2004: 26). Since the discrimination is concluded to be the result of existing “gaps in the specific legal guarantees against discrimination”, the Macedonian authorities are recommended to examine a possible extension of the scope of the “non-discrimination provisions” (CoE Report 2004: 26). Even though the EU Commission does not specifically refer to the Roma, as being subjected to *de facto* discrimination, it is nevertheless acknowledged that “the Roma community suffers from a very difficult economic and social situation” (EU Report 2005: 30).

Besides the lack of sufficient legal provisions, in the domain of anti-discrimination, which also concerns the scope of application of the citizenship criteria, as well as the scope of the application of recognition of national minorities, the Advisory Committee notes, with satisfaction, that the Macedonian Government has taken steps to “develop a national strategy for the Roma”, of which the Advisory Committee urges a speedier development. (CoE Report 2004: 11) Furthermore, since the powers of the Ombudsman’s Office¹¹³ have been strengthened in the area of non-discrimination, these “may be helpful in identifying instances of discrimination and combating them” (CoE Report 2004: 11). In the same vein, the EU Commission notes, with satisfaction, that the newly elected Ombudsman of 2004, has taken a more active stance in safeguarding the principle of non-discrimination, although, noting at the same time, “that it is still too early to judge his effectiveness properly” (EU Report 2005:

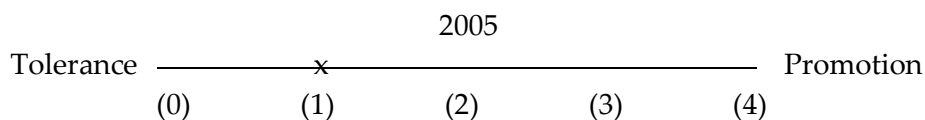
¹¹² The 1992 Citizenship Law entailed that the requirements for acquiring Macedonian citizenship were “15 years of continuous residence, a permanent source of income and production of the necessary identity papers” (CoE Report 2004: 11).

¹¹³ The Ombudsman’s Office became operational in 1998 and acquired a new remit of powers with the Law on the Ombudsman of the 10th of December 2003, on the basis of the Ohrid Framework Agreement. (CoE Report 2004: 11)

30). However, as pointed out by the EU Commission, Macedonia has yet to establish the Equality Body, “required by the *acquis*” (EU Report 2005: 96).

Even though the equality clause does prohibit discrimination, on grounds of ethnic origin, and although there are some anti-discrimination provisions in the Criminal Code, specific anti-discrimination legislation is lacking. The EU requirement of developing specific anti-discrimination legislation is emphasised by the Advisory Committee, which, in fact, “urges the authorities to examine all the legislation in place and to fill any gaps in the protection against discrimination, including by covering indirect discrimination” (CoE Report 2004: 10). In fact, apart from the necessary establishment of the Equality Body, specific anti-discrimination legislation is required, in order to “implement EC legislation concerning discrimination on grounds of racial or ethnic origin, religion or belief, age, disability and sexual orientation” (EU Report 2005: 96). This makes the EU conclude that, the “national measures taken so far are by no means comprehensive” (EU Report 2005: 96). Based on the non-discrimination index, Macedonia, upon gaining status as a candidate state in the EU, has only commenced to seriously implement the non-discrimination *acquis*. In fact, even though the Criminal Code does integrate anti-discrimination provisions, there is no penalisation of discrimination on the grounds of ethnic origin. Furthermore, the Macedonian authorities have yet to establish the Equality Body which is required by the non-discrimination *acquis*. Taken altogether, and based on our non-discrimination index, Macedonia is argued to having complied with the general provisions, stipulated by Article 9 of the equality clause, but has yet to develop specific anti-discrimination legislation. Therefore, Macedonia is positioned on the level of 1.0 according to the index scale.

Fig. 7.1. Macedonia and level of rule adoption in non-discrimination upon gaining status as candidate state



- (0): Absence of any non-discrimination norm;
- (1): General provisions such as an equality clause in the Constitution;
- (2): Non-discrimination laws are inserted in specific laws;
- (3): Comprehensive anti-discrimination legislation which then means that there has been a complete transposition of the EU anti-discrimination *acquis*;
- (4): Non-discrimination laws exceed the minimum requirements of the Directive.

Minority language use in official contexts

The use of languages, and the displaying of minority-related symbols, are also incorporated in the Ohrid Framework Agreement (OFA), which, in order to be implemented, consequently called for a certain number of amendments to the Macedonian Constitution. Article 7 of the Constitution still declares that Macedonian and its Cyrillic alphabet is the official language of the Republic. (Art. 7) However, with the amendments made, Article 7 now stipulates that the Constitution “allows for the use of languages other than Macedonian” (CoE Report 2004: 17). As noted by the EU Commission, the new provisions made in the area of language use means that “any language spoken by at least 20% of the population is an **official language**, following the amendment of the Constitution in 2001” (EU Report 2005: 30). Therefore, the Albanian language, spoken by approximately 25% of the Macedonian population, is recognised as an official language, which entails that it can be used “in communications with the central administration and with the local administration in municipalities where the ethnic Albanian community makes up at least 20% of the population” (EU Report 2005: 30). Also, the official language status of Albanian entails that the use of Albanian “is recognised in Parliament and in court proceedings” (EU Report 2005: 30). However, since these legal provisions have only started to be implemented, the EU Commission notes that “further progress will require heavy investments” (EU Report 2005: 30). The EU Commission also notes that legislative

provisions have been made as to permit the issuance of both ID cards, passports and driving licenses in Albanian, “implemented since May 2003 for ID cards and since December 2004 for passports” (EU Report 2005: 30).

Although Albanian is the only minority language having received status as official language nationally, the Macedonian Constitution makes a distinction between the national and the local level. Indeed, locally, other minority languages than Albanian can also be used as official languages. As noted by the Advisory Committee, Article 7 of the Constitution stipulates that, on the local level, “where a language is spoken by at least 20% of the inhabitants of the municipality, that language shall be used as an official language in addition to Macedonian” (CoE Report 2004: 17). Apart from Albanian, the Advisory Committee notes with satisfaction that also “Turkish, Romani and Serbian have been recognised as official languages in some municipalities” (CoE Report 2004: 18).¹¹⁴ Furthermore, the fact that local authorities have been delegated the powers to decide to grant the official use to numerically smaller minority languages, which don’t amount to the threshold of 20%¹¹⁵, this is welcomed by the Advisory Committee. (CoE Report 2004: 18)

The right to use the minority language before judicial courts is provided for in both civil and criminal procedures. In fact, the Criminal Code makes provisions for the use of interpreters, “free of charge in criminal procedure” (CoE Report 2004: 18). However, the Advisory Committee notes that in court proceedings, the record of implementation, particularly as concerns Albanian and Turkish, has displayed deficiencies especially “owing to the shortage of qualified interpreters” (CoE Report 2004: 18). With Amendment V to the Constitution, the official language status implies that, “any official personal documents of citizens, speaking an official language other than Macedonian, shall also be issued in that language, in addition to the Macedonian language, in accordance with

¹¹⁴ In fact, as noted by the Advisory Committee, along with Macedonian, “Albanian is an official language in 34 municipalities, Turkish in 5 municipalities, and Romany and Serbian in one municipality each” (CoE Report 2004: 18).

¹¹⁵ According to Article 7 of the Constitution and Article 90 of the Law on Local Self-Government, adopted in January 2002, local self-government units have the right to decide to grant minority languages, spoken by less than 20%, the right to official use. Cf. (CoE Report 2004: 18)

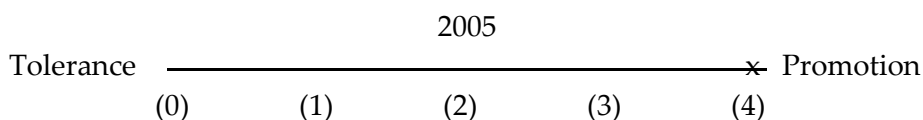
the law” (Article 7). As regards the free use of signs and symbols, this right is provided by the general rules regulating the use of languages. Therefore, when a minority language is spoken by at least 20% of the population, inscriptions such as local names, and other minority-related symbols, may be “displayed in a minority language” (CoE Report 2004: 19). However, in practice, this rule has been applied at random and the Advisory Committee encourages the authorities, both at national, and at local level, “to take the necessary steps to encourage the use of languages, other than Macedonian, for displaying local names, in cases where there is sufficient demand for such indications, and the necessary conditions are met” (CoE Report 2004: 19).

The legal changes, made in accordance with the Ohrid Framework Agreement as concerns the use of minority languages, are extensive, and according to the Advisory Committee, the Macedonian constitutional guarantees “reflect the principles of Article 10 of the Framework Convention” (CoE Report 2004: 28). Even though the use of minority languages are extensive, and the Albanian language has been granted the status as official language alongside Macedonian, the EU argues that, “although not formally required by the Framework Agreement, a law on the use of languages should be adopted to complement the substantial number of existing sectoral laws, specifying use of the Albanian language” (EU Report 2005: 30). Along the same line of reasoning, on a more general level, the Advisory Committee argues that, the authorities “should now further define the legal obligations, resulting from this constitutional provision, in the forthcoming law on the use of languages and alphabets, as well as take the necessary measures to implement the law on identity documents” (CoE Report 2004: 28). It is likely that these comments are due to concerns originating from the poor implementation in some areas, as well as fears, related to the interethnic relations between the Albanians and the Macedonians, that still show signs of tension.

Since this investigation is exclusively centred on analysing the existing legislation in place, these implementation concerns are not taken into account in the analysis. Having taken into consideration that both the EU Commission and the CoE Advisory Committee want to see further legal specifications as regards the use of minority languages, and being fully aware of the implementation problems, particularly stressed by the Advisory Committee, these concerns are not integrated into the analysis.

In fact, according to our index on minority language use, and based on the extensive legislative rights in place, including the fact that nationally Albanian is recognised as an official language alongside Macedonian, the Macedonian authorities are argued to largely promote minority language use. Therefore, Macedonia scores high and has been positioned on the level of 4.0 according to the index scale.

Fig. 7.2. Macedonia and level of rule adoption in minority language use in official contexts upon gaining status as candidate state



- (0): No recognition of minority languages;
- (1): The right to use the minority language in official contexts (before judicial and administrative authorities; i.e. the right to a translator);
- (2): The minority language can be used in Personal and Place Names (public signs);
- (3): The minority language can be used in official documents;
- (4): Minority language having status as official language.

Minority language rights in education

On the basis of the regulations stipulated by the Ohrid Framework Agreement, amendment VIII, to the Constitution, provides for minority education in primary and secondary schools. Article 48 stipulates that, “members of communities have the right to instruction in their language in primary and secondary education, as determined by law” (Art. 48); rights which in turn are assessed as implemented by the EU Commission. (EU Report 2005: 29). Furthermore, and on the basis of the Ohrid Framework Agreement, the Law on Higher Education was amended, which “finally” instituted legal provisions enabling minorities to set up their own universities. The legal provisions were implemented by the establishment of the first minority-speaking university, the South East European University (SEEU), which opened in 2001, and which offers tuition in Macedonian, Albanian and English. Also, the Albanian University in Tetovo was reopened in 2004/2005, “based on the so-called “University of Tetovo”, which had no legal status” prior to the amended Law on Higher Education. (EU Report 2005: 30) The positive effects of

these two minority universities are that the share of minority populations, and especially the Albanians¹¹⁶, enrolled at higher education institutions, have considerably increased. (EU Report 2005: 30) Furthermore, and also possibly a contributing factor to explain the rapid increase of the share of enrolled minorities at Macedonian universities, the new Law on Higher Education also provided for “affirmative action in the enrolment process at State universities (Skopje, Bitola)” (EU Report 2005: 30).

However, and as underlined by the Advisory Committee, statistics show that even though the introduction of quotas¹¹⁷ in higher education has increased the share of national minorities, “the system has not brought the expected results as far as the Roma are concerned” (CoE Report 2004: 20). Therefore, the Advisory Committee advises the Macedonian authorities to introduce a monitoring system, in order to “ensure that the various groups have equitable access to higher education” (CoE Report 2004: 20). Also, in view of the above, the Advisory Committee notes that the faculties of Skopje only specialise in Albanian and Turkish, and, that it would be advisable to “extend this provision to include other languages, in order to meet needs which are not currently catered for” (CoE Report 2004: 20). Furthermore, as regards the Albanian-speaking Tetovo University, the Advisory Committee expresses concerns as to deficiencies in the accreditation measures, which call for stronger efforts from the Macedonian authorities, which specifically would entail “the approval of the curricula and the recognition of diplomas delivered by the University of Tetovo” (CoE Report 2004: 21).

In the assessment made by the EU Commission, no concern as to the implementation of the rights granted to minorities in the educational sector has been expressed. However, even though the Commission concludes that minority rights in education have been implemented, there is nevertheless concern as to what impact these rights have on the social cohesion of the Macedonian society. (EU Report 2005: 29-30) In fact, the reporting of incidents at some schools between various communities

¹¹⁶ The share of the Albanians enrolled in higher education institutions in Macedonia more than doubled, from a mere 6.7% in 2001/2002 to 15.5% in 2004/2005. Cf. (EU Report 2005: 30).

¹¹⁷ The quota system was introduced already in 1996 as an effort to increase the share of national minorities in higher education institutions in Macedonia. Cf. (CoE Report 2004: 20).

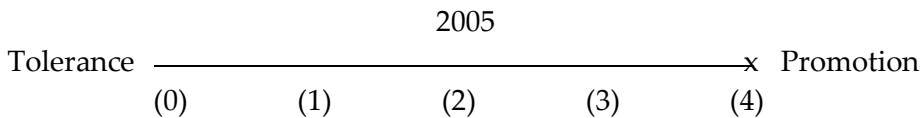
raises concerns as to how these rights “contribute to promoting cultural identities and, at the same time social cohesion” (EU Report 2005: 30). These concerns are furthermore elaborated in the Report of the Advisory Committee, which previously had “expressed deep concern at the attitudes of intolerance which have led to clashes between Macedonian and Albanian pupils over the introduction of additional classes in Albanian and the functioning of ethnically mixed schools” (CoE Report 2004: 19). Paradoxically, minority rights education, instead of contributing to social cohesion, has instead increased “the linguistic gap between the various communities”, which makes the Advisory Committee point out that, “special attention should be given to encouraging individuals’ knowledge of the languages spoken in their region” (CoE Report 2004: 19). In regards to the Albanian-speaking University in Tetovo, the Advisory Committee has expressed fears that this might lead to “further segregation in the education sector”, since it does nothing to facilitate interaction between the different communities. (CoE Report 2004: 20)

Apart from the concerns raised on the adverse effects of the very extensive minority rights in education, instituted by the Macedonian authorities, the Advisory Committee has also raised other concerns. Related to minority education in primary and secondary schools, the Advisory Committee notes the difficulty of obtaining “up-to-date textbooks in languages other than Macedonian”, which would call for measures from the Macedonian authorities. (CoE Report 2004: 19) Another barrier towards effective implementation, which the Advisory Committee urges the authorities to “give a high level of attention to”, is the shortage of qualified teachers “for providing instruction of, and instruction in, minority languages” which “is particularly acute in the case of certain minorities such as the Roma and the Vlachs” (CoE Report 2004: 19). The difficult situation of the Roma, “and Roma girls in particular”, is stressed by the Advisory Committee and they welcome the National strategy for the Roma, under development by the Macedonian authorities. (CoE Report 2004: 20) Even though Article 48, of the Constitution, provides for minorities’ rights to be instructed in and to learn their mother tongue, these rights have shown to display deficiencies in practice, especially with regard “to persons belonging to Vlach, Roma and Serb minorities” (CoE Report 2004: 22). In consequence, the Advisory Committee urges the Macedonian authorities to specifically look into the

needs of these communities, in order to “provide appropriate support for teaching of and in their minority languages” (CoE Report 2004: 22).

Extensive rights in minority education in Macedonia are provided as a consequence of the implementation process, initiated by the Ohrid Framework Agreement. These rights not only provide instruction of and in minority languages in primary and secondary schools, since 2001, these rights also encompass higher education where minorities now have the right to set up their own universities. Since this study is focused on measuring the legal provisions in place, barriers to minority education in practice, however important these may be, are not integrated into our analysis. Therefore, the rights provided by the Macedonian authorities are extensive, which in turn positions Macedonia on the far right hand side of the minority education index, on the level of 4.0.

Fig. 7.3. Macedonia and level of rule adoption in minority language rights in education upon gaining status as candidate state



- (0): No education of or in minority language;
- (1): Children belonging to minorities have the right to learn their mother tongue in school;
- (2): At least parts of the curriculum (e.g. history or religion) are taught in the minority language;
- (3): Minorities have the right to educate their children completely in the mother tongue, either in state schools with a complete syllabus taught in the minority language or in specific minority schools;
- (4): Minorities have their own universities.

SERBIA AND MINORITY LANGUAGE RIGHTS PROTECTION

Serbian independence

The history of Serbia is one of early nation-building, where the conversion to the Orthodox Church became a constitutive characteristic, as well as a driving force, in the development of the Serbian national identity. The national identity was, furthermore, fertilised by the collective memory of a glorious past of the Serbian Empire, whose expansionism had peaked during the 14th century, before being stopped by the Ottomans in what was to become the symbolically value-laden battle of Kosovo Polje in 1389. However, due to the successful Serbian opposition, which peaked in the Belgrade uprisings and the Serbian conquest of Belgrade in 1806, the Ottoman tutelage over Serbia became relatively short. Therefore, in 1806, Serbia gained *de facto* independence “which mark(s) the beginning of the construction of the Serbian nation-state” (Lukic in Ramet 2010: 45). *De jure* independence was granted in 1878, when Serbia gained international recognition by the Congress of Berlin.

The Serbian nation-state was constructed on the French Jacobin state model, where nation and state were presumed to go hand in glove. Serb nationalism was based on centralism and hegemony, formulated in the concept of “Greater Serbia”, which was to become particularly articulate in the 19th and in the beginning of the 20th century. (Bilandzic 1972: 161) As a consequence of the victory in the Balkan wars of 1912-1913, a large part of Macedonian territory, as well as Kosovo, were integrated into the jurisdiction of the Kingdom of Serbia in 1913. (Briza 2000: 7) Hence, not only population wise¹¹⁸, but also statehood wise, Serbia became a domineering nation in the first multinational Yugoslav states. Just like the former Serbian King Alexander, during the SHR regime, fought to

¹¹⁸ The Serbs were to account for almost 40% of the total population in the first two Yugoslavias, the Kingdom of Serbs, Croats and Slovenes (SHS) and the Socialist Federal Republic of Yugoslavia. Cf. (Banac 1988: 58; Baltic 2007: 25).

preserve the unity and to counter the separatist claims of particularly the Croats, by installing a personal dictatorship, history would repeat itself in the early 1990s.

The Serbian aggressive nationalistic policies incarnated in the Milosevic regime, from 1987 to 2000¹¹⁹, had no interest in becoming independent but quite the opposite, aiming at an aggrandizement of Serbia within the confines of the SFRY. Thus, with the successive proclamations of independencies from the Socialist Republics between 1991 and 1992, which became the igniting factor to the aggressive wars planned by Milosevic¹²⁰, Serbia was resigned in April 1992 into proclaiming the establishment of a new state, the Federal Republic of Yugoslavia (FRY), with Montenegro, and also including the Serbian provinces of Vojvodina and Kosovo. (Ramet 2010: 290) The Kosovo war, and the subsequent NATO-intervention in 1999, would, however, worsen the conditions of the Montenegrin-Serbian coexistence within the FRY.¹²¹ In fact, the estrangement between the two Republics became blatant during the NATO-intervention when Montenegro, “although a constituent unit of the FRY, declared itself “neutral”!” (Ramet 2010: 293). Hence, as a natural consequence thereof, with the ending of the NATO intervention, the Montenegrin government initiated a pro-independence agenda which eventually was turned down by the international community. (Ramet 2010: 293-294).

A compromise was however found when in February 2003, the Union of Serbia and Montenegro replaced the FRY. The longevity of the new state was however to be short since in June 2006, the time was finally¹²² ripe for

¹¹⁹ Slobodan Milosevic seized power in Serbia in 1987 and stayed in power until the elections of 2000 when he was defeated. One year later he was taken into custody of the ICTY charged with war crimes but was found dead in his cell in 2006 before the trials were over. Cf. (Ramet 2010: 304).

¹²⁰ The Wars of Yugoslav Succession were never fought on Serbian territory which could also explain the popularity and the longevity of the Milosevic regime. Cf. (Ramet 2010: 274).

¹²¹ In fact, already in 1997 the coexistence between Montenegro and Serbia started to wane and there was a noticeable shift in the Montenegrin government which started to oppose the Milosevic leadership. Cf. (MRGI 2008).

¹²² The pro-independence agenda of Montenegro had been supported by the US and Western Europe up until the ousting of power of Milosevic and his subsequent jailing at the ICTY. However, with Milosevic gone so was also the pro-independence stance of the Western powers. Cf. (Ramet 2010: 296).

Montenegro to acquire independence. (Ramet 2010: 296, 304) The Republic of Serbia became independent with the adoption of the new Constitution in October 2006, which stipulates that, "Kosovo is an inalienable part of Serbia" (Ramet 2010: 304). In fact, even though Serbia had countered the external threats to Serbia by waging wars, particularly¹²³ against Croatia and Bosnia and Herzegovina, which initiated interventions from the UN, NATO and the OSCE, the Kosovo problem remained within Serbia itself. Even though the internal stress of the Kosovo claims became acute upon the Serbian political leadership in the late 1980s, the Kosovo issue had in fact preoccupied SR Serbia ever since the 1974 Constitution, when the Serbian Autonomous Provinces gained an almost equivalent status to the Republics, which consequently meant that in Kosovo the Serbs were demoted to the status of a national minority. Apart from the fact that the decentralisation went counter to the Serbian ideology of centralism, the legal act was perceived as a miscarriage of justice since it was perceived as a violation upon both the Serb nation as well as the Serb state. Added with the external threats on the Serb nation and state, internally the Serbian political leadership decided to suppress the autonomy of Kosovo in 1989, later manifest in the Serb Constitution of 1990, which lowered the Province of Kosovo to the rank of District, renaming it Kosovo-Metohija.

Open war between the Kosovo Albanians, under the banner of the Kosovo Liberation Army (KLA), and the Serbs, ensued between 1998 and 1999. It was ended by the three-month's long NATO-intervention in spring 1999, which resulted in a *de facto* separation of Kosovo from Serbia and the establishment of a UN protectorate in Kosovo. In 2003, on the basis of the Thessaloniki Agenda, Serbia acquired the status of a potential candidate state to the EU. The path towards EU integration has, however, been cumbersome and even though the negotiations on the Stabilisation and Association Agreement started in October 2005, it was not until April 2008, that the Agreement was signed. In fact, especially the Serbian reluctance to cooperate with the ICTY¹²⁴, in the extradition of war

¹²³ The Yugoslav Wars of Succession refer not only to the wars in Croatia and Bosnia and Herzegovina but also to the war in Slovenia however short the war fought. Cf. (Hoare in Ramet 2010: 111).

¹²⁴ Cooperation with the ICTY is one of the key conditions of the Stabilisation and Association Agreement (SAA) and when the Agreement was signed the EU stipulated

criminals, has delayed Serbia's chances of integrating into the EU. Furthermore, the democratisation process in Serbia has been lengthy, and cumbersome, and as opposed to the Croatian case, where the death of Tudjman meant a relaxation of the nationalistic policies, the end of the Milosevic regime did not have the same effects. In fact, after the assassination of the Serbian Prime minister Zoran Djindjic in 2003, who had pursued a pro-western integration agenda, the Kostunica government (2004-2008) relapsed into aggressive nationalistic policies¹²⁵ and Serbia "slipped backwards, basking in revanchist Chetnik nationalism" (Ramet 2010: 274-275).

Furthermore, the Kosovo issue is still an unresolved problem for Serbia. For the international community the problem of the status of Kosovo was partly settled in April 2007, when the UN-envoy Ahtisaari presented his plan on "supervised independence" for Kosovo. (Trix in Ramet 2010: 373) Less than a year later, in February 2008, Kosovo unilaterally proclaimed independence which Serbia has since adamantly refused to recognise. In fact, even though constructive cooperation "on matters relating to Kosovo is a key European Partnership priority", Serbia still cannot come to terms with the fact that Kosovo no longer constitutes "an inalienable part of Serbia". (EU Report 2009: 21)

The demographic dimension

Population wise, and territory wise, Serbia was by far the most domineering Republic of former Yugoslavia. Situated in the North-eastern parts of former Yugoslavia, the Serbian population, according to the 2002 census, amounted to 7,498,001 and the Serbian landmass extends over 77.474 km².¹²⁶ The Republic of Serbia, of which Vojvodina is still a part, is surrounded by Hungary to the North, Croatia to the far North-West, Bosnia and Herzegovina to the West, Montenegro to the South-West, Kosovo and Macedonia to the South, Bulgaria to the South-East and finally Romania to the North-East. Even though Serbia proper was

that Serbia "will not get any concrete benefits from it until Belgrade is judged to be fully cooperating with the ICTY" (Bokulic & Kostadinova 2008: 28).

¹²⁵ To Kostunica, the Serb war criminals were glorified as Serb heroes and consequently the Kostunica government adamantly refused to cooperate with the ICTY in the extradition of Serb wars criminals. Cf. (Ramet 2010: 297-300).

¹²⁶ Exempted from the figures, population-wise and territory-wise is the former Kosovo Province.

highly mono-ethnic, when taking into account the two Autonomous Provinces, Vojvodina and Kosovo, the Serbian Republic had, in fact, and by far, the largest share of national minorities in the former Yugoslavia.

In fact, in the SFRY, according to the 1981 census, “75.8% of all nationalities and ethnic groups lived in SR Serbia” (Baltic 2007: 38). Up until recently, *de facto* since 1999, and *de jure* since 2008¹²⁷, the Republic of Serbia was constituted by Serbia proper, and the two Autonomous Provinces, Vojvodina in the North and Kosovo in the South. Whereas Serbia proper was relatively mono-ethnic, constituted by approximately 85% of Serbs, when taking into account the highly multi-ethnic provinces, the Serbs only amounted to 66.4%. Serbia proper had a share of national minorities of which the most important were constituted by the Albanians (1.3%) and the Bulgarians (0.5%), which “made up the two largest nationality groups” (Baltic 2007: 39). In the multi-ethnic Vojvodina, although constituted by a majority of Serbs (55.8%), the Province had a high concentration of settled homeland minorities, of which the most important were the Hungarians (21.7%), the Croats (7.1%) and the Slovaks (3.7%). In fact, and according to the 1981 census, approximately 90% of the Hungarian minority in the SFRY¹²⁸ was settled in Vojvodina. (Baltic 2007: 38) In Kosovo, the “heartland of Serbia”, the population was predominantly Albanian which amounted to an important 77% of the Kosovo population and the Serbs only amounted to 13%. (Trix in Ramet 2010: 361) On the basis of the 1981 census, the Albanian minority in the SFRY¹²⁹ was, in fact, largely concentrated to Kosovo (70.9%). (Baltic 2007: 38)

Even though the Yugoslav Wars of Succession naturally were to create ethnic conflictive divisions with the Croat and Bosniak minorities, the primary ethnic conflict in Serbia was to develop between the Serbs and the Kosovo-Albanians. Just as the Albanian question became a threat to

¹²⁷ Kosovo was placed under international protectorate in 1999 which consequently means that however not officially, Kosovo was separated from the domestic jurisdiction of Serbia. *De jure* independence was granted in 2008 when Kosovo unilaterally proclaimed independence on the 17th of February 2008. Cf. (Baldwin 2006: 11; Trix in Ramet 2010: 373).

¹²⁸ The remainder of the Hungarian minority was primarily settled in Croatia (5.96%) and in Slovenia (2.22%). Cf. (Baltic 2007: 38).

¹²⁹ According to the 1981 census, the share of the Albanian minority in the SFRY was primarily settled in Macedonia (21.8%), in Serbia proper (4.19%) and in Montenegro (2.18%). Cf. (Baltic 2007: 38).

the internal stability of Macedonia, the same was true for Serbia. In Serbia, though, the increasing ethnic hostilities between the Serbs and the Kosovo-Albanians were primarily located to the Kosovo-question which involved problems of another order. Thus, the root problem to the Kosovo territory is to be found in two competitive claims of a historic homeland, where both the Serbs and the Albanians claim exclusive authority over the same territory. Just as the Albanians view Kosovo as the cradle of their national identity, Kosovo represents “the holy place of all Serbs because it had formed the centre of the Medieval Serbian Empire”, which was destroyed in the mythical battle at Kosovo Polje by the Ottoman armies in 1389. (Swain & Swain 2003: 180) Furthermore, since the “ancient seat of the Serbian Orthodox Church – the Patriarchate of Pec – is situated in Kosovo/a”, Kosovo became the symbol of the essence of the Serbian nationhood, grounded in the Serbian heroism, as well as in the Serbian spirituality. (Briza 2000: 12) The Serbian aversion towards the Albanians is therefore not only explained from a classical religious antagonism between Christianity and Islam, it is further accentuated by the previous national wars of liberation where leaders from the Orthodox Church participated against the Muslims to free Serbia from the Ottoman tutelage. The importance of the Church, in the strengthening of Serbian nationalism, was on display during the Milosevic regime, when priests were participating in “the carrying of King Lazar (the Serbian ruler who was killed in the battle of Kosovo/a) at the 600th anniversary of the battle in 1989”, which was a way to mark that Kosovo belonged to the Serbs. (Briza 2000: 10).

Demographically, the Albanians also constituted a threat to the Serb nation in Kosovo. This is especially due to the comparatively very high fertility rate of the Albanians who, by large, constituted the majority in the province. In fact, whereas the Albanian population increased by 7.6% between 1961 and 1991, concomitantly the Serb population decreased by 8% during the same time-period. (Eberhardt 2002: 388) These demographic changes were, however, not only explained by the high fertility rate of the Albanians but also by economic hardships and ethnic tensions that subsequently resulted in a continuous exodus of the Kosovo Serb minority from Kosovo to Serbia proper, especially between 1971 and 1981.

The systematic discrimination of the Kosovo Albanians that resulted from the decision of the Serbian political leadership to suppress the autonomy of Kosovo in 1989¹³⁰, found its politico-legal justification in the 1974 Constitution which had upgraded the Serbian Autonomous Provinces to an almost equivalent status to the Republics. This, in turn, meant that in Kosovo, the Serbs had been demoted to the status of a national minority in a territory that was conceived of as the very cradle of the Serb nationhood, and statehood. However, even though Kosovo henceforth constituted a federal unit, the Kosovar situation was not matched by the Republics, since the “Albanians were recognized as a nationality and not as a nation” (Baltic 2007: 41). The distinction between nation and nationality was to become important since the right to secede was legally limited to those recognised as nations. (Baltic 2007: 41) The Albanians’ claims for status of Federal Republic, as well as claims of secession, started to be voiced in the Kosovo riots in the beginning of the 1980s. These claims exacerbated Serb nationalistic sentiments, of which the famous Memorandum of the Serbian Academy of Science and Art, a document produced by former nationalist dissidents opposed to Titoism¹³¹, expressed the quintessence of the Serbian nationalistic project. The Memorandum declared that the constitutional order from 1974, denied the Serbs their right to their own state and, not only Kosovo, but “the western Yugoslav republics, were exploiting Serbia economically, and that the regime was acquiescing in the Albanian “genocide” of Serbs in Kosovo, as well as in Croatia’s assimilation of its Serb population” (Hoare in Ramet 2010: 115). When Slobodan Milosevic came to power in 1987, he endorsed the conclusion of the Memorandum, which stated that the status of Kosovo was primordial to the very survival of the Serb nation. Thus, logically following from this, the autonomy of Kosovo was suppressed in 1989. In 1998 open war broke out between the Serbs and the Kosovo-Albanians.

Demographically, not only the Kosovo war, but also the wars of Yugoslav Succession, had changed the ethnic structure of Serbia. As a result of the massive loss of lives, as well as the displacements of people, Serbia proper had become even more mono-ethnic, as a result of an influx of

¹³⁰ In parallel to the suppression of the Kosovo autonomy, the Serbian parliament had also “revoked the right of self-government” in Vojvodina. Cf. (MRGI 2008: 2).

¹³¹ The Serbian opposition to Titoism and the constitutional order of 1974 accelerated after Tito’s death. Cf. (Hoare in Ramet 2010: 115).

Serb refugees and also Roma refugees, from especially Kosovo, as well as from Croatia, and Bosnia and Herzegovina. Furthermore, Serbia, and especially the multi-ethnic Vojvodina, lost many “among its traditional minorities, in particular Hungarians, Croats and Bosniaks” (MRGI 2008: 3).

Table 8.1. Ethnic structure of the population in the Republic of Serbia according to the 1991¹³² census and the 2002 census¹³³ (data of 1991 retrieved from the State Report submitted by the Federal Republic of Yugoslavia to the Advisory Committee of the Council of Europe of 16 October 2002 and data from 2001 census derived from the CoE Report 2003: 10)¹³⁴

Nationality	1991 number	1991 %	2002 number	2002 %
Serbs	6.252.405	79.9	6.212.838	82.9
Montenegrins	118.934	1.5	64.049	0.9
Yugoslavs	320.168	4.1	80.721	1.1
Albanians	78.281	1.0	61.647	0.8
Bosniaks	-	-	136.087	1.8
Bulgarians	26.698	0.3	20.497	0.3
Bunjevtsi	21.434	0.3	20.012	0.3
Vlachs	17.804	0.2	40.054	0.5
Gorantsi	-	-	4.581	0.1
Hungarians	343.900	4.4	293.299	3.9
Macedonians	45.068	0.6	25.847	0.3
Moslems ¹³⁵	180.222	2.3	19.503	0.3
Roma	94.492	1.2	108.193	1.4
Romanians	42.316	0.5	34.576	0.5
Ruthenians	18.052	0.2	15.905	0.2
Slovaks	66.772	0.9	59.021	0.8
Slovenes	-	-	5.104	0.1
Ukrainians	-	-	5.354	0.1
Croats	97.344	1.2	70.602	0.9
Others	20.518	2.6	11.711	0.2
Non-declared	10.718	0.1	107.732	1.4
Regional aff.	4841	-	11.485	0.1
Unknown	47.958	0.6	75.483	1.0
Total	7.822.795	100	7.498.001	100

¹³² Even though Kosovo was integrated in the 1991 census, in order to facilitate comparison between 1991 and 2002, the Kosovo District has been removed from this chart.

¹³³ The 2002 census did not cover Kosovo. Cf. (CoE Report 2003: 10).

¹³⁴ Only minorities amounting to at least 0.1% have been integrated into the list. Thus, the German minority (0.05%), the Russian minority (0.03%) as well as the Czech minority (0.03%) have been removed. Cf. (CoE Report 2003: 10).

¹³⁵ Moslems and Bosniaks did not constitute separate categories in the 1991 census. Thus Bosniaks and Moslems together amounted to 2.3% in the 1991 census. Cf. State Report submitted by the Federal Republic of Yugoslavia to the Advisory Committee of the Council of Europe, ACFC/SR(2002)003, 16 October 2002, p. 11.

The sociolinguistic dimension

Just as the aggressive nationalistic policies of Serbia never aimed at independence, but rather the contrary, the same was true for their language policy. In fact, as opposed to Croatia, Serbia was never interested in pursuing linguistic nationalism but “had continued to insist on the joint language and readily accepted the term *Serbo-Croatian*” (Greenberg 2000: 625).¹³⁶ The Serbian reluctance of defining the specificity of a Serbian language was already blatant in the language policy discussions that emanated from the 1974 Constitution, which “guaranteed the language rights of all nations and nationalities in Yugoslavia” (Greenberg 2000: 636). Hence, as opposed to the Croatian, Montenegrin and Bosnian Republican Constitutions, which all made modifications in favour of their respective linguistic specificities, Serbia, by contrast, “did not make constitutional provisions for a Serbian, standard linguistic idiom” (Greenberg 2000: 636). As a response to the Croatian Constitution of 1990¹³⁷, however, the Serbs finally declared Serbian to be the official language of the newly formed Federal Republic of Yugoslavia in 1992. (Greenberg 2000: 625)

The evolution of the denomination of the majority language, and the gradual emphasis on the specificity of the Serbian language, is noticeable in the consecutive Constitutions of Serbia. In the 1990 Constitution, article 8 stipulates that “the Serbo-Croatian language and the Cyrillic alphabet are in official use, and the Latin alphabet is in official use, as stipulated by law” (Art. 8, 1990 Constitution). A gradual shift is noticeable in the 1991 Constitution, whereby a more precise identification of the Serbian linguistic specificity is made when it is declared that “in official use is the Serbo-Croatian language, which, when it represents the Serbian linguistic expression, ekavian or ijekavian, is also called the Serbian language (henceforth the Serbian language)” (Art. 1, 1991 Constitution). Finally, in the 1992 Constitution with the proclamation of the FRY¹³⁸, the Serbo-Croatian terminology had completely vanished since Article 15 declared

¹³⁶ The Serbian linguistic stance was to hold on to the Novi Sad Agreement of 1954 which “declared Serbo-Croatian to be a single language with two equal and official variants” (Greenberg 2000: 626).

¹³⁷ The Croatian Constitution of 1990 declared the Croatian language to be the official language of Croatia. Cf. (Greenberg 2000: 625).

¹³⁸ In April 1992 the proclamation of the FRY, consisting of the Republics of Serbia, including Kosovo and Vojvodina, and Montenegro, was made. Cf. (Ramet 2010: 304).

that, “the Serbian language in its ekavian and ijekavian pronunciations and the Cyrillic alphabet are in official use, and the Latin alphabet is in official use, in accordance with the constitution and the law” (Art. 15, 1992 Constitution). However, even though there has been a shift in the terminology of the majority language, this has not impacted on the substance or the structure of the language itself, and the changes can thus be “described as external acts with few implications for internal language development” (Bugarski 2004: 192).¹³⁹

As far as minority language use is concerned, there is no change in substance in that all Constitutions establish that “in areas of the Federal Republic of Yugoslavia where national minorities reside, their languages and alphabets are also in official use, in accordance with the law” (Art. 15, 1992 Constitution). Thus, minority language rights, up until the Serbian independence of 2006, have been regulated by one Federal Constitution, the Serbian Republic Constitution, as well as the statutes of the two Autonomous Provinces, Kosovo and Vojvodina. The most widely used minority languages in Serbia are Albanian, Hungarian, Romani and, to some extent, Croatian and Bosnian. Even though minority language rights in post-war Serbia are still extensive by international standards, the wars, and especially the Kosovo war, drastically changed the situation in both Kosovo and Vojvodina, whose respective autonomies were radically reduced. Compared to the 1974 Republican Constitution of Serbia, in which it was stated that the provincial constitutions themselves stipulated the minority language in official use¹⁴⁰, this had changed in the early 1990s, resulting in the “relegation of the official use of their minority languages from provincial to municipal level” (Bugarski 2004: 192).

In fact, prior to the suppression of the autonomy of Kosovo in 1989, the Albanian language had “enjoyed a high degree of rights” (Bugarski 2004:

¹³⁹ As opposed to the Croatian case where the independence and the new language policy entailed not only a terminological change, from Serbo-Croatian to the Croatian language but also an active pursuance of a linguistic purge to remove any “actual or perceived Serbisms” at the same time as “reviving Croatian archaic and regional forms and creating neologisms” (Bugarski 2004: 197).

¹⁴⁰ According to Article 5 of the Vojvodina Constitution, apart from Serbo-Croatian, the following minority languages were in official use at the state level: Hungarian, Slovak, Romanian and Ruthenian. In Article 236 of the Kosovo Constitution, Albanian and Serbo-Croatian were in official use on the state level. On the municipal level it was also stipulated that the Turkish language could be used as well. Cf. (Baltic 2007: 39)

192). However, after 1989, these rights were eliminated and the increasing conflictive relations between Serbs and Albanians were accentuated by a linguistic estrangement between the two antagonists. However, in Vojvodina, “one of the most multi-ethnic and multilingual regions of Europe”, minority language rights have continued to be provided rather extensively and Vojvodina is, by far, the region in Serbia where national minorities “enjoy both *de jure* and *de facto*, the greatest collective rights in Serbia” (Briza 2000: 9). However, the record of implementation displays great variations as to how these rights are adhered to in practice and, as a consequence of the wars, “attendance of mother tongue education and production of mother tongue media for minorities (...) has dropped significantly” (Bugarski 2004: 192). In Serbia proper, the gap between *de jure* rights, and *de facto* rights, have been the most blatant. One example is the recent linguistic upheavals in the Sandzak region¹⁴¹, which have engaged the population, predominantly Moslems speaking the Serbo-Croatian language, in a campaign of defining themselves as Bosnian speaking Bosniaks, “thus identifying with their kin in Bosnia” (Bugarski 2004: 192).

Minority language rights in education have also been extensively provided for, and guarantees in the three Constitutions of the 1990s (1990, 1991 and 1992), provide for education in minority language, “from primary school to university level” (Briza 2000: 9). However, the campaign initiated in 1990-1991, for creating a Serbian uniform educational system, with a standardised curriculum, went counter to the legal minority rights provisions, and were to have disastrous effects, particularly in Kosovo, during the 1990s. In fact, a “number of educational facilities and institutes in Kosovo/a were closed”, and approximately 18 000 Albanian teachers were let go as a consequence of a general refusal from the Albanian teachers to use the imposed textbooks of the new curriculum. (Briza 2000: 9) Just as the peaceful resistance of the Albanians had installed a system of parallel political institutions in Kosovo, the same was done in the educational sector, “with the development of a wide parallel school network by the ethnic Albanians” (Briza 2000: 9). Even though the wars had had negative effects on minority education in Vojvodina as well, the situation was radically

¹⁴¹ The Sandzak region is an area which extends into the territory of Montenegro and is in proximity to both Kosovo and Bosnia and Herzegovina.

different. In fact, both at primary and secondary school levels, in the 45 municipalities of Vojvodina, instruction in minority languages, especially in Hungarian, Slovak, Romanian and Ruthenian, was provided for. Furthermore, since 1998, “some primary schools in Vojvodina have voluntarily introduced instruction in the Roma language” (Briza 2000: 9). The situation in Serbia proper, however bearing in mind that Serbia proper is relatively mono-ethnic, stands in stark contrast to the one in Vojvodina, and once again the gap between theory and practice is the most acute, since “no primary or secondary schools in central Serbia (...) teach in minority languages” (Briza 2000: 9).

Legislation in minority language rights protection upon gaining status as potential candidate state

The 2003 monitoring Reports of both the EU and the Council of Europe were published the same year as the European Council decided upon the Thessaloniki Agenda and Serbia became a potential candidate state to the EU. 2003 also marks the year, as solemnly pointed out by the EU Report, of the assassination of the pro-western Serbian Prime Minister Zoran Djindjic. Furthermore, in February 2003, the Federal Republic of Yugoslavia was replaced by the Union of Serbia and Montenegro, a loose confederation instigated by the EU¹⁴² and reluctantly entered into by the two former Republics. The reluctance was particularly manifest from the Montenegrin side and its non-recognition of the new federal institutions was visible in the “non-implementation of important newly adopted federal laws (e.g. Criminal Procedure Code, Law of Minorities” (EU Report 2003: 3). As pointed out both by the CoE and the EU, the monitoring process is situated in a context of a precarious politico-legal situation, which, furthermore, can be seen in the “parallel existence of obsolete legislation from the previous era¹⁴³, and newly adopted acts, and a lack of harmonization between laws and policies at different levels” (EU Report 2003: 3). However, the precarious politico-legal situation notwithstanding, the EU is also careful to emphasise that progress “has been slow even in areas *without* constitutional/institutional problems” (EU Report 2003: 36).

¹⁴² The Belgrade Agreement, brokered by the EU and signed in March 2002, and the Constitutional Charter made provisions on how the joint state was to be regulated. Cf. (Kim 2005: 1-2).

¹⁴³ Previous era refers to the Federal Republic of Yugoslavia (FRY).

The monitoring reports survey the situation in both Serbia and Montenegro, however since Serbia is the focus of investigation, information regarding the Montenegrin legislation has been discarded where possible. Furthermore, even though the EU Report does, to some extent, address the situation in Kosovo, information regarding the province is not integrated since it is “outside the effective control of the Government of Serbia and Montenegro” since 1999 when it was placed under a UN protectorate. (CoE Report 2003: 6). Serbia ratified the CoE’s Framework Convention on National Minorities (FCNM) on the 11th of May 2001, but had not, as of March 2003, signed the European Charter on Regional and Minority Languages. (EU Report 2003: 18) Legislation pertaining to the protection of national minorities that has been adopted includes: The Union Charter of Human Rights and Minority Rights and Civil Freedoms, as well as the Federal Law on the Protection of Rights and Freedoms of National Minorities. Furthermore, and as noted by the Advisory Committee, this legislative framework contains “promising innovations such as the National Councils of national minorities” (CoE Report 2003: 3). Also, the Law on the Official Use of Language and Script of Serbia regulates the right to use minority languages in official contexts. However, as consistently stressed by the monitoring reports, the fundamental constitutional changes which entails that the country is “undergoing comprehensive reforms (...) also affect the protection of national minorities” (CoE Report 2003: 7).

Non-discrimination

Just as the recent politico-legal changes have created a situation of a constitutional limbo, the same goes for the anti-discrimination legislation where the EU points out that “the legal system has a variety of anti-discrimination provisions, but these are dispersed across different laws at all levels” (EU Report 2003: 14). Furthermore, the legacy of the previous ethnic violence is seen in the inherited legislation, where some acts are “discriminatory in content” (EU Report 2003: 14). Thus, even though an Anti-discrimination Act is in preparation, it has not yet been adopted since it is “contingent on the new constitutional division of power” (EU Report 2003: 14). The EU notes, however, that the country has made real progress in the area of integrating ethnic communities into society, “where the authorities have continued to demonstrate a strong reform commitment” (EU Report 2003: 18). Noteworthy in this regard is the introduction of the Federal Law on the Protection of Minorities, which

provides for both individual, as well as collective rights, “including protection instruments” (EU Report 2003: 18). As noted by the CoE Advisory Committee, the lack of a clear status of the Federal Law is discernible in the fact that even though the Law is considered applicable in Serbia, adoption has been refused by the Montenegrin authorities. (CoE Report 2003: 7) However, as pointed out by the Advisory Committee, there “exist general guarantees against discrimination” which, apart from the above stated Federal Law, are provided for in the Union Charter of Human Rights and Minority Rights and Civil Freedoms, as well as in criminal law and civil law. (CoE Report 2003: 11) However, these provisions are not sufficient and the Advisory Committee specifically notes that, “both legislative and practical measures are needed to improve the implementation of the principles of non-discrimination and full and effective equality” (CoE Report 2003: 4).

The Advisory Committee further raises the issue of the scope of application of the citizen criterion in relation to national minorities by noting that the Federal Law on the Protection of Rights and Freedoms of National Minorities¹⁴⁴ gives an encompassing definition of a national minority.¹⁴⁵ The objections raised by the Advisory Committee, however positive the Committee finds the encompassing nature of the definition, pertains to the scope of a national minority which is limited only to citizens of Serbia and Montenegro. This would per definition, not only exclude many of the Roma community, but also “other persons whose citizenship status, following the break-up of Yugoslavia and the conflict in Kosovo, has not been regularized, including those displaced persons from Kosovo who, in the absence of personal documentation, have had difficulties in obtaining confirmation of their citizenship” (CoE Report 2003: 10). Furthermore, since the Roma, Ashkali and Egyptian minorities consider themselves as having distinct identities from one another, the

¹⁴⁴ This Law, from 2002, is an example of an inherited law from the Federal Republic of Yugoslavia.

¹⁴⁵ According to the Federal Law, a national minority is “a group of citizens of the Federal Republic of Yugoslavia, sufficiently representative, although in a minority position in the territory of the Federal Republic of Yugoslavia, belonging to a group of residents having a long term and firm bond with the territory and possessing some distinctive features, such as language, culture, national or ethnic belonging, origin or religion, upon which it differs from the majority of the population, and whose members should show their concern over the preservation of their common identity, including culture, tradition, language or religion” (CoE Report 2003: 9).

Advisory Committee calls upon the authorities not to treat them as “one indivisible minority” (CoE Report 2003: 10). The citizen-criterion is thus problematic in regards to non-discrimination, since the “relevant guarantees in the Constitution of Serbia (...) are largely limited to “citizens” only” (CoE Report 2003: 12).

Therefore, even though the Advisory Committee recognises the legitimacy of differentiating between citizens and non-citizens, at the same time they stress the necessity for non-citizens to be legally protected against discrimination. In this regard it is also pointed out that “Article 134 of the federal Criminal Code protects only “citizens” from violence motivated by ethnicity or race” (CoE Report 2003: 12). Thus, even though the Advisory Committee positively notes that the authorities recognise the existence of ethnic discrimination in Serbia, especially as regards the Roma community, the Advisory Committee stresses “the importance of having adequate legislation in place to protect persons belonging to national minorities from discrimination” (CoE Report 2003: 12). Along the same line of reasoning, the EU notes that although there has been obvious progress in the area of protection of national minorities, “sporadic discrimination against some ethnic groups”, and especially against the Roma community, still exists. (EU Report 2003: 18-19) Also, hate speeches are occurring and even though sporadic in manifestation, the EU notes with concern that these sometimes also involve “prominent politicians or officials” (EU Report 2003: 19). The Advisory Committee is, furthermore, concerned about reported discrimination against national minorities by the police and other law enforcement agencies, and in this regard the Advisory Committee welcomes “the information received from the Ministry of Interior of Serbia that new instructions concerning police ethics emphasise the principles of non-discrimination and the protection of national minorities” (CoE Report 2003: 18). A good example of interethnic promotion in law enforcement agencies in this regard is the introduction of a multi-ethnic police force in Southern Serbia, as noted satisfactorily both by the CoE and the EU. (CoE Report 2003: 18; EU Report 2003: 12) Also, in order to promote greater inclusion of the Roma community in society, the EU notes, with satisfaction, that, in cooperation with both the OSCE, and the United Nations High Commissioner on Refugees, a National Strategy for Roma integration has been developed. (EU Report 2003: 18)

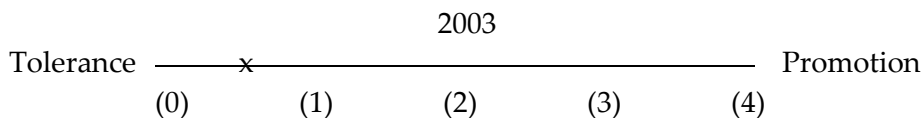
In order to combat ethnic discrimination more effectively, the Advisory Committee considers that specific institutional structures need to be established. The Advisory Committee welcomes the decision taken by the Assembly of the Autonomous Province of Vojvodina of December 2002, to set up an Ombudsman's Office which would be "devoted to the protection of national minorities" (CoE Report 2003: 12). Also, the Advisory Committee stresses the need to launch "additional positive measures in the field of employment", in order to ensure effective equality of people previously discriminated against, especially as concerns "persons belonging to Albanian, Bosniac, Croatian and Muslim minorities" (CoE Report 2003: 13). Furthermore, in the same vein as the EU Report, the Advisory Committee stresses the precarious situation of the Roma, which is particularly difficult, not only in the field of employment, but also in such fields as housing and education. (CoE Report 2003: 13) Therefore, the Advisory Committee finds it encouraging that the authorities are underway to draw up "a comprehensive Strategy for the Integration and Empowerment of Roma", where the prioritised issues would, in fact, pertain to "housing, economic empowerment, education and living-conditions of displaced Roma" (CoE Report 2003: 14).

It is obvious that the precarious politico-legal situation of the newly established Union of Serbia and Montenegro makes the monitoring, and subsequently, the analysis of non-discrimination legislation difficult, since "the legal system has a variety of anti-discrimination provisions, but these are dispersed across different laws at all levels" (EU Report 2003: 14). However, even though it is stated that there "exist(s) general guarantees against discrimination", these provisions are not sufficient and "both legislative and practical measures are needed to improve the implementation of the principles of non-discrimination and full and effective equality" (CoE Report 2003: 11, 4). In the same vein, the EU Commission notes that even though Serbia has made real progress in the area of non-discrimination, Serbia needs to adopt and to implement "general anti-discrimination legislation" (EU Report 2003: 26). Furthermore, and not surprisingly, the EU stresses the need to implement the "new constitutional arrangements", in line with the Council of Europe's FCNM. (EU Report 2003: 26) The EU also recommends the Union of Serbia and Montenegro to ratify the European Convention of Human Rights and Fundamental Freedoms, and also to proceed with

“implementation and guarantees of all human rights and fundamental freedoms” (EU Report 2003: 25).

Taken in this study, and on the basis of the conclusions of both the EU and the CoE, general guarantees against discrimination do exist even though the general is problematic since these do not encompass a considerable share of non-citizens. People lacking citizenship are primarily constituted by a large portion of the Roma community, but also a considerable share of displaced persons, resulting from the Yugoslav wars of Succession, as well as from the Kosovo war. However, even though it is stressed by the Advisory Committee that non-citizens need to be legally protected against discrimination, at the same time, they abide by the legitimacy to differentiate between citizens and non-citizens. Also, according to the EU Report, Serbia needs to adopt and to implement general anti-discrimination legislation. Although the Constitutional Charter, instituting the new constitutional framework, had not been adopted at the time of writing, the equality clause of the FRY Constitution from 1992 does stipulate that “Citizens shall be equal irrespective of their nationality, race, sex, language, faith, political or other beliefs, education, social origin, property, or other personal status” (Art. 20, FRY Constitution 1992). Therefore, one could argue that, partially at least, general provisions exist in the passing from one Constitution to another. Thus, on the basis of the above, and substantially due to the constitutional limbo that Serbia finds itself in, Serbia is argued to have only partially constitutional guarantees against discrimination, and is thus positioned on the level of 0.5 according to the index scale.

Fig. 8.1. Serbia and level of rule adoption in non-discrimination upon gaining status as potential candidate state



- (0): Absence of any non-discrimination norm;
- (1): General provisions such as an equality clause in the Constitution;
- (2): Non-discrimination laws are inserted in specific laws;
- (3): Comprehensive anti-discrimination legislation which then means that there has been a complete transposition of the EU anti-discrimination *acquis*;
- (4): Non-discrimination laws exceed the minimum requirements of the Directive.

Minority language use in official contexts

The EU Report does not touch upon the use of minority languages in official contexts other than stating that the country is on its way to signing the European Charter on Regional and Minority Languages (ECRML). (EU Report 2003: 18) Following the more comprehensive review of the Advisory Committee, which devotes a considerable part of their Report to the status of the official use of minority languages in Serbia, the difficult legal situation of the country is once again emphasised. However, and bearing this in mind, the Advisory Committee's notes, with satisfaction, that the already mentioned Federal Law on the Protection of Rights and Freedoms of National Minorities does contain legal provisions for the official use of minority languages, as does Article 52 of the Union Charter of Human Rights and Minority Rights and Civil Freedoms. In fact, articles 10 and 11 of the Federal Law contain obligations to "introduce the "official use" of minority languages – which includes the oral and written use of the said language in relations with authorities – in those local self-governing units where the number of persons belonging to the national minority concerned has reached 15 per cent, and that the local self-government units may decide to introduce this measure even with a lower percentage of the minority population" (CoE Report 2003: 21). Additionally, Article 16, of the Law on the Official Use of Language and Script of Serbia, identifies the conditions which regulate the use of minority languages in procedures before agencies also

“in areas where a minority language is not in official use” (CoE Report 2003: 21). Furthermore, Article 11 also provides rights as to the use of minority languages in official documents, such as “the issuance of public documents, and keeping official registers and registers of personal data also in the language of national minorities, and the acceptance of those public documents as legally valid” (Art. 11 of the Federal Law on the Protection of Rights and Freedoms of National Minorities).

On the question of implementation of the said laws the Advisory Committee notes, in general terms, that there exist wide regional variations as to how these laws are implemented in practice. In fact, in Vojvodina these laws have been extensively applied, also having been recently “extended with respect to the Croatian language” (CoE Report 2003: 21). Furthermore, laudable initiatives have been recorded in some municipalities of Southern Serbia, where the Albanian language, after intense debates, has been introduced in official use. The same can be said of the Bosnian language, having acquired status as in official use in “the municipalities of Novi Pazar, Sjenica and Tutin” (CoE Report 2003: 21). However, and keeping in mind that “the present legal situation is rather complicated”, and considering the great differentiation of the regional variations, the Advisory Committee considers that the authorities should review the situation in order to guarantee that “the above-mentioned legal obligations have been implemented *de facto*, and *de jure*, in all municipalities concerned” (CoE Report 2003: 21). Furthermore, and pertaining to the complicated legal situation, the Advisory Committee notes, with concern, that the rights provided for in the Federal Law are not compatible notably with Article 20 of the Law on the Official Use of Language and Script of Serbia. In fact, according to Article 20, “the annotation of an enterprise, institution and other legal person may be written, in addition to Serbian, also in the language of a nationality that is in official use in the location of the seat or business of the entity” (CoE Report 2003: 22). The Advisory Committee is wary that this provision could be interpreted in a way that would limit persons belonging to minority languages, not in official use, the right to display information of a private nature to the public, which goes counter to Article 11 of the FCNM. Thus, the Advisory Committee calls upon the Serbian authorities to make adjustments to the said provision in order for it to be compatible with the FCNM. (CoE Report 2003: 22).

As concerns the use of signs and symbols, Article 16, of the Federal Law on the Protection of Rights and Freedoms of National Minorities, stipulates that national minorities do have the right to “choose and use their national symbols but that these symbols cannot be identical with symbols of another state” (CoE Report 2003: 22). Furthermore, Article 19, of the Law on the Official Use of Language and Script of Serbia, provides guarantees as to the right to use signs and symbols and that these *de jure* rights have been followed by commendable initiatives in practice especially as concerns the “display of topographical indications intended for the public in those local self-government units where a minority language is in official use” (CoE Report 2003: 22). As noted by the Advisory Committee, however, more pervasive efforts are needed, especially in areas inhabited by large shares of Romanians and Croats, particularly in regards to street names in minority languages. Furthermore, the Advisory Committee calls for more “vigilance and consistency (...) to ensure that, in addition to the local self- government units, the agencies of the constituent states display inscriptions in minority languages in areas traditionally inhabited by a substantial number of persons belonging to a national minority, when there is a sufficient demand” (CoE Report 2003: 22).

Bearing in mind the complicated legal situation which, here, is exemplified by the incompatibility between the Federal Law and the Law on the Official Use of Language and Script of Serbia, one has nevertheless to conclude that the use of minority languages in official contexts is quite extensively provided for. Furthermore, even though regional variations do exist as to the compatibility between the *de jure* provisions, and the *de facto* situations, the Advisory Committee confirms that overall these rights have been quite successfully implemented. Hence, taken in this study, Serbia is positioned on the level of 3.0.

Fig. 8.2. Serbia and level of rule adoption in minority language use in official contexts upon gaining status as potential candidate state



- (0): No recognition of minority languages;
- (1): The right to use the minority language in official contexts (before judicial and administrative authorities; i.e. the right to a translator);
- (2): The minority language can be used in Personal and Place Names (public signs);
- (3): The minority language can be used in official documents;
- (4): Minority language having status as official language.

Minority language rights in education

Just as the status of minority languages in official use in Serbia does not get a lot of attention from the EU, the same is true for rights pertaining to minority language rights in education. The only comment the EU Report makes, in this respect, is that a “comprehensive review of school curricula has been conducted, and minorities will, in the future, have a say” (EU Report 2003: 18). The CoE Report is, however, more extensive, and based on particularly the Federal Law on the Protection of Rights and Freedoms of National Minorities, as well as the Law on Elementary Schools of the Republic of Serbia, the Advisory Committee notes that, on the constitutional level, guarantees are made for minorities to have education in their own languages. This right is further accentuated in Article 13, as well as in the Law on Elementary Schools of the Republic of Serbia. Article 13, of the Federal Law, stipulates that “Persons belonging to national minorities have the right to instruction in their own language in pre-school, elementary school and secondary school education” (Art. 13). However, for instruction in minority language to take place, a minimum of 15 persons need to have applied for this right to be implemented. As noted by the Advisory Committee, “such teaching can also be organised for a smaller group upon approval by the Ministry of Education of Serbia” (CoE Report 2003: 25). Furthermore, Article 15, of the Federal Law, establishes the right for minorities to establish their own private educational institutions, from primary up to university level. (Art. 15 of the Federal Law)

In practice, these rights seem to be upheld rather well in a number of minority languages, and the Advisory Committee specifically welcomes new initiatives like the one in Vojvodina where instruction in Croatian was introduced recently. (CoE Report 2003: 25) However, shortcomings in practice have been recorded and the Advisory Committee specifically notes that instruction in the Vlach language in municipalities in the North-eastern parts of Serbia has not been made available. Even though the Serbian authorities assert that this is due to limited demand, the Advisory Committee considers that “the authorities should take more proactive measures to analyse the level of demand and introduce such teaching whenever the criteria established by the domestic legislation are met” (CoE Report 2003: 25). The Advisory Committee also notes that there is a demand from representatives of the large Bosniak community in the Sandzak region to have instruction in the Bosnian language in the public educational system. However, although calling on the authorities to ensure that “the domestic legislation pertaining to the teaching in, or of, minority languages, is fully implemented also in respect of the Bosniac language”, the Advisory Committee is at the same time wary and recognises the problem with an unwarranted linguistic separation in the Serbian educational system. (CoE Report 2003: 25)

Another issue related to the implementation of minority language rights in education is that the Serbian legislation stipulates that when instruction is made in a minority language, it is obligatory in parallel to study Serbian. This is hardly surprising, however, the problem raised is that “such Serbian language teaching has been introduced as an addition to, rather than part of, the regular school work of the pupils concerned” (CoE Report 2003: 25). The Advisory Committee considers that the Serbian authorities should review the situation in order not to potentially discourage minority language pupils to opt out from minority education because of increased school work. Another more serious shortcoming raised by the Advisory Committee is the problem of Serbian school textbooks that have, up to date, contained very limited information on the history and culture of national minorities. Even more worrying is that in too many cases these textbooks have contributed to “negative stereotypes as regards Albanians, Germans, Muslims and persons belonging to other national minorities” (CoE Report 2003: 23). This goes counter to Article 12, of the Federal Law on the Protection of Rights and Freedoms of National Minorities, which stipulates that “the expression, preservation,

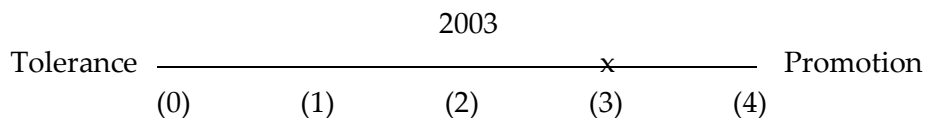
cultivation, promotion, inheritance and public demonstration of the national, ethnic, cultural, religious and linguistic specificity as the part of the tradition of citizens, national minorities and their members, is their inalienable individual and collective right” (Art. 12 Federal Law on the Protection of Rights and Freedoms of National Minorities). The Advisory Committee notes, satisfactorily, that the authorities are taking measures in order to redress the situation in line with Article 12 and in line with the FCNM. (CoE Report 2003: 23) Other shortcomings, and potentially contributing to the discouragement of national minority pupils to pursue minority education, is the shortage of qualified teachers, which has been addressed as a problem, primarily amongst the Albanians, the Slovaks, the Romanians and the Ruthenians. (CoE Report 2003: 23)

The poor integration of the Roma minority into the Serbian educational system is also raised by the Advisory Committee. Specifically alarming is the fact that, according to recent research provided by the Serbian authorities, “Roma children account for 50 to 80% of the total number of pupils” in Serbian special schools for the mentally disabled. (CoE Report 2003: 23) The large share of Roma in these schools is explained by the proceedings regulating the enrolment into elementary schools, which are specifically based on verbal tests which have not taken into account the “specific needs, social and cultural characteristics or language skills of Roma” (CoE Report 2003: 23). The Advisory Committee notes, satisfactorily, that these shortcomings have been recognised by the Serbian authorities and that the Ministry of Education of Serbia has already indicated an introduction of a new enrolment policy for 2004/2005 that would prevent such misdemeanours from reoccurring. However, in order to redress the present unfortunate situation, the Advisory Committee urges the authorities to “pursue this issue as a matter of high priority and to introduce additional measures to integrate in regular schools those Roma children who have been unduly placed in special schools” (CoE Report 2003: 23). Generally, as regards integration of Roma into the Serbian educational system, the Advisory Committee is concerned about the low school attendance and the high drop-out rate, especially as regards Roma girls, from elementary schools. Thus, however laudable some initiatives from the Serbian authorities to increase the access of the Roma to education, such as providing for free textbooks, the situation is still very problematic. (CoE Report 2003: 24)

The Advisory Committee also addresses problems specifically in relation to the Albanian minority as regards non-recognition of diplomas from abroad and from Kosovo. Since progress has been noted in the area of recognition of diplomas from educational institutions in Kosovo, the Advisory Committee “finds that there is a need to make further progress with respect to diplomas obtained in Albania or other foreign countries” (CoE Report 2003: 24). Furthermore, as concerns the right for minorities to set up their own educational institutions, the Advisory Committee notes that this right should not only be reflected in the Federal Law, but also “be better reflected in other pertinent legislation, notably in the Law on Elementary Schools of the Republic of Serbia, which at present excludes the establishment of regular private primary schools” (CoE Report 2003: 24).

Bearing in mind that there are some legal inconsistencies in the domain of minority language rights in education, and even though there are regional variations as to the implementation of the said provisions, it has to be concluded that Serbia, nevertheless, provides for extensive legal guarantees in this domain. The Federal Law on the Protection of Rights and Freedoms of National Minorities even provides legal rights for minorities to set up their own higher education institutions. However, since there are no such minority-run universities, Serbia does not score the maximum according to the index scale but is positioned on the level of 3.0.

Fig. 8.3. Serbia and level of rule adoption in minority language rights in education upon gaining status as potential candidate state



- (0): No education of or in minority language;
- (1): Children belonging to minorities have the right to learn their mother tongue in school;
- (2): At least parts of the curriculum (e.g. history or religion) are taught in the minority language;
- (3): Minorities have the right to educate their children completely in the mother tongue, either in state schools with a complete syllabus taught in the minority language or in specific minority schools;
- (4): Minorities have their own universities.

KOSOVO AND MINORITY LANGUAGE RIGHTS PROTECTION

Kosovo semi-independence

Just as the other Balkan states had been the battleground of competing Empires, the same was true for the Kosovo region. During the 13th century the common destiny of Serbia and Kosovo was sealed when Kosovo became part of the Serbian Kingdom¹⁴⁶. From 1455, when Serbia lost its independence to the Ottomans, Kosovo was also incorporated under Ottoman tutelage up until 1912 when it was reincorporated, against the wishes of the Albanian majority¹⁴⁷, into the Kingdom of Serbia, as a result of the Serb victory in the first Balkan war. Thus, just as the other Balkan states and regions had experienced great migrations and settlements of what were to become various historic homeland minorities, this was also true for Kosovo where primarily Albanians and Serbs had inhabited the same territory for centuries. However, the exclusivity of the Kosovo territory as it was to develop in the 1980s, apart from the international legal dimension, is not comparable to the other Balkan states. Indeed, the exclusivity lies in the politico-mythical domain where the territory is associated with legends of the first settlers¹⁴⁸, as well as associated with the national birth of both the Serbs (14th century) and the Albanians (19th century). The Kosovo problem can be traced back to the constitutional changes of 1963, when Kosovo was upgraded from the

¹⁴⁶ Kosovo was a part of the Serbian Kingdom between 1200 and 1450 and in the famous battle at Kosovo Polje in 1389 the Albanians in fact fought the Ottomans alongside King Lazar and the Serbs. Cf. (Trix in Ramet 2010: 359-360).

¹⁴⁷ The incorporation of Kosovo into the Kingdom of Serbia was sanctioned by the Great Powers in the Treaty of London of 1913. Cf. (Trix in Ramet 2010: 360).

¹⁴⁸ There is dispute over who were the first to settle on Kosovo territory. The Albanians claim the territory as being the direct descendants of the Illyrics, perceived as the first inhabitants of the territory around 7th century B.C. thus many centuries prior to the Slavic tribes whose presence is attested to be situated around 7th century A.D. Furthermore, the settlement of the Illyrics is argued to have been continuous as opposed to the Serbs who left Kosovo en masse during the 17th century not to return until the beginning of the 20th century and their re-conquest of the territory. Cf. (Baltic 2007: 4; Baldwin 2006: 6-7)

status of Region to that of Autonomous Province. The increased autonomy granted to Kosovo by the 1974 Constitution, gaining almost Republican status, consequently strengthened the independence of Kosovo from Belgrade.¹⁴⁹ The 1981 riots¹⁵⁰ became the start of a long political stalemate, where the Albanian calls for increased autonomy and claims of the establishment of a Republic of Kosovo were countered by an increasing Serbian concern that the constitutional order of 1974 was a violation of the Serbian state and nation.

The reaction of the Kosovo Albanians to the suppression of the autonomy of Kosovo in 1989 was to auto-proclaim Kosovo as a federal Republic of the Yugoslav Federation, by installing a parallel “State” with a Constitution, a Parliament and a Presidency, with a shadow government in the strongest sense of the term. In a secret ballot, held in May 1992, Ibrahim Rugova, of the newly formed Democratic League of Kosova (LDK)¹⁵¹, was elected President and pursued a policy of peaceful passive resistance against the Serbs. However, the policy of Rugova did nothing to change the systematic discrimination, imposed upon the Albanians, which led to a rapidly deteriorating socio-economic situation. Parallel to the incapacity of the international community to resolve the conflict, open war broke out in 1998 between the Serb security forces and the Kosovo Liberation Army (KLA). (Briza 2000: 13) The escalation of violence, not only from the Serbian side, but also the KLA’s offensive, changed the prerequisites of the conflict, and with an impending humanitarian catastrophe, the international community was forced into action. With the failure of the peace conference at Rambouillet¹⁵², NATO intervened and put an end to the conflict, after a three-month period of airborne raids.

¹⁴⁹ The increased autonomy meant that Kosovo was allowed its own Constitution and in the same token the University of Pristina was established which consequently permitted that “Albanians took positions of leadership in Kosova” (Trix in Ramet 2010: 360).

¹⁵⁰ The riots of 1981 started out with an incident at the Pristina University but rapidly set in motion contestations of a more general character directed against the authorities which resulted in violent demonstrations. The protests were rooted both in a disastrous economic situation with massive unemployment and extremely poor socio-economic conditions of the Kosovars in parallel to rising nationalism. Cf. (Trix in Ramet 2010: 360).

¹⁵¹ The Democratic League of Kosovo (LDK) was established in December 1989 and was to become the main political party of the Kosovo Albanians throughout the 1990s and into the 2000s. Cf. (Trix in Ramet 2010: 362).

¹⁵² The Peace conference at Rambouillet was instigated by the US diplomat Richard Holbrooke. The Albanians were pressurised into signing the treaty but the treaty became void since the Serbs never signed it. Cf. (Trix in Ramet 2010: 365).

On the 10th of June 1999, and with the establishment of the United Nations' Mission in Kosovo (UNMIK), following UN resolution 1244, Kosovo became a UN protectorate, still "under the technical sovereignty of Yugoslavia but to be administered by the UN" (Trix in Ramet 2010: 366). The UN resolution also allowed for the presence of NATO forces on Kosovo territory. However, even though the war was over and the quasi-state was under international protection, ethnic hostilities persevered and exploded in ethnic clashes in the riots of March 2004.¹⁵³ The build-up to the riots was rooted in a profound frustration which was directly related to "the economic crisis, precipitated by Kosovo's unresolved political status" (Trix in Ramet 2010: 368). Consequently, the riots were not limited to interethnic strife but were also directed against the UNMIK administration, which was blamed for lagging behind in the resolution of the Kosovo status. In fact, the "political vacuum" that ensued in the aftermath of the war, was partly due to the fact that too many actors¹⁵⁴ were involved in the reconstruction of a state, in transit from war as well as from a police state. Although all were under the command of the Special Representative of the Secretary General (SRSG), the ambiguities of their mandates created coordination problems which resulted in "overlapping and lack of clarity in accountability" (Trix in Ramet 2010: 367). As a result, the set-up of institutional structures was too slow and without a working system of both the judiciary and the local security, "there was no clear way to control the incipient violence" (Trix in Ramet 2010: 366).

The establishment of Kosovo's Provisional Institutions of Self-Government¹⁵⁵ from 2001 further increased the complexity of the governance structures in Kosovo. The powers of the provisional government were sharply curtailed in favour of the SRSG, and the local government was, by no means, allowed to take decisions on the final status of Kosovo whose negotiations had stalled. The riots of 2004 would however precipitate the international negotiations and in April 2007, the

¹⁵³ Apart from deaths that were reported in both the Albanian and the Serbian camps, the riots led to the displacement of several thousands of Serbs. Cf. (Trix in Ramet 2010: 369).

¹⁵⁴ UNMIK was in fact made up of an array of international organisations and apart from the UN encompassed the UNHCR, the OSCE and the EU. Cf. (Trix in Ramet 2010: 367).

¹⁵⁵ The Constitutional Framework of May 2001 provided for "elections every three years for the Kosova Assembly which in turn would elect the president and the prime minister" (Trix in Ramet 2010: 367).

UN envoy Ahtisaari presented his plan of “supervised independence” for Kosovo. (Trix in Ramet 2010: 373) One year later, in February 2008, Kosovo unilaterally proclaimed its independence which has, up to date, been recognised by 22 EU member states, but still is adamantly contested by Serbia. The contested independence has led to that Kosovo is still a semi-protected state under international supervision. However, Kosovo is considered a *sui generis* case, and the aim of the EU has, ever since the Thessaloniki Declaration of June 2003, been to integrate Kosovo into the European structures. This aim was even more explicit when the EU Commission adopted the Communication to the Council and the European Union on “A European Future for Kosovo”, in April 2005.¹⁵⁶ In support of the official declarations, the deployment of EULEX¹⁵⁷ was established in Kosovo from 2008, in order to “mentor, monitor and advise Kosovo institutions in the area of law enforcement, and police, customs and the judiciary” (Stevens 2009: 6), in order to facilitate the compliance of Kosovo with the conditions of the Stabilisation and Association Agreement.

The demographic dimension

The region the least developed in former Yugoslavia, according to the 1981¹⁵⁸ census Kosovo was inhabited by approximately 1.5 million people, of which the majority were Albanian (77.4%), and the two largest minority groups were the Serbs, amounting to 13.2%, and the Bosniaks (3.7%). The other national minorities were divided up primarily between the Roma (2.2%), the Montenegrins (1.7%), the Turks (0.8%) and the Croats (0.5%). (Briza 2000: 12) The conflict, as it was to develop in the 1980s and the 1990s, was, however, limited to the ethnic strife between the Albanian majority and the Serb minority. Hence, rooted in a fight for exclusive control of a symbolically value-laden territory, the Serbs were

¹⁵⁶ European Commission (2005) *Communication from the Commission. A European Future for Kosovo*, COM (2005) 156 final, Brussels, 20 April 2005, http://ec.europa.eu/enlargement/potential-candidates/kosovo/key-documents/index_en.htm, 2011-12-14.

¹⁵⁷ The European Union Rule of Law Mission in Kosovo (EULEX) within the framework of the European Security and Defence Policy (ESDP) is to date the largest civilian mission ever deployed by the EU, <http://www.consilium.europa.eu/eeas/security-defence/eu-operations/eulex-kosovo>, 2011-12-15.

¹⁵⁸ After 1981 it is difficult to find reliable censuses. The 1991 census was boycotted by the Albanians and after 1999 there have been no censuses carried out. Cf. (Stevens 2009: 8).

fearful that the increasingly numerous Albanian majority would secede, first from the Socialist Republic of Serbia, and subsequently from the FRY, and then unite with Albania in a Greater Albania. The geographical position of Kosovo, stretching throughout a landmass of approximately 11.000 km², borders on Albania to the southwest and Macedonia, with its numerically large Albanian community, to the south. To the west, Kosovo is bordering on Montenegro and, to the northeast, it neighbours Serbia. Even though the Serbs for a long time had been a “numerical minority in Kosovo”, they were a domineering minority which imposed discriminatory policies on the Albanian majority and not vice versa. (Baldwin 2006: 8)

Although rooted in two peoples, separated by distinct religious and linguistic affiliation, the conflict was located to a territory over which both Serbs and Albanians claimed exclusive ownership.¹⁵⁹ Even though the majority of the Kosovo Albanians converted to Islam during the tutelage of the Ottoman Empire, the rise of the Albanian national consciousness had little to do with religious affiliation, as was attested by the “League of Prizren”¹⁶⁰, which became the start of the Albanian national revival, and which was, along with the birth of the Serb nation, located to Kosovo. (Baldwin 2006: 7). The main purpose of this first transnational Albanian organisation was to protect Albanian land from being confiscated by Montenegro, Bulgaria, Greece, and Serbia. (Trix in Ramet 2010: 359) In the case of Kosovo this failed, since Kosovo was incorporated into the Serbian Kingdom in 1912. As a way to fortify the authority over the Kosovo region, the Serbs started to confiscate lands, and to actively pursue a policy of colonisation of the territory during the 1920s and the 1930s.¹⁶¹ Discriminatory policies against the Kosovo Albanians were also introduced as a means of serbianising the territory, and these were to continue up until the initiation of the decentralisation process in the 1960s, during the SFRY regime. (Briza 2000: 12)

¹⁵⁹ The divergent historical perceptions of the Albanians and the Serbs are formed on the basis of the identification of the first occupant of the territory. Cf. (Baldwin 2006: 7).

¹⁶⁰ The first Albanian organisation, the League of Prizren consisted of Albanian representatives from four of the Ottoman Provinces, including Kosovo. The League was made up of both Muslims as well as Christian Albanians. Cf. (Trix in Ramet 2010: 359).

¹⁶¹ In the interwar period during the Kingdom of the Serbs, Croats and Slovenes, the colonisation endeavour of the Serbs meant the settlement of 10.877 Serbian families which were allotted lands taken from especially Turkish landowners. Cf. (Briza 2000: 12).

The interlude of increased political and cultural autonomy, given to Kosovo by the Constitutional changes of 1963, and particularly 1974, strengthened the position of the Kosovo Albanians¹⁶², but was short. Hence, in 1989, when the Serbian political leadership suppressed the autonomy of Kosovo, this would lead to a generalised policy of repression where discrimination against the Albanians was effectuated in every area. This continued up until the NATO intervention in 1999, when the Albanians became “once more in a position of power in Kosovo as a whole” (Baldwin 2006: 9). The war, and the subsequent UN-administration in place in Kosovo since June 1999, changed the prerogatives of Kosovo, both in terms of the national structure of the population, but also in terms of discrimination and minority rights protection.

The development of the national structure of Kosovo during the 20th century is attested by the censuses, and ever since 1912, there have been important changes in the demography, primarily due to migrations, but also to huge imbalances in the fertility rates. According to the censuses between 1948 and 1981, the percentage of the Albanians in Kosovo rose from 68% to 77.4%, in parallel with a decrease in the Serb population during the same period, from 24.1% to 13.2%.¹⁶³ For instance, it is estimated that between 1971 and 1981, “over 30,000 Serbs and Montenegrins left Kosovo/a because of ethnic tensions and for economic reasons” (Briza 2000: 12). The population figures from 1981 are difficult to measure accurately since there have been no reliable censuses carried out since 1981. However, estimations have it that on the eve of the NATO-intervention in 1999, there were “up to 300,000 Serbs living in Kosovo” (Baldwin 2006: 8). The Serbs were primarily living in the big cities and in the capital of Pristina, where they amounted to approximately 25% of the population. Furthermore, the Serbs were primarily located to three municipalities in northern Kosovo, the municipality of Strpce in the south, as well as in the town of Kosovo Polje, where they formed the majority. (Baldwin 2006: 8) Prior to the war, the Serb minority, along with the Bosniaks, and the Turks, were, to a large

¹⁶² In parallel to the increased autonomy given to Kosovo was the establishment of the University of Pristina which would provide the manning of Kosovo Albanians to positions in the public sector. Cf. (Baltic 2007: 42; Trix in Ramet 2010: 360).

¹⁶³ Statistical Office of Kosovo (2008) “Demographic changes of the Kosovo population 1948 – 2006” in *Series 4: Population Statistics*, Pristina, February, 2008, p. 7.

degree, living in ethnically quite homogeneous societies. The war and the subsequent UN-protectorate have further accentuated these ethnically-concentrated communities.

The consequences of the war and the NATO-intervention had led to thousands killed, as well as huge refugee movements approaching the million. In fact, records have it that during the NATO-intervention, which was not only limited to Kosovo but also directed towards Serbia proper, over 800,000¹⁶⁴ Albanians were forced to leave Kosovo. The Serbs also left in huge numbers to escape the bombings, approximating the 100,000 and decimating the Serb population in Kosovo by one third. However, the main reason for the exodus in 1999 was not the bombing in itself, but was rather the consequence of a “systematic campaign of intimidation against minorities”, which meant the purification of villages and towns where Albanians were expelled from Serb-ruled municipalities and vice versa. (Baldwin 2006: 13). Furthermore, the intimidation was not only directed against the Albanians and the Serbs, other minorities¹⁶⁵, and especially the Roma, accused of having been the collaborators of the Milosevic regime¹⁶⁶, were targeted in systematic raids which, according to the European Roma Rights Centre, have been “the single biggest catastrophe to befall the Romani community since World War II” (Baldwin 2006: 14).

With the war over and the UN-led administration in place, the majority of the Albanian refugees returned to Kosovo “in the largest spontaneous movement of refugees since the Second World War” (Trix in Ramet 2010: 366). The majority of the Serb refugees, however, never returned, neither did a large part of the Roma¹⁶⁷, nor the Bosniaks, nor the Croats. Thus, the impact of the war on the national structure of Kosovo had led to a situation where the former multinational region had developed into a

¹⁶⁴ The Kosovo Albanians found refuge primarily in Albania and in Macedonia but also to some degree were taken in by Montenegro and Turkey. Cf (Trix in Ramet 2010: 365).

¹⁶⁵ In fact, the intimidation of the Turks has almost gone unnoticed but as a consequence of the 1999 war a part of the Turkish community fled to Macedonia. Cf. (Bugarski & Hawkesworth 2004: 209).

¹⁶⁶ The systematic discrimination against the Albanians during the Milosevic regime had set in motion “bureaucratic expulsions” of the Albanians from all positions in the public sector and many from the Roma community filled the vacancies left from the systematic expulsion of the Albanians. (Trix in Ramet 2010: 362).

¹⁶⁷ The Roma who fled the war primarily sought refuge in Serbia and Montenegro. Cf. (Briza 2000: 14).

highly mono-ethnic society, in which the most drastic changes were seen in the decrease of the Serb share of the population, from 9.9% to a mere 5.3%, in parallel with an enormous increase in the Albanian population, from 81.6% to 92.0%.¹⁶⁸ The reasons for the increasing mono-ethnic character of the Kosovo society are two-fold and can primarily be ascribed to the failure of the UNMIK administration, which was in place already in June 1999. Despite the fact that the main task of the UNMIK mandate was the protection of minority rights, and especially to secure the safe return of refugees to Kosovo, this policy failed because of the incapacity to provide a secure environment for the returnees. Furthermore, interethnic strife, between primarily the Albanians and the Serbs, continued to contaminate the society and, in parallel with the unresolved political status of Kosovo, exploded into violent conflict in 2004, which neither the UNMIK nor the KFOR armed forces had the capacity to prevent. In fact, the post-conflict phase¹⁶⁹, instead of leading to an integration of the different ethnic communities, has further accentuated the segregation, entailing a congregation of “mono-ethnic enclaves”, where the ethnic marker has become even more rigidly divisive. (Baldwin 2006: 17) In fact, the segregation of the Kosovar society today has made some minority rights experts comment that, “nowhere else in Europe is at such a high risk of ethnic cleansing occurring in the near future – or even a risk of genocide” (Baldwin 2006: 3).

¹⁶⁸ Statistical Office of Kosovo (2008) “Demographic changes of the Kosovo population 1948 – 2006” in *Series 4: Population Statistics*, Pristina, February 2008, p. 7.

¹⁶⁹ The UN-administered protectorate of Kosovo has in fact been the longest and most expensive international administrations ever experienced since the creation of the UN. Cf. (Baldwin 2006: 3).

Table 9.1. Demographic changes of the Kosovo population, 1948 – 2006 (data retrieved from *The Statistical Office of Kosovo, February 2008, p. 7*)

Census year	Total	Albanians	Serbs	Turks	Roma	Others
1948	733.034	498.244	176.718	1.320	11.230	45.522
%	100	68.0	24.1	0.2	1.5	6.2
1953	815.908	524.562	189.869	34.590	11.904	54.983
%	100	64.3	23.3	4.2	1.5	6.7
1961	963.988	646.605	227.016	25.764	3.202	61.401
%	100	67.1	23.5	2.7	0.3	6.4
1971	1.243.693	916.168	228.264	12.244	14.593	72.424
%	100	73.7	18.4	1.0	1.2	5.8
1981	1.584.440	1.226.736	209.798	12.513	34.126	101.267
%	100	77.4	13.2	0.8	2.2	6.4
1991	1.956.196	1.596.072	194.190	10.445	45.745	109.744
%	100	81.6	9.9	0.5	2.3	5.6
2006	2.100.000	1.932.000	111.300	8.400	23.512	24.788
%	100	92	5.3	0.4	1.1	1.2

The sociolinguistic dimension

Whereas religious affiliation is of minor importance to the Albanian national identity, linguistic affiliation is at the core of the national revival, as it was to develop at the meeting in Prizren in 1878. In fact, the linguistic marker is essential for the Albanians because they are the sole people of the Balkans for whom the national identity exclusively has been formed around the linguistic identity, and where linguistic unity is seen as a prerequisite for Albanian national unity. (Roux 1992: 205) The correlation between linguistic unity and national unity was obvious when, in 1992, at a conference¹⁷⁰ on the future of the Albanian literary language, and at the height of the Serbian systematic discrimination against the Kosovo Albanians, the Kosovar representatives adamantly resisted any attempts at introducing linguistic pluricentrism, arguing that “a unified literary standard is necessary for national unity” (Bugarski & Hawkesworth 2004: 204). The Albanian language spoken in Kosovo and

¹⁷⁰ The Conference, *The national literary language and the Albanian world today*, was held in Tirana on the 20-21 November 1992. Cf. (Bugarski & Hawkesworth 2004: 204).

the standard used in Albania have, however, developed independently from one another ever since a conference held in Pristina in 1952. (Bugarski & Hawkesworth 2004: 2003)

In the beginning of the SFRY regime, the Albanian language was officially recognised in Kosovo. As enshrined by the 1974 Constitution of Kosovo, the official languages were the Albanian and the Serbo-Croatian, which could be used “in procedures before state agencies and organizations with official authority” (Baltic 2007: 39). Although the Turkish minority was numerically quite small (0.8%)¹⁷¹, the Turkish language held a prestigious position and could be used officially, as determined by the statutes of the municipalities. (Baltic 2007: 39) Thus, just as in the other Republics of the SFRY, the equality of the languages and scripts was extensive in Kosovo, not only *de jure*, but also *de facto*. This situation prevailed at least up until the 1981 riots and the subsequent abolition of minority rights protection for the Kosovo Albanians, instituted with the suppression of the Kosovo autonomy in 1989. As a consequence thereof, Albanian lost its status as official language, and the official language use of Albanian was relegated from the provincial to the municipal level. (Bugarski 2004: 192) This situation persevered throughout the 1990s.

In the education system, and with the official recognition of the Albanian language, great effort was put into raising the literacy rate of the Albanians¹⁷². Indeed, “the opening of 122 Albanian language departments in elementary schools in 1946”, and the establishment of a Province-wide educational system, would provide schooling for the rapidly growing Kosovo population. (Baltic 2007: 42). The number of Albanian teachers grew, which was facilitated by the opening of the Pristina University, established in parallel to the increased Kosovo autonomy in the 1970s. However, “attempts to provide the growing population with adequate schools were insufficient” and underpaid teachers, as well as a shortage of teaching material, resulted in second-grade diplomas of the Kosovo Albanians. This, in turn, limited the career possibilities of the Kosovar graduates to Kosovo which “itself had an enormously high

¹⁷¹ The Turkish minority amounted to 0.8% according to the 1981 census. Cf. Statistical Office of Kosovo “Demographic changes of the Kosovo population 1948 – 2006” in *Series 4: Population Statistics*, Pristina, February 2008, p. 7.

¹⁷² Just like the illiteracy rate was particularly high amongst the Albanian community in Macedonia, the same was true for the Kosovo Albanians. Cf. (Baltic 2007: 42).

unemployment rate" (Baltic 2007: 42). The riots of 1981 started on the University premises but were soon extended to the whole Kosovar society, grounded in frustration over the poor socio-economic conditions. The subsequent suppression of the Kosovo autonomy resulted in the abolition of the Albanian education system and the implementation of "a uniform educational programme and curriculum throughout the Republic of Serbia" (Briza 2000: 9). This, in turn, led to the dismissal of 18,000 Albanian teachers and other staff when they protested against the imposed Serbian standardised curriculum. This was the start of an Albanian parallel educational system where the "instruction of Albanian students was held in "private homes, storerooms, mosques, and Sufi centres" (Trix in Ramet 2010: 363). At the same time, under the regime of the Serbian standardised education system, education in minority languages in elementary schools were offered in Albanian, Serbian, Turkish, and sometimes also in the Romani language throughout the 1990s. (Bugarski & Hawkesworth 2004: 201)

Even though the legalisation of the Albanian education system naturally was restored with the UNMIK administration after the war, the division of the education system has remained and has been further accentuated. In fact, the UNMIK's original educational policy was based on a philosophy where a resurgence of ethnic violence, between the Serbs and the Albanians, would be the most effectively prevented in a system of "two schools under one roof" (Baldwin 2006: 18). However, to promote a system where Albanian and Serbian students, respectively, get entrenched in different historiographies has led to further segregation and has proven ineffective from a conflict prevention perspective, which the riots of 2004 were an obvious example of. Furthermore, minority language rights in education have been heavily undermined in terms of the numerically smaller minority languages in post war Kosovo, since the focus has been almost exclusively on the two biggest communities, the Albanians and the Serbs. This has led to a situation where the numerically smaller minority languages have been treated offhandedly which has been criticised particularly by the Turks who have been "complaining about the downgrading of their language" (Baldwin 2006: 22). Indeed, reports from Prizren indicate that, not only the Turkish community, but also the Bosniaks, have been denied education in their languages. Furthermore, by 2000, the children from the Roma community, as well as the Ashkali and the Egyptian communities, "were

still largely not receiving education” (Baldwin 2006: 18). The *de facto* situation of minority rights in education is problematic and is far from the *de jure* rights which were instituted by the Constitutional Framework as of May 2001.

In the Constitutional Framework, set up as a means of regulating Kosovo’s Provisional Institutions of Self-Government, minority language rights are extensively provided for and, in fact, “go far beyond the international standards and, indeed, those that apply in other countries, as they appear to apply to all communities, at all times, and in all places” (Baldwin 2006: 22). In fact, according to chapter 4 of the Constitutional Framework, and regardless of the numerical size of the national minority, “communities and their members shall have the right to: a) use their language and alphabets freely, including before the courts, agencies, and other public bodies in Kosovo; b) receive education in their own language; c) enjoy access to information in their own language” (Baldwin 2006: 22). Although commendable in theory, these extensive rights have proven difficult to implement in practice, since there are no limits that regulate the minority language rights in question. Hence, as shown in practice, although the numerically smaller minorities do have legal rights to use their languages in official contexts, as well as to get instruction in their minority languages, oftentimes these rights have been denied them in practice.

Legislation in minority language rights upon gaining status as potential candidate state

Even though Kosovo was also integrated in the Thessaloniki Agenda with the aim of moving the Western Balkan States into the structures of the European Union, the status of Kosovo has been a challenge ever since the start. Hence, the Thessaloniki Agenda of 2003 applies to Kosovo, “as governed under the auspices of UN Security Council Resolution 1244” (EU Report 2005: 4). The unclear legal status of Kosovo does not only pertain to the division of power between the international administration and Kosovo’s Provisional Institutions of Government, it also pertains to the complicated relationship with Serbia, which still, *de facto*, was administering the Serbian-populated municipalities, although UN Resolution 1244 specifically transferred the administration to the UN. (EU Report 2005: 12) The challenges of the relations between Kosovo and

Serbia were also blatant since, prior to 2005, no assessments were carried out individually for the Kosovo region but, these were integrated in the reports pertaining to the FRY and later to the Union of Serbia and Montenegro. Hence, even though Kosovo did become a potential candidate state to the EU in 2003, along with the other states of the Western Balkans, it is only in 2005 that Kosovo becomes assessed individually in the Reports of the EU and the Council of Europe.

The complexity of the legal and institutional set-up of Kosovo is stressed throughout the EU Report, as well as the Report of the Advisory Committee in 2005, the latter describing the Kosovo situation as “a complicated and politically sensitive legal and institutional context” (CoE Report 2005: 6). Indeed, the problem of the future status of Kosovo, in relation to a situation of an unclear division of power between the international actors and the local government, permeates the Reports and are stressed as being seriously detrimental to the security situation, and the protection of minority rights. In fact, and as underlined by the Advisory Committee, “the present complex and ambiguous institutional arrangements, coupled with uncertainty as regards the future status of Kosovo, have at times obscured the respective authorities’ responsibilities and accountability for the implementation of the Framework Convention, to the detriment of persons belonging to minority communities” (CoE Report 2005: 37). However, at the same time, it is also true that the implementation of existing legislation “remains exceptionally difficult in Kosovo, where inter-ethnic violence has seriously eroded trust between communities” (CoE Report 2005: 37). However, it has to be stressed that both Reports were produced at a time of excessive interethnic hostilities in the wake of the 2004 events, which became an indicator of the failure of both the UNMIK administration as well as NATO to provide an environment of security, necessary for the reconciliation process, not only between Albanians and Serbs, but also a secure environment for smaller minority communities.

Non-discrimination

In the wake of the 2004 riots, an Anti-Discrimination Law was adopted by the Kosovo Assembly, and, subsequently, imposed by the Special Representative of the Secretary General on the 20th of August 2004, as specified in UNMIK Regulation No. 2004/32. (CoE Report 2005: 14) Even though the Advisory Committee recognises the encompassing nature of

the Law, which “provides far-reaching guarantees against both direct and indirect discrimination in both public and private spheres”, the generalised nature of the Law does remain a problem. (CoE Report 2005: 14) In fact, the lack of conditions regulating the anti-discrimination law, seeing that there are no “specific structures to combat ethnic discrimination”, inhibits effective implementation. (CoE Report 2005: 14) Furthermore, and as underlined by the EU, the lack of “subsidiary legislation” in the area of non-discrimination is also hampering more effective implementation. (EU Report 2005: 21)

The Ombudsperson and the judicial courts have been entrusted with “the task of receiving, respectively, complaints and claims in accordance with the existing legislation” (CoE Report 2005: 14). However, even though the EU stresses the important role played by the Institution of the Ombudsperson which has, “continued to play a crucial role in safeguarding human rights and the protection of minorities”, the weakness of the judicial institutions and the law enforcement agencies need to be “substantially improved” to be able to more effectively implement the said law. (EU Report 2005: 25-26) In fact, the weakness of the judicial institutions, both in civil and criminal sectors, remains a problem, not only as concerns anti-discrimination provisions, but also to the undermining of the rule of law in Kosovo more generally. The underlying problem is the legal uncertainty, prevalent in Kosovo, where the “applicability of laws (...) is divided between UNMIK regulations and certain (Yugoslav) laws in force in Kosovo on 22 March 1989” (EU Report 2005: 14). This, consequently, produces a situation of legal uncertainty where practitioners are left interpreting which laws are actually in force, consequently, contributing to the undermining of the rule of law.

Effective implementation of anti-discrimination provisions is, in fact, to a great extent dependent upon the introduction of “an extensive, coherent and comprehensive body of law governing Kosovo” (EU Report 2005: 14). Even though the weakness of all the law enforcement agencies persists in Kosovo, progress has been made in the Kosovo Police Service, where the recruitment from minority communities has increased and currently amounts to 15%, of which 9% are Serbs. (EU Report 2005: 53) Even though there has been some positive effects of the implementation of “mixed patrols in mixed areas”, where citizens have the opportunity to get assistance in the minority language, there have been “a number of

complaints that police reports were written in a language not understood by the citizen" (EU Report 2005: 53).

Legislation in Kosovo does not use the term national minority to describe persons of a non-Kosovo Albanian ethnic origin. The term employed is "communities", which the Constitutional Framework and the Kosovo legislation define as "inhabitants belonging to the same ethnic or religious or linguistic group" (CoE Report 2005: 11). The communities covered by the Framework Convention, as specified by the Kosovo legislation, are: Kosovo Serbs, Turks, Bosniaks, Gorani, Torbesh, Roma, Ashkaelija, Egyptians, and Kosovo Croats. (CoE Report 2005: 11) Whereas the Advisory Committee does not consider the term "community" problematic, inconsistencies have been noted in regards to "the endorsement of the specific identity of certain communities" (CoE Report 2005: 12). In fact, the tendency to lump together the Egyptians and the Ashkali with the Roma, often referring to them as "RAE communities", is considered a problem since such a designation could be "perceived as a sign of lack of acceptance of the specific identities of the groups concerned" (CoE Report 2005: 12).

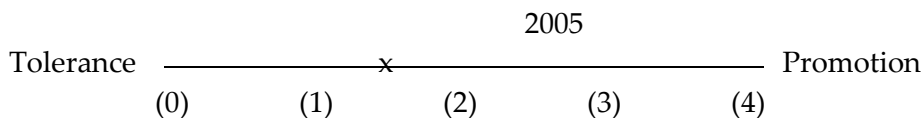
The reconciliation process, particularly between the Albanian and the Serb communities, was heavily undermined by the March 2004 events and even though no major incidents have been reported since then, "relations between Kosovo Serbs and Kosovo Albanians have remained strained" (EU Report 2005: 25). Thus, the poor implementation of the anti-discrimination law is particularly blatant as concerns the Serb community, but also the Roma community, who both "face discrimination, restrictions in freedom of movement, access to education, health care, public utilities and social assistance due to poor quality of services and security concerns" (EU Report 2005: 21). Also, in relation to minority-related crimes, there is concern about the "perceived impunity of actors against Serbs, Roma, and others, including in relation to the violence of March 2004" (which) is a particularly serious problem that needs to be addressed as a high priority" (CoE Report 2005: 38). However, and as underlined by the Advisory Committee, this would necessitate concerted action from both local as well as international bodies and therefore there is an absolute necessity that both "judicial institutions and the law enforcement agencies need to be substantially

improved to be capable of fully enforcing the law” (CoE Report 2005: 38; EU Report 2005: 25).

The problem of the internally displaced persons (IDP), as well as the difficult situation of returnees in general, deserves particular mention. According to estimates, the number of minority IDPs in Kosovo amounts to approximately 22,000, of whom the greatest part are constituted by Roma, Ashkali and Egyptians, where particularly a high percentage of Roma “still live in hazardous and very precarious conditions in northern Kosovo and in the Pristina region” (EU Report 2005: 22). Even though there have been attempts at taking down the camps, the EU most strongly underlines that these efforts need to be accelerated. (EU Report 2005: 22) As for the situation of the returnees, the remaining problem is that “sufficient security guarantees for minorities” need to be implemented. Hence, as long as minority-related crime is left unpunished, the problem of returnees will remain. Furthermore, in regards to particularly the Roma, but also the Ashkali and the Egyptians, the lack of documentation as well as the lack of education “represent an obstacle for them to reclaim land and access social structures and services” (EU Report 2005: 22). Contributing to the discriminatory effects against the Roma, Ashkali and Egyptians is also their almost complete lack of representation at the level of public institutions. (EU Report 2005: 23)

Thus, although an encompassing Anti-Discrimination Law was adopted in 2004, the generality of the Law, i.e, the lack of conditions that would regulate the non-discrimination provisions, is a problem which is emphasised by the monitoring bodies. Furthermore, and as underlined by both the EU and the Council of Europe, since no subsidiary legislation in the area of non-discrimination has been adopted, the lack of regulatory structures and conditions hampers full and effective equality. Thus, the Law, however encompassing, cannot be considered comprehensive and, furthermore, since no subsidiary legislation has been adopted, Kosovo is positioned on the intermediate level of 1.5.

Fig. 9.1. Kosovo and level of rule adoption in non-discrimination upon gaining status as potential candidate state



- (0): Absence of any non-discrimination norm;
- (1): General provisions such as an equality clause in the Constitution;
- (2): Non-discrimination laws are inserted in specific laws;
- (3): Comprehensive anti-discrimination legislation which then means that there has been a complete transposition of the EU anti-discrimination *acquis*;
- (4): Non-discrimination laws exceed the minimum requirements of the Directive.

Minority language use in official contexts

Legal uncertainty is very much prevalent also in the domain regulating minority language use in official contexts. The complexity of the legal guarantees, as well as the weak regulatory status of existing legislation, is a problem that is consistently addressed by the EU Report and particularly by the CoE Report. The Advisory Committee notes, with satisfaction, that legislation pertaining to the use of minority languages in official contexts is provided for in Kosovo, however, “with guarantees scattered across various legal texts, including the Constitutional Framework, UNMIK Regulation No. 2000/45 on Self-Government of Municipalities in Kosovo and the 1977 Law on the Implementation of the Equality of the Languages and Alphabets in the Socialist Autonomous Province of Kosovo (1977 SAP Law on Languages)” (CoE Report 2005: 22). In the above-mentioned legal texts, it is particularly clear, as pointed out by the Advisory Committee, that the importance of preserving the official language status of Serbian has been an overarching goal. However, when it comes to the status of the Turkish language, it becomes more problematic since the 1977 SAP Law, “which contains provisions that are still applicable pursuant to UNMIK Regulation 1999/24”, provides for the official language status to the Turkish language, “in

areas where members of the Turkish minority live” (CoE Report 2005: 23).¹⁷³

In the area of minority languages pertaining to smaller communities, legal provisions guarantee that these communities have the possibility “to address the Assembly of Kosovo in their own language and to have access to legislation translated in their language” (CoE Report 2005: 22). These legal guarantees also pertain to the local level, where “persons belonging to these communities (have) the right to communicate in their own language with municipal bodies and with municipal civil servants” (CoE Report 2005: 22). However, the regulatory status of these provisions is weak, since there are neither conditions nor any thresholds attached to them. The lack of thresholds is, in fact, disturbing, since this entails that “municipalities are left with considerable discretionary power in determining the provisions, relating to the use of languages of the communities in the municipality at issue” (CoE Report 2005: 23). The concern of the Advisory Committee has, in fact, been confirmed by the EU Commission which states that “the use of minority languages in central and municipal authorities is insufficient and hinders participation into the institutions” (EU Report 2005: 26). In the judicial system, the new provisional criminal code does provide for the right of communities to be assisted with “free-of-charge interpreters, if the person cannot understand or speak the language of the proceedings in a criminal procedure” (CoE Report 2005: 23). However, implementation of this right varies and is heavily dependent on factors such as, “the language proficiency of the judicial staff, the availability of interpreters as well as the jurisdiction in which the proceedings are held” (CoE Report 2005: 23). Thus, on the basis of the above-mentioned shortcomings, the Advisory Committee “urges the competent bodies to closely monitor the courts’ compliance with the existing language requirements” (CoE Report 2005: 24).

¹⁷³ The legal uncertainty of the status of the Turkish language has caused frustration among the Turkish community. Since the status as official language is legally enshrined, this has caused expectations among the Turkish community that “the Turkish language should generally be given a status similar to that of the Albanian and Serbian languages in today’s Kosovo, regardless of the numerical importance of the Turkish community living in particular regions” (CoE Report 2005: 23).

As regards the right to display names and other signs for Albanian and Serbian, these rights are regulated by UNMIK Regulation No. 2000/45, and the Advisory Committee welcomes the fact that “official signs indicating the names of localities, street signs and other topographical indications intended for the public, must be displayed in both the Albanian and Serbian languages” (CoE Report 2005: 24). The Advisory Committee contends that implementation of the said regulations has been slow and even in some instances the systematic disfiguration and obliteration of signs in Serbian has been noted. The “Albanisation” of names in certain municipalities has been worrying and the Advisory Committee finds it “essential, that in the Kosovo context, local names, street names and other topographical indications, intended for the public, duly reflect the multi-ethnic character of the area at issue” (CoE Report 2005: 24). Pertaining to minority languages of smaller communities, UNMIK Regulation 2000/45 also provides rights to display names and signs in the minority language, “in those municipalities where these communities form a substantial part of the population” (CoE Report 2005: 24). Implementation of these legal provisions has not held good, however, and requests from different communities, especially from Bosniaks, Turks and Roma, have claimed their right to display signs in their respective minority language, “in those municipalities where they live in substantial numbers” (CoE Report 2005: 25). However, since the term “substantial part of the population” is equated with a “two-third majority”, these rights are practically invalidating themselves since they only would be applicable to municipalities which are dominated by one community.

In view of the serious shortcomings in the implementation of legislation, which provides for smaller communities the right to use minority languages in official contexts, the Advisory Committee strongly recommends the adoption of “new language legislation in order to bring clarity and legal certainty as regards the use of languages, including in relations with administrative authorities, topographical indications, and registration of personal names, and closely monitor compliance with language requirements in the relevant sectors, including in the judiciary” (CoE Report 2005: 40). In this regard, the Advisory Committee satisfactorily notes that the Ministry of Public Service, with the support of UNMIK, has initiated a process with the aim of adopting a “comprehensive law on languages” (CoE Report 2005: 24).

It is evident that the focus on ensuring the equality of the Serbian language to that of the Albanian language has been done to the detriment of language rights of smaller communities. Hence, even though the Kosovo legal framework does provide for smaller communities to use their minority languages in official contexts, the complexity of the legal guarantees, as well as the weak regulatory status of existing legislation, inhibit effective implementation. In fact, the absence of thresholds, or the very high thresholds, that condition these provisions, severely undermine applicability and actually relegate these legal provisions to a legal void. However, as concerns the use of the Serbian language in official contexts, the existing legislation is far-reaching since the official language status of Serbian has been preserved. This consequently means, that the language rights granted to Serbian are on the same legal footing as those granted to the Albanian language. The clear division of the legal rights granted to smaller communities, as opposed to the very extensive legal rights that protect the use of the Serbian language, does present a problem as regards the investigation at hand. Thus, on the basis of the index scale, if we were to focus on the rights granted to smaller communities, Kosovo would be positioned at the far left corner of our index scale, most likely amounting to 1.0. However, since interethnic relations have been centred on the conflictive relationship between Albanians and Serbs, and still is, it is considered more relevant to actually measure existing legislation that protects the use of the Serbian language in official contexts. Hence, on the basis of the above, Kosovo is instead positioned at the far right corner, amounting to the level of 4.0.

Fig. 9.2. Kosovo and level of rule adoption in minority language use in official contexts upon gaining status as potential candidate state



- (0): No recognition of minority languages;
- (1): The right to use the minority language in official contexts (before judicial and administrative authorities; i.e. the right to a translator);
- (2): The minority language can be used in Personal and Place Names (public signs);
- (3): The minority language can be used in official documents;
- (4): Minority language having status as official language.

Minority language rights in education

Just as the clear division between the Serb minority and the smaller communities was pertinent in the domain of minority language protection, the same division is clear also as regards minority rights in education. In fact, the cleavage of the Kosovo society in the educational sector is blatant since it is actually constituted by two educational systems, one Albanian and the other Serbian. The existence of two parallel education structures, or “parallel schools”, where the Serbian Ministry of Education and Sports still finance the Serbian-led schools, which furthermore have their own curriculum, “means the *de facto* existence of a separate school system” (CoE Report 2005: 26). In 2004, with the legalisation of the Serbian-speaking and Serbian-led University of Northern Mitrovica, as established “by UNMIK Regulation No. 2003/14, on the Promulgation of a Law adopted by the Assembly of Kosovo on Higher Education in Kosovo”, the division of the Albanian and Serbian educational systems was complete. (CoE Report 2005: 28) The strict separation of the two systems entails that there is “little mutual recognition of certificates and diplomas”, which, in turn, allows for further cementation of the ethnic segregation that characterises the Kosovo society. (EU Report 2005: 12) As stressed by the Advisory Committee, this situation is unfortunate and the non-mixing of Serb and Albanian pupils is particularly detrimental to the reconciliation process, and the efforts to build trust, and to promote inter-ethnic tolerance, particularly between Albanians and Serbs, but also with other minority

communities. Hence, the Advisory Committee recommends that the authorities “consider ways to create opportunities for interaction between pupils from Serbian and Albanian communities, and design a comprehensive plan that would progressively remove barriers, including linguistic ones, between pupils from different communities” (CoE Report 2005: 41).

Legislation pertaining to minority language rights in education of the smaller communities exists, as guaranteed by the Constitutional Framework. According to Chapter IV of the Constitutional Framework, members of national minorities “have the right to set up their own private educational and training establishments”, and financial assistance, “including public funds”, may be provided to realise these objectives. (CoE Report 2005: 29). The Advisory Committee furthermore notes, with satisfaction, that the Constitutional Framework guarantees “rights of persons belonging to a community to receive education in his/her own language” (CoE Report 2005: 29). However, no conditions or threshold regulate application of this right, but, as noted by the Advisory Committee, there seems to have developed a policy requiring a minimum of 15 pupils for opening a “class with instruction in a minority language” (CoE Report 2005: 29). Even though the Advisory Committee finds the policy of a minimum of 15 pupils reasonable, concern is nevertheless raised as regards the numerically smaller communities, like the Bosniaks who often find themselves numerically inferior to the established minimum of 15. Therefore, the Advisory Committee argues that “the situation as regards the threshold should be clarified, including through the adoption of specific regulation that would also allow for flexibility to accommodate, to the extent possible, requests made by smaller groups” (CoE Report 2005: 29).

On the issue of higher education in Kosovo, UNMIK Regulation No. 2003/14 provides guarantees as to the access of “all persons in the territory of Kosovo (...) without direct or indirect discrimination on any actual or presumed ground such as national, ethnic (...) origin, association with a national community” (CoE Report 2005: 28). Furthermore, in order to enhance minority representation in higher education, in 2004, a system of quotas was introduced in the University in Pristina. However, since instruction is carried out in Albanian only, but “with the possibility of taking exams in Serbian”, the effectiveness of the

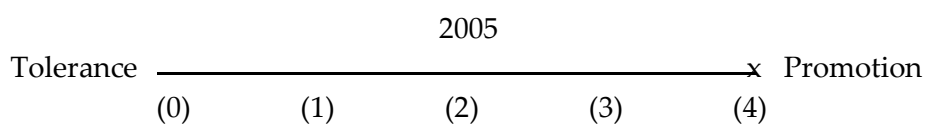
quota system is heavily reduced due to language problems. (CoE Report 2005: 28) Thus, to receive higher education in minority languages, communities are relegated to parallel structures or, in the Bosniak case, to receive higher education either at “the Business School in Pec or at the Faculty of Pedagogy of the University of Prizren, which deliver education in the Bosnian language” (CoE Report 2005: 28).

Existing legislation is rather extensive and even though the regulatory status of having the right to receive education in minority languages is weak, since there are no conditions regulating implementation, the policy that has emerged sets the bar for implementation at 15 pupils, which has to be considered reasonable. However, the lack of effective implementation pertains especially to a shortage of textbooks, as well as a lack of qualified staff to teach in minority languages. Furthermore, and even more serious, more effective implementation is heavily undermined by the difficult security situation. It has, for instance, been reported from the Bosniak, Turkish and Gorani communities, that pupils have had difficulty in accessing educational facilities with instruction in minority languages. Thus, the problem of not being able to ensure safe transportation for these “minority pupils” is serious, and calls for “an urgent need to make progress in this respect, given that the absence of such transportation harms access to mother tongue education of persons belonging to a number of minority communities” (CoE Report 2005: 30).

On a more general level, the Advisory Committee also raises the issue of the poor integration of especially the Roma, Ashkali and Egyptian pupils into the educational system. Since these communities find themselves in a particularly vulnerable situation, the authorities need to address this problem with vigour. The Advisory Committee strongly recommends the authorities to take decisive steps to “address the educational needs of Roma, Ashkali and Egyptian communities, including by ensuring the sustainability of the programmes, designed to help pupils from these communities to integrate and stay in the education system” (CoE Report 2005: 41). In fact, in this regard the Advisory Committee welcomes the initiative from the Ministry of Education, Science and Technology (MEST), “with the support of the OSCE and international NGOs, to address this problem by providing catch-up classes for children from these communities in order to help them integrate into regular schools” (CoE Report 2005: 27).

Legislation protecting smaller communities is quite extensive, even though there are shortcomings which hamper more effective implementation. As regards legislation protecting the Serb minority, and once again the rights protecting the Serb minority are considered more relevant as concerns the investigation at hand, these rights can be equalled to those of the Albanian majority. Hence, when in 2004 the Serbian-speaking and Serbian-led University of Mitrovica was legalised, the educational rights of the Serbs became manifest also in the domain of higher education. Paradoxically, these extensive rights are problematic since this situation has entailed the furtherance of ethnic segregation, which, in turn, the Advisory Committee considers to be the greatest challenge in the educational domain. This is also shown in the concluding remarks of the Advisory Committee when they recommend the authorities of Kosovo to “consider ways to create opportunities for interaction between pupils from Serbian and Albanian communities, and design a comprehensive plan that would progressively remove barriers, including linguistic ones, between pupils from different communities” (CoE Report 2005: 41). In the light of the investigation at hand, viewed the extensive rights of particularly the Serb minority, Kosovo is positioned on the level of 4.0.

Fig. 9.3. Kosovo and level of rule adoption in minority language rights in education upon gaining status as potential candidate state



- (0): No education of or in minority language;
- (1): Children belonging to minorities have the right to learn their mother tongue in school;
- (2): At least parts of the curriculum (e.g. history or religion) are taught in the minority language;
- (3): Minorities have the right to educate their children completely in the mother tongue, either in state schools with a complete syllabus taught in the minority language or in specific minority schools;
- (4): Minorities have their own universities.

BOSNIA AND HERZEGOVINA¹⁷⁴ AND MINORITY LANGUAGE RIGHTS PROTECTION

Bosnian semi-independence

Just as the Serbian Empire during the 14th century had reached its peak in terms of territorial conquest and political power, the same was true for Bosnia which was considered “the strongest Slavic Kingdom in South Eastern Europe” during the reign of Tvrtko I¹⁷⁵ (1353-1391). (Bebler 2006: 2) Having experienced more or less three centuries of independent statehood (12th century – 15th century), Bosnia would, henceforth, become a pawn in the game of territorial conquest, first between the Ottomans and the Austro-Hungarians, and in the 20th century, between Serbs and Croats. The four centuries’ long Ottoman rule would leave a long-lasting imprint, politically, culturally, religiously as well as socially, on the Bosnian society, where the larger part of the Bosnian Christians would convert to Islam. In 1878, and as a consequence of the decision made at the Congress of Berlin, Bosnia was annexed to the Austro-Hungarian Empire.

With the Austro-Hungarian defeat in World War I, Bosnia was integrated into the Kingdom of the Serbs, Croats and Slovenes in 1918, where the Bosnian Moslems would acquire a second-rate status, becoming the victims of systematic killing and expulsion, leading to a relatively large share of the “Bosniaks” migrating to Turkey. (Bebler 2006: 4) Furthermore, in the Serb-dominated Kingdom and following the royal coup of 1929, the territory of Bosnia would succumb to numerous partitions where the newly created “banovinas”¹⁷⁶ were “gerrymandered

¹⁷⁴ Bosnia and Herzegovina will hereinafter be labelled Bosnia.

¹⁷⁵ The Bosnian king, Tvrtko I, entitled himself the “King of the Serbs and of all Bosnia” (Bebler 2006: 2).

¹⁷⁶ The “banovinas” were provinces that became the administrative units of the first Yugoslavia. The banovinas were created on a non-national criterion. Cf. (Bebler 2006: 5).

with the clear purpose of giving the ethnical Serbs, at least, a plurality in as many among the nine Yugoslav “banovinas” as possible” (Bebler 2006: 5). Thus, in the 4 Bosnian banovinas, the Bosnian Moslems “found themselves in a distinct minority position” (Bebler 2006: 5). In 1939, Bosnia was partitioned between the Serbs and the Croats, with the greater part “allotted to “Banovina Croatia” (Bebler 2006: 5). As a consequence of the German and Italian occupation of 1941, and the forming of the fascist Independent State of Croatia the same year, Bosnia was formally annexed to Croatia, before becoming liberated by the Partisans during spring 1945. As one of six constituent Republics in the SFRY, Bosnian statehood was partly restored when Bosnia, in 1946, for the first time in its history, “obtained a constitution, all representative institutions, symbols and other distinct features of statehood” (Bebler 2006: 6).

With the crumbling of the SFRY, Bosnia was, in fact, the least prone as well as the least apt, to secede from the SFRY and begin the transition from the old communist regime to multiparty democracy. In fact, having been one of the most authoritarian and non-democratic Republics of the SFRY, where repression of “all signs of opposition” had been much more severe than in the “big sister” Republics of Croatia and Serbia, the civil society had been left weakened, aggravating the transition to a multiparty democracy. (Bebler 2006: 7) Also, with the increasing Serbo-Croat war, the *raison d'être* of an independent Bosnian state raised problems of another order than was the case in Croatia. Indeed, since the Bosnian Republic was constituted by the three constituent nations, of which two had their kin states in Serbia and Croatia, the Bosnian Republic was highly “vulnerable to possible attempts of partition and annexation by two neighbouring states” (Bebler 2006: 8). This vulnerability became acute when, in December 1991, Serbia made public their intention of creating a “Serbian Republic” in Bosnia which almost coincided with “a very similar pronouncement in Croatia” (Bebler 2006: 8).

The proclamation of independence was accelerated by the start of the disintegration process of Bosnia, rapidly leading to three “politically segregated but territorially considerably overlapping systems” (Bebler 2006: 8). After a referendum¹⁷⁷, imposed as a condition of recognition by

¹⁷⁷ The majority of the Serbs boycotted the referendum; however more than two thirds of the Bosnians voted yes to independence. Cf. (Oellers-Frahm 2005: 184).

the Badinter Commission, Bosnia declared independence on the 4th of March of 1992¹⁷⁸, unanimously recognised by the EU Member states on the 7th of April 1992.¹⁷⁹ Upon proclamation of independence, as Serbia had already warned Bosnia¹⁸⁰, much of the Serbo-Croat conflict moved to Bosnia, beginning as an open war between the two primary antagonists, Croats and Serbs, and continuing as a proxy war in which Croatia and Serbia were using community leaders in Bosnia to stir up resistance. When “the Muslim-Croat coalition in Bosnia fell apart in 1993”, this consequently resulted in a three-sided war. (Bieber in Ramet 2010: 313) Indeed, the highly adulterated character of Bosnia led to what was to constitute one of the worst battlegrounds of ethnic cleansing on European soil since World War II.¹⁸¹ After years of passivity, the international community finally reacted and the NATO intervention¹⁸², of 1995, and the subsequent signing of the Dayton Peace Agreement, would finally put an end to the atrocities.

The Dayton Peace Agreement¹⁸³, although putting an end to the devastating bloodshed between the parties, has been highly criticised and is exceptional since it, not only, laid the groundwork for the new Bosnian state, but actually “created the state as such” (Oellers-Frahm 2005: 193-194). With the well-intentioned aim of preventing future ethnic conflict from resurfacing, the architects at Dayton were convinced that the

¹⁷⁸ On the basis of the popular referendum, the Assembly in Sarajevo proclaimed the independence of Bosnia after having gained the majority from the predominantly Moslem and Bosnian Croatian deputies. The Bosnian Serbs either absented from voting or voted no thus rejecting the Bosnian secession from the FRY. Cf. (Bebler 2006: 8).

¹⁷⁹ On the 22nd of May 1992 Bosnia became a member state of the United Nations. Cf. (Oellers-Frahm 2005: 184).

¹⁸⁰ In fact, already in 1991 Serbia had threatened the Bosnians of armed conflict if Bosnia would secede from the SFRY. As a consequence of the very real threat of Serbian military intervention, President Izetbegovic had called upon the UN to deploy preventive forces on the Bosnian territory. Cf. (Oellers-Frahm 2005: 184).

¹⁸¹ Estimations have it that the war cost approximately 100.000 lives of which around 70 000 were Moslems. The number of refugees and internally displaced persons has been estimated at over one million. Cf. (Bebler 2006: 9).

¹⁸² The NATO-intervention was welcomed by the Bosnian Croats and the Bosnian Moslems but was adamantly resisted by the Bosnian Serbs. Cf. (Bebler 2006: 10).

¹⁸³ The Agreement, signed by the new state as well as by the Republic of Croatia and the Federal Republic of Yugoslavia, consists of the General Framework Agreement for Bosnia and Herzegovina (GAF) as well as 12 Annexes. While the GFA is merely a framework with no actual substance, the 12 Annexes added to the Framework “contain the details for the peace settlement” (Oellers-Frahm 2005: 189).

“ethno-territorial autonomies, carved out during the war”, were to be preserved. (Bieber in Ramet 2010: 314) Accordingly, the Bosnian state was constructed as a highly decentralised federation, consisting of the two entities, the Bosnian Serb enclave “Republika Srpska”, and the “Federation of Bosnia and Herzegovina”. Whereas Republika Srpska is highly centralised, the Federation, domineeringly populated by Bosnian Croats and Bosniaks, is organised into 10 cantons, largely populated on an ethno-territorial basis. (Oellers-Frahm 2005: 189) Paradoxically though, however well-intentioned the partitioning of the three constituent nations, the cementing of the ethnic segregation soon turned out to be detrimental upon both the transition towards democracy and also upon the functioning of a state where, “ethnicity often took precedence over democratization” (Bieber in Ramet 2010: 311). Already in 1996, with the first democratic elections taking place¹⁸⁴, it became evident that the political system only accentuated the stronghold of nationalist parties in power, resulting in a situation where multiparty democracy in Bosnia was limited, “within each of the three ethnic groups and the entities”, making the transition to democracy cumbersome. (Bieber in Ramet 2010: 316) Furthermore, although a highly decentralised state, the power-sharing system, based on ethnicity, has led to an enormous bureaucratic colossus on the state level. In fact, the “principal governmental organs are designed to have an equal number of Bosnian, Serb and Croat members and to provide for means to prevent the adoption by any groups joining of decisions ‘destructive of a vital interest’ of any of the groups” (Oellers-Frahm 2005: 191).

A situation with strong ethno-nationalist entities, in parallel with a weak and dysfunctional state level, dashed the hopes of a rapid transfer of authority from the international to the domestic level, as envisaged in the Dayton Peace Agreement.¹⁸⁵ In fact, the situation on the ground, early on, led to an increased international presence, where especially the Office of the High Representative (OHR)¹⁸⁶ acquired extensive powers, both

¹⁸⁴ The 1996 elections, the first elections of the new state, were monitored by the OSCE. Cf. (Bieber in Ramet 2010: 315).

¹⁸⁵ The first five Annexes added to the GFA regulate the transitional arrangements of Bosnia “giving formal approval to NATO and other forces and authorities to carry out particular functions in the country” (Oellers-Frahm 2005: 190).

¹⁸⁶ The Office of the High Representative (OHR) is an *ad hoc* body, established in 1995 and becoming responsible for the implementation of the civilian aspects of the General Framework Agreement. Cf. (Bieber in Ramet 2010: 315).

legislative as well as executive, as early as from 1997.¹⁸⁷ Thus, not only was the state structure imposed on Bosnia with the Dayton Peace Agreement, but core functions and duties of the new state were also, to a large extent, managed by international actors. This “international imposition over domestic state-building”, however indispensable, has, at the same time, inhibited the transition to a more viable and democratic Bosnia. (Bieber in Ramet 2010: 311) Furthermore, and in line with the Thessaloniki Agenda and the aim of integrating the Western Balkan states into the EU structures, there has been a significant “Europeanization” of the international presence in Bosnia. In 2003, the EU took over the police mission from the UN, and the following year, shouldered the peacekeeping mission from NATO. In addition, from 2002 the High Representative “has been simultaneously the EU’s Special Representative (EUSR)” (Bieber in Ramet 2010: 318). The Europeanisation efforts have, however, not yet borne fruit, since the prospects of EU integration have “featured lower on the list of Bosnian priorities than in other countries, such as Croatia and Macedonia” (Bieber in Ramet 2010: 318). Consequently, the negotiations between the EU and Bosnia over the Stabilisation and Association Agreement only started in 2005, and the Agreement was signed as late as in June 2008.

The demographic dimension

In comparison with both Croatia and Serbia, Bosnia stands out as different since the country is constituted by three numerically large constituent nations, the Serbs, Croats and the Bosniaks, with a very small share of national minorities. Indeed, in comparison with all the other former Republics of Yugoslavia, Bosnia had the smallest share of national minorities in the SFRY. According to the 1981 census, out of a population of approximately 4.1 million inhabitants, the share of national minorities only amounted to 0.6%. (Baltic 2007: 36)

¹⁸⁷ At a conference in Bonn in 1997 it was decided that the powers of the OHR would be extended in the executive and legislative domains. These “Bonn-powers” meant that the High Representative could dismiss public officials “ranging from members of the state presidency and presidents of the entities, down to mayors and local police officials” as well as impose legislation which also has included “far-reaching changes to entity constitutions, and voting mechanisms in the state government” (Bieber in Ramet 2010: 315).

Strategically positioned between Croatia (Northwest) and Serbia (East), as well as Montenegro (in the south), the territory of the Bosnian state stretches throughout 51.197 km². As is the case in the other former Republics, changes to the national structure have been significant, mainly due to wars, migrations, and diverging fertility rates. The most blatant change throughout the 20th century has been the decrease in the Serb share of the population (from 44.3% in 1948 to 31.2% in 1991), and the Croat share of the population (from 23.9% in 1948 to 17.4% in 1991), in parallel with an increase in the Bosnian Moslems (from 30.7% in 1948 to 43.6% in 1991).¹⁸⁸ The status as constituent nation was granted to the Bosnian Moslems as late as in the 1960s, manifest in the 1963 Federal Constitution. In fact, prior to the 1961 census there was not even a “Muslim” category, often reducing the Moslems to the category of the “undecided”. Indeed, as a consequence of the relaxation of the discriminatory policies against the Moslems of Yugoslavia, and the elevated status of the Bosnian Moslems, in parallel with the fact that they became the largest ethnic group in Bosnia¹⁸⁹, the dominance of the Bosnian Serbs came to a halt.¹⁹⁰ Although this would constitute a psychological blow to the Serbian self-image of a domineering nation, the cohabitation between the three constituent nations was rather unproblematic up until the beginning of the 1990s. (Bebler 2006: 7)

Upon the Bosnian proclamation of independence in March 1992, however, this situation would change and the worst genocidal war since World War II would take place on Bosnian soil. The continued “coexistence” between the three constituent nations was only possible with international intervention, first with the signing of the Dayton Peace Agreement, and then with a continued international governance. The coexistence is, however, artificial, since the new Bosnian “phantom state”

¹⁸⁸ However, the Bosnian Moslems’ share of the population prior to the 1961 census is difficult to estimate since “Muslims” was integrated as a category in the censuses carried out within the SFRY as late as in 1961. The figure 30.7% is therefore to be considered with some caution. During the same time period the share of the Croat population in Bosnia also decreased from 23.9% to 17.4%. Cf. (Baltic 2007: 27)

¹⁸⁹ The numerical shift was largely due to a higher birth rate of the Bosnian Moslems at the same time as a considerable share of the Bosnian Serbs emigrated, not only to Serbia proper but also to Western Europe. Cf. (Bebler 2006: 7).

¹⁹⁰ However, the loss of political dominance in Bosnia constituted a blow to the Serbs and would later become a tool of the Serbian nationalists in their attempts to recapture political power and to prevent the SFRY from disintegrating. Cf. (Bebler 2006: 7).

(Hayden 1992: 661) has been designed on the basis of ethno-territorial autonomies, where at least the Republika Srpska is highly mono-ethnic, as a result of the Bosnian Serbs' purification policies during the Bosnian war. This, in turn, has resulted in a situation where Serbs constitute almost 97% of the population in the Republic with almost no national minorities. However, even though Bosniaks and Croats have status as constituent nations at the state level, *de facto* they find themselves in a minority position in the Republic where the Croats amount to 1% and the Bosniaks to 2.2%. Even though the Croat and Bosniak Federation is more heterogeneous, constituted by the two constituent nations, and a share of national minorities amounting to 2.4%, the 10 cantons are likewise highly ethno-territorially based.¹⁹¹ The numerically largest minority groups according to the 1991 census were the Yugoslavs (5.5%), the Montenegrins (0.2%), the Roma (0.2%), the Albanians (0.1%), followed by the Ukrainians (0.09%), Slovenians (0.05%), and the Macedonians (0.03%). (CoE Report 2004: 10) Although not having status as a national minority, the ethnic Serbs, who amount to 2.3% of the population in the Federation, *de facto*, are in a minority position. This, in turn, has resulted in a situation where the previously adulterated character of Bosnia has in fact been replaced by two largely ethno-territorial Entities which has led to a system of cemented segregation.

The exclusive focus on resolving the conflictive relations between the three constituent nations at Dayton has entailed that the issue of the rights of national minorities has been relegated to the background. In fact, in the constitutional framework of Bosnia, the national minorities of the Bosnian state are indiscriminately referred to simply as, "the Others"¹⁹², and in the statistics carried out since 1991, there is no categorisation of ethnic groups, except for the three constituent nations. Although ethnic minorities were recognised as categories during the SFRY regime, the focus on minority rights protection was lacking to the benefit of the "equality of the constituent nations" (Hayden 1992: 661), as articulated by

¹⁹¹ Whereas the 5 Cantons around Sarajevo, Tuzla, Zenica, Bihac and Gorazde have a distinct Bosniak majority, the 3 Cantons in the western parts as well as in the North-east of the Federation are predominantly populated by Bosnian Croats. Only 2 Cantons are multiethnic, however internally divided into a Croat and a Bosniak part. Cf. (Vladisavljevic 2004: 12-13).

¹⁹² In the Preamble to the 1995 Constitution, the term "Others" refers indiscriminately to all national minorities. Cf. Constitution of Bosnia and Herzegovina, 1995, <http://confinder.richmond.edu>, 2011-12-14.

articles 1, 2 and 3 of the 1974 Constitution. The equality of the three constituent nations was also the basis of the power-sharing system in the Republic of Bosnia, however, regulated on a “non-territorial basis”, as opposed to the present ethno-territorial basis. (Bebler 2006: 7) Thus, the lack of minority rights protection in Bosnia is not only a Dayton constitutional construction since it was pertinent in Bosnia already during the SFRY regime.

Table 10.1. Ethnic structure of the population in Bosnia and Herzegovina according to the 1991 census and statistics provided by 2001 (data retrieved from the CoE Report 2004: 10 and the State Report submitted by Bosnia and Herzegovina to the Advisory Committee of the Council of Europe of 20 February 2004, pp. 3-7)

Nationality	1991 number	1991 %	2001 number	2001 %
Bosniaks	1.902.956	43.6	1.626.843	48.3
Serbs	1.366.104	31.2	1.142.948	34.0
Croats	760.872	17.4	519.478	15.4
Yugoslavs	242.682	5.5	-	-
Montenegrins	10.048	0.2	-	-
Roma	8.864	0.2	-	-
Albanians	4.922	0.1	-	-
Others ¹⁹³	30.106	0.7	75.556	2.3 ¹⁹⁴
No declared ethnicity	14.585	0.3	-	-
Regional affiliation	224	-	-	-
Unknown	35.670	0.8	-	-
Total	4.377.033	100	3.364.825	100

¹⁹³ In the category “Others” have been integrated numerically smaller minorities that amount to less than 0.1% of the Bosnian population. These numerically smaller minorities are: Czechs (590), Italians (732), Jews (426), Hungarians (893), Macedonians (1.596), Germans (470), Poles (526), Romanians (162), Russians (297), Ruthenians (133), Slovaks (297), Slovenians (2.190), Turks (267) and Ukrainians (3.929). Cf. (CoE Report 2004: 10).

¹⁹⁴ Since there are no records on the numerical sizes of national minorities in the statistics submitted by the Bosnian state in 2001, the national minorities have been grouped in the category “Others”. Cf. State Report submitted by Bosnia and Herzegovina to the Advisory Committee of the Council of Europe, ACFC/SR (2004) 001, Strasbourg, 20 February 2004, p. 7.

The sociolinguistic dimension

With the dissolution of Yugoslavia, and the forming of the Bosnian and Croat Federation, it became indispensable to strengthen a Bosniak¹⁹⁵ national identity, anchored in the “community of Islamicised Bosnian Slavs”, and with it a specific Bosnian language, clearly separated from the Serbo-Croatian language. (Okey 2005: 436) Even though the specificity of a Bosnian language, as distinct from Serbo-Croatian, was raised in the 1970s, it was during the initial phase of the disintegration of Yugoslavia that “claims of Bosnian linguistic autonomy” were stressed. (Okey 2005: 434) In the Bosnian case, however, there was never question to claim linguistic independence since the Bosniaks recognised their linguistic proximity to the Serbian and Croatian languages.¹⁹⁶ But, since the Serbo-Croatian language had become defunct¹⁹⁷, as a consequence of the emergence of the specific Croatian and Serbian languages, it was only natural for the Bosniaks to follow suit and to argue for a Bosnian language. However, the attempt to define a Bosnian “majority language” would not only create problems of a linguistic order, as had been the case in Croatia and Serbia, it furthermore raised problems of a state-forming order, a state which furthermore lacked many of the prerogatives of a state, including a majority nation.

The term, ‘Bosnian language’, is therefore problematic since it refers to the name of the Republic and suggests that the Bosnian language should be the language of all the Republic’s citizens, thus entailing a potentially territorial designation. (Bugarski 2004: 194). This is inconceivable both for the Bosnian Croats (amounting to almost a quarter of the population in the Federation of Bosnia and Herzegovina), and certainly for the Bosnian Serbs, who constitute almost 97% of the inhabitants in the Republika Srpska. However, in reality, the “Bosnian” label is more prone to refer to an ethnic designation, where the specificity of the Bosnian language is closely associated with the Bosniak national identity, and where it should be comprehended as a “symbol of actual ethnic identity” (Bugarski 2004: 194). However interpreted, territorially or ethnically, it highlights the

¹⁹⁵ With independence the Bosnian Muslims freed themselves of the label, “Muslims in the national sense”, a concept imposed upon them during the SFRY regime, and the new “independent” nation chose to call themselves Bosniaks. Cf. (Okey 2005: 436).

¹⁹⁶ In this sense, the Bosnian case was different from that of the Croatian and Macedonian linguistic nationalisms established with the proclamation of independencies.

¹⁹⁷ Defunct in the administrative sense of the word.

inherent problem of the state-forming of Bosnia anchored in three distinct and constituent nations, who are not prone to sacrifice their national identity or their territory, subsequently creating two mini-states with their respective official languages.

In the SFRY, the official languages of the Republic of Bosnia and Herzegovina, as stipulated by Article 4 of the Constitution of Bosnia and Herzegovina, were the Serbo-Croatian and the Croat-Serbian languages with the Cyrillic and the Latin alphabets. (Baltic 2007: 36) The Dayton constitutional framework, and the official recognition of the two Entities, entailed that the declaration of the official languages are stipulated in the Constitutions of the respective entities. Hence, in the Bosniak-Croat Federation, the Bosnian and the Croatian languages and the Latin alphabet are declared official, as stipulated by Article 6 of the Constitution of the Federation of Bosnia and Herzegovina. (Bugarski 2004: 194) In the Republika Srpska, on the other hand, only the Serbian language, “in the ijekavian and ekavian pronunciations and the Cyrillic alphabet, are in official use, and the Latin alphabet as stipulated by law” (Art. 7 of the Constitution of the Serb Republic, 1992, Bugarski 2004: 194).

Even though the equality of the constituent nations was particularly stressed also in the former Republic of Bosnia and Herzegovina, minority rights provisions were constitutionally protected. As far as minority language rights were concerned, the former Constitution stipulated that minorities had the right to use their languages “before the agencies of official authority”, if so stipulated by the statutes of the municipalities. (Baltic 2007: 36) Minority language rights in education were also provided for, even though the small share of minorities, as well as their dispersion, made this right difficult to implement in practice. In the constitutional framework, initiated at Dayton, the focus on the constituent nations, and the official use of the three “separate” majority languages, overshadowed everything else. Hence, in the Constitutions of the Entities¹⁹⁸ which should regulate rights pertaining to national minorities, these rights were to a large extent left constitutionally unprotected. In line with the conditionality package, established with the

¹⁹⁸ The Constitutions of the two Entities were adopted at the height of the Bosnian war. The Constitution of the Federation of Bosnia and Herzegovina was adopted in 1994 and the Constitution of the Serb Republic was adopted as early as in 1992 when the “Republika Srpska” was proclaimed. Cf. (Bebler 2006: 9).

Stabilisation and Association Agreement, Bosnia did adopt, in 2003, a Law on the Protection of Rights of Persons Belonging to National Minorities. This Law provides, at least *de jure*, for minority language rights of the 17 minority groups¹⁹⁹ that are recognised, of which the Romany, Albanian and the Ukrainian languages are the most widely spoken.

Legislation in minority language rights upon gaining status as potential candidate state

The monitoring Report of the EU was adopted in 2003, the same year as Bosnia became a potential candidate state of the EU. The Report of the Council of Europe was adopted the following year, in 2004. The EU Report initially stresses the need for Bosnia to become a “self-sustaining state”, in order for a future accession to take place. (EU Report 2003: 3) At the same time, however, the EU Report acknowledges that the reforms, necessary to further the democratisation process, as the reforms already taken have proven²⁰⁰, are possible only with the help of international governance. Thus, the EU Report emphasises that “the role of the international Community remains vital” to the continued and necessary reform process. (EU Report 2003: 8) What is clear from the EU Report is that, in order for Bosnia to be able to start complying with minority rights conditionality, Bosnia has to make considerable progress in many domains and particularly as concerns harmonisation of legislation between the different levels of government.

In the same vein, the Advisory Committee addresses the problem of the complexity of the governmental structures, between the Federal and the State level, and points out that there is a “lack of information on the implementation of the Framework Convention at the sub-state level, a matter that should be addressed through enhanced co-operation between the Entities and the State authorities” (CoE Report 2004: 6). Furthermore, the Advisory Committee takes note of the poor socio-economic

¹⁹⁹ Bosnia and Herzegovina’s National Law on the Protection of Rights of Persons Belonging to National Minorities, adopted on the 12th of April 2003, recognises the following national minorities: Albanians, Czechs, Germans, Hungarians, Italians, Jews, Macedonians, Montenegrins, Poles, Roma, Romanians, Russians, Ruthenians, Slovaks, Slovenians, Turks and Ukrainians. Cf. (Cicak & Hamzic 2006: 1).

²⁰⁰ The vital reforms made were to a large extent adopted by imposition of the High Representative. Cf. (EU Report 2003: 5).

conditions of the country, which are argued to inhibit implementation of the regulatory principles of the Framework Convention. (CoE Report 2004: 8) In the area of minority rights protection, the constitutional changes, made “as a result of the 2000 Constitutional Court decision on “constituent peoples”, represented an important advance in formally securing citizens’ **civil and political rights** throughout BiH” (EU Report 2003: 11). Another step in this direction was Bosnia’s ratification of the European Convention on Human Rights, made in July 2002. Furthermore, Bosnia adopted the Law on the Protection of Rights of National Minorities in April 2003. In 2002, Bosnia became a member of the Council of Europe, having ratified the Council of Europe’s Framework Convention in February 2000. Whereas the assessment of the Advisory Committee is all-encompassing, the EU Report neither assesses legislation pertaining to minority language rights protection, nor, and which is even more surprising, legislation pertaining to non-discrimination.

Non-discrimination

The discriminatory effects of the “overly ethnically based politics”, pervasive also in the institutional arrangements of Bosnia, are consistently, however prudently²⁰¹, pointed out in the Report of the Advisory Committee. (CoE Report 2004: 19) In this regard, the problem of the division of the polity into constituent peoples and “Others”, as stipulated in the preamble to the Constitution of Bosnia and Herzegovina, raises concerns. These concerns are not only of a terminological order, but pertain to the discriminatory effects these have on the rights of national minorities, as well as to who should be considered a national minority. (Preamble to the Constitution of Bosnia and Herzegovina, 1995) On the basis of criticisms raised by representatives of minority groups, the Advisory Committee stresses the problematic use of the term “Others” as an all-encompassing label of those persons not affiliating with the constituent peoples. However, in the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities, the term “Others” has been substituted by national minorities and the Advisory Committee expresses the hope that, at both State level and at Entity level, the authorities would

²⁰¹ Prudently in the sense that the Advisory Committee recognises that the status granted to the three constituent peoples as a guarantee for the equal treatment of the Serbs, Bosniaks and Croats has been instrumental “in ensuring a lasting peace and stability in the country after the conflict” (CoE Report 2004: 10).

“contemplate the possibility of consistently introducing similar terminology at the constitutional level” (CoE Report 2004: 11).

According to Article 3, of the Law on the Protection of National Minorities, national minorities are defined as “a part of the population – citizens of Bosnia and Herzegovina – that does not belong to one of the three constituent peoples of Bosnia and Herzegovina, and it consists of the people of the same or similar ethnic origin, same or similar tradition, customs, religion, culture, and spirituality, and close or related history and other features” (CoE Report 2004: 10). The national minorities covered by this status are Albanians, Montenegrins, Czechs, Italians, Jews, Hungarians, Macedonians, Germans, Poles, Roma, Romanians, Russians, Ruthenians, Slovaks, Slovenians, Turks, Ukrainians and “others who satisfy requirements from paragraph 1 of this Article” (CoE Report 2004: 10). Whereas the Advisory Committee satisfactorily notes that also smaller minority groups are included in the enumeration, there is, at the same time, concern as to the scope of application, limited to citizens only, which would exclude many from the Roma community, as well as the numerically large refugee groups, emanating from the dissolution of the SFRY in general, and the Bosnian war in particular. (CoE Report 2004: 10) Furthermore, since there still is the division between constituent people and national minorities, this raises concerns as to the status, both *de jure* and *de facto*, of constituent peoples who find themselves in a *de facto* minority position (Croats and Bosniaks in the Republika Srpska and Serbs in the Federation as well as Bosniaks and Croats on the cantonal level).

In this regard, the Advisory Committee welcomes the decision of the Constitutional Court of 2000²⁰², stipulating that, “Bosniacs, Croats and Serbs are to be considered constituent peoples across the whole territory of Bosnia and Herzegovina, no matter the Entity in which they reside” (CoE Report 2004: 12). The importance of ensuring legal equality of the constituent peoples has, however, been detrimental to minority representation, and the Advisory Committee is of the opinion that “consideration should be given to finding ways and means of remedying the total exclusion of persons belonging to national minorities” (CoE

²⁰² On the basis of the partial decision on the status of constituent peoples taken by the Constitutional Court on the 30th of June and the 1st of July 2000, the Constitutions of both Entities were amended as to allow for the “three constituent peoples to be represented in the Parliaments of the Entities” (CoE Report 2004: 14).

Report 2004: 14). Furthermore, the constitutional provisions are incompatible with the provisions stipulated in the 2003 Law on the Protection of National Minorities, as Article 19 of the said law declares that “persons belonging to national minorities shall have the right to be proportionally represented in the bodies of public authorities and other civil services at all levels” (CoE Report 2004: 14-15). Thus, in order to guarantee minority representation, at the same time as harmonising the legislation, the Advisory Committee considers that this situation “may ultimately require constitutional amendments at the Entity level” (CoE Report 2004: 15).

Despite the discriminatory effects of the fundamental principle of the constituent peoples, as well as the lack of harmonisation of legislation, the Advisory Committee recognises, with satisfaction, that “there exist general guarantees against discrimination, including in the Constitution of Bosnia and Herzegovina, in the Constitutions of the Entities and in the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities” (CoE Report 2004: 12). At the same time, though, it is clear that the existing Bosnian legal order, based on a division of ethnic affiliation, which, in turn, is based on the superiority of the three constituent nations, greatly hampers the necessary development of a more comprehensive anti-discrimination legislation, which would require a reorientation from protection of collective rights to the protection of individual rights. (CoE Report 2004: 12) In this regard, the Commission on Human Rights, instituted as part of the General Framework Agreement²⁰³, and consisting of the Office of the Ombudsman²⁰⁴ and the Human Rights Chamber, have been “instrumental in the fight against discrimination, including for persons belonging to national minorities as well as those belonging to constituent peoples in a minority situation” (CoE Report 2004: 12-13).

²⁰³ The Commission of Human Rights was established in Annex 6 of the General Framework Agreement for Peace in Bosnia and Herzegovina. Cf. (Oellers-Frahm 2005: 191).

²⁰⁴ The Office of the Ombudsman actually consists of three Ombudsman Institutions, one at State level and the other two at the level of the Entities. Each Ombudsman Institution in turn consists of 1 representative from each of the constituent peoples. Cf. (CoE Report 2004: 12).

However, *de facto* discrimination against both national minorities, and especially against the Roma, but also against constituent peoples in a minority situation, is frequent and gives evidence to the poor implementation of the existing non-discrimination legislation, but also to the interethnic animosities that still are simmering under the surface. Indeed, the vulnerable situation of the Roma, who face “particular difficulties in fields such as housing, health care, employment and education”, is alarming and calls for remedial measures. (CoE Report 2004: 4) In fact, the Advisory Committee recommends the Bosnian authorities to promptly draw up a “comprehensive national strategy”, in order to meet the needs of this vulnerable group. (CoE Report 2004: 4) A factor, considered inhibiting more effective implementation of the existing non-discrimination legislation, is the lack of up-to-date statistics of the numerical sizes of the minority groups. Because there has been no official census carried out in Bosnia since 1991, the Advisory Committee fears that there are “wide discrepancies between the latest official statistics of the Government and the unofficial estimates of the actual number and geographical location of persons belonging to national minorities” (CoE Report 2004: 17). As long as these discrepancies exist, this is considered to “hamper the ability of the State to target, implement and monitor measures to ensure the full and effective equality of persons belonging to national minorities” (CoE Report 2004: 17).

Even though the legally protected status of Serbs, Bosniaks and Croats should pertain to the whole territory of Bosnia and Herzegovina, as decided by the Constitutional Court in 2000, this decision has not been effectively implemented. Discrimination against constituent peoples who find themselves in a *de facto* minority situation, is pointed out by the Advisory Committee and raises concerns as to the protection of these “minority groups”, which are not protected by minority rights provisions, thus reducing their status to a legal vacuum. When viewed the extensive organisational autonomy and the extensive powers of the two Entities, the Advisory Committee therefore considers that these constituent peoples, in a minority position in their respective Entities, should “be given the possibility – in case they so wish – to rely on the protection provided by the Framework Convention, as far as the issues concerned are within the competence of the Entities” (CoE Report 2004: 11).

General provisions against discrimination exist, both on the State level and the level of the Entities, as stipulated in the Constitutions and in the Law on the Protection of Rights of Persons Belonging to National Minorities. However, for a more comprehensive anti-discrimination legislation to take place there is the need to reorient the emphasis on ethnically-based rights towards an emphasis on individual rights. As underlined by the Advisory Committee, the Bosnian authorities are expected to develop “comprehensive anti-discrimination legislation that protects *individuals* from discrimination” (CoE Report 2004: 12, emphasis added). Furthermore, harmonisation of legislative acts between the State level and the Entities, as well as between the Entities, is instrumental in developing a Bosnian legal system that assures the protection against discrimination throughout its territory. However, on the basis of the current legal system, and having taken into consideration the fact that there is a lack of harmonisation between the Constitutions and the 2003 Law on the Protection of National Minorities, Bosnia is positioned on the level of 0.5.

Fig. 10.1. Bosnia and level of rule adoption in non-discrimination upon gaining status as potential candidate state



- (0): Absence of any non-discrimination norm;
- (1): General provisions such as an equality clause in the Constitution;
- (2): Non-discrimination laws are inserted in specific laws;
- (3): Comprehensive anti-discrimination legislation which then means that there has been a complete transposition of the EU anti-discrimination *acquis*;
- (4): Non-discrimination laws exceed the minimum requirements of the Directive.

Minority language use in official contexts

The lack of harmonisation between the legislative acts in Bosnia is also apparent in the domain of the protection of the official use of minority languages. Minority language rights are constitutionally protected as is clear from the Constitutions in both Entities. However, although the

Advisory Committee welcomes the fact that the Constitutions of both Entities²⁰⁵ have made Serbian, Croatian and Bosnian the official language in both Entities, and that the right to the official use of minority languages, likewise, is constitutionally protected, minority language use has not been “regulated by law at the entity level, in the Republika Srpska or in the Federation” (CoE Report 2004: 23). The Law on the Protection of Rights of Persons Belonging to National Minorities, however, provides for the protection of the use of minority languages. Hence, Article 11, of the said Law, stipulates that “BiH shall recognise and protect the right of each member of a national minority in BiH to use his/her language freely and without any hold-ups, both in private and in public, both orally and in writing” (Law on the Protection of Rights of Persons Belonging to National Minorities, Art. 11). Article 11, furthermore, provides for the right of members of national minorities to “use his/her name in the language of minority and to request it to be used as such in public” (Art. 11). As regards the right to use minority languages in official contexts, Article 12 determines that the competent authorities have the obligation to “ensure the use of minority languages in contacts with persons belonging to a national minority” (CoE Report 2004: 23). The same Article, furthermore, provides for the right of minorities to use, in public, inscriptions and other signs as well as street names and place names in the minority language. (Art. 12)

These legal rights are, however, problematic, and pose serious challenges to their implementation, seeing as how the high numerical threshold, that conditions protection of these legal rights, drastically reduces *de facto* implementation. Hence, these rights are only provided for given that “the minority in question constitutes an absolute or relative majority in the city, municipality or local community at issue” (CoE Report 2004: 23). The high numerical threshold, established by the Law, is problematic since, in practice, it nullifies the substance of these legal provisions. In fact, the

²⁰⁵ Article 7, of the Constitution of Republika Srpska, stipulates that “the official languages of the Republika Srpska are: the language of the Serb people, the language of the Bosniak people and the language of the Croat people. The official scripts are Cyrillic and Latin. In regions inhabited by groups speaking other languages, their languages and alphabet shall also be in official use, as specified by law”. Article 6 of the Constitution of the Federation likewise declares that “The official languages of the Federation of Bosnia and Herzegovina shall be: Bosnian language, Croat language and Serb language. The official script shall be Latin and Cyrillic. Other languages may be used as a means of communication and instruction” (CoE Report 2004: 23).

Advisory Committee notes that the threshold is so high, that “it raises doubts about its compatibility with the Constitution, as suggested by the case-law of the Constitutional Court itself” (CoE Report 2004: 23-24). The high threshold is, furthermore, aggravated by the fact that there is neither any up-to-date statistics on the numerical sizes of national minorities, nor any information as to their geographical concentrations. Thus, the lack of updated census results, subsequently, means that the authorities have to rely on the latest census results, carried out in 1991, which are unlikely to give an accurate picture of both the numerical sizes, as well as the geographical location of the national minorities. Hence, on the basis of discussions between the Advisory Committee and the authorities of the Republika Srpska, it became clear that the legal rights pertaining to minority language use protection were “largely considered inapplicable in Bosnia and Herzegovina, since there was not a single municipality in the country in which a given minority constituted a majority, when the last general census was taken in 1991” (CoE Report 2004: 23).

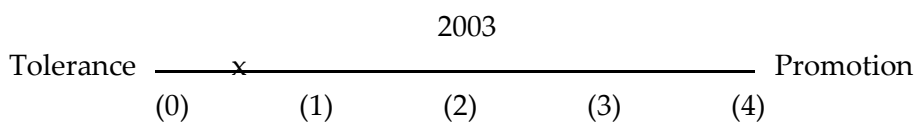
The legal impasse of minority language use in official contexts is, however, opened up by the possibility, as stated in Article 12 of the said Law, for cities and municipalities, as determined in their statutes, to lower the threshold. Thus, as stipulated by Article 12, the right to use a minority language in official contexts could be provided, on condition that the statutes of the cities and municipalities so determine, even when national minorities “do not constitute an absolute or relative majority of the population” (Law on the Protection for Persons Belonging to National Minorities, Art. 12). In this regard the Advisory Committee “expresses the hope that the competent authorities will make systematic use of the possibility they have to rely on a lower threshold to activate the right to use minority languages in contacts with administrative authorities” (CoE Report 2004: 24).

As concerns the use of signs and symbols, Article 10, of the Law on the Protection of National Minorities, declares that members of national minorities “may freely display and bear insignia and symbols of a national minority” (Law on the Protection for Persons Belonging to National Minorities, Art. 10). However, and as underlined by the Advisory Committee, this right will only be provided for, on condition that minority members, at the same time, “display the official insignia and symbols of Bosnia and Herzegovina, as well as those of the Entities,

Cantons and municipalities” (CoE Report 2004: 22). The Advisory Committee finds this additional formulation disturbing, since it “prescribes the systematic additional use of State symbols”, without making any distinction between the public and the private spheres. The recommendation of the Advisory Committee is that the Bosnian authorities amend “this provision with a view to restricting the compulsory use of State symbols to the public sphere only” (CoE Report 2004: 22).

Even though there are legal provisions as regards the right to use minority languages in contacts with official authorities, as well as to use minority languages in personal and place names, these legal provisions, in fact, nullify themselves in view of the very high threshold that conditions the guaranteeing of these rights. Hence, even though the Law on the Protection of National Minorities does give the cities and municipalities the right to determine lower thresholds, this possibility is voluntary and does not guarantee that this will be implemented. In light of the above, along with the fact that Bosnia does recognise minority languages, Bosnia is positioned on the level of 0.5 according to the index scale.

Fig. 10.2. Bosnia and level of rule adoption in minority language use in official contexts upon gaining status as potential candidate state



- (0): No recognition of minority languages;
- (1): The right to use the minority language in official contexts (before judicial and administrative authorities; i.e. the right to a translator);
- (2): The minority language can be used in Personal and Place Names (public signs);
- (3): The minority language can be used in official documents;
- (4): Minority language having status as official language.

Minority language rights in education

On occasion of the Bosnian ratification of the Council of Europe's Framework Convention, discussions on the educational sector, and the necessary reforms, focused particularly on the problem of the highly fragmented Bosnian education system. In fact, the system of "two schools under one roof"²⁰⁶, prevalent in the Croat and Bosniak Federation, was rooted in a system which meant the complete separation, both physically as well as academically, of Croat and Bosniak pupils. This went completely counter to the regulatory principles of the FCNM, and Article 12, which underlines the importance of facilitating "contacts among students and teachers of different communities" (CoE Report 2004: 24). In fact, in order to promote national cohesion and avoiding the furtherance of segregation, the introduction of "a common core curriculum should be instrumental" to this end. (CoE Report 2004: 25) In the same vein, a core curriculum would also facilitate "the integration of returnee children and student mobility, which remains a challenge, given the number of displaced persons and refugees" (CoE Report 2004: 25).

The attempts to unify the system, and to go "from three distinct curricula – and set of textbooks – to a common core curriculum", have proven difficult, and especially Croat officials have been reticent to give up their school system for fear of assimilation. (CoE Report 2004: 24) As underlined by the Advisory Committee, it is important that the unification process does not impede on the rights of the three constituent peoples to have instruction of/in minority languages and, thus, "ensures that persons belonging to each of the three constituent peoples have an equal right to use their language, without discrimination" (CoE Report 2004: 25). Interestingly, the Advisory Committee, by making reference to the regulatory principles of the FCNM, clearly treats the constituent peoples as having status as national minorities which is surprising seen as how the three constituent peoples are neither covered by the Law on the Protection of National Minorities and consequently nor by the FCNM.

The Law on the Protection of Rights of Persons Belonging to National Minorities provides for minority rights in education, where Article 13

²⁰⁶ The system of 'two schools under one roof' was still in existence especially in Canton 6 (Middle Bosnia) and Canton 7 (Herzegovina Neretva) at the time of the writing of the CoE report. Cf. (CoE Report 2004: 24).

stipulates that it is the responsibility of the Entities and the Cantons of the Federation to determine, in their respective legislations, “the possibilities for the members of national minorities to establish, and preserve their own private institutions, for education and vocational training” (Law on the Protection of National Minorities, Art. 13). It should, however, be added that this provision does not guarantee any State funding but that the financing “shall be secured by persons belonging to national minorities themselves” (CoE Report 2004: 26). Article 14, of the said Law, also provides for the right of education in minority languages, from pre-school level up to secondary school level, where the Entities and Cantons in Bosnia are obligated to ensure that “members of national minorities shall be enabled to have education in the minority language in the cities, municipalities, and inhabited areas, in which the members of national minorities represent an absolute or relative minority” (Law on the Protection of National Minorities, Art. 14).

Again the very high threshold is problematic, and even more so since Article 14 does not open up possibilities for cities and municipalities to allow for lower thresholds. Surprisingly, even though the Advisory Committee is “concerned” that the high threshold “*might* constitute an obstacle for receiving instruction in certain minority languages”, this problem does not seem to merit further attention. (CoE Report 2004: 27, emphasis added) In fact, it seems that the national cohesion principle, here, is stressed to the detriment of the rights of minorities to receive education in their minority languages. In fact, the Advisory Committee welcomes the more flexible approach, taken by the 2003 Framework Law on Primary and Secondary Education, where Article 8 “prescribes that the language and culture of any significant minority in Bosnia and Herzegovina shall be respected and accommodated within the school, to the greatest extent practicable, in accordance with the Framework Convention for the Protection of National Minorities” (CoE Report 2004: 27).

More emphasis of the Advisory Committee is devoted to the legal provisions regulating the right to receive teaching of the minority language, a right that is not conditioned by any numerical threshold. Hence, Article 14, of the Law on the Protection of National Minorities, stipulates that “regardless of the number of members of national minorities, the entities and cantons shall be bound to secure that the

members of national minority, if they request so, may have instruction on their language, literature, history, and culture in the language of minority they belong to as additional classes" (Law on the Protection of National Minorities, Art. 14). The Advisory Committee, furthermore, notes, with satisfaction, that the "legislation on Primary and Secondary Education in the Entities is being harmonised with the 2003 Framework Law on Primary and Secondary Education" (CoE Report 2004: 27). However, whereas the new Law on Primary and Secondary Education in the Republika Srpska, adopted in 2004, was amended²⁰⁷ in accordance with the Framework Law, the harmonisation process has not yet been completed in some cantons of the Federation. Hence, the Advisory Committee recommends the authorities in these cantons to "follow suit, by speeding up the process of harmonising their legislation, with both the 2003 Framework Law on Primary and Secondary Education, and the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities" (CoE Report 2004: 27). Thus, once again, the Advisory Committee stresses the problem of the highly fragmented education system, which constitutes a barrier towards more effective implementation of minority language rights in education. Hence, the Advisory Committee considers that "there is an urgent need to coordinate matters in the field of education" to ensure that these are in line with the regulatory principles of the Framework Convention. (CoE Report 2004: 25)

Even though there exist some legislative provisions, and these mainly concern the right for minorities to get instruction of minority languages, this legal provision seems to be poorly implemented in practice. Hence, the highly segregated education system is blatant also as concerns minorities' language rights in education. Even though the *de facto* situation confirms that instruction of minority languages is provided with "additional classes for certain national minorities, (which) already exist both in the Federation and in the Republika Srpska", these classes are often provided by "minority associations outside the public education system" (CoE Report 2004: 28). Even though the initiatives from minority associations are welcomed both by the Advisory Committee, as well as by

²⁰⁷ The Law on Primary and Secondary Education was adopted on the 30th of April 2004 and the amendment made was to abolish the previous legal threshold of 20 pupils, needed for the application of having "a minority language taught at the primary school level" (CoE Report 2004: 27).

the minorities themselves²⁰⁸, the Advisory Committee points out that there is a perceived need to “increase State support, not least of all to pay for the teachers and their training, as well as to provide textbooks in minority languages” (CoE Report 2004: 28). In this regard, the Advisory Committee notes, with satisfaction, that State support in this domain already is legally provided for, since Article 14, of the Law on the Protection of National Minorities, stipulates that the competent authorities “shall be bound to secure funds, means for the education of teachers to teach in the language of the national minority, (...) as well as printing of textbooks in the languages of national minorities” (Law on the Protection of Rights Belonging to National Minorities, Art. 14).

However, as concerns the minority language the most widely spoken in Bosnia, it is only occasionally that the Romany language is taught. In fact, the poor inclusion of Roma pupils into the education system in Bosnia, in general, is a serious problem, as underlined by the Advisory Committee. Apart from the poor socio-economic conditions of the Roma, which greatly hampers more effective integration of Roma pupils into the educational system, direct discrimination from teachers, administrators and other pupils has been reported. (CoE Report 2004: 26) Thus, the Advisory Committee encourages the State authorities “to introduce more systematically Roma language teaching in schools, attended by Roma children, as well as develop curriculum resources to enable teachers to teach the Roma language, culture and history, as provided for in the Action Plan on the Educational Needs of Roma and Members of Other National Minorities”²⁰⁹ (CoE Report 2004: 28).

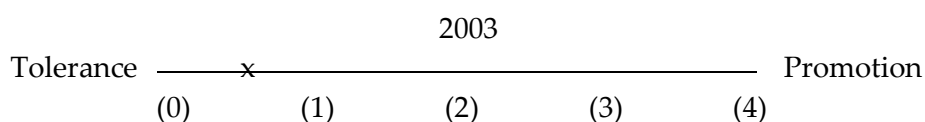
Legal provisions regulating minority language rights in education exist, although they are, to a large extent, hampered by the very high threshold that conditions these rights and which, consequently, does not allow for implementation. However, independently of any numerical threshold, the right to be instructed of minority languages, as well as the culture and

²⁰⁸ These additional classes of minority languages have been held mainly for Czechs, Poles, Italians and Ukrainians and they have “expressed an interest to consolidate and to develop them further” (CoE Report 2004: 27-28).

²⁰⁹ The Action Plan was adopted on the 17th of February 2004 by both Entities and the Cantonal Ministers of Education on the initiative of the OSCE. The Plan is an effort to try to “meet the needs of the national minorities and especially the Roma” (CoE Report 2004: 25).

history of national minorities, is provided for by the Law on the Protection of Rights of Persons Belonging to National Minorities (Art. 14). However, these rights are restricted to additional classes and are not integrated into the curriculum. Furthermore, these rights have only been implemented in the Republika Srpska, and not in the Federation so, not only are these rights referred to extra-curriculum activities, but they are also only provided for in one of the Entities. Thus, in light of the above and based on the index scale, Bosnia is positioned on the level of 0.5.

Fig. 10.3. Bosnia and level of rule adoption in minority language rights in education upon gaining status as potential candidate state



- (0): No education of or in minority language;
- (1): Children belonging to minorities have the right to learn their mother tongue in school;
- (2): At least parts of the curriculum (e.g. history or religion) are taught in the minority language;
- (3): Minorities have the right to educate their children completely in the mother tongue, either in state schools with a complete syllabus taught in the minority language or in specific minority schools;
- (4): Minorities have their own universities.

THE SOVIET EMPIRE

From construction to deconstruction

The origins of the Russian Empire's colonial endeavours can be traced back to the 16th century, when pre-tsarist Russia incorporated parts of Siberia into Russian territory. (White 2011: 264) The major parts of the territorial annexations were, however, gained during the 18th and 19th centuries, when most of the territories of Central Asia, the Caucasus and parts of Eastern Europe were subjugated to imperial authority. The policy of territorial annexation was later continued by the Soviet Union, which, by 1990, had created "one of history's greatest land empires" (Hughes & Sasse 2001: 225). Indeed, the vast majority of territories and the mosaic of nationalities which were incorporated into tsarist Russia, and subsequently into the Soviet Union, had turned it, not only, into a European, but also an Asian power. In 1905, and as a consequence of the defeat in the Russo-Japanese war, the attempt to stretch the Empire further, in order to become the "dominant power in the Pacific", never materialised. (White 2011: 264).

Not only did 1905 constitute a backlash in the area of foreign policy, even more serious were the internal problems of the Empire. Caused by ethnic and social distress, the revolution of 1905 became the start of the withering of tsarist Russia. Although the territorial might was the empire's strongest geopolitical asset, the diversity of the nationalities, inhabiting the territory, was to become one of its primary weaknesses. In fact, just as the nationality problem was a pervasive problem in the Yugoslav context, the nationality problem, and the policies inaugurated to tend to the nationality problem, were a contributing factor to the demise of tsarist Russia, as well as a facilitator to the establishment of the second empire, the Soviet Union. The revolution of 1905 was, partly at least, a reaction to the harsh policies of assimilation, which had started in the 18th century, however, seriously initiated in 1830, when the "Russian authorities began to promote Russification and conversion to Orthodoxy" (MRGI 2011a: 2). These policies caused uprisings in 1830 and 1863, in the territories of Poland, Lithuania and Belarus, which were violently

crushed, and the Governor, in charge of the 1863 operations, famously remarked that, “what the Russian bayonet did not accomplish, the Russian school will” (Vollebaek 2009: 3).

Both the ethnic and the social components²¹⁰ of the revolution were, however, cleverly exploited by the Bolsheviks, which facilitated their accession to power in the subsequent October revolution of 1917. Indeed, by making use of the “overlap between the social and ethnic cleavage in the Russian Empire (...), the idea of the ‘world proletariat brotherhood’” was promoted. (Vollebaek 2009: 4). Furthermore, the demise of tsarist Russia, which had seen a resurgence of long subjugated nationalist sentiments, was effectively used by the Bolsheviks to win the ensuing civil war against the nationalists. Indeed, by linking the socialist revolutionary movement to the principle of national self-determination of nations, the Bolsheviks developed a strategy which meant that, in return for allegiance to the Bolshevik cause, important ethnic groups would be granted territorial rewards. With the subsequent establishment of the Soviet state, the “practice, of granting ethno-territorial autonomy to leading ethnic groups, was institutionalised as an organising principle of the Soviet state” (MRGI 2011a: 2).

In 1922, the Union of Soviet Socialist Republics (USSR) was constitutionally enshrined as a federation based on the principle of ethno-territorial autonomy. On the basis of the major ethnicities, the large multinational socialist federation was divided into 15 union republics as well as 20 autonomous regions. However, although *de jure* a federation, where the ethno-territorial union republics had “sovereignty with the right to secession inscribed in their constitutions”, *de facto* the USSR was highly centralised. (Lundestad 1994: 134) In fact, with the exception that the new Soviet Empire was based on a totalitarian ideology, in which the supremacy of the Communist Party was to pervade every sphere of both

²¹⁰ In the beginning of the 20th century the social distress of the peasants, who had largely been compelled to serfdom and the industrial workers was extremely difficult. In 1913 tsarist Russia was a backward society composed of mainly peasants (77% according to the 1897 census) and the “Russian share of world industrial output as a whole was very small” (White 2011: 117-118). Furthermore, the devastation of World War I and the ensuing Civil war in parallel to poor harvests had decimated the population by 10 % in 1921 “through fighting, disease and starvation” (Harrison 2011: 104).

system and society, the USSR displayed much of the same characteristics as centralist and unitary tsarist Russia.

Indeed, even though the ethno-territorial divisions had been created, with the aim of stimulating national consciousness as a means of preventing national strife, there was never any question of transferring decision making authority to the union republics. In fact, as was to become very clear in the early stages of the “unitary state in disguise” (Lundestad 1994: 133), “Soviet totalitarianism was fundamentally incompatible with genuine region-based federalism and autonomy” (Starovoitova 1997: 10). Furthermore, since the principle of democratic socialism assumed that citizens’ had a common interest²¹¹, regardless of any ethnic belonging, the integrative force of socialism was thought to annihilate any nationality issue in the end. However, in the beginning of the new Soviet Empire, the Communist Party did institute the policy of indigenisation (*korenizatsiia*). This policy was part of a bigger nation-building programme and involved “systematic efforts to ensure that local administrations, courts and schools function in local languages” (Pavlenko 2008: 280). However, this policy stance was soon abandoned, since it was counterproductive to the process of increasing centralisation and uniformity, which “clearly emerged as the regime’s basic political goals”, from the late 1920s. (Starovoitova 1997: 10) Consequently, this entailed a policy shift, which was based on advanced russification which, in parallel, with the introduction of a pathological control system, would lead to purges against, not only, local nationalities²¹², but pervaded all spheres of Soviet society. (Starovoitova 1997: 10) The indiscriminate nature of Stalin’s political terror reached its peak in 1937, when “Stalin set out to exterminate all his enemies, including those he designated as ‘objective’ or ‘unconscious’ enemies” (Harrison 2011: 115). Apart from mass killing and deportation, the regime of political terror paralysed both industry and the economy. Furthermore, the collectivisation of agriculture in 1929-1930 had devastating effects, leading to mass starvation. A decade later, World War II, primarily fought on Soviet territory, “killed one in eight

²¹¹ The conviction was that working people, regardless of ethnic belonging, had a common interest which was “based upon their ownership of the means of production” (White 2011: 62).

²¹² For instance the regime had identified that there was resistance to the collectivisation of the agriculture in Polish and German villages in Ukraine and Belarus which led to deportations of whole communities. Cf. (Blitstein 2006: 289).

Soviet citizens, and destroyed one third of their national wealth” (Harrison 2011: 104).

In light of the devastations that had struck both humans, and infrastructure in the pre-World War II period, the economic recovery of the industrialised Soviet Union, especially from the 1950s, was remarkable. Indeed, compared with the backward pre-war tsarist Russia, “just a couple of generations later (...), the USSR had by this time become one of the world’s economic superpowers, with a gross domestic product (GDP) that was second only to that of the United States” (White 2011: 118). The change into the economic and military might²¹³ of the USSR was the more astonishing in the light of the fact that, neither the political system, nor the economic institutions, had undergone any significant changes. Thus, even though post War USSR underwent a de-Stalinisation process, under the thaw introduced by Chrustchev, there was never any real rupture with the past. Both “the Stalinist and the post-Stalinist epochs were characterised by an extreme centralisation of the economy, predominance of bureaucratic administrative methods of management, and the failure of all attempts at reforming the economy” (Lundestad 1994: 148). This, in turn, would lead to economic stagnation from the beginning of the 1970s, and even though this decade was marked by world economic recession with two oil crises, the Soviet economic collapse was more encompassing and would, consequently, lead to the breakdown of an entire system.

Indeed, the inefficiency and corruption of the centralised economic and political systems, maintained during the Breshnev regime, became particularly blatant in the period of accelerated superpower arms race during the late 1970s. The increasingly strained economy would lead to what the new leadership under Gorbachev in the 1980s would call a ‘crisis situation’. (White 2011: 115) In fact, even though observations had had it that the USSR during the 1960s was almost in parity, economically and militarily, with the USA, it was claimed that the USSR, in 1985, “was as far behind America as the Russian Empire had been in 1913” (Lundestad 1994: 139-140). Since the crisis situation was diagnosed as having been brought on, not only by the defaults of the economic system,

²¹³ By the 1970s the Soviet Union “maintained one of the world’s largest merchant marines and deployed one of its most formidable concentrations of military might” (White 2011: 118).

but also the political system, centralisation as a model of development became rejected. Hence, with the emergence of an understanding that “the totalitarian one-party, one-policy model of a multinational state was wrong”, nationalist ideas and movements, inhibited for half a century, surfaced and were promoted not only as legal²¹⁴, but also as legitimate by the new leadership. (Lundestad 1994: 149)

The demographic dimension

Stretching from Eastern Europe²¹⁵, via the Transcaucasus²¹⁶ to Central Asia²¹⁷, the vast territory of the Soviet Union encompassed 22.4 million km² covering 1/6th of the earth’s inhabited area. It neighboured twelve other states and shored three oceans, however, with parts of its territory largely inhabitable.²¹⁸ The population of almost 286 million (according to the 1989 census)²¹⁹, was highly multiethnic and the officially recognised ethnic groups exceeded the one hundred, however, unofficially “more inclusive counts as many as eight hundred” (White 2011: 164). Of the 15 union republics, the Russian republic was by far the most important, not only by its geographical size, extending over ¾ of Soviet territory, but also in terms of its sizeable population and its political might. Indeed, the Russians outnumbered by far the other major nationalities, accounting for 50.8% of the total population, and “Russia, and the Russians were the power base of the Soviet regime” (Starovoitova 1997: 10). The second largest nationality was constituted by the Ukrainians, who amounted to 15.5%, with the Uzbekhs ranked as the third largest nationality,

²¹⁴ Although the right to secession was formally enshrined in Article 72 of the Soviet Constitution, it was not until 1990 and the passing of a law “codifying the procedure for secession”, that this right became legally enforceable for the Union republics. (Starovoitova 1997: 13)

²¹⁵ The republics of Eastern Europe were: Ukraine, Moldova, Belarus and the Baltic States: Latvia, Lithuania and Estonia. Cf. (Pavlenko 2008: 285)

²¹⁶ The Transcaucasus was a relatively small geographical area which was composed of three smaller union republics: Armenia, Georgia and Azerbaijan. All three stood out in terms of very high levels of national consciousness as well as having a large share of the intelligentsia, particularly in Armenia and Georgia. Cf. (Pavlenko 2008: 280)

²¹⁷ Central Asia was a vast geographical area composed of the union republics of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan and a large proportion of the populations were adhering to Islam. Cf. (White 2011: 164).

²¹⁸ The southern republics were largely desert and much of the northern territory was “permanently frozen” (White 2011: 164).

²¹⁹ U.S. Bureau of the Census, *USA/USSR: Facts and Figures*. Government Printing Office, Washington, DC, 1991, p. 1-4.

amounting to 5.8%. Among the 22 nationalities, which accounted for more than 1 million each, the Estonians were the numerically smallest nationality to have their own Republic (see Table 11.1. below).

Table 11.1. Ethnic structure of the USSR in 1979 and 1989 (data retrieved from the U.S. Bureau of the Census, USA/USSR: Facts and Figures, U.S. Government Printing Office, Washington, DC, 1991, pp. 1-4)

Nationality	1979 numbers	1979 %	1989 numbers	1989 %
Russian	137.397	52.4	145.155	50.8
Ukrainian	42.347	16.2	44.186	15.5
Uzbek	12.456	4.8	16.698	5.8
Belorussian	9.463	3.6	10.036	3.5
Kazakh	6.556	2.5	8.136	2.8
Tatar	6.317	2.4	6.649	2.3
Azerbaijani	5.477	2.1	6.770	2.4
Armenian	4.151	1.6	4.623	1.6
Georgian	3.571	1.4	3.981	1.4
Moldavian	2.968	1.1	3.352	1.2
Tadzhik	2.898	1.1	4.215	1.5
Lithuanian	2.851	1.1	3.067	1.1
Turkmen	2.028	0.8	2.729	1.0
German	1.938	0.7	2.039	0.7
Kirgiz	1.906	0.7	2.529	0.9
Jewish	1.811	0.7	1.378	0.5
Chuvash	1.751	0.7	1.842	0.6
People of Dagestan	1.657	0.6	2.066	0.7
Latvian	1.439	0.5	1.459	0.5
Bashkir	1.371	0.5	1.449	0.5
Mordvinian	1.192	0.5	1.154	0.4
Polish	1.151	0.4	1.126	0.4
Estonian	1.020	0.4	1.027	0.4
Others	8.369	3.2	10.077	3.5
TOTAL	262.085	100	285.743	100

Although religion was “banned” from the communist agenda, the major part of the population was of the Orthodox faith even though the share of the population adhering to Islam was also substantial. In fact, in Central Asia as well as in Azerbaijan, the majority of the population was Muslim which, by consequence, meant that the Soviet Union in fact was the “world’s fifth largest Muslim state” (White 2011: 164). Apart from the Orthodox and Muslim adherents, the Jewish and Buddhist minorities were also quite numerous. Even though the administrative units of the Soviet Union had been made on the basis of ethno-territorial divisions, “within each of which a particular national group was supposedly predominant”, the union republics were highly heterogeneous.²²⁰ (White 2011: 164) Indeed, with the exception of Armenia, which was particularly mono-ethnic, the majority of the union republics housed both substantial ethnic minorities as well as a substantial share of ethnic Russians.²²¹

Even though the beginning of the Soviet regime had been characterised by the policy of indigenisation, where national cultures and languages were promoted, both in the administration, the media and in the education system, this policy was abandoned in favour of russification policies, introduced from the mid-1930s. Russification under Soviet rule was, however, different from Tsarist Russia since “Soviet russification was more pervasive – it was no longer just people who were russified but also languages, their lexicons, grammars and orthographies, and even territories, russified as a result of state-sponsored migration” (Pavlenko 2008: 281). However, Soviet russification did not mean the annihilation of the national specificities of the union republics. In fact, on a general level, russification took place concomitantly to the continued use of national cultures and languages, specific to the various union republics. However, at the same time, it is also true that the level of the impact of russification varied greatly between the union republics, as well as within. Indeed, depending upon factors such as the level of national consciousness, the

²²⁰ Kazakhstan was the union republic where the Kazakh nationality did not even constitute a majority and only amounted to 39.7% of the population. Apart from having substantial ethnic minorities, Kazakhstan furthermore had a sizeable Russian population that amounted to almost the numerical size of the Kazakhs, namely 37.8%. Cf. (Pavlenko 2008: 284).

²²¹ The largest share of ethnic Russians outside of Russia was living in Ukraine where they amounted to more than 17 million. Also, apart from Kazakhstan, the Russian-speaking minority constituted an important 34% in Latvia and 30.3% in Estonia. Cf. (Pavlenko 2008: 284).

proportion of native *intelligentsia* and, consequently, the importance given to the republic, as well as the national structure and the structure of population settlements within the union republics, russification was more or less successful. In fact, already in the 1920s, the Soviet leadership noted the differences in the level of russification when noting that, “while the Bielorussians ‘lacked’ national consciousness, the Ukrainians had too much” (Hirsch cited in Pavlenko 2008: 291).

Indeed, among the union republics of Eastern Europe, Belarus stood out as particularly russified compared with Ukraine, although Ukraine housed the largest population of ethnic Russians outside of Russia, amounting to more than 17 million. The three Baltic States were harsh opponents to russification, even though both Latvia and Estonia had very large shares of ethnic Russians, 34% and 30.4% respectively.²²² Indeed, the three Baltic States displayed very high levels of national consciousness, partly explained by the forceful re-annexation of the three Baltic States into the USSR in 1940, after the short period of independence experienced by the Baltic States upon the demise of tsarist Russia.²²³ Moldova was particular in that, in parallel with russification, efforts at Moldovanising the deep Romanian imprints of the union republic were actively pursued since the 1920s. Whereas russification was highly successful in Moldova, the attempts to construct a Moldovan ethnicity proved rather fruitless.

Whereas the union republics of Eastern Europe had a significant share of ethnic Russians, the union republics of the small geographical area of the Transcaucasus had very small shares of ethnic Russians.²²⁴ The level of the national consciousness was very high with strong nationalist movements, especially in Armenia and Georgia, which also had large native *intelligentsias*. This, in turn, meant that both union republics, in fact, were overrepresented, viewed their share of the total population in the central leadership of the communist party (CPSU). As opposed to Georgia and Armenia, which were historically rooted in Christianity,

²²² In comparison to both Latvia and Estonia, Lithuania’s share of 9.4% of Russians was small. Cf. (Pavlenko 2008: 284).

²²³ The three Baltic States had succeeded in becoming independent during the Civil war. However, during World War II and on the basis of the Ribbentrop-Molotov Pact, the Baltic States were re-annexed into the USSR in 1940. Cf. (Pavlenko 2008: 288).

²²⁴ The highly mono-ethnic Armenia had an insignificant share of ethnic Russians which amounted to 1.6%. Georgia and Azerbaijan, much more multi-ethnic, housed Russians populations of 6.3% and 5.6% respectively. Cf. (Pavlenko 2008: 284).

Azerbaijan was however predominantly Islamic and, furthermore, was not ranked as high as the two other union republics by the central Soviet leadership. However, the special position, and the prerogatives, that all three union republics enjoyed during Soviet rule, was manifest in the relaxation of the russification policies. Part of this relaxation, in fact, meant that, exclusively in these union republics, their “national languages were already declared official under the Soviet regime” (Pavlenko 2008: 292).

As opposed to the union republics of the Transcaucasus, the situation of the five union republics, stretching over the vast territory of Central Asia, was very different since the population of almost 50 million was predominantly Islamic. Ranked low by the Soviet central leadership, these republics had no privileged position. Also, the republics were largely multi-ethnic, housing not only significant shares of ethnic Russians but also a substantial share of national minorities. In fact, Kazakhstan, being the most heterogeneous of all 15 union republics, housed the largest share of ethnic Russians (37.8%), in proportion to its total population of 16.5 million, and had a substantial number of national minorities.²²⁵ The national structure of Uzbekistan, the largest of the 5 Central Asian republics, was highly different with the titular nationality amounting to 71.4%, compared with the mere 39.7% of Kazakhs in Kazakhstan, and with the ethnic Russians amounting to the relatively small share of 8.3%. Of the three smaller republics, Tajikistan and Turkmenistan had rather small shares of ethnic Russians, 9.7% and 9.5%, respectively, while Kyrgyzstan had a significant share (21.5%). (Pavlenko 2008: 284) Although russification policies were severely applied throughout the vast Central Asian territory, the level of success varied greatly. In fact, largely successful in the urban areas, particularly among the titular nationalities, the inefficiency of these policies was blatant in the large rural areas, predominantly inhabited by large segments of national minorities, where the illiteracy rate was very high.

²²⁵ In fact Kazakhstan was the only union republic in which the domineering nationality was not in a majority position. Cf. (Pavlenko 2008: 284).

Minority language rights protection in the former Soviet Union

Although the level of success of the russification policies varied greatly, between the 14 union republics, as well as within, it is evident that the Russian language was the *lingua franca* throughout the Union, and by the end of Soviet rule, “82 per cent of the population spoke it fluently or as a native language” (White 2011: 164). Concomitantly, however, the languages of the titular nationalities, as well as the multitude of minority languages, were very much part of the linguistic repertoire since “about 130 other languages were spoken somewhere on Soviet territory” (White 2011: 164). The multitude of linguistic communities that inhabited the vast Russian Empire, and subsequently, the Soviet Union, made language planning a central component of the russification policies that were introduced from the mid-19th century. In the beginning, the spread of Russian was harshly, however, selectively applied, reaching its peak with the introduction of the Ems Edict of 1876, which “prohibited the use of the Ukrainian language” (Vollebaek 2009: 3). In the aftermath of the 1905 revolution, however, a relaxation of the repressive language policies was introduced, which, in turn, meant that not only did language planning become more systematic, the spread of the Russian language started to be made concomitantly to the promotion of minority languages.²²⁶ With the coming of the Russian revolution in 1917, the goal of late imperial Russia had been reached, since the national elites had “integrated Russian into their linguistic repertoires” (Pavlenko 2008: 279). However, bilingualism was limited to the national elites and never reached the vast segments of the population, which largely remained monolingual.

The promotion of the Russian language was momentarily stopped by the indigenisation policy that was introduced by the new Soviet leadership in the beginning of the 1920s. Indeed, part of the bigger nation-building programme, these “early language policies, advanced by Lenin and his followers, aimed to support and develop national and ethnic languages on the assumption that the new regime would be best understood and accepted by various minority groups if it functioned in their own

²²⁶ The promotion of minority languages was particularly seen in an increase of minority language schools as well as a flourishing of publication houses which had started to publish books and periodicals in a multitude of minority languages. Cf. (Pavlenko 2008: 279).

languages” (Pavlenko 2008: 280). The strengthening of national cultures and languages not only meant an important increase in minority language schools, in general, but, in particular, it helped contribute to the fact that “millions of minority peasants became literate by attending schools in their own language” (Vollebaek 2009: 4-5). Thus, whereas the policy of bilingualism had contributed to making national elites more proficient in Russian, the promotion of national and minority languages under the indigenisation policy was more encompassing. Apart from the fact that it allowed national languages to take on a hegemonic position, since “titular languages began to assume their functions across all domains”, it helped educate the masses by schooling them in their minority languages. (Pavlenko 2008: 280) However, the explosiveness of these national and minority language policies soon became manifest, especially in republics with strong nationalist movements, like Armenia and Georgia, which subsequently, led to “a wave of repressions and purges of national elites” (Pavlenko 2008: 280).

Caused by concerns primarily over the emergence of increasing nationalism, but also over apprehensions of decreasing mastery in the Russian language among the vast non-Russian population, the abandonment of the indigenisation policy became inevitable. Therefore, policies to promote and strengthen the Russian language started to be implemented from the mid- 1930s. Anchored in the increasing Soviet centralisation, the Russian language was propagated as “a language of state consolidation, industrialisation, and collectivisation” (Pavlenko 2008: 280). In education, the 1938 decree introduced a centralised curriculum where the instruction of the Russian language was made compulsory in non-Russian schools. This, however, did not mean the rejection of minority schools which continued to run in native languages. Thus, the new language policy was, in fact, a continuation of the policy of bilingualism, introduced in the last phase of imperial Russia, where the promotion of the Russian language was made concomitantly to the promotion of minority languages. This was further formalised with the 1958 amendment to the Soviet Education Act, which, on the one hand, emphasised that “each child should be educated in his or her mother tongue”, at the same time as it was emphasised that “the question of which languages children should learn or be instructed in was a matter of parental choice” (Vollebaek 2009: 6).

Since social mobility presupposed proficiency in the Russian language, parents' choice was, however, often limited to enrol their children into schools where instruction was Russian. This consequently meant that the "law led to an increase in enrolment in Russian-medium schools" (Pavlenko 2008: 281). The amendment was "violently" resisted by the union republics since this entailed that the populations of the republics "no longer had to study the local language as a second language" (Vollebaek 2009: 6). Whereas the consequences of this change of policy were favourable to increase the spread and proficiency of the Russian language to the general masses of the population, the effects were highly detrimental to the titular national languages, whose importance had become formally not only secondary to the Russian language but also secondary to minority languages. In view of the increasing importance of the Russian language, both as the language of social mobility, as well as the language of interethnic communication, large segments of national minorities throughout the Union either went to schools where the medium of instruction was Russian, or, alternatively, were educated in their minority languages with Russian as the obligatory second language. The consolidation of the new language policy, anchored in the prerogatives given to the Russian language, concomitantly to the promotion of minority languages in education, manifested itself in the 1977 Constitution. Indeed, "for the first time in Soviet history, republican Constitutions contained no reference to the language of the titular republican group as the State language" (Vollebaek 2009: 6-7). Because of the sanctified status of the Georgian language, resistance to this revolutionary clause was particularly voiced in Georgia, which, in fact, led to the re-establishment of the Georgian language as the State language in the Georgian republican Constitution.

Although the policy change meant an enormous increase in the share of the population becoming Russian-speaking, as attested by the fact that upon the dissolution of the Soviet Union the 14 union republics "were home to 25 million ethnic Russians and 36.5 million native speakers of Russian" (Pavlenko 2008: 283), there were huge variations in-between the union republics. Whereas there was an enormous increase in the share of the population becoming Russian-speaking in Moldova, Ukraine and particularly Belarus, the increase was insignificant in the union republics of the Transcaucasus as well as in the majority of the union republics in

Central Asia²²⁷. (Pavlenko 2008: 284) The russification of the education system took place concomitantly though to the continued existence of minority education, where large segments of minority groups still were educated in minority education establishments. Particular for these minority schools of the Soviet Union was that generally these were completely segregated from the various national educational establishments, and actually often belonged to the national educational system of the neighbouring kin-state. For instance, minority schools in Kyrgyzstan, where the medium of instruction was Uzbek, were in fact part of the educational system of Uzbekistan, and vice versa. This arrangement, furthermore, meant that “some Soviet republics supplied personnel, curricula and textbooks to their co-ethnics in other Soviet republics” (Vollebaek 2009: 9). When, in the beginning of the 1990s, the Soviet Union disintegrated into its 15 constituent parts, the segregation of these minority groups became particularly blatant since they neither spoke the national language, nor had been instructed in the history, culture and geography of what was to become their home state.

The deconstruction of the Soviet Union

The rejection of the Soviet totalitarian system would lead, not only to the destruction of the Soviet system, but also to the destruction of the Soviet State, even if it became apparent that the demise of the Soviet State was neither what the new Soviet political leadership had predicted nor wanted. Upon the ascent to power in 1985, Gorbachev diagnosed the disastrous economic situation as having been the result of, not only the centralisation of the economy, but also the centralisation of the political system. This would, consequently, lead to a series of reforms under the policies of *glasnost* and *perestroika*, where the restructuring of the economy (*perestroika*) was diagnosed as being dependent upon the democratisation of the society (*glasnost*). Since *glasnost* meant “real freedom also for the nationalities”, this would, consequently, lead to the liberation of the nationality component. (Lundestad 1994: 140) The repercussions of *glasnost* on the nationality issue would, subsequently, mean that not only was there rejection of the system but the very essence of the constitution of the multinational State started to become seriously questioned.

²²⁷ In Central Asia it was only the very heterogeneous Kazakhstan that experienced a large increase in the share of the population becoming Russian-speaking. Cf. (Pavlenko 2008: 284).

Facilitated by the fact that the 15 Union republics legally had both autonomy as well as the right to secession inscribed in their respective republican Constitutions, the nationalist impoundments were rapidly to burst. What is highly surprising, in retrospect, is that Gorbachev and the ideologues of the new political leadership did not predict the pitfall of the nationality component of democratisation since they apparently “saw nationalism as no threat to the Soviet Union’s existence” (Vollebaek 2009: 7).

Although “the nation became the alternative to communism”, there were great variations between the Union republics as to the level of nationalist strife and nationalist independence claims. (Kennedy 1991: 9) Whereas the Baltic States, Georgia and Armenia rapidly were endorsing their nationalist aspirations and their claims for independencies, outright secession was not part of the agenda of most of the other Soviet Union republics. However, the centrifugal forces entailed by democratisation, in parallel with the rapidly deteriorating economy, would lead to a process of rapid generalised secession and the subsequent demise of the Soviet State. Furthermore, not only would the increased autonomy lead to increased nationalism on the republican level, this would in turn generate intra-republican tensions which, in some cases, would escalate into violent inter-ethnic conflict, which, in fact, contributed to further weaken the Soviet State at the same time as it “precipitated its demise” (Vollebaek 2009: 7).

The upsurge of promotion of national languages and cultures on the republican level, in parallel with social unrest, would cause upheavals in the minority-dominated Autonomous regions of particularly the Transcaucasus but also in Moldova. What started as strikes in the Armenian-dominated Azerbaijani province of Nagorno-Karabakh²²⁸, in 1988, would develop into inter-ethnic violent conflict and outright war between Armenia and Azerbaijan, as a consequence of the unilateral secession of the Autonomous Republic. The conflicts in the Georgian Autonomous region of South Ossetia and the Moldovan region of Transnistria were directly linked to, and in opposition to, the nationalist agendas of the respective governments. In fact, the promotion of the

²²⁸ Although domineeringly populated by Armenians, Nagorno-Karabakh was integrated into Azerbaijan in the 1920s as an Autonomous province. Cf. (Matveeva 2002: 7)

national languages as sole official languages provoked nationalist uprisings in the highly russified enclaves of South Ossetia and Transnistria which, as a consequence, were proclaiming unilateral secessions from their mother republics. Weakened by both loss of political power and the catastrophic economic situation, the central Soviet leadership was incapable of handling the nationalist conflicts and particularly “the conflict between Armenia and Azerbaijan further weakened the Union” (Lundestad 1994: 140).

The final blow to the survival of the Soviet Union was to be anchored in the power struggle between the leading Union republic and the federal level. Indeed, increased autonomy for the Union republics naturally entailed increased autonomy also for the powerful Russian republic, which meant that “the nominally federal structure of the RSFSR assumed a real significance for the conduct of domestic politics” (MRGI 2011a: 3). The legitimacy of the newly elected Russian president, Yeltsin, who came to power by furthering the agenda of increased “regional powers, built on an alliance between regional economic interests and local nationalist groups”, challenged the agenda of Gorbachev. (MRGI 2011a: 3) Indeed, having miscalculated the power of the liberation of the nationality component, Gorbachev realised that in order to guarantee the survival of the Soviet Union, at the same time as winning the power struggle with Yeltsin, which actually boiled down to the same thing, the federative structure of the Soviet Union had to be altered. By launching the Union Treaty in November 1990, in an attempt to establish a confederation of 15 sovereign states, Gorbachev sought at the same time to use the power of the local nationalities in the 20 Autonomous Republics. In fact, in the Union Treaty, the sovereign status was not only granted to the 15 Union republics but also to the Autonomous republics which were put “on a par with the Union republics” (MRGI 2011a: 3). The power struggle between Yeltsin and Gorbachev ended with the failed coup²²⁹ of August 1991, which, in turn, contributed to the defeat of Gorbachev, and, subsequently, to “the formal abolition of the party”, which was rapidly followed by the disintegration of the Soviet Union. (Lundestad 1994: 144)

²²⁹ In opposition to the Union Treaty of Gorbachev the putsch was staged by communist hard-liners who sought to restore the centralised nature of the Soviet Union. Cf. (White 2011: 22-23).

Even though the nationality component contributed to dismantle the second Russian Empire, as it did the first, it is at the same time true that this was one factor amongst many. The major cause, however closely linked to the liberation of the nationality component, must be sought in the rejection of the totalitarian socialist ideology, which, in turn, meant the “collapse of the legitimacy of communist rule and of the party as ruler” (Lundestad 1994: 144). Soviet disintegration had devastating effects upon national minorities, generally, and particularly, in the realm of minority languages and minority education. Indeed, in the newly proclaimed independent states, where nation-building processes would run concomitantly to state-building, de-russification policies were introduced as a consequence of nationalist policies. These policies generally meant that “Russian lost its status of a supra-ethnic language”, in favour of the national titular languages which became sole official languages.²³⁰ (Pavlenko 2008: 282) Consequently, the minority groups, which generally spoke Russian but had no or little knowledge in the newly proclaimed state language, became naturally excluded from the societies in which they lived. The increasing segregation of national minorities became particularly blatant in the area of education. Since large segments of national minority groups did not have mastery in the new state language they, consequently, were dependent on minority education establishments. However, whereas minority education during Soviet times had been anchored in a transnational arrangement of mutual obligations with the respective kin states, this system had seriously been severed in the new national settings, which both undermined the quality of minority education, in parallel with fortifying the segregation of large minority groups. (Vollebaek 2009: 9)

²³⁰ Except in Belarus where it was decided to preserve Russian as an official language concomitantly to the introduction of Belarussian as official language. Cf. (Pavlenko 2008: 285).

MOLDOVA AND MINORITY LANGUAGE RIGHTS PROTECTION

Moldovan independence

In the wake of the failure of the Soviet putsch in August 1991, Moldova rapidly proclaimed its independence on the 27th of August 1991. Already prior to the proclamation of independence, however, the viability of the new state was challenged both internally as well as externally. The external factors were historically engrained and pertained to the great influences of both Romania and Russia, which, in turn, would be the root causes of the internal divisions of the newly formed state and which still permeates Moldovan politics and society.

The independence of the principality of Moldova, formed in the 1350s, and peaking in terms of political power in the latter part of the 15th century, became short-lived. (Crowther & Josanu in Berglund et al. 2004: 549-550) In 1538, the principality became a vassal to the Ottoman Empire, before becoming a pawn in the wars of imperial expansionism during the 18th and 19th centuries. Under Ottoman tutelage, the internal autonomy of Moldova was, however, preserved, and during the 17th century a Romanian “transnational” movement²³¹, transposing also the principalities of Wallachia and Transylvania²³², started to construct a Romanian identity, based on “a common ethno-genesis and started to consolidate and propagate a national consciousness on this basis” (van Meurs 1998: 40). The awakened Romanian national consciousness was, however, not ripe enough to create a Romanian nation-state, as was attested by the 1848 revolution which in fact failed in all three principalities. Furthermore, the consecutive Russo-Turkish wars during

²³¹ Intellectuals from the three principalities laid the foundations for the construction of the idea of a common ancestry and the creation of a national identity and independence. Although the revolutions of 1848 “failed in all three principalities, these ideals remained on the political agenda” (van Meurs 1998: 40).

²³² Whereas both Moldova and Wallachia were incorporated into the Ottoman Empire, the principality of Transylvania belonged to the Habsburg Empire. Cf. (van Meurs 1998: 40).

the 18th and 19th centuries would heavily undermine the realisation of the pan-Romanian movement. Indeed, as a consequence of the Russian victory in the Russo-Turkish war of 1806-1812, and as manifest by the Treaty of Bucharest of 1812, “the bulk of current Moldova, Bessarabia, was annexed by Russia” (Crowther & Josanu in Berglund et al. 2004: 550). As a result of the annexation and in order to russify the sparsely populated territory, tsarist Russia actively pursued a policy of colonisation where Russians, Ukrainians, Bulgarians as well as Gagauzians²³³ would settle in the area, contributing to making the major part of Moldova ethnically highly diverse. (Crowther & Josanu in Berglund et al. 2004: 550)

The Russian influence over Moldova was, however, intermittently reduced with the Treaty of Paris in 1856, ending the Crimean War and returning parts of Bessarabia under Ottoman tutelage, at the same time as granting internal autonomy to Moldova. A few years later, with the formation of the Kingdom of Romania (1859), the principality of Moldova ceased to exist, and was integrated into the new Romanian state.²³⁴ In 1918, in the wake of the Russian revolution and as a result of the emergence of the Moldovan national movement²³⁵, Bessarabia was integrated into Romania, as was attested by “the proclamation of unification with Romania on 9 April 1918” (van Meurs 1998: 42). However, the unification with Romania had little support among the broad masses of the Bessarabian population, who had been under the Russian sphere of influence since 1812, and for whom the unification was more perceived as a “Romanian annexation” (van Meurs 1998: 45).

As part of the newly established Soviet Union’s policy of extending its sphere of influence in the Balkans, in general, and to allow for the future re-annexation of Bessarabia, in particular, the Moldovan Autonomous Soviet Socialist Republic (MASSR) was “established on 12 October 1924 in

²³³ The Gagauzians, originating from the Turkish people but of Christian faith, were brought to Bessarabia from the Balkan Peninsula. Cf. (Chinn & Roper 1998: 88).

²³⁴ Although formed in 1856, the Kingdom of Romania stayed under Ottoman rule until the Ottoman defeat in the Russo-Turkish war of 1877-1878 when recognition of independence was granted to Romania at the Congress of Berlin in 1878. Cf. (Lukic in Ramet 2010: 45-46)

²³⁵ The national movement, which emerged already in the 1905 revolution, was quite an insignificant organisation constituted primarily by a small group of local intellectuals. Cf. (van Meurs 1998: 42).

extreme south-western Ukraine along the border with Romania” (King 1998: 59). Apart from consisting of a 2% share of the present-day territory of Ukraine, the other part consisted of roughly the territory of present-day Transnistria. In 1940, parts of Bessarabia were annexed by the USSR, and along with present-day Transnistria, the Moldovan Soviet Socialist Republic (MSSR) was established. During the approximately 50 year longevity of the Republic under Soviet tutelage, the painstaking efforts of the Soviet political leadership to “moldovanise” the inhabitants of the Republic and to construct a Moldovan nation, distinct from the Romanian nation “in terms of ethno-genesis, language, culture and history”, had proven rather futile. (van Meurs 1998: 44) Hence, when it became obvious that the Soviet Union would dissolve into its constituent parts in the beginning of the 1990s, the Moldovan Republic was ill-prepared, both politically as well as economically, to embark on the state-building process. The absence of a Moldovan national identity, and the attempts to formulate one, would create strong ethnic divisions, both within the Romanian-speaking camp (pan-Romanian nationalists versus Moldovan nationalists), as well as in between the Romanian-speaking camp and the Russian-speaking camp. In fact, the language issue would become the linchpin of the ethnic conflict, which would permeate party politics as well as becoming the catapulting factor to the decision of both Gagauzia and Transnistria to break away from the newly established Republic.

As early as in September 1989, and as a reaction to the Moldovan Popular Front’s “growing Romanian ethno-nationalism”²³⁶, as well as a reaction to the newly adopted state language laws²³⁷, the leaders of the Russian-dominated area of Gagauzia had proclaimed independence.²³⁸ In 1990, the

²³⁶ The growing ethno-nationalism raised fears of unification with Romania which would relegate both ethnic Moldovans as well as ethnic Russians to the status of minorities “in an enlarged Romania” (Kaufman & Bowers 1998: 138). These fears were not groundless since the nationalists of the Popular Front movement pursued an “increasingly open agenda of reunification with Romania” (Crowther & Josanu in Berglund et al. 2004: 574).

²³⁷ The state language laws adopted in 1989 stipulated that Moldovan was the “state language of the republic” (van Meurs 1998: 52). Adding to the controversial declaration it was stated that the Moldovan language was in fact identical to the Romanian language “and that it was best represented by the Latin alphabet” (Chinn & Roper 1998: 93).

²³⁸ Although the fear of unification with Romania was the overwhelming cause to the proclamation of independence, the trigger can be traced to a Moldovan parliamentary report on minorities, published in 1989, which classified the Gagauz “as an ethnic minority rather than an indigenous people” (Chinn & Roper 1998: 92).

Transnistrian region rejected the legitimacy of the newly democratically elected Moldovan parliament and proclaimed a Transnistrian Republic, independent from Chisinau. (Roper in Ramet 2010: 475) Whereas the autonomy of Gagauzia presented little problem to the Moldovan government and to the Russians, as attested by the rapid resolution of the conflict and the subsequent agreement on autonomy for Gagauzia of 1994²³⁹, the stakes of the Transnistrian breakaway republic were far greater and were to have implications of another order, both domestically, as well as internationally. Domestically, being the most industrialised and urbanised region, along with a highly educated population, consisting of mainly Ukrainians, Moldovans and Russians, Transnistria was the economic locomotive of Moldova, at the same time as having “a large cadre of politically aware and active people” (Chinn & Roper 1998: 93).

The domestic conditions, along with the fact that the location of Transnistria, historically being of a “strategic interest and vital for Russia”, entailed a transnational dimension to the conflict which only aggravated the same. (Kaufman & Bowers 1998: 141) In fact, the hardened positions, between the separatists of the ethnic Russians in Transnistria and the Moldovan government, were exacerbated when the 14th Russian Army intervened on the side of the separatists in 1992, leading to outright war.²⁴⁰ Even though the peace agreement of the 21st of July 1992, signed between Moldova and Transnistria, ended the violent conflict, a viable solution to the Transnistrian conflict has yet to be found. (Roper in Ramet 2010: 487) Thus, although *de jure* still part of Moldova, *de facto* the Moldovan government has no effective control over the Transnistrian

²³⁹ The agreement of December 1994 between the Moldovan government and the Gagauz leadership sets “the terms for extensive cultural, political, and social autonomy within Moldova” (Chinn & Roper 1998: 87).

²⁴⁰ The peak of the military intervention was the Bendery battle which constituted a watershed both for Moldovan domestic politics as well as for Russian foreign policy. In Moldova, the Transnistrian war and particularly the Bendery battle made almost all members of the Popular Front government resign due to an imminent fear that the conflict threatened the political independence of Moldova. (Roper in Ramet 2010: 477) For Russia, the Bendery battle was the first military intervention in a former Soviet Republic. Furthermore, due to the fact that this intervention was met with almost no criticism from the West, this military intervention would be followed by others in the “Near Abroad” (Kaufman & Bowers 1998: 134).

republic, and internationally, the border with Ukraine is still monitored by OSCE peacekeepers²⁴¹.

Another serious challenge to the path of EU integration, and equally challenging to the viability of the newly formed state, was the breakdown of the Moldovan economy, which markedly aggravated Moldova's post-communist transition. This, furthermore, entailed that particularly the International Monetary Fund (IMF) and the World Bank provided Moldova with heavy loans. However, due to the weak institutional structure of the newly established semi-presidential political system, "which left lines of authority between the president, parliament and government unclear", the pace of the economic legislative reforms was slowed down. (Crowther & Josanu in Berglund et al. 2004: 575) Hence, although the pro-Romanian nationalists abdicated from the government in 1992²⁴², and the "ethnic card" was played down, the social cleavages, in parallel to the disastrous economic conditions, were capitalised upon by the political parties. This, in turn, meant that during the greater part of the 1990s, "intra-elite fighting was prominent among the factors that led to political bankruptcy in the second half of the 1990s" (Crowther & Josanu in Berglund et al. 2004: 575).

Even though the first decade of the 21st century meant significant positive changes, both economically²⁴³ as well as politically²⁴⁴, there are still severe shortcomings that the Moldovan government needs to address in order to assure an increase of the pace of EU integration. Hence, apart from the high levels of corruption that permeates Moldovan society, the frozen Transnistrian conflict remains the main stumbling block, both domestically, but also as concerns the Moldovan government's pro-European agenda and the furtherance of the negotiations of EU

²⁴¹ Since 2003, the Transnistrian conflict has been mediated by the OSCE along with Russia and the Ukraine. (EU Report 2004a: 10)

²⁴² The Popular Front Movement lost its legitimacy when the national independence of Moldova was threatened by the Russian military intervention in the Bendery battle of 1992. Cf. (Roper in Ramet 2010: 476-477).

²⁴³ Even though there was a recovery in the Moldovan economy from the beginning of the 2000s, still the situation is alarming and in 2002 "over 40% of the Moldovan population lived under the absolute poverty line" (EU Report 2004a: 15).

²⁴⁴ The constitutional amendments of 2000 would transform the semi-presidential system, inaugurated by the 1994 Constitution, into a parliamentary regime. (Roper in Ramet 2010: 487).

integration. This, in turn, explains why the aim of the Moldovan government to be integrated into the framework of the Stabilisation and Association Agreement has not yet received any support from the EU. In March 2004, Moldova “recognised the importance of the Neighbourhood Policy for Moldova’s internal reform process, and as a way to come closer to the EU” (EU Report 2004a: 5).

The demographic dimension

Primarily a rural country with an agrarian-based economy, multi-ethnic Moldova was one of the smallest and poorest of the former Soviet republics. Stretching over a landmass of 33.851 km² and bordering on Ukraine and Romania, the country was, however, of a strategic interest to the Russians due to its geographical location, where particularly the Transnistrian region historically had been the “key to the Balkans” (Kaufman & Bowers 1998: 140-141). The historically engrained Romanian influence on the population of Moldova, however actively discouraged by the Russians, became blatant when attempts at forming a Moldovan national identity in the late 1980s encountered competing visions of this Moldovan nation in the making. Thus, however active the Russian efforts during the 20th century at constructing a Moldovan nation (with a distinct history, language, and culture), these attempts largely failed, since the Romanian influence was overwhelming and actually would mean to “carve out a Moldavian part out of Romanian history” (van Meurs 1998: 39). On the other hand, and causing both Gagauzia’s proclamation of autonomy as well as the Transnistrian proclamation of independence, the russification of Moldova had been particularly successful especially in these territories which claimed autonomy and independence in 1989-1990. Hence, although all three “territorial units” are ethnically diverse, the origins of the Moldovan conflict pertain both to ethnic conflictive lines, as well as to geographic ones.

The main geographic conflictive line is naturally established by the Dneestr River separating Transnistria, located on the right bank of the river, from the bulk of Moldova. This geographical demarcation line also goes hand in hand with the strongly russified Transnistria, as opposed to the strongly Romanian influence which permeates the greater part of Moldovan society on the left bank of the Dneestr. Bordering on Ukraine to the east, the ethnic structure of Transnistria has undergone radical

changes since the area started to be colonised under tsarist Russia from the beginning of the 19th century. Immigration of particularly Ukrainians, which formed the majority²⁴⁵ of the Transnistrian population, Russians, Gagauz and Bulgarians contributed to the ethnic diversification of the area that would become the Moldovan Autonomous Soviet Socialist Republic (MASSR) in 1924. Ethnic diversity notwithstanding, the successful russification of the approximately half a million inhabitants²⁴⁶, would in fact lead to a blurring of the ethnic boundaries, which, by the late 1980s, had led one analyst to define the dominant ethnic group of Transnistria “as the sum of Russians, Russified Ukrainians, Russified Moldovans and other groups that consider Russian as their first language and the USSR as their country” (Kolstö & Malgin 1998: 104). Not surprisingly then, when the Moldovan political elite, by the late 1980s, started to show clear signs of pan-Romanian nationalism, by adopting state language laws which proclaimed Moldovan as the state language, the Russian-speaking Transnistrians rapidly proclaimed independence from the otherwise Romanian influenced Moldova. The Transnistrian Republic covers approximately 11% of the territory of Moldova and the population amounts to approximately half a million. (EU Report 2004a: 10)

²⁴⁵ In the 1926 census the share of the Ukrainians amounted to 48.5% in comparison to the Moldovans who constituted 30.1% of the former Moldovan Autonomous Republic, which more or less represents present-day Transnistria. Cf. (King 1998: 60).

²⁴⁶ According to the 2004 census carried out by the Republic of Transnistria the population amounted to 555.347. Cf. (CREDO Report 2004: 8).

Table 12.1. Ethnic structure of the MASSR population according to the 1926 census compared with the ethnic structure of the Transnistrian Republic according to the 2004 census carried out by the Republic (data retrieved from King 1998: 60 and the CREDO Report 2004: 8)

Nationality	1926 number	1926 %	2004 number	2004 %
Moldovan/Romanian	172.556	30.1	177.156	31.9
Russians	48.868	8.5	168.270	30.3
Ukrainians	277.515	48.5	159.940	28.8
Gagauz	-	-	11.107	2.0
Bulgarians	6.026	1.0	11.107	2.0
Other/non-declared	67.149	11.9 ²⁴⁷	27.767	5.0 ²⁴⁸
Total	572.114	100	555.347	100

Although the majority of the Moldovan controlled area on the left bank of the Dnestr had been highly impacted by the Romanian influence, the Russian influence since the Second World War had also been strong in parts of the bulk of Moldova. Thus, although located in the southernmost parts of Moldovan controlled territory and bordering on Romania, the “autonomous territorial unit”²⁴⁹ of Gagauzia had also been most vulnerable to the “harsh and continuing russification, experienced since the end of the Second World War” (Chinn & Roper 1998: 92). Stretching over 10-12% of the Moldovan landmass, with a population amounting to approximately 300 000, composed by a majority of Gagauz²⁵⁰ (47%) as

²⁴⁷ In the 1926 census the numerically large portion of “Others/Non-declared” referred primarily to: Jewish (8.5%), Germans (1.9%), Poles (0.8%) and Romani (0.2%). Cf. (King 1998: 60).

²⁴⁸ In the category “Others/Non-declared” of the 2004 census, the group consists amongst others of Romani (0.4%) and Jews (0.1%). Cf. (CoE Report 2009: 6)

²⁴⁹ The Law on the status of Gagauzia was approved by the Moldovan Parliament on the 23rd of December 1994. Article 1 of the said Law recognises Gagauzia as an “autonomous territorial unit with a special status for the self-determination of the Gagauz people”. However, at the same time it is stipulated that Gagauzia is a “constituent part of the Republic of Moldova” (Chinn & Roper 1998: 98).

²⁵⁰ The Gagauzians originate from the Turkish people, however being of Christian faith. Being discriminated against by the Ottoman Moslems they migrated from Bulgaria (then under Ottoman rule) and settled in the Bessarabian part of Moldova in the late 18th century. Cf. (Chinn & Roper 1998: 87-88).

well as Ukrainians, Moldovans, Bulgarians and a small share of Russians, the imprint of the Russian influence was remarkably strong. (Chinn & Roper 1998: 93; King 1994: 357-358) Largely due to the fact that the educational establishments only provided for instruction in Russian, Russian remained “the language of public life” and so the population of Gagauzia became almost completely Russian-speaking. (Chinn & Roper 1998: 93) Thus, just as in the Transnistrian case, the population of Gagauzia was to react with provocation to the state language laws of 1989. However, even more provocative was the 1989 parliamentary report on minorities, “classifying the Gagauz as an ethnic minority rather than an indigenous people” (Chinn & Roper 1998: 92).

Table 12.2. Ethnic structure of the Moldovan controlled areas according to the censuses of 1989 and 2004 (data retrieved from the CoE Report 2009: 6)

Nationality	1989 number	1989 %	2004 number	2004 %
Moldovan	2.796.307	64.5	2.578.099	76.2
Romanian	²⁵¹	-	74.433	2.2
Ukrainian	598.280	13.8	284.200	8.4
Russian	563.597	13.0	199.617	5.9
Gaugazian	151.738	3.5	148.867	4.4
Bulgarian	86.707	2.0	64.283	1.9
Jews	43.354	1.0	3.383	0.1
Roma	13.006	0.3	13.533	0.4
Others/non-declared	82.371	1.9	16.917	0.5
Total	4.335.360	100	3.383.332	100

Even though the language issue, and “the fear of unification with Romania”, made both Gagauzia and Transnistria natural allies against the central government in Chisinau, the internal prerequisites of the two breakaway regions were very different and would, consequently, present very different stakes, both to the central government in Chisinau, internationally, but also internally to the respective political leaderships

²⁵¹ In the 1989 census the Moldavian and the Romanian nationalities are not separated from one another but lumped together in the category of the “Moldovans”. Cf. (CoE Report 2009: 6).

of the two regions. (Chinn & Roper 1998: 93) Thus, the urbanised and highly industrialised Transnistria stood in stark contrast to the “almost entirely agricultural and village-oriented” Gagauzia, which, furthermore, had the lowest educational attainment, as opposed to Transnistria, which had a highly educated population. (Chinn & Roper 1998: 93-94) Furthermore, the geographic location of Transnistria, the longevity of the Russian influence²⁵², as well as the numerically large shares of ethnic Russians and Ukrainians, had had an enormous impact on every sphere of the Transnistrian society. The politically active population of Transnistria would react more violently to the pro-Romanian policies of Moldovan state-building, where the state language laws were only part of the problem, and which went completely counter to the pro-Russian political agenda of the Transnistrian political elite. Hence, where the limited claims of the Gagauz were rapidly endorsed by an agreement in 1994, setting the terms “for extensive cultural, political and social autonomy within Moldova”, the Transnistrians would not settle for anything less than outright independence, which, consequently, resulted in much higher stakes, as attested by the still unresolved Transnistrian conflict. (Chinn & Roper 1998: 87)

The sociolinguistic dimension

The language issue did not only pertain to the conflict between the Russian-speaking communities and their Romanian-speaking confreres, but also pertained to divisions within the Romanian/Moldovan-speaking camp. Thus, in the late 1980s, when the search for the foundations of Moldovan statehood became acute, the issue of a distinct Moldovan language, separate from the Romanian one, emerged. The politicisation of the language issue, which even today remains a highly politically sensitive issue, concerned whether, in fact, Moldovan and Romanian boiled down to the same language, as stipulated by the pan-Romanian nationalists, forming the first democratically elected government, or whether there was a distinct Moldovan language, as declared by the pro-Moldovan nationalists. The problematic demarcation between the two languages became obvious when, in 1989, the state language laws stipulated that the official language was Moldovan, however, adding at

²⁵² Even though the russification of the Gagauz region had been strong since the end of the Second World War, the russification had been even more pervasive in Transnistria. Cf. (Kolstö & Malgin 1998: 104).

the same time that the two languages were in fact identical. The persistent linguistic debate, rooted in the Moldovan nation-building efforts and the attempt to form a nation, distinct from the Romanian one, is historically engrained and lies “in the linguistic and cultural debates of the 1920s and early 1930s” (King 1999: 141).

The attempt to “moldovanise” the Moldovans started in the early 1920s and coincides with the creation in 1924 of the Moldovan Autonomous Soviet Socialist Republic (MAASR). The Soviet policy was clear from the outset: in order to free the Moldovans from the Romanian bourgeois and capitalist yoke, and in order to prevent any future Romanian annexation of the territory, it was vital to “liberate” the Moldovans. The liberation was to be made within the Soviet realm, however, with the aim of creating a Moldovan language, as distinct from Romanian as possible. In the mid- 1920s the construction of the Moldovan language commenced with a new Moldovan grammar and lexicon. In the foreword to the first grammar book of Moldovan, it was stated that “the Moldovan language is an independent language, different from Romanian and also different from the language of all Moldovan books which were published before the formation of the Autonomous Moldavian SSR” (Dyer 1998: 74).

The aim of the architects of the new Moldovan language was to construct a simple language, free from the French influenced capitalist Romanian language, and thus more democratic. The barriers to the implementation of the new language were, however, numerous and explain the failure of this linguistic experiment. In fact, the main target group of this highly artificial language was the ethnic Moldovans, which accounted for approximately one third of the MASSR population. This group primarily consisted of uneducated, often illiterate, peasants who had difficulty understanding the new language which often led to misinterpretations.²⁵³ However, since misunderstandings were also noted amongst the educated cultural elite, there was a general fear that this could lead to “serious misinterpretations of the party’s policies” (King 1999: 136). Furthermore, the resistance of the cultural elite was, not only grounded in a lack of comprehension, they “were also reluctant to adopt a language based on forms of speech and writing they themselves found uncultured”

²⁵³ One quite hilarious example of a misinterpretation was a slogan published in a journal that went: “A cow to every collective farm worker” which had been interpreted as “Every collective farm worker is a cow” (King 1999: 136).

(King 1999: 119). Therefore, resistance from the Moldovans, in general, in parallel with a fear of the Soviet political leadership that party policies would neither be understood, nor properly implemented would consequently lead to a change of policy in the mid- 1930s. Even though the rhetoric of an independent Moldovan language remained, in practice, the policy change would lead to the abandonment of the simple language construction and the return to a more correct and educated form, which, paradoxically, “bore far more resemblance to literary Romanian than to the neologisms and archaisms of the Madan²⁵⁴ grammar” (King 1999: 142). Consequently, by the late 1980s, when the Moldovan language was to be launched as the national language, there was in fact little to tell Moldovan and Romanian apart, other than the Cyrillic script that had been in use since 1938. (King 1999: 141-142)

The focus on the identification of a state language, and the conflicts produced thereof, had relegated the issue of the protection of minority languages to the background. Even though the whole territory of Moldova (including the Transnistrian Republic) is composed of large segments of minority groups, where the Ukrainians make up 11.2% of the population, the Russians 9.4%, the Gagauzians 4% and the Bulgarians 1.9%, the russification of these numerically largest minority languages remains a pervasive problem. This has entailed that even though ethnic Russians account for 9.4% of the population, “the Russian language is claimed by a much larger proportion of the population than chooses Russian nationality” (Ciscel 2008: 383). Thus, even though cultural autonomy was granted to national minorities, as a consequence of the Transnistrian violent conflict, these language rights are rarely upheld in practice. This situation became particularly blatant in Gagauzia, which acquired a special legal status in 1994, by the adoption of the Agreement regulating the autonomy of Gagauzia, and which, furthermore, stipulates that the official languages in this region are Moldovan, Russian and Gagauzian. However, although composed of almost 50% of the Gagauz minority “Russian remains the primary language of administration, commerce and education” (Chinn & Roper 1998: 91). Even though there have been attempts to raise the awareness of the Gagauzian minority language in the media and in schools, these efforts have proven rather

²⁵⁴ Madan was the “chief linguist” and the architect behind the first grammar book on Moldovan. Cf. (King 1999: 124).

fruitless. Thus, apart from two schools, which furthermore use Moldovan as the language of instruction, all the other schools in Gagauzia “use Russian as the language of instruction” (Chinn & Roper 1998: 91).

Legal protection notwithstanding, the primary threat, not only to the survival of the Gagauzian language, but also to Ukrainian and Bulgarian, is the threat of total language assimilation with Russian. (CREDO Report 2004: 3) Thus, the historically strong Russian influence on, not only the minority languages, but also on the state language²⁵⁵, both inhibits implementation of minority language rights, at the same time as it is manifest of the uneasy compromise between the Russian and the Moldovan languages, which still is at the core of the political dispute of Moldova. (Cisnel 2008: 375)

Legislation in minority language rights upon gaining status as ENP-state

Moldova ratified the Framework Convention on National Minorities (FCNM) on the 20th of November 1996, and has, as stated in the EU Report, “ratified most of the international **Human Rights** instruments” (EU Report 2004a: 8). The monitoring reports of both the EU and the Council of Europe, from 2004, are not as encompassing as the reports on the Western Balkan states. Furthermore, and especially as concerns the Report of the Council of Europe, it is consistently more focused on assessing the situation on the ground than monitoring existing legislation. As noted consistently throughout the Report of the Advisory Committee, more effective implementation of the legal framework, as well as assessment of the *de facto* situation, is primarily hindered by the “present socio-economic crisis”, and the lack of resources as well as the lack of statistics. (CoE Report 2004: 7) An even greater impediment to effective implementation, however, is the lack of law enforcement, in general, which permeates Moldovan society, “and the laws on protection of national minorities are no exception”, which furthermore is explained by

²⁵⁵ In Transnistria the discrimination against Moldovans to use the Latin script both in official contexts as well as in education has been reported by various human rights agencies and international organisations. Hence, the Russian influence also on the state language is demonstrated by “the continued vulnerability of even majority language groups” (Cisnel 2008: 373).

a lack of political determination which needs to be addressed by the Moldovan authorities. (CoE Report 2004: 7)

At the same time, however, there is a conciliatory attitude of the Advisory Committee of the sensitivity of the linguistic issue, which has “understandably” produced a situation where the Moldovan government finds itself in a cul-de-sac. Indeed, for fear of disturbing the shaky social cohesion of the country, the Moldovan government has opted for the status quo which subsequently hinders any positive developments. The complex linguistic issue has, in fact, entailed that the state language is sometimes treated as being in need of particular legal support. (CoE Report 2004: 24) The fact that Moldova hadn’t, as of 2004²⁵⁶, adopted the European Charter for Regional or Minority Languages, is an example of the explosiveness of the prevailing linguistic issue in Moldova. (CoE Report 2004: 25) In this regard, the Transnistrian conflict and the problematic minority language situation does present the biggest problem, both to the Moldovan government, as well as to the Council of Europe and primarily the EU, since the conflict constitutes the very “key to enabling the country to develop into a stable and secure neighbour of the Union” (EU Report 2004a: 10).

Although the situation in Transnistria is addressed by both the EU and the Council of Europe, no real assessment of the situation is made. Consequently, for practical reasons assessment of minority language rights protection in Transnistria has been left out of our study of investigation. Furthermore, due to the fact that information on existing legislation is less comprehensive in both monitoring reports, supplementary assessments, produced the same year, has been consulted.²⁵⁷ The legislative acts regulating minority language rights in Moldova are: the Constitution of 1994 (amended in 2000); the Law on National Minorities, adopted in August 2001; the National Policy Law of December 2003 (aimed at strengthening the legal basis for the protection of national minorities) and the Law on Education. Also, the Law on Functioning of Languages Spoken in Moldova, adopted in 1989, is still in

²⁵⁶ However, in the National Human Rights Action Plan, 2004 – 2008, one of the measures deals with the “projected ratification of the European Charter for Regional or Minority Languages” (CoE Report 2004: 6).

²⁵⁷ Resource Center for Human Rights (CReDO) (2004) *Report on the Implementation of the Minorities Rights in Moldova*, Chisinau, Moldova, 2004.

force. (Stoianova 2002: 2) Furthermore, the National Human Rights Action Plan 2004 – 2008, ratified by the Moldovan Parliament in October 2003, sets out the measures that need to be adopted in the area of minority rights during the set time frame.

Non-discrimination

Assessment of Moldovan legislation pertaining to non-discrimination is scarce in both monitoring Reports, and as concerns the EU Report this is specifically surprising, seeing as how the non-discrimination norm generally attracts most of the EU Commissions' attention. Non-discrimination is, however, integrated as part of the EU-Moldova Action Plan from 2004, where it is stated that the Moldovan government has to "ensure effective protection of rights of persons belonging to national minorities" (EU Report 2004b: 12). Explicitly referring to the non-discrimination norm, the EU points out that Moldova needs to "*put in place* and implement legislation on anti-discrimination, and legislation guaranteeing the rights of minorities, in line with European standards" (EU Report 2004b: 12 emphasis added). Whereas the EU Action Plan evidently points out that Moldova lacks legislation on anti-discrimination, the Advisory Committee is of the opinion that this legislation exists, since they recommend the Moldovan authorities to "step up their efforts to find ways of obtaining a more complete picture of *the implementation of the principles of non-discrimination* and full and effective equality with respect to persons belonging to national minorities" (CoE Report 2004: 13, emphasis added).

According to both the Moldovan Constitution of 1994, and the Law on National Minorities, adopted in 2001, it is, however, clear, that the legal provisions in the domain of non-discrimination, exist. Thus, Article 16, of the Constitution, stipulates that "All citizens of the Republic of Moldova are equal before the law and the public authorities, without any discrimination as to race, nationality, ethnic origin, language, religion, sex, political choice, personal property or social origin" (Art. 16, Constitution of Moldova). Furthermore, instigations to "...ethnic, racial or religious hatred, the incitement to discrimination..." are prohibited and shall be prosecuted. (Art. 32, Constitution of Moldova). The Law on National Minorities, also guarantees the protection of persons belonging to national minorities, and, furthermore, stipulates that "any kind of discrimination based on the national minority affiliation is prohibited"

(Art. 4 of the Law on National Minorities). Thus, and concurring with the Report of the Advisory Committee, legal provisions pertaining to non-discrimination do exist, even though they are not extensive.

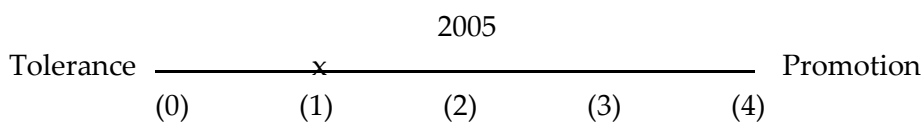
As regards implementation of existing legislation, the Advisory Committee recommends the Moldovan authorities to “continue their efforts to combat discrimination and promote tolerance and intercultural dialogue, through more effective monitoring and law enforcement in these areas; in addition, further awareness-raising measures, *inter alia* addressed to the police and the media should be taken” (CoE Report 2004: 38). Even though the Advisory Committee points out that the “general climate of Moldovan society is one of tolerance and mutual respect”, ethnic discrimination has been reported. (CoE Report 2004: 7) Especially vulnerable are the Roma, where there have been reported incidents of violence and harassment, and where the media has contributed to fuel these incidents, by disseminating prejudices against the Roma. Furthermore, discriminatory acts, directed against the Roma by “members of the law enforcement bodies, are reported in most areas” (CoE Report 2004: 14). This is particularly serious, since it inhibits the willingness to report crimes, since “the police and judicial authorities tend to be reluctant to conduct necessary investigations and prosecute known perpetrators of violence against the Roma, especially when such acts are committed by police officers” (CoE Report 2004: 19).

Even though the Advisory Committee notes, with satisfaction, that the Moldovan authorities have taken measures to fight discrimination against the Roma, of which the Governmental Programme for Roma Integration, adopted in 2001, is one example, it “has not resulted yet in tangible improvement of the situation” (CoE Report 2004: 14). Thus, the Advisory Committee encourages both central and local authorities to step up their efforts, and to “adopt a more resolute stance”, in order to fight the exclusion of the Roma more systematically. (CoE Report 2004: 8) Another problem, addressed by the Advisory Committee, and of great significance to more effective implementation, is the lack of data on the situation of persons belonging to national minorities. Hence, the problem of the lack of reliable statistics makes it “difficult to determine the real number of ethnically motivated manifestations of intolerance and hostility”, and therefore the Advisory Committee advises the authorities to “take all

steps necessary to enable adequate monitoring of the situation in this field” (CoE Report 2004: 19).

Whereas the assessment of the Advisory Committee almost exclusively focuses on monitoring the situation on the ground, and the factors that impede more effective implementation, existing legislation is not one of these impeding factors and is therefore left unchecked. Thus, one has to conclude that the existing legislation does neither present a problem, nor necessitates developing, since it seems that it is only the development of “the implementation of the principles of non-discrimination” that would call for action from the Moldovan authorities. (CoE Report 2004: 13) The EU Report, on the other hand, provides neither assessment of existing legislation, nor assessment of the *de facto* situation. However, when accessing the information provided for in the EU-Moldova Action Plan, adopted in 2004, it is clear that the EU finds that no legislation pertaining to non-discrimination exists, since it is recommended that Moldova needs to “put in place and implement legislation on anti-discrimination” (EU Report 2004b: 12). The contradictory assessments of the two monitoring bodies are remarkable. However, when conducting a reading of both the Constitution as well as the Law on National Minorities, it is evident that legislation on non-discrimination exists, even though it is by no means comprehensive. Thus, taken in this study and based on the index scale, Moldova is positioned on the level of 1.0.

Fig. 12.1. Moldova and level of rule adoption in non-discrimination upon gaining status as ENP-state



- (0): Absence of any non-discrimination norm;
- (1): General provisions such as an equality clause in the Constitution;
- (2): Non-discrimination laws are inserted in specific laws;
- (3): Comprehensive anti-discrimination legislation which then means that there has been a complete transposition of the EU anti-discrimination *acquis*;
- (4): Non-discrimination laws exceed the minimum requirements of the Directive.

Minority language use in official contexts

The sensitivity of the linguistic issue is prevalent in the reports of both monitoring bodies. In fact, the particular status of Russian²⁵⁸, although a minority language, and the precarious stance of Moldovan, although the state language, is manifest throughout both monitoring reports. The fragility of the state language and its need for support, in parallel with the special status granted to Russian, becomes evident when the Advisory Committee takes note of the positive developments “made in recent years to make more efficient the learning of the State language by adults, and eliminate the difficulties previously found in implementing the Moldovan-Russian bilingualism, required of public servants” (CoE Report 2004: 24). Furthermore, the fact that the largest minority languages, Ukrainian and Gagauzian, to a very large degree, have been assimilated with Russian, in fact, centres the assessment on the protection of the Russian minority language and relegates, not only assessment of smaller minority languages, but also larger ones, to the background. This is also manifest in the legislative provisions of Moldova, as attested primarily by the Law on National Minorities, adopted in 2001. The sensitivity of the linguistic issue, which, furthermore, explains the cautious approach of particularly the Advisory Committee, is related to the fact that the language issue is a “vital aspect of the building process of the Moldovan State and of people’s identity” (CoE Report 2004: 8). Indeed, even though the Moldovan authorities “should ensure that legislation and the related practice provide the necessary conditions for effective implementation of the rights of persons belonging to minorities, relating to the use of their languages under the Framework Convention”, it is equally important that the authorities “should try to maintain a balanced approach that take into account the particular features of the linguistic situation in Moldova and the sensitivities of the groups concerned” (CoE Report 2004: 25).

The differentiation of minority languages, and the various rights attached to them, is confirmed by the Law on National Minorities. Even though the Law provides all linguistic minorities, irrespectively, with the “right to have free use of their mother tongue, both in written and verbal form,

²⁵⁸ The initiatives made by the communist-led government to upgrade the Russian language to official status resulted in violent upheavals which in consequence led to the “moratorium on introducing measures to give Russian higher status” in 2002. (CoE Report 2004: 25)

to have access to information in this language, to disseminate it, and to exchange information”, this right is very imprecise and does not pertain to the official realm. (Art. 7, Law on National Minorities). Indeed, rights pertaining to minority language use in official contexts are very much restricted to the Russian language and attest of its special status, and even though not yet having *de jure* status as official language, one could argue that Russian has *de facto* status as official language. Thus, Article 8 stipulates that the “state shall ensure the publication of normative acts, official communication and other information of national importance in the Moldovan and Russian languages” (Art. 8, Law on National Minorities). Equally, the right to use Russian in judicial contexts is provided for in Article 12 which declares that “persons belonging to national minorities shall have the right to appeal to public institutions, in writing or verbally, in the Moldovan or Russian languages” (Art. 12, Law on National Minorities). The special status of the Russian language is equally manifest as regards the legal provisions regulating the display of signs and symbols. Hence, Article 10 equally provides for that “the name of localities, streets, institutions and public places shall be indicated in the Moldovan and Russian languages” (Art. 8, Law on National Minorities).

The second group of rights pertains to minority languages having obtained autonomy status. Thus, in the locality of the Gagauz region, the legally protected status of the Gagauz language enjoys as extensive legal provisions as Russian. Hence, as stipulated by Article 8, in areas where the minority language enjoys autonomy status, “the normative acts of local importance, official communications and other information shall be published also in other official languages established by the respective laws” (Art. 8, Law on National Minorities). The same extensive legal provisions also pertain to the domain of judicial authorities, as well as regarding the display of signs and symbols. (Art. 12 and 10, Law on National Minorities) However, even though the autonomy status of the Gagauz language provides for extensive legal rights, the *de facto* situation is more problematic since these rights are rarely upheld in practice due to the predominant status of the Russian language.

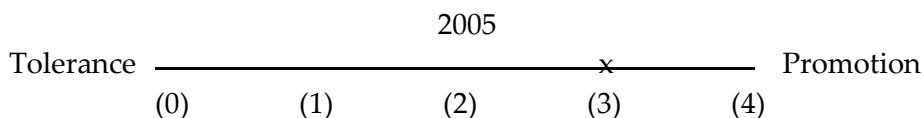
The third group of rights is attached to minority languages with neither special status nor autonomy status. These rights are less extensive and more imprecisely defined. Hence, the Law stipulates that in districts where the minority languages are spoken by a “considerable part of the

population, the acts of the local public administration shall be published in the language of such minority, *if necessary*" (Art. 8, Law on National Minorities, emphasis added). Just like the "considerable part" is not defined in terms of a numerical threshold, the phrase, "if necessary", equally raises concerns as to what criteria this necessity would pertain to. Furthermore, and in the same vein, regarding provisions regulating the use of minority languages with public administration, Article 12 declares that "in localities where persons belonging to national minorities constitute *a significant part of the population*, the language of communication with public authorities *may* also be the language of the respective national minority" (Art. 12, Law on National Minorities). In the area of the displaying of signs and symbols, there are no legal provisions provided for. Not surprisingly, the Advisory Committee points out that the Moldovan authorities need to give "clarifications on the numerical threshold, required for the use of minority languages in relations with the administrative authorities" (CoE Report 2004: 25).

However vague and imprecise the provisions of the last group, the EU Report notes that "in areas where the Ukrainian, Russian and Bulgarian population, or other ethnic minorities form a significant part of the population, it allows the use of minority languages in the public administration, as well as in the drafting of official acts" (EU Report 2004a: 9). The assessment of the Advisory Committee is more nuanced and although reports have it that, on a general level, national minorities are content with "the opportunities they are given to use their own languages (...), more resolute efforts must be made to increase the actual presence of those languages – particularly Ukrainian and the languages of the smaller minorities, including the Roma – in such sectors as media, education and relations with authorities" (CoE Report 2004: 9). However, the special status of the Russian language, having *de facto* official language status, in fact, means that although previously coerced into learning it, the minority groups of today have no alternative to opt it out. Indeed, since proficiency in Russian is indispensable to guarantee any career opportunities, the use of other minority languages, although legally provided for, have often been opted out. Even though the differentiation of the rights attached to the different minority language groups is strong, where the Gagauz and the Russian languages enjoy much greater legal protection than other minority languages, in this study the assessment is based on the status of the Russian language.

Indeed, since the linguistic conflict primarily concerns the status of the Russian language that is what is of interest here. Thus, based on the index scale, Moldova is positioned on the level of 3.0.

Fig. 12.2. Moldova and level of rule adoption in minority language use in official contexts upon gaining status as ENP-state



- (0): No recognition of minority languages;
- (1): The right to use the minority language in official contexts (before judicial and administrative authorities; i.e. the right to a translator);
- (2): The minority language can be used in Personal and Place Names (public signs);
- (3): The minority language can be used in official documents;
- (4): Minority language having status as official language.

Minority language rights in education

The division of the Moldovan society is blatant also in the educational domain, where the sensitivity of the linguistic issue also pertains to issues of the Moldovan national identity. Thus, the assessment of particularly the Council of Europe Report makes evident that, not only is it vital that the culture and history of national minorities are integrated in the Moldovan curriculum, but also that this takes place in parallel to a “strengthening of Moldova’s distinct identity” (CoE Report 2004: 27). Here again, the fragility of the Moldovan language in the context of education is emphasised, which also is attested by the fact that one section of the Council of Europe Report also integrates an assessment of the teaching of the state language. In this regard, the Advisory Committee points to the problematic situation of Moldovan-speaking pupils in Transnistria who are prohibited to use the Latin script. Indeed, the Advisory Committee “considers that the situation of the pupils, families and teachers concerned, who are *de facto* – at least in language terms – in a minority position in Transnistria, is unacceptable” (CoE Report 2004: 6). The gravity of the problem of the uncontrolled area of the Moldovan government is further emphasised, since the Advisory Committee stresses that “the principles enshrined in the Framework

Convention must be upheld, ensuring that the rights of persons belonging to national minorities living *anywhere in Moldovan territory* are respected” (CoE Report 2004: 6, emphasis added). Thus, just like the sensitivity of the language issue in minority language use called for a balanced approach, the linguistic issue, in parallel with Moldovan nation-building, is equally challenging in the domain of minority language rights in education. Hence, “the intention (...) to include in the new books a multicultural dimension and to take a balanced approach to the country’s history, while strengthening Moldova’s distinct identity”, is an approach that is recommended by the Advisory Committee. (CoE Report 2004: 27)

The Constitution provides for educational rights for minorities. Hence, according to Article 35, of the Constitution, it is stipulated that, “the State will enforce under the law the right of each person to choose his/her language in which teaching will be effected” (Art. 35, Constitution of Moldova). The same article, furthermore, specifies that, “in all forms of educational institutions, the study of the country’s official language will be ensured” (Art. 35, Constitution of Moldova). Whereas the constitutionally protected guarantees provide for minority rights in education on a general level, the Law on National Minorities is more specific as concerns the scope of application. Hence, Article 6 of the Law, stipulates that, persons belonging to national minorities are entitled to “pre-school education, middle school, high school and professional, undergraduate and graduate education in Moldovan and Russian” (Art. 6, Law on National Minorities). Furthermore, the same article stipulates that, the State “shall create conditions for the realization of their rights to education and training in their mother tongue (Ukrainian, Gagauz, Bulgarian, Jewish, etc)” (Art. 6, Law on National Minorities). In educational institutions, where “teaching is done partially or integrally in the languages of national minorities, the State shall contribute to the development of curricula and teaching materials, as well as to training of teaching staff, cooperating with other countries in this area” (Art. 6, Law on National Minorities). Also, minority groups are given the right to establish “pre-school institutions and private educational institutions of all levels”, on condition that “teaching of the Moldovan language and literature, as well as of the history of Moldova in all educational institutions”, is provided for. (Art. 6, Law on National Minorities)

The Advisory Committee considers that the Moldovan legal framework provides for “a generous legal basis, generally in line with international standards” (CoE Report 2004: 8). However, these legal provisions are not sufficiently implemented in practice, an assessment, furthermore, supported by the EU Report, which refers to the UN Human Rights Committee which has concluded that “effective implementation is lacking” (EU Report 2004a: 9). Hence, as regards the *de facto* situation, it is evident that the poor implementation concerns primarily the Roma and the Gagauz minorities who live in rural areas. The vulnerable situation of the Roma is particularly stressed by the Advisory Committee which points out that, “the complete isolation of Roma children, when they live in Roma villages far from other localities”, in parallel with a “lack of qualified teachers”, result in the very poor integration of Roma into the Moldovan educational system. (CoE Report 2004: 29) However commendable the measures²⁵⁹ introduced by the Moldovan authorities “there is as yet no possibility of learning Roma language in Moldovan schools” (CoE Report 2004: 31). In consequence, the Moldovan authorities “should redouble their efforts to improve the situation of the Roma” (CoE Report 2004: 8). On a more general level, the Advisory Committee raises the issues of, both the “lack of qualified teachers”, as well as the lack of “textbooks, appropriate for the education of national minorities”, as impediments to more effective implementation, and which the Moldovan authorities should address as a priority. (CoE Report 2004: 29). At the same time, the Advisory Committee points to the need to integrate an intercultural dimension which is “lacking in the history textbooks, currently used in Moldovan schools” (CoE Report 2004: 28).

The problem of the lack of qualified teachers and textbooks notwithstanding, and apart from the Roma minority language, instruction in other minority languages is provided for. In fact, the continuous efforts of the Moldovan authorities, to “offer persons belonging to national minorities adequate opportunities to learn their languages, or study in those languages”, have increased the possibilities of minority language instruction. (CoE Report 2004: 31) Even though the

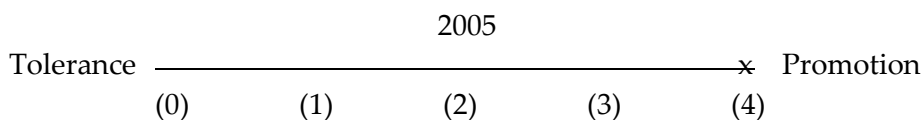
²⁵⁹ The measures introduced by the Moldovan authorities have specifically concerned both “socio-economic support” for the Roma families as well as introduction of “quotas for access to higher education” which have resulted in a numerical increase in Roma students in Moldovan universities. (CoE Report 2004: 29)

very low numerical thresholds²⁶⁰ enable pupils of Russian, Ukrainian, Bulgarian and Gaguzian descent to “study their mother tongue as part of the normal curriculum”, apart from instruction in Russian, there seems to be little interest from the other minority communities to pursue minority language instruction. (CoE Report 2004: 31-32) One factor inhibiting more effective implementation seems to be a lack of interest from the minority communities themselves, which surely is explained by the predominant position of the Russian language, but also an increased attention to the importance of the State language. The outstanding position of the Russian minority language can be seen in the fact that only the Moldovan and the Russian languages “are used in primary and secondary education” (CoE Report 2004: 32). Furthermore, the predominant position of the Russian minority language is also evident in the two newly opened State Universities, although on the initiative of the Gagauz and Bulgarian minorities, respectively, “the language of instruction in these establishments is, at least for the moment, Russian” (CoE Report 2004: 31).

Furthermore, the increased efforts from the Moldovan authorities, to “boost learning of the State language by persons belonging to national minorities”, have made minority communities more sensitive to the importance of becoming proficient in the state language, which is seen as “a precondition for the future socio-economic integration of their children” (CoE Report 2004: 30). This, in turn, has resulted in a situation where proficiency in Russian and Moldovan is considered far more important than, however legally provided for, the right to receive instruction in the minority language. Thus, as concluded previously, the Russian minority language has a particularly predominant position at all levels of the education system in Moldova, where not only the state language is perceived as a socio-economic guarantee for the future of minority pupils, but also in which the Russian minority language has an outstanding position, thus becoming prioritised before other minority languages. Furthermore, and on the basis of the index scale, since the legal framework actually provides the right to even establish minority universities, of which the two Gagauz state universities are an example of, Moldova is positioned on the level of 4.0.

²⁶⁰ The numerical threshold is reported to be extremely low and sets the bar at four to five pupils. (CoE Report 2004: 31)

Fig. 12.3. Moldova and level of rule adoption in minority language rights in education upon gaining status as ENP-state



(0): No education of or in minority language;

(1): Children belonging to minorities have the right to learn their mother tongue in school;

(2): At least parts of the curriculum (e.g. history or religion) are taught in the minority language;

(3): Minorities have the right to educate their children completely in the mother tongue, either in state schools with a complete syllabus taught in the minority language or in specific minority schools;

(4): Minorities have their own universities.

GEORGIA AND MINORITY LANGUAGE RIGHTS PROTECTION

Georgian independence

Prior to the proclamation of independence on the 9th of April 1991, Georgia had little experience of being a sovereign state. Due to the strategic location of the country, at the crossroads of Europe, Asia, and the Middle East, it had for long been the battleground of regional Empires. Furthermore, the region in the South Caucasus, consisting of present-day Georgia, Armenia and Azerbaijan, was, in fact, territorially unsettled and “until the Soviet period, the region constituted more or less a single whole” (Lattimer 2003: 6). However, during the 11th and 14th centuries, and “after periods of Roman, Pontic, Iranian and Arab domination”, Georgia experienced an interlude of independent statehood and political unity. (MRGI 2011b: 1) In the 12th and early 13th centuries, the Georgian kingdom peaked in terms of political and cultural influence. Culturally, the early conversion to Christianity²⁶¹, and the forming of the autocephalous Georgian Orthodox Church, “and its close link to Georgian as its liturgical language”, became central to what was to become the foundation of the Georgian nation. (MRGI 2011b: 1) However, from the mid-15th century, subsequent successive invasions from the Mongolians, the Turks, and the Persians contributed to the division and subjugation of Georgia which, to a large extent, remained fragmented, into a western part, under Ottoman tutelage, and an eastern part, under Persian suzerainty, until becoming successively incorporated into the Russian Empire.

However, what started as a small Russian protectorate²⁶², consisting of the region of Kartli-Kakheti in present-day eastern Georgia, consented to, and

²⁶¹ In fact Georgians along with Armenians are two “of the oldest Christian people” (Lattimer 2003: 6).

²⁶² For fear of the growing Persian expansionism by the late 18th century, the King of the Eastern Georgian Kingdom, consisting of the Kartli-Kakheti region, sought protection from “co-religionist Russia” (MRGI 2011b: 1).

concluded by, both parties in the Treaty of Georgievsk of 1783, soon developed into coerced piecemeal Russian annexation of the entire Georgian territory during the course of the 19th century. The violent reactions from the Georgians during the 19th century were to no avail. However, in the aftermath of the Russian revolution, and at the height of civil war, Georgia proclaimed independence from Russia in 1918. The independence was, however, short-lived, and “despite Russia’s non-aggression pact with Georgia”, the Red Army invaded Georgia in 1921 and sealed its fate for the next 70 years as one of the Soviet Socialist Republics²⁶³. (Lattimer 2003: 7) In comparison with many of the other Soviet republics, Georgia held a particularly predominant position within the USSR which meant that Georgia actually enjoyed “*de facto* domination of the republic’s key political and economic posts” (MRGI 2011b: 2).

Parallel to that, and as a consequence thereof, the highly multi-ethnic Georgia was also one of the least russified republics. Just as the Soviet nationalities policy emphasised “ethnicity before citizenship as the ultimate badge of belonging”, the same was true for Soviet Georgia where the state policies privileged the majority nation to the detriment of national minorities. (MRGI 2009: 2) However, also part of the Soviet nationalities policy and with the aim of accommodating the specific needs of national minorities, autonomous regions were established. In Soviet Georgia, the autonomous regions of Abkhazia and South Ossetia had been created and these regions had quite extensive self-rule. When the Georgian nationalist movement started its struggle towards independence in the late 1980s, multi-ethnic Georgia was badly prepared for statehood since the very foundation of the state-building process was lacking, namely a strong nation. Hence, the highly divided multi-ethnic society, both politically, culturally as well as territorially had produced a society where the “identification with the Georgian state among its various minorities” was almost inexistent. (MRGI 2011b: 2) As a consequence, ethnic nationalism became a prerequisite to, and closely intermingled with, the state-building process where the “independence and the legitimacy of the new state were largely expressed and understood as based on the unity of ethnic Georgians” (MRGI 2009: 2).

²⁶³ Georgia became an “independent Soviet republic” as late as in 1936 when the Georgian Soviet Socialist Republic was formed. In between 1922 and 1936 Georgia formed part of the Transcaucasian Soviet Federative Socialist Republic along with Armenia and Azerbaijan. Cf. (Lattimer 2003: 7).

The strengthening of the nation-building process actually boiled down to rejecting everything non-Georgian where alternative identities came to be viewed as foreign, at best, and as threats, at worst. After having proclaimed independence on the 9th of April 1991, the first government under the lead of former Soviet dissident, Zviad Gamsakhourdia, introduced nationalist policies²⁶⁴ that “threatened to exclude minorities from political life” (MRGI 2011b: 2) Furthermore, the self-rule, previously granted to the Autonomous regions of Abkhazia and South Ossetia, was withdrawn. The nationalist policies of the short-lived government of Gamsakhourdia, which was ousted from power already in 1992²⁶⁵, radically worsened majority-minority relations. Even though the nationalist policies were denounced by the new administration, led by Eduard Shevardnadze, no real change was introduced, other than that the nationalist rhetoric was toned down. As a result of the aggressive nationalist policies of the Gamsakhourdia’s government, ethnic violent conflicts broke out in both South Ossetia and Abkhazia, in parallel with civil struggle in between Shevardnadze’s “government forces, and militias loyal to former president Gamsakhourdia” (MRGI 2011b: 2).

Whereas Shevardnadze, with the support of Russian forces, went victorious from that battle, Georgia was defeated in the wars of the breakaway regions, which ultimately led to unilateral secessions and *de facto* independence. Viewed, however, the potential explosiveness of the unrecognised secessions of the two breakaway republics, bordering on the Russian Federation, in parallel to the weak Georgian government, Shevardnadze was prompted to agree to “Russian-led peacekeeping missions”, which marked the beginning of “protracted and heavily internationalized peace processes” (MRGI 2011b: 2). Thus, the beginning of Georgian independence was turbulent, both domestically as well as internationally, and throughout the 1990s, the weak state was challenged both from within and from the outside. Whereas the intra-élite fighting

²⁶⁴ The policies in question concerned the state language laws, the electoral laws and the citizenship law which were highly controversial since they further excluded minorities from political participation. Cf. (MRGI 2011b: 2).

²⁶⁵ The 1992 January coup was a result of the violent conflicts that ravaged the country due to the unilateral secessions of the breakaway republics. The violent conflicts were also due to the authoritarian style that characterised Gamsakhourdia’s regime and which consequently led to that many of his former supporters lost confidence in him which actually resulted in “low-level civil strife and eventually outright civil war in 1991” (MRGI 2011b: 2).

eventually petered out, the challenges of the secessionist republics remained, and so did the international peacekeeping forces, where the “presence of Russian soldiers would become increasingly contentious”, as evidenced from the outbreak of war in 2008. (MRGI 2011b: 2)

The political system of Georgia was confirmed in the Constitution, adopted on the 24th of August 1995, which, although establishing Georgia as a unitary state, at the same time integrated the Autonomous Republics and, thus, opened up the possibility for “federalism as a way of reintegrating these regions” (Kymlicka 2007: 179). Following the Rose Revolution of 2003, the pro-European agenda of the government, already initiated in the beginning of the 1990s with the aim of further distancing the future of Georgia from any Russian influence, was re-launched with emphasis. Already in 1999, Georgia had become a member of the Council of Europe, and the Framework Convention for National Minorities “was ratified by Parliament in late 2005” (Wheatley 2009: 4). However, even though President Saakashvili’s administration “has made efforts to devise new policies for the integration of minorities”, as attested by the ratification of the FCNM in 2005, this international commitment has been poorly implemented domestically. (MRGI 2011b: 3)

Even though the rhetoric of the present government makes way for a new perception that would enable the integration of national minorities into the demos of the Georgian state, it is still blatant that the old perception, where everything non-Georgian is perceived as an anomaly, and thus, as a threat to the Georgian nation and the Georgian state, still prevails. Paradoxically, it is the exclusion of national minorities that consolidates the weakness of the Georgian nation and state, and which furthermore explains why the breakaway republics are still the most serious threat to Georgia, whose government adamantly refuses to recognise their independencies. Furthermore, the unresolved status of the breakaway republics, and the transnational dimension of these conflicts, as attested by the Russian military intervention in South Ossetia, siding with the separatists in the 2008 war, confirms that the threats to the territorial integrity of Georgia are not only domestic but also international. The frozen conflicts of Abkhazia and South Ossetia are also the main preoccupations of the EU, which became involved in the peace-process during the 2008 war, under the leadership of the French president who took responsibility of negotiating a cease-fire agreement. Furthermore,

and “under international pressure to comply with the terms of the ceasefire agreement, Russia eventually agreed to allow 200 EU observers into the buffer zones south of Abkhazia and South Ossetia” (MRGI 2011b: 4). In the EU-Georgia Action Plan, adopted in 2006, in the framework of the European Neighbourhood Policy, the settlement of Georgia’s ongoing civil conflicts is one of the set priorities as is the protection “for rights of persons belonging to national minorities” (MRGI 2009: 7).

The demographic dimension

The strategic location of Georgia made the Georgian territory vulnerable to the expansionist regional empires, as attested by the many invasions Georgia succumbed to. Bordering on the Black Sea, the landmass of 69.700 km², sandwiched in between present-day Russia to the north, Turkey to the south-west, Armenia to the south and Azerbaijan to the south-east, the Georgian territory became the home of a multitude of ethnic groups. Consequently, when Georgia was incorporated into the Soviet Union, the mosaic of different ethnic groups made Georgia one of the most multi-ethnic Republics, with national minorities making up “one-third of the Soviet Socialist Republic of Georgia’s population” (MRGI 2009: 1).

Due to the minority-unfriendly policies, introduced upon the proclamation of Georgian independence and which subsequently contributed to the emergence of wars in Abkhazia and South Ossetia, heavy migrations led to an enormous depopulation²⁶⁶ where the number of national minorities decreased by almost half, from 29.9% in 1989, to 16.2% in 2002. (Popjanevski 2006: 25) According to the 2002 census, the population of Georgia, excluding South-Ossetia and Abkhazia, amounted to 3.661.173, of which 83.8% are ethnic Georgians. (CoE Report 2009: 11) Although Georgia houses a great number of different ethnic communities, it is the numerically largest ones, territorially concentrated and located near their kin-states, which have posed the greatest threat to the Georgian government and to the territorial integrity of the Georgian state. The numerically largest minority groups, according to the 2002 census, are the Azeri and the Armenians who amount to 6.1% and 5.7%,

²⁶⁶ The population of Georgia was decimated by 1 million between 1989 and 2002 and even though the largest proportion of the decrease was constituted by national minorities, the share of ethnic Georgians also decreased. Cf. (MRGI 2011b: 1)

respectively, of the Georgian population. The Russians constitute a mere 1.5%, the Ossetians amount to 0.9%, followed by numerically smaller minority groups, of which the Abkhaz minority, categorised as “Others” in the Table below, only constitutes 0.1% of the population.

Table 13.1. Ethnic structure of the Georgian controlled area according to the 2002 census²⁶⁷ (data retrieved from the National Statistics Office of Georgia; MRGI 2011b: 1; CoE Report 2009: 11)

Nationality	2002 number	2002 %
Georgians	2.954.119	83.8
Azeris	284.761	6.1
Armenians	248.929	5.7
Russians	67.671	1.5
Ossetians	38.028	0.9
Yezidi	18.329	0.4
Greeks	15.166	0.3
Kists	7.110	0.2
Ukrainians	7.039	0.2
Others ²⁶⁸	32.950	0.9
Total	3.661.173	100

Although dispersed across the whole Georgian territory, the numerically large minority groups are to a great extent territorially concentrated in regions bordering on their kin-states. Apart from the northern regions of Abkhazia and South Ossetia, territories which had extensive self-rule during the Soviet regime as part of the Soviet nationalities policy, the southern and south-eastern regions of Samtskhe-Javakheti and Kvemo-Kartli also have large minority concentrations, where they “may constitute numerical majorities” (MRGI 2009: 1). According to the 2002 census, the population of Samtskhe-Javakheti, bordering on Armenia and Turkey, is composed of 55% ethnic Armenians who are especially concentrated in Javakheti, where they make up “94 per cent of the

²⁶⁷ The census carried out by the Georgian authorities in 2002 only covered the Georgian controlled area thus leaving out Abkhazia and South Ossetia. Cf. (CoE Report 2009: 11; Popjanevski 2006: 25).

²⁶⁸ In the category “Others” are primarily included Jews, Abkhaz, Assyrians and Kurds who account for 0.1% each. Cf. (CoE Report 2009: 11).

population in the Akhalkalaki district and 96 per cent in the Ninotsminda district" (MRGI 2009: 1). Although not as mono-ethnic as the Armenian districts, the Kvemo-Kartli region, bordering on both Armenia and Azerbaijan, reflects the same challenge of minority-concentrated settlements. Hence, in 2002, the Kvemo-Kartli region was home to 45% of ethnic Azeri, as well as "to a number of Armenians and Greeks, mainly located in the Tsalka district" (MRGI 2009: 1). In the districts of Marneuli and Bolnissi, however, the Azeris were in a majority position, amounting to 83% and 66% respectively.

Since these numerically large minority concentrations are bordering on their kin-states, the Georgian government has seen these as potentially secessionist areas, where, for instance, the Samtskhe-Javakheti region "is sometimes branded as a potential conflict zone where Armenian separatists could threaten the integrity of Georgian territory" (MRGI 2009: 2). The problem is historically grounded and relates to the ethnic accommodation policy of the Soviet Union, in parallel to Georgia's discriminatory policies of non-titular, i.e. non-Georgian, nations. Thus, although the Soviet nationalities policy, based on ethnic accommodation, resulted in extensive self-rule and autonomy status for certain territories, at the same time, it contributed to the exclusion of these minority communities from Georgian society. This consequently entailed that both Armenians and Azeri have much stronger kinship to their mother nations than to the Georgian state to which they belong. This problem was only accentuated when Georgia became independent, since everything non-Georgian was seen as a threat to the state-building process. As a consequence, the government withdrew the extensive self-rule, previously enjoyed by these minority communities, which only resulted in further segregation since these communities were left with neither ethnic nor civic protection. The absence of any civic integration has left large minority communities on the verge of Georgian society, where "these populations live together in close-knit communities, with little attempt on the part of the state to provide them with services that could help them integrate, so they remain isolated from mainstream society" (MRGI 2009: 2).

The wars in the breakaway republics attest to the gulf between ethnic Georgians and the numerically largest minority communities which has contributed to the ethnic segregation. In the aftermath of the war in

Abkhazia, when the breakaway region acquired *de facto* independence from Georgia, approximately 250 000 ethnic Georgians were expelled from the territory. (Wheatley 2009: 14) Furthermore, the sufferance of ethnic minorities, following the 2008 war with Russia, was reported from various sources. Indeed, as stated by the UN High Commissioner for Refugees (UNHCR), “at its height, the ten-day war displaced 128.000 people within Georgia, with another 30.000 people (Ossetians) fleeing to Russia” (MRGI 2011b: 4). Even though positive developments have been noted recently in efforts to bridge the gulf between ethnic Georgians and the largest minority communities, much work remains in order to address the long-lasting segregation. Especially problematic is the linguistic barrier, where the lack of mastery of the Georgian language strongly contributes to inhibit “contacts between the majority population and ethnic minorities”, and to further the isolation of minority communities, economically, politically as well as socially. (MRGI 2011b: 5)

The sociolinguistic dimension

The language issue became highly politicised in Georgia’s state-building process from the late 1980s, and still is, as attested by the fact that although Georgia undertook to sign and ratify the European Charter for Regional and Minority Languages (ECRML), upon signing the FCNM in 1999, this undertaking has up to date not been met. The Georgian language, although weakened during Soviet rule by the Soviet nationalities policy, became indispensable in the strengthening of the nation-building process. Furthermore, since the Georgian language was closely linked to the emergence of the autocephalous Georgian Orthodox Church, the language was “bestowed with almost sacred status as a wellspring of the Georgian nation” (Wheatley 2009: 4). Although spoken by only 71% of the Georgian population, according to the 1989 census, the Georgian language acquired the status as sole official language. However, in light of the developments in the Abkhaz region, the Georgian government had to succumb to giving the Abkhaz language status as the official language in the breakaway republic of Abkhazia. (Art. 8, Constitution of Georgia). This was a huge concession on the part of the Georgian authorities, since “ethnicity in Georgia was more or less defined by linguistic identity” (Popjanevski 2006: 38). Consequently, just as members of national minorities are viewed as anomalies and potential

threats to the territorial integrity of the Georgian state, “the continuing use of minority languages in Georgia is somehow seen by the Georgian majority as an aberration that needs to be corrected” (Wheatley 2009: 5).

The language issue is at the very core of the ethnic divide and the poor inclusion of ethnic minorities, particularly as regards the numerically large linguistic minority communities. In fact, in the highly multilingual Georgia, which harbours as many as 29 minority languages²⁶⁹, it is the numerically larger minority languages that pose the threat to the Georgian government, and contributes to both the ethnic divide and the furtherance of their marginalisation. The numerically largest minority languages in the Georgian controlled areas²⁷⁰ are Azeri and Armenian, which account for 6.5% and 5.4% of mother tongue speakers, respectively²⁷¹. Apart from Laz, Svan and Megrelian²⁷², other minority languages are: Russian (1.9%), Ossetian (0.7%), Kurmanji (0.2%), Kist (0.2%), Ukrainian (0.1%) and Abkhazian (0.1%).²⁷³ However, even though the numerically smaller languages pose no threat to the Georgian government, these languages are instead threatened by extinction and complete assimilation with the Georgian and the Russian languages. Indeed, even though Russian is a minority language, it has however a particular status since Russian was the language of interethnic communication during Soviet rule. Consequently, even though Russian is the mother-tongue of merely 1.9%, “around half of the population of

²⁶⁹ 29 minority languages if one includes Svan, Megrelian and Laz as distinct languages. However, Georgian linguists claim that these are not distinct languages but dialects of the Georgian language. Others argue however that even though these languages “belong to the same (Kartvelian) subgroup of languages as Georgian” they are in fact distinct languages and hence constitute minority languages. Cf. (Wheatley 2009: 12).

²⁷⁰ The Georgian-controlled areas exclude the two breakaway republics of South Ossetia and Abkhazia since no up-to-date information is available on the numerical sizes of minority languages. Cf. (Wheatley 2009: 12).

²⁷¹ Whereas Azeri is a sub-group of the Turkic language, Armenian is a Thracian language part of the Indo-European language tree. Cf. (Wheatley 2009: 10-12).

²⁷² Since the speakers of these languages consider themselves to be Georgian and “virtually all can also speak Georgian fluently”, these groups can be argued to be integrated into the mainstream of the Georgian society and do neither pose a threat to the Georgian authorities nor are threatened by exclusion. Cf. (Wheatley 2009: 12).

²⁷³ Apart from the Slavic Russian and Ukrainian languages, Ossetian and Kurmanji are part of the Iranian subgroup and Kist and Abkhazian are part of the Caucasian language. Cf. (Wheatley 2009: 10-12).

Georgia speaks relatively good Russian as a second language” (Wheatley 2009: 23).

Upon the proclamation of Georgian independence, the weak affiliation to the Georgian state and the exclusion of national minorities from the Georgian society was particularly rooted in an alienation of the Georgian language. In fact, as a result of the Soviet nationalities policy, where the nationality concerns was upheld to the detriment of civic integration, “knowledge of Georgian was not necessary during Soviet times” which entailed that the promotion of particularly the larger minority languages was maintained over learning the majority language. (MRGI 2009: 3) This consequently meant that when Georgia became independent, and Georgian became the official language, “only 31% of members of national minorities in Georgia” spoke Georgian fluently. (Wheatley 2009: 5) Since official documents are only published in Georgian, and proficiency in Georgian is a prerequisite for government officials, the poor command of the Georgian language amongst national minorities severely contributes to aggravate the exclusion of large segments of the Georgian minority populations, who find themselves on the verge of Georgian society, politically, socially and economically. (MRGI 2011b: 3)

The ethnic divide is especially blatant as regards the larger minority languages, and is a remnant from the Soviet regime where guarantees of minority language education were provided for. Hence, a parallel system of education was established for the numerically large minority communities, where “Russian, Azeri, Armenian, Abkhazian and Ossetian schools provided tuition in the respective languages” (Wheatley 2009: 17). The system of two parallel education systems remains for the Azeri, Armenian and Russian minorities. As a consequence of the breakaway republics, however, tuition in Abkhazian and Ossetian is no longer provided for. Taken into consideration that the main problem of minority exclusion is due to the poor mastery of the Georgian language, these minority schools only provide for instruction in the respective minority languages and the teaching of the Georgian language is almost non-existent. Also, the lack of quality education for minorities, due to a lack of resources, has been a persistent problem, and although there have been attempts to redress this situation, for instance by harmonising the curricula with Georgian-language schools, these efforts have been insufficient. (MRGI 2009: 3) Thus, the lack of any real efforts from the

Georgian authorities to provide for instruction of the Georgian language in these minority establishments has only led to a situation where these “minorities tend only to speak their native languages”, which, by consequence, only accentuates their marginalisation. (MRGI 2011b: 3) The lack of any serious incentives from the Georgian government is astonishing, since this situation only cements the “separate development of large linguistic communities” in territories like Kvemo Kartli and Samtskhe-Javakheti, where Azeri and Armenians are in a majority position and which, furthermore, are considered potential secessionist areas and thus, a threat to the territorial integrity of the Georgian state. (Wheatley 2009: 6)

Legislation in minority language rights upon gaining status as ENP-state

The challenging balancing act between civic integration and ethnic accommodation also permeates the legislation pertaining to minority language rights protection in Georgia, as it does the assessments of the monitoring bodies. Indeed, as a consequence of the weak Georgian state, which still is in the process of state-building, the strengthening of the state institutions and the state language need to be made concomitantly to the implementation of the principles of the Framework Convention for National Minorities (FCNM). The weakness of the state is also attested by the two breakaway republics and the secessionist claims that were voiced from the southern regions of Georgia at the beginning of the 1990s. By consequence, the ethnic conflicts of both Abkhazia and South Ossetia entail that the issue of the territorial integrity of Georgia is also the key in the discussions on minority protection, in general, and as regards minority language protection, in particular. At the same time as the equality principle enshrines minority rights protection, the Georgian constitution stipulates that “the exercise of minority rights shall not oppose the sovereignty, state structure, territorial integrity and political independence of Georgia” (Art. 38 (2), Constitution). Minority rights protection is, thus, viewed, if not as a threat, at least as counterproductive to the process of civic integration, viewed as indispensable to the strengthening of the Georgian state. Thus, the inherent resistance to the furtherance of minority language rights protection is naturally due to the weakness of the Georgian language and the necessity to strengthen the same.

The implementation of the FCNM has not yet begun and is, not only dependent upon an intrinsic resistance to minority rights protection, but also relates to the weakness of the rule of law where “the weak implementation of legislative acts, especially in the regions, is a problem in general” (Popjanevski 2006: 55). Furthermore, upon ratification of the FCNM, the Georgian Parliament explicitly stated that “it could not ensure full implementation of the Convention before the territorial integrity of Georgia is restored, and pleaded for aid from the Council of Europe in resolving the conflicts in Abkhazia and South Ossetia” (Popjanevski 2006: 31).

Assessment of the legislative provisions from the two monitoring bodies in the domain of minority language rights is scarce. Whereas there is no assessment made from the Council of Europe’s Advisory Committee in 2006, the assessment of the EU is very general and does neither evaluate the legislation in the area of non-discrimination nor in the area of minority language rights. Furthermore, even though the EU-Georgia Action Plan, adopted in 2006, has as one of its objectives to “ensure respect for rights of persons belonging to national minorities”, it is also very general in its contents. (MRGI 2009: 7) As a consequence, other sources produced that same year have been consulted.²⁷⁴

Non-discrimination

Upon independence, and as a consequence of integrating into the major international organisations, legal provisions protecting the rights of national minorities were integrated into the 1995 Constitution. Hence, Article 14, of the Constitution, stipulates that “Everyone is free by birth and is equal before law regardless of race, colour, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence” (Art. 14, Constitution of Georgia). Furthermore and more specifically related to minority rights protection,

²⁷⁴ European Commission against Racism and Intolerance (2007) *Second report on Georgia adopted on 30 June 2006*, CRI (2007) 2, Strasbourg, 13 February 2007, http://www.coe.int/t/dghl/monitoring/ecri/activities/countrybycountry_en.asp, 2012-01-23. Popjanevski, J. (2006) “Minorities and the State in the South Caucasus: Assessing the Protection of National Minorities in Georgia and Azerbaijan”, *Silk Road Paper*, September 2006. Washington-Uppsala: Central-Asia Caucasus Institute & Silk Road Studies Program – A Joint Transatlantic Research and Policy Centre.

article 38 stipulates that “Citizens of Georgia shall be equal in social, economic, cultural and political life, irrespective of their national, ethnic, religious or linguistic belonging. In accordance with universally recognised principles and rules of international law, they shall have the right to develop freely, without any discrimination and interference, their culture, to use their mother tongue in private and in public” (Art. 38, Constitution).

Upon signing the Convention on the Elimination of All Forms of Ethnic Discrimination, the Criminal Code was amended and integrated a provision stating that “Racial discrimination, that is, an act committed with the intention of inciting ethnic or racial hatred or conflict, injuring national dignity, or directly or indirectly restricting human rights or granting advantages on the grounds of race, skin colour, social status or national or ethnic affiliation, shall be punishable by deprivation for up to three years” (Popjanevski 2006: 47-48). Even though the ECRI report welcomes the amendments made, the Georgian authorities are recommended to supplement the criminal law provisions further and to “take further actions in a number of areas” (ECRI Report 2006: 6). Legal provisions in the civil and administrative domains are scarce, and apart from the Labour Code, which includes a provision prohibiting “the reduction of remuneration for ethnic minorities”, no other anti-discrimination guarantees are provided. (Popjanevski 2006: 48) Hence, the ECRI Report calls on the Georgian authorities to strengthen and complement the legal provisions “by adopting further provisions, prohibiting racial discrimination in a precise and exhaustive manner, to ensure that all areas of life, such as education, access to housing, to public services and to public places and contractual relations between individuals, are covered” (ECRI Report 2006: 12).

Upon Georgia’s accession to the International Convention on the Elimination of All Forms of Racial Discrimination and the signing of the FCNM in 1999, the Georgian government “approved of an action plan for the protection of minorities in Georgia, entitled *Plan of Action for Strengthening Protection of Human Rights and Freedoms of Minorities Living in Georgia (2003 – 2005)*” (Popjanevski 2006: 28). As part of this Plan, the authorities began by setting up minority protection bodies within the state institutions, of which particularly the Public Defender’s Office has been actively promoting minority rights issues. Indeed, in coordination

with the European Centre for Minority Issues, as well as various minority rights NGOs, the Public Defender's Office launched the Council of National Minorities in December 2005. The Council's aim is to function "as a forum for dialogue between the authorities and members of minority communities, as well as coordinating the activities of organisations working in the field of national minorities" (Popjanevski 2006: 34).

Even though the Georgian authorities claim that discrimination against national minorities is non-existent, as evidenced by the lack of legal proceedings in this domain, discrimination exists. Indeed, reports from both monitoring bodies and minority group representatives in the country "continuously express concerns about isolation and discrimination of ethnic minorities and about xenophobic sentiments among the Georgian public, fuelled by media stereotyping" (Popjanevski 2006: 25). This is also underlined by the ECRI which reports that "stereotypes and prejudice liable to cause discrimination persist among the majority population, particularly against ethnic minorities, non-traditional religious minorities, refugees from Chechnya and Meskhetia Turks²⁷⁵" (ECRI Report 2006: 6). Indeed, the lack of implementation of the legal provisions is more related to the general segregation of national minorities, who mostly live concentrated in poor rural areas on the verge of Georgian society. Hence, the lack of both financial resources, as well as the generally poor mastery of the Georgian language, create a situation where the "awareness of legal remedies, in relation to human rights abuses, is generally low in the country, and due to weak communication between the local and central structures, violations on ethnic grounds which take place in rural areas are not brought to the attention of Tbilisi-based institutions" (Popjanevski 2006: 49). Since knowledge of the legal provisions is greatly hampered by minority groups' lack of proficiency in the Georgian language, the ECRI Report calls upon the Georgian

²⁷⁵ The Meskhetian Turks were a minority group, numbering 100.000 and inhabiting the southern region of Javakheti up until 1944 when they were expelled from Georgian territory under the Stalin regime. As a consequence of minority rights claims, a repatriation process started in the 1990s where approximately 600-700 of the Meskhetian Turks have been repatriated up until now. However, the process has been slow and cumbersome "and further repatriation of the deportees is an issue currently under consideration and may take place over the coming years" (Popjanevski 2006: 27).

authorities to step up their efforts in providing opportunities for minorities to learn the Georgian language. (ECRI Report 2006: 6)

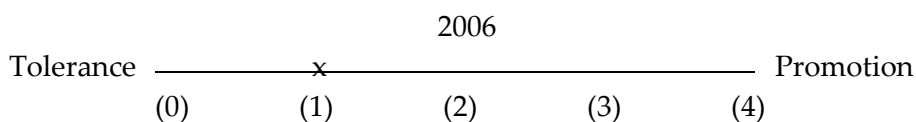
The ECRI Report also stresses the need for awareness-raising and the strengthening of competencies amongst judicial officials, and recommends that Georgian authorities provide them “with more training on the importance of applying provisions of this kind” (ECRI Report 2006: 6). The strengthening of the judicial system is further underlined in the EU-Georgia Action Plan, where it is stated that Georgia should make improvements in its judicial system, specifically, as regards the “training of judges, prosecutors, and officials in the judiciary, Ministry of Justice administration, police and prison, in particular, with regard to human rights issues and judicial internal cooperation” (EU Report 2006: 8). Furthermore, however important the work of both the Public Defender’s Office as well as the Council of National Minorities, the ECRI report recommends the authorities to set up “an independent specialised body, to combat racism and racial discrimination” (ECRI Report 2006: 6).

Another hampering factor to more effective implementation concerns the scope of application of the groups that need protection. Since the Georgian authorities have absented from giving an official definition of a national minority, the interpretation given upon the ratification of the FCNM is the prevailing one. According to this interpretation, members belonging to a national minority are “Georgian citizens (who) stand out from the prevailing population in terms of their own language, culture and ethnic identity; have inhabited the territory of Georgia for an extended period of time; and densely populate a region of Georgia” (Popjanevski 2006: 36). Whereas the citizenship requirement is clear, however not consistent with the principles of the FCNM, the problematic requirements of “extended period” and “densely populated area” are extremely vague and left undefined. Furthermore, and as stressed by the ECRI Report, even though the 2002 census provides for some information on national minorities, the statistics are inadequate and do not correspond to the current situation in Georgia which consequently inhibits a proper assessment. (ECRI Report 2006: 22)

General legal provisions in the domain of non-discrimination exist, and the recent amendment to the Criminal Code furthermore penalises discrimination on ethnic grounds. However, and as stressed by

particularly the ECRI Report, the provisions are not encompassing enough, and especially in the domain of the civil sphere, anti-discrimination provisions need to be developed. Hence, on the basis of the index scale, Georgia is positioned on the level of 1.0.

Fig. 13.1. Georgia and level of rule adoption in non-discrimination upon gaining status as ENP-state



- (0): Absence of any non-discrimination norm;
- (1): General provisions such as an equality clause in the Constitution;
- (2): Non-discrimination laws are inserted in specific laws;
- (3): Comprehensive anti-discrimination legislation which then means that there has been a complete transposition of the EU anti-discrimination *acquis*;
- (4): Non-discrimination laws exceed the minimum requirements of the Directive.

Minority language use in official contexts

The balancing act between ethnic accommodation and civic integration is particularly blatant in the context of legislation regulating the language laws of the country. Whereas the stance of the Georgian authorities, ever since independence, has been to strengthen legislation in favour of the state language and, thus, relegate minority language rights to the background, little effort has been put in to actually create opportunities for minorities to increase their proficiency in the Georgian language. Since the strengthening of the state language has been seen as the key to civic integration, and as a way to fight off any further secessionist claims from particularly the southernmost regions, concomitantly there has been a reluctance to legislate in favour of minority language rights. Thus, even though the European monitoring bodies recommend that Georgia signs and ratifies the European Charter for Regional or Minority Languages, Georgian authorities have, up to date, refused to comply with this demand. (ECRI Report 2006: 8)

The Constitution of Georgia consecrates Georgian as the official language of the country and acknowledges the official language status of Abkhazian in the Abkhazia region. (Art. 8, Constitution of Georgia). Constitutionally, minority language rights protection is limited to provisions pertaining to the use of minority languages before judicial authorities. Even though it is stated that the language of communication in legal proceedings is the state language, “an individual not having command of the state language shall be provided with an interpreter” (Art. 85, Constitution). Added to this, and referring to the densely populated minority areas, where the population “does not have a command of the state language, teaching of the state language and solution of the issues related to the legal proceedings shall be ensured” (Art. 85, Constitution). The strengthening of the state language in official contexts is also pertinent in the 1999 Administrative Code, which states that “all administrative proceedings should be in Georgian and in Abkhazian in Abkhazia” (Popjanevski 2006: 39). The Public Service Act, of 1997, extensively limits the career opportunities for minorities in the public sector, since the regulation states that “those applying for posts in the public services and local autonomous entities must be proficient in the official language. It likewise states (Article 98-1) that lack of knowledge of Georgian, on the part of officials, may be a ground for dismissal” (ECRI Report 2006: 26). Furthermore, the electoral code greatly hampers the political participation of minorities, since the code stipulates that “members of parliament must know Georgian” (ECRI Report 2006: 26).

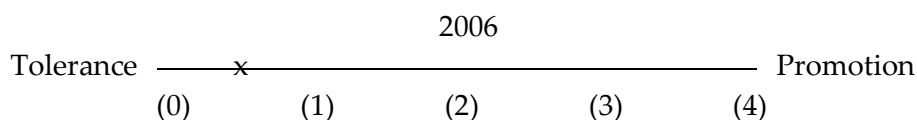
Whereas the State language has been strongly promoted in every sphere of Georgian public life, it has almost relegated the use of minority languages to non-existence. The reluctance to provide minority languages with legal protection was particularly blatant upon the ratification of the FCNM, when the Georgian Parliament expressed concerns as to its implementation. Indeed, in the negotiations preceding the ratification, the Parliament “noted that the state is obliged to provide for interpreters in administrative and legal proceedings, and that it should provide minorities with the opportunity to learn the State language, but expressed no recognition of its obligation to promote or support minority languages” (Popjanevski 2006: 31-32).

The legal emphasis on the state language and the lack of legal provisions for the use of minority languages in official contexts put heavy responsibility on the Georgian authorities to provide opportunities for minorities to learn the State language. However, even though this responsibility is constitutionally stipulated, it has been poorly implemented in practice, especially in the heavily minority concentrated regions. Thus, in the Armenian and Azeri dominated regions of Samtskhe-Javakheti and Kvemo-Kartli, the minority populations “do not speak Georgian or speak it very little” (ECRI Report 2006: 26). Furthermore, in the Samtskhe-Javakheti region, the most common “language for administrative purposes is Armenian for spoken transactions, and Russian for written ones” (ECRI Report 2006: 27). The poor implementation of the legal provisions in the Javakheti region also applies to the courts, since the poor mastery of the Georgian language is also manifest among the judicial representatives, which then entails that “most trials are carried out in Armenian” (Popjanevski 2006: 40).

Not only is there no legal provisions for the use of minority languages, but the problem of the insufficient efforts made in the area of providing minorities with teaching of the State language, in fact entails that, *de facto*, minority language use in official contexts prevails. Thus, instead of integrating these minority groups (especially in the densely populated minority areas) into the Georgian society, it contributes to further the gap between minorities and the majority. Even though the assessments of the monitoring bodies are not opposed to the promotion of the State language, which, in fact, “is not contrary to international recommendations to use the state language in this way”, the Georgian authorities need to find ways to overcome the unfortunate situation which challenges the rule of law, at the same time as it relegates minorities to a state of limbo, both *de jure*, as well as *de facto*. (Popjanevski 2006: 52) Thus, the ECRI Report recommends the Georgian authorities to “maintain their efforts to improve all present or intending officials’ command of Georgian” (ECRI Report 2006: 27). However, since learning the state language is a long process, the Georgian authorities are strongly recommended to “provisionally devise practical and legal arrangements allowing access to public services for Georgian citizens, who do not speak the official language” (ECRI Report 2006: 28).

However laudable the efforts to strengthen the legal provisions for the State language, the Georgian authorities have, at the same time, rejected the introduction of any legal provisions in the domain of minority language use in official contexts. The agenda of civic integration has however back-lashed on the authorities since the aim of decreasing the existing segregation rather has had the reverse effect. Thus, as recommended by the ECRI, in parallel to the strengthening of the State language, it is important that “the authorities take care to preserve and encourage use of minority languages alongside the official language” (ECRI Report 2006: 29). In the context of our study, Georgia is positioned on the level of 0.5.

Fig. 13.2. Georgia and level of rule adoption in minority language use in official contexts upon gaining status as ENP-state



- (0): No recognition of minority languages;
- (1): The right to use the minority language in official contexts (before judicial and administrative authorities; i.e. the right to a translator);
- (2): The minority language can be used in Personal and Place Names (public signs);
- (3): The minority language can be used in official documents;
- (4): Minority language having status as official language.

Minority language rights in education

The strengthening of the Georgian language is also blatant in the educational sector. Whereas minority language rights in education were previously extensively provided for, as stipulated by Article 4 of the Law on Education²⁷⁶, the recent legislative changes in the educational sector emphasise and aim “at strengthening the position of the Georgian language” (Popjanevski 2006: 42). However, at the same time, provisions

²⁷⁶ Article 4 stipulated that “the State, in accordance with recommendations from local administrative authorities shall take, for citizens whose mother tongue is not Georgian, measures to enable them to receive primary or secondary education in their own language” (Popjanevski 2006: 42).

guaranteeing minority rights in education are still upheld. Indeed, the 2005 General Education Act, encompassing primary and secondary education, declares that “the language of instruction at institutions delivering general education is Georgian (with Abkhaz in Abkhazia), but also that citizens of Georgia, whose mother tongue is not Georgian, have the right to full general schooling in their mother tongue” (ECRI Report 2006: 29). The General Education Act, furthermore, introduces reforms that aim to further strengthen the Georgian language, in particular, and civic integration, in general, by uniforming the curriculum. Hence, as part of the new General Education Act, it is stipulated that, “by 2010-2011, at the latest, schools giving instruction through the medium of a non-official language must teach Georgian language and literature, Georgian history and geography, and other social sciences through the medium of Georgian” (ECRI Report 2006: 30).

The predominance of the Georgian language is also blatant in the provisions regulating higher education. The 2004 Higher Education Act stipulates that the language of instruction is Georgian and Abkhaz in Abkhazia. Possibilities for instruction in minority languages in higher education are sharply curtailed since the Law states that “instruction in other languages, except for individual study courses, is permitted provided that this is envisaged by international agreements or is agreed with the Ministry of Education and Sciences of Georgia” (Popjanovski 2006: 43). The centralisation efforts as well as the strengthening of the Georgian language are also blatant in the higher education reforms, since, as from the school year 2005-2006, “a centralised system of entrance examinations for all of Georgia’s state-run universities was introduced” (ECRI Report 2006: 30). Part of the entry examinations are tests pertaining to both the Georgian language as well as to the Georgian literature. (ECRI Report 2006: 30)

The legislative reforms, introduced by the 2005 General Education Act, are laudable in their efforts to strengthen the Georgian language and to unify the curriculum, in order to increase civic integration and thus decreasing the gap between minority communities and the majority. This could, consequently, lead to the strengthening of the competitiveness of ethnic minorities on the labour market, as well as to improving the possibilities of minorities to access higher education institutions in Georgia. However, the legislative reforms entail a number of challenges

which need to be met in order to guarantee more effective implementation. Indeed, in 2006, Georgia had 456 educational establishments which provided instruction in minority languages, mainly in Russian, Armenian and Azerbaijani. Although teaching of Georgian is compulsory in these schools, which means that “around three hours a week of the curriculum are devoted to it”, the number of hours dedicated to the teaching of Georgian is insufficient since the poor command of Georgian amongst minority communities prevails. (ECRI Report 2006: 29) Apart from too few hours of Georgian language training, there is the problem of the lack of qualified teachers of Georgian, especially in the isolated and heavily concentrated minority areas in the southern regions of Georgia. Moreover, due to the prevailing use of minority languages in the densely concentrated minority communities, “students are unable to practice Georgian outside of the school environment”, also heavily contributing to the poor command of the Georgian language. (Popjanevski 2006: 44) Furthermore, the problem of the poor quality of textbooks is another issue that hampers more effective teaching. Indeed, as underlined by the ECRI Report, in general, the quality of textbooks, “used at some levels in minority schools, are still inferior in content and quality to textbooks in Georgian” (ECRI Report 2006: 29).

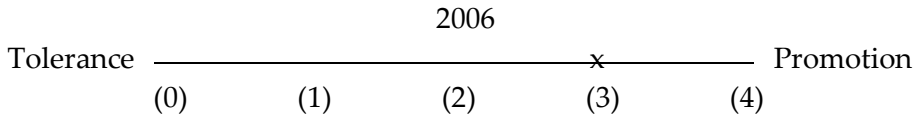
Even though the Georgian authorities have made serious efforts in attracting qualified teachers to especially the isolated regions, as welcomed by the ECRI Report, the result has so far not been successful. (ECRI Report 2006: 29-30) Indeed, “attempting to improve conditions for language training in the regions, the Georgian Ministry of Education recently offered 40 language teachers a high salary for Georgian language teaching in Kvemo-Kartli and Javakheti regions. However, due to the hardships connected with living in the regions, few teachers were willing to work in those remote areas” (Popjanevski 2006: 44). Thus, the lack of qualified language teachers, as well as the lack of quality textbooks, subsequently, entail that pupils of minority education still do not “attain sufficient command of Georgian by the end of their schooling”, and graduate from schools that are still inferior in quality, and thus viewed as second-rate. (ECRI Report 2006: 29) This, furthermore, greatly hampers minorities’ chances to integrate into the Georgian labour market, as well as greatly reduces their chances to access higher education. (ECRI Report 2006: 29)

Hence, even though the ECRI Report welcomes the steps taken by the Ministry of Education and Sciences to improve the education system, in general, and minority education, in particular, more effective and concerted action needs to be taken by the Georgian authorities. Indeed, as strongly recommended by the ECRI, the Georgian authorities need to “press ahead with their reform of the teaching of Georgian to children belonging to ethnic minorities, so as to make sure that when they leave school they have a sufficient standard of Georgian to be able to integrate into higher education, the employment market and society, generally. This involves providing all the human and financial resources necessary to continue training teachers of Georgian as a second language and provide suitable textbooks” (ECRI Report 2006: 31). Indeed, in connection with the prevailing poor command of the Georgian language, the ECRI recommends that the Georgian authorities “closely monitor the new higher education entrance examinations to make sure that they do not have the effect of preventing Georgian citizens, who do not speak the official language, from studying in Georgia or discouraging them from doing so” (ECRI Report 2006: 31). As a way of reconciling guarantees of minority language rights protection in education, with the emphasis on the Georgian language training, the ECRI, furthermore, notes that there is a need “that adequate room be left for teaching minority languages and cultures” (ECRI Report 2006: 31). This is also in line with worries expressed by some minority communities who have voiced fears that the learning of the State language would take over “to such an extent that their children will no longer be proficient in their mother tongue” (ECRI Report 2006: 30). In this regard, the ECRI points out that the “setting up of bilingual schools is a worthwhile idea” (ECRI Report 2006: 31).

Even though the recent legislative reforms have inaugurated an educational system where the state language is promoted to the detriment of minority languages, members belonging to national minorities still have legal rights to “full general schooling in their mother tongue”, in primary and secondary education. (ECRI Report 2006: 29). However, the term, “full general schooling”, is relative inasmuch as, not only, is the teaching of the Georgian language obligatory, “the Georgian literature, Georgian history and geography, and other social sciences”, should also be given in the Georgian language, to be fully implemented by the school year 2010/2011. (ECRI Report 2006: 30) However, in 2006, pupils belonging to national minorities had the right to be educated

completely in their mother tongue. Thus, taken in our study and based on the index scale, Georgia is positioned on the level of 3.0.

Fig. 13.3. Georgia and level of rule adoption in minority language rights in education upon gaining status as ENP-state



- (0): No education of or in minority language;
- (1): Children belonging to minorities have the right to learn their mother tongue in school;
- (2): At least parts of the curriculum (e.g. history or religion) are taught in the minority language;
- (3): Minorities have the right to educate their children completely in the mother tongue, either in state schools with a complete syllabus taught in the minority language or in specific minority schools;
- (4): Minorities have their own universities.

AZERBAIJAN AND MINORITY LANGUAGE RIGHTS PROTECTION

Azerbaijani independence

As opposed to Georgia and Armenia, which both had experienced periods of “statehood in the Middle Ages”, Azerbaijan had little previous statehood to fall back upon when it gained independence in 1991. Indeed, except for a short interlude of independence in between 1918²⁷⁷ and 1920, present-day Azerbaijan had primarily been ruled by the Ottoman and Iranian Empires, before being annexed to the Russian Empire in 1828.²⁷⁸ Thus, the strong influences from the Ottoman and the Iranian empires had, early on, islamised the population and the “conversion to Shi’a Islam occurred mainly in the sixteenth century, under the impact of Safavid Iran” (Lattimer 2003: 6).

Another distinctive feature of Azerbaijan, as opposed to both Georgia and Armenia, was the richness of its natural resources. Already in the 19th century, the first findings of oil were discovered which brought both prosperity to the country, as well as further increased the ethnic diversity of Azerbaijan, by attracting “Armenians, Jews, Russians and other minorities to Baku, the capital” (Lattimer 2003: 6). After the invasion of the Red Army in 1920, supported and facilitated by the Baku Bolsheviks, Azerbaijan became one of the constituent republics of the Transcaucasian Soviet Federative Socialist Republic up until 1936, when Azerbaijan became an independent Soviet Socialist Republic. (Lattimer 2003: 7) Just as the neighbouring states of the South Caucasus had a privileged

²⁷⁷ The existence of the first Azeri state, proclaimed in 1918 as the Democratic Republic of Azerbaijan, was short-lived and only endured until 1920 when it became subjected to Soviet rule. Cf. (Lattimer 2003: 6).

²⁷⁸ Even though the border between Iran and the Russian Empire was established in 1828 when present-day Azerbaijan was annexed to Russia, the majority of Azeris in fact live in Iran. According to estimates they constitute “approximately one-fifth to one-quarter of the total population” of Iran and sometimes this part of Iran is controversially referred to by some Azeris as ‘southern Azerbaijan’. Cf. (MRGI 2006: 1)

position in the Soviet Union, so did Azerbaijan which also was granted special arrangements, “with economic subsidies and pricing arrangements, designed to ensure higher living standards” (Lattimer 2003: 7). The special position, furthermore, entailed that the penetration of the Soviet system in Azerbaijan never reached the same level as in the other Slavic Republics. However, the relaxation of Soviet control also meant that “private entrepreneurial activities and black markets were never completely eradicated”, and still is a distinctive feature of society in present-day Azerbaijan. (Lattimer 2003: 7) When Azerbaijan proclaimed independence on the 30th of August 1991, the first phase of state-building was to take place in parallel with open war, fought against Armenia over the Nagorno-Karabakh region, which was to define the internal turmoil, characteristic of the first years of independence, as well as contribute to complicate “the relationship between the state and national minority groups” (Popjanovski 2006: 59).

The conflict over the Nagorno-Karabakh region flared up, as early as 1988, between Armenia and Azerbaijan, but escalated in conflict intensity when both states gained independencies in 1991. In fact, the Nagorno-Karabakh region had been an issue of contention between the two Soviet Republics ever since the 1920s, when Stalin “sought *rapprochement* with Turkey and thus tended to support Azerbaijani claims to the predominantly Armenian-populated lands of Nagorno-Karabakh and Nakhichevan, the latter’s population being approximately half Muslim, half Armenian” (Lattimer 2003: 7). The loss of the Autonomous region to Azerbaijan constituted a heavy blow to Armenia and their “aspirations to bring together historical homelands, where Armenians still constituted a majority” (Lattimer 2003: 7). Thus, with the liberalisation of Soviet policies during the Gorbachev period, the Armenian majority of Nagorno-Karabakh, supported by the Armenian army, unilaterally declared secession from Azerbaijan. The intensity of the conflict rose at the beginning of the 1990s, and whereas Azerbaijani forces, initially, were victorious, they would experience several defeats in 1993, “leading to not only to the taking of Nagorno-Karabakh but the occupation of seven regions of Azerbaijan, surrounding it by the Karabakh Armenian forces, backed by Armenia” (MRGI 2006: 1). After having experienced heavy casualties on the part of the Azeri army and the expulsion of ethnic Azeri from the Armenian-controlled area, the cease-fire of 1994 put an end to the violent conflict. However, the unresolved status of Nagorno-

Karabakh, *de facto* independent, but *de jure* still a part of Azerbaijan, still poses the most serious threat to the territorial integrity and the internal stability of Azerbaijan, as well as to international stability.

Domestically, the conflict was to have severe repercussions on the first years of the virgin state with a series of fragile governments, which “rose and fell according to developments in the Karabakh war” (MRGI 2006: 1). In 1993, however, political order and stability would be restored when Heydar Aliyev²⁷⁹ seized the presidential power and secured a regime based on an authoritarian rule, in which the all-empowering President would be subjected to a personality cult. The authoritarian rule would entail the establishment of a party-state²⁸⁰ à la Soviet rule, which meant that social mobility was conditional upon state-party membership, the electoral processes were non-democratic and any opposition was crushed, with violence if necessary. (MRGI 2006: 1). The Constitution, adopted on the 12th of November 1995, enshrined the Republic of Azerbaijan as a unitary, secular state, and only made provisions as for the autonomy status of Nakhichevan, but did not touch upon an eventual future autonomy status for Nagorno-Karabakh. (Art. 134, Art. 7, Constitution) In fact, even though Azerbaijan had, in 1992, already made legislative provisions for the protection and the promotion of national minority issues²⁸¹, the war in Nagorno-Karabakh and the subsequent Azeri defeat, would have a deteriorating impact on the State’s relationship with minority groups.

In fact, not only the Karabakh conflict but also other secessionist-prone minorities in both the north and the south meant that any minority rights claims were seen as a threat to the territorial integrity of the Azerbaijani state. Hence, in 1993, the position of the Aliyev regime was to take “a unitary approach to nationhood”, thus, relegating issues of minority rights protection to the domain of rhetoric exclamations. (Popjanevski

²⁷⁹ In the Socialist Soviet Republic of Azerbaijan, Aliyev had held the position of first secretary of the Azerbaijani Communist Party. Cf. (MRGI 2006: 1).

²⁸⁰ The state party is the Yeni Azerbaijan Party (YAP) and without party membership, career opportunities are almost non-existent. For instance, employment in the public sector is conditional upon membership in the YAP. Cf. (MRGI 2006: 1).

²⁸¹ In 1992 Azerbaijan issued a presidential decree on the *Protection of the Rights and Freedoms and on State support for the Promotion of the Languages and Cultures of National Minorities, Numerically small Peoples and Ethnic groups living in the Republic of Azerbaijan*. Cf. (Popjanevski 2006: 59).

2006: 59) This, furthermore, meant that any separatist movements were effectively crushed, by “prosecuting and sentencing individuals, involved in separatist activities, to lengthy imprisonments” (Popjanevski 2006: 59). The restoration of domestic order, however non-democratically upheld, in parallel with the fertilisation of the personality cult of the President, as well as the “lucrative contracts for Caspian oil exploitation”, explain not only the longevity of the Heydar Aliyev regime, which endured for two Presidential terms (1993-2003), but also the enforcement of his succession. Indeed, the presidential election of 2003 secured the victory of Heydar’s son, Ilham, who would pursue the policy line of his father, by emphasising the promotion of “a civic, rather than ethnic, national identity” (Popjanevski 2006: 59). The problem of corruption, which permeates the whole Azerbaijani society, and the non-democratic regime²⁸², are severe challenges to the Euro-Atlantic structures which Azerbaijan belongs to as a consequence of their pro-western foreign policy orientation.

Internationally, the Nagorno-Karabakh conflict was already a challenge from its inception, in that the war broke out prior to the dissolution of the Soviet Union, severely limiting any international action. In January 1992²⁸³, however, the OSCE took on a mediating role and the subsequent creation of the Minsk Group, involving Russia, the USA and France, would successfully mediate a cease-fire on the 12th of May 1994. (Ramelot & Remacle 1995: 124) However, even though the cease-fire meant the end of bloodshed, a solution to the conflict is yet to be found. Since the positions of the two parties are frozen, and the Azerbaijani authorities have been reluctant to have direct talks with the political leadership of Nagorno-Karabakh, the Minsk Group still has a mediating role in trying to find a political solution to the conflict. However, in the mid-2000s, the rhetoric of the new Azerbaijani President towards Nagorno-Karabakh became more militant and, “coupled with a rise in military expenditure, contributing to expectations of a military ‘solution’ to the conflict” (MRGI 2006: 2).

²⁸² In fact, the authoritarian rule was further strengthened after a referendum in 2009 which gave the government *carte blanche* to eliminate any barrier for the extension of the two consecutive presidential terms. Cf. (EU Report 2009: 3).

²⁸³ In January 1992 both Azerbaijan and Armenia became members of the Organisation for Security and Cooperation in Europe (OSCE). Cf. (Ramelot & Remacle 1995: 114).

However, since the foreign policy goals of the Azerbaijani government is to deepen the Euro-Atlantic ties with both the EU and NATO, there is a chance that with an increasing integration into Western structures, the incentives of finding a political solution to the Nagorno-Karabakh conflict will increase. Indeed, in the EU-Azerbaijan Action Plan of 2006, the main priority of the EU is to “contribute to a peaceful solution of the Nagorno-Karabakh conflict” (EU Report 2006: 9). Furthermore, the relations with the USA took a turning point²⁸⁴ in 2001, in the aftermath of the terrorist attacks of 9/11, when Azerbaijan sided with the USA in the fight against terrorism. This turn of events has increased both the US financial support to Azerbaijan, as well as having increased their integration into NATO. Furthermore, due to fact that the Azeri are “ethnographically and linguistically a Turkic people”, the country has very close ties to Turkey. (MRGI 2006: 1)

The demographic dimension

The Azeri are a Turkic people who adhere to Islam, with an orientation towards Shi’a rather than Sunni and the majority of the Azeri people live in the north-western parts of neighbouring Iran. Indeed, according to estimates, the Azeri population of Iran amounts to “approximately one-fifth to one-quarter of the total population” and sometimes this part of Iran is controversially referred to by some Azeri as ‘southern Azerbaijan’. (MRGI 2006: 1) The positioning of Azerbaijani territory in the South Caucasus, stretching over 86.000 km², has important geostrategic implications. Indeed, situated on the western coast of the Caspian Sea, Azerbaijan borders on Iran to the south, Armenia to the west and Georgia as well as Dagestan of the Russian Federation to the north. Furthermore, since the Nakhichevan Autonomous Republic still constitutes a part of Azerbaijan, a small strip of the north-western part is bordering on Turkey.

Prior to independence and particularly before the emergence of the Nagorno-Karabakh war, Azerbaijan was a highly multi-ethnic state, accounting for sizeable minority groups. According to the 1979 census, the Azeri majority amounted to a mere 78.1% with the Russian and the

²⁸⁴ Prior to 2001, US financial support to Azerbaijan was severely “limited by Section 907a of the Freedom Support Act, which restricted assistance to states which blockades other states” (Popjanevski 2006: 62).

Armenian minorities accounting for 15.8% of the population. The third numerically largest minority group in 1979 was the Lezgin minority, amounting to 2.6% of a total population of just over 6 million. These three minority groups still account for the numerically largest minority groups in Azerbaijan. However, with independence and especially the Nagorno-Karabakh war, their numbers have decreased significantly in parallel with the substantial increase in the majority group, where the ethnic Azeri had increased to 90.6%, according to the 1999 census, out of a population of almost 8 million. (Gerber 2007: 8) Indeed, the trend towards mono-ethnicity in parallel to a trend towards depopulation have characterised Azerbaijani society ever since independence. Furthermore, these two trends have been mutually reinforcing since “minorities are more prone to emigrate” than is the majority. (Lattimer 2003: 15)

In fact, due to social and economic hardship, ensued by independence as well as the ethnic conflict over Nagorno-Karabakh, it is estimated that approximately 2 million have primarily migrated to Russia from Azerbaijan. It is the decimation of the two historically and numerically largest minority communities that is the most blatant. Indeed, during a time span of 20 years, in between 1979 and 1999, the Russian minority was decimated from 7.9% (1979) to 1.8% (1999). Due to the ethnic conflict in Nagorno- Karabakh, an even bigger decrease has been noted in the Armenian community which amounted to almost half a million in 1979 (7.9%), had decreased to 390.500 (5.6%) in 1989 to reach a mere 1.5% in 1999. (Lattimer 2003: 15) The same trend is notable also amongst the Lezgin minority which decreased from 2.6% (in 1979) to 2.2% (1999), as well as in some smaller minority groups which fear that without state support their minority cultures and languages will peter out into complete assimilation. However, the decrease in the smaller minority communities’ numbers is not only a result of emigration but is also due to the fact that some chose to register as the titular nation rather than according to their ethnic belonging. The failure to register according to ethnicity is both explained by way of facilitating social mobility, as well as by way of preventing harassment from state officials. Indeed, with the war and the increasing Azeri nationalism, some minority communities, such as the Lezgin, Avar and the Talysh minorities, have been perceived as secessionist-prone and as threats to both the territorial integrity and to the political stability of the Azerbaijani state.

Table 14.1. Ethnic structure of Azerbaijan according to the 1999 census (data retrieved from MRGI 2006: 1; Gerber 2007: 8)

Nationality	1999 number	1999 %
Azeri	7.205.780	90.6
Lezgi	178.000	2.2
Russian	141.700	1.8
Armenian	120.700 ²⁸⁵	1.5
Talysh	76.800	1.0
Avar	50.900	0.6
Turk-Meskhetian	43.400	0.5
Tatar	30.000	0.4
Ukrainian	29.000	0.4
Georgian	14.900	0.2
Kurd	13.100	0.2
Tat	10.900	0.1
Jews ²⁸⁶	8.900	0.1
Others/non-declared	29.320	0.4
Total	7.953.400	100

As a result of the conflict in Nagorno-Karabakh, the Armenian minority²⁸⁷ has a particularly vulnerable situation. Indeed, out of the 1.5% of Armenians, approximately 30,000 live on Azerbaijani-controlled territory where they are consistently harassed both from the media, from state officials as well as from the general public. Indeed, the discriminatory policies from the state against the Armenians, consistently being treated as pariah and as traitors to the state, have subsequently entailed that the majority of Armenians in Azerbaijan “often seek to hide their ethnic identity, for instance through changing their names” (ECRI Report 2006:

²⁸⁵ The size of the Armenian minority in Azerbaijan is a contentious issue and the figure should be taken with precaution. Cf. (MRGI 2006: 1). Furthermore, almost the entirety of this group inhabits Nagorno-Karabakh except for an estimated 3000 which are believed to live in the Azerbaijani controlled territory. Cf. (Lattimer 2003: 15).

²⁸⁶ The Jews are divided into European (Ashkenazi), Mountainous and Georgian Jews. Cf. (Gerber 2007: 8).

²⁸⁷ During the height of the war in Nagorno-Karabakh the Armenian minority was expelled from Azerbaijan “after pogroms in Baku and its suburb Sumqayit” (MRGI 2006: 1).

28). Apart from the conflictive relationship between the State and the Armenian minority, the Karabakh conflict would also shed light on increasing tension between the ethnic Azeri and the Lezgi and Avar communities in the North Caucasus as well as the Talysh minority in the South.

Bordering on Dagestan in the Russian Federation, the Lezgin minority amounts to 178,000 people who are territorially concentrated in the far north-eastern regions of Gussary²⁸⁸, Khachmaz, Quba as well as Sheki; Sheki being located a bit further to the north-west. In Baku, the capital, the Lezgi minority amounts to approximately 15%. (Lattimer 2003: 17) On the Dagestan side of the border, the Lezgi minority constitutes another 150,000 people. Although the border between Dagestan and Azerbaijan has divided this minority ever since 1860, the border was not perceived as a real problem until 1991, when the border became international and the Lezgi found “themselves in the position of a truly divided people” (Lattimer 2003: 17). Thus, ever since 1991, the division has been perceived as a threat to the survival of the Lezgi culture and language with an increasing fear of becoming assimilated to the Azeri majority. Tensions between the mounting nationalism of the Azeri and the Lezgi started in 1991, when a separatist movement of the Lezgi on the Dagestani side of the border, the “Sadval political movement, called for the creation of an independent Lezgistan” (Lattimer 2003: 17).²⁸⁹ The tensions between the Azeri state and the Lezgin minority on the Azerbaijani side of the border were, furthermore, exacerbated when, at the height of the Nagorno-Karabakh war, the Lezgi refused to enroll in the Azerbaijani army which led to “violent clashes between Lezgins and Azeri in Derbent, Dagestan, and in the Gussary region of Azerbaijan” (Lattimer 2003: 17).

Just as the Lezgin, the Avar minority, amounting to 50,900 people and constituting 0.6% of the population, is territorially concentrated on the border to Dagestan, mainly inhabiting the regions of Zakataly and Belokany. As is the case with the Lezgi, the Avar community is also divided by the Dagestani border, however, with the major part of the

²⁸⁸ The Gussary region is primarily inhabited by Lezgis where they constitute 91% of the share of the population. Cf. (Lattimer 2003: 17).

²⁸⁹ The Dagestani authorities however never endorsed the claim of an independent Lezgistan and it was furthermore “officially rejected by Sadval in April 1996” (Lattimer 2003: 17).

Avars living in Dagestan, “where they constitute the largest ethnic group, numbering 600,000” (Lattimer 2003: 17). The explosiveness of inter-ethnic relations in the north of Azerbaijan has been fuelled by the wars in adjacent Chechnya²⁹⁰, in parallel with a radicalisation of Islam, making the region highly violent-prone. Whereas the ethnic Azeris are predominantly Shi’a Muslims, both the Lezgin minority as well as the Avar minority are primarily Sunni Muslims. Indeed, the ethnic tensions and the violent clashes between the local police, predominantly ethnic Azeris, and the ethnic minorities in the North, increased in strength in 2001²⁹¹, and “increasingly, minorities in Azerbaijan are associated with a growing religious zeal” (Lattimer 2003: 16).²⁹²

Although being of Shi’a Muslim faith, the Talysh minority inhabiting the south-eastern parts of Azerbaijan, mainly in the regions of Lenkoran and Massaly, bordering on Iran, became a problem to the internal security of Azerbaijan in 1993, when the Talysh minority proclaimed a “Talysh-Mugan Republic in Lenkoran” (Lattimer 2003: 17). People belonging to the Talysh minority are an Iranian people who, for a long time during Soviet rule, were not recorded as a minority group. In fact, it was only in the 1989 census that the Talysh became officially recorded and in the census of 1999 their number was recorded as constituting 76,800, (1 %), of the total population of Azerbaijan. However, some Azeri experts estimate that their actual number, in fact, amounts to between 200,000 and 250,000 although “the authorities are reluctant to admit this” (Lattimer 2003: 17). The closeness to the Iranian border, and the growing Iranian influence on the Talysh minority, becoming visible with the creation of “new mosques and *madrassas*, established with financial backing from Iran”, has become increasingly challenging to the Azeri state. (Lattimer 2003: 17)

Thus, religion and the radicalisation of Islam have become an aggravating component in the relations between the State and the national minorities, in particularly the North but also in the South. With the active stance of

²⁹⁰ Since the Azeri authorities do not recognise the Chechens, there are no official records as to their numerical strength in northern Azerbaijan. However, estimates have it that approximately 20,000 Chechen refugees inhabit the area. Cf. (Lattimer 2003: 17).

²⁹¹ Violent clashes between the local police, predominantly ethnic Azeri, and ethnic minorities were reported in 2001. Cf. (Lattimer 2003: 17).

²⁹² In the Lezgin-populated Khachmaz region in Northern Azerbaijan, bordering on Dagestan and Chechnya, Lezgins are usually associated with radical Islamic movements. Cf. (Gerber 2007: 14).

the Azeri government in siding with the USA in the aftermath of 9/11 and the war on terrorism, minority claims from especially the Lezgin and the Avar minority communities have sometimes been effectively labelled as terrorist acts by the Azeri government. Thus, whereas minority protection was largely inhibited by the negative unfolding in the Nagorno-Karabakh war during the 1990s, minority protection was furthermore hampered by the Azeri government's active stance in the war against terrorism during the 2000s.

The sociolinguistic dimension

The socio-linguistic situation in Azerbaijan is highly different to that of Georgia in that the language does not constitute the primary factor of segregation. Indeed, national minorities in Azerbaijan generally have a good command of the state language which means that the language issue does not constitute a barrier of integration in Azerbaijan. Thus, the language issue in Azerbaijan is neither as problematic nor as politically sensitive as it is in Georgia. However, the recent legislative reforms, aiming at strengthening the state language, are made on behalf of minority language rights protection which have entailed that "international monitoring bodies are concerned with the diminishing importance of minority languages and the lack of state support for their use" (Popjanovski 2006: 65).

As is the case in Georgia, the recent Azerbaijani policies of promoting the state language are prevalent, both in the administrative sphere as well as in the educational domain. These policy reforms should primarily be seen as a reaction to the Russian language, which has been, and still is, frequently used as the language of communication in the administrative domain in Azerbaijan, but also to other minority languages in use in the regions. (Popjanovski 2006: 65) This development, in parallel with the trend towards mono-ethnicity, entail that there is a real concern, especially voiced from monitoring bodies, that without promotion of minority languages, especially the smaller minority languages might face extinction. However, the Azeri authorities that have been engaged in strengthening an Azeri civic national identity, based on an omnipotent state, have been quite immune to any criticism of this kind. Furthermore, language rights claims from minority communities have been sparse and this could obviously be understood in light of the oppressive policies,

pursued by the regime against any oppositional forces. At the same time, it should be noted that the linguistic issue does not present a paramount challenge to minorities, since they generally are proficient in the Azeri language. Also, it should be noted that instruction in the Azeri language in education could furthermore be seen to be in the interest of minorities, as a way to provide for better guarantees as to social mobility and career opportunities.

Spoken by the majority of the population, the Azeri language is a Turkic language which, prior to 2001, used the Cyrillic script. However, and by way of bringing the Azeri language “into line with the Turkish alphabet”, in September 2001, the President ordered that the Azeri language should henceforth use the Latin script. (Lattimer 2003: 24) This decision, which has alarmed not only minority communities but also the ethnic Azeris, can presumably also be understood as an effort to strengthen the Azeri language by distancing it from, as well as reducing the status of, the Russian language, which still is largely used as the administrative language of communication in the country. In fact, the Russian language is the second most used language of communication, spoken also by “ethnic Azeris who bilingually use Russian and Azerbaijani” (Popjanevski 2006: 64). Apart from Russian, which holds a particular position due to the fact that it is understood by the majority of the Azerbaijani interlocutors, Azerbaijan hosts a variety of smaller linguistic minorities, like the Lezgi, Georgian and Talysh.

The deteriorating status of minority languages is particularly blatant as regards the Russian language, which had such a predominant position in Azerbaijan prior to independence. Indeed, during Soviet rule, the strong position of the Russian language had relegated the Azerbaijani language to a second-rate status, which meant that not only was Russian used as the language of administration, but also that “the majority of the schools were in Russian” (Gerber 2007: 26). Thus, prior to 1991, even though there were schools with instruction in the Azerbaijani language, these were by far outnumbered by the Russian-speaking educational establishments. From 1991 to 2001, the main languages of instruction in the educational system were Azeri and Russian, respectively. However, since 2001, the educational reforms have led to the closing down of many Russian-speaking schools and today instruction in Azerbaijani accounts for approximately 80-90% of the schools in the country. (Gerber 2007: 26)

Even though the Azeri language has predominantly become the language of instruction in the Azerbaijani school system, instruction of minority languages is offered in regions which are densely populated by minority communities. Thus, in the Lezgin-populated regions in the north, as well as in the Talysh-dominated regions in the south, minority pupils are offered “lessons of their mother tongue two hours per week, from the first to the fourth grade” (Gerber 2007: 53). Furthermore, as concerns especially the Lezgin minority, being the numerically largest minority language at present, the State has introduced measures for the promotion of the Lezgin language, by sponsoring “Lezgin-language newspapers and radio programmes” (Lattimer 2003: 17). Another example of the importance given to the Lezgin language is that one branch of the Baku Teacher Training College, located in Gussary, “prepares students to teach Lezgin in primary schools” (Lattimer 2003: 17).

As attested by interviews, carried out among representatives from the Lezgi and Talysh minority communities, amongst others, instruction in the state language in school is unproblematic and, in fact, is welcomed by these minority communities since they feel that “their interests are best served by achieving a good command of the state language” (Gerber 2007: 54). Proficiency in the state language is viewed as of paramount importance, since this is a prerequisite to access higher education institutions in Azerbaijan. Thus, without a good command of the state language, these minority communities would not be able to compete on equal terms with the ethnic Azeris. (Gerber 2007: 54).

Legislation in minority language rights upon gaining status as ENP-state

Azerbaijan ratified the Framework Convention on National Minorities (FCNM) on the 26th of June 2000 and in January 2001 Azerbaijan became a full member of the Council of Europe. Upon accession to the Council of Europe, the poor human rights record of Azerbaijan became blatantly clear in the “lengthy list of conditions, which the country was required to meet after its accession, including the adoption of a law on ethnic minorities” (Lattimer 2003: 25). Even though the country has made progress in the legislative domain, the path towards full compliance is cumbersome, especially in the domain of minority rights, which is particularly blatant in that the adoption of a law on ethnic minorities,

which the Azerbaijani government “committed itself to adopting within three years of its accession” (i.e. before 25 January 2004), has yet to be adopted. (ECRI Report 2006: 17)

The cumbersome road to complying with the minority rights conditionality should be understood, both as a consequence of the still unresolved conflict over Nagorno-Karabakh, but also due to the nature of the authoritarian regime, whose oppressive policies have left a very weak civil society.²⁹³ The stance of the Azerbaijani political leadership is problematic and involves a balancing act. On the one hand, it is in the national interest of the Azeri state, both economically as well as security-wise, to pursue a pro-western foreign policy agenda, which consequently requires the Azeri state to adopt legislation favouring minority rights’ protection. On the other hand, minority rights protection is perceived to go counter to the strengthening of the internal stability of the country, where a strong Azeri national identity is deemed indispensable in preventing any future secessionist minority claims and, above all, in finding a solution to the Nagorno-Karabakh conflict. Thus, the fact that “Azerbaijan is attempting to promote a civic national identity is visible in many areas of the legal framework as regards minorities” (Popjanevski 2006: 72).

The poor implementation of existing legislation is consistently pointed out in the monitoring reports and, in fact, is not limited to the domain of minority rights legislation, but refers to a more general problem which is the weakness of the rule of law in the country. In fact, in order to render minority rights protection more effective in the country, “particular attention needs to be paid to the weak rule of law in Azerbaijan, in general, and *de facto* application of minority rights provisions, in particular” (Popjanevski 2006: 73). Furthermore, the Nagorno-Karabakh territory and the adjacent regions, which are not under the Azeri government’s effective control, are not part of the assessments, thus, are not included in the investigation pertaining to minority language rights

²⁹³ The oppressive policies pursued by the regime have produced a situation where minority communities generally absent from coming forward to claim their minority rights. In fact, the climate generated by the conflict in Nagorno-Karabakh has entailed that minority rights claims are generally equated with separatism and secession where minority representatives have been accused of being traitors and enemies of the state. Cf. (ECRI Report 2006: 18).

legislation. Just as in the case of Georgia, the assessments from the two monitoring bodies in the domain of minority language rights are scarce and therefore other sources from 2006 have been consulted.²⁹⁴

Non-discrimination

General guarantees against discrimination are provided for by the Azerbaijani legislation. The equality provisions are constitutionally protected in Article 25 which stipulates that “the State guarantees equality of rights and liberties of everyone, irrespective of race, nationality, religion, language, gender, origin, property status, occupation, beliefs, affiliation with political parties, trade unions or other public associations” (Art. 25, Constitution, 1995). The same article, furthermore, declares that limitation of these rights pertaining to the above-mentioned categories is prohibited. (Art. 25, Constitution) Non-discrimination legislative provisions are also provided for in the spheres of civil law and criminal law. Non-discrimination in the area of employment is provided for in the Labour Code, adopted in 1999, where Article 16 prohibits “discrimination in offering employment and in defining rights and duties arising from employment on the grounds, *inter alia*, of nationality, race or religion” (ECRI Report 2006: 11). The Labour Code, furthermore, stipulates that “a person who has been subjected to discrimination has (...) the right to appeal to the court and demand restoration” (Popjanevski 2006: 70). The penalisation of discrimination is constitutionally enshrined in that the Constitution prohibits “agitation and propaganda aimed at arousing racial, national, religious or social difference and hostility”, as well as being provided for in the Criminal Code. (Popjanevski 2006: 70) Various articles in the Criminal Code prohibit discrimination “on the grounds of, *inter alia*, ethnic origin, language or religious belief” and, furthermore, ban “incitement to national, racial, religious hatred or the debasing of national dignity and discrimination” (ECRI Report 2006: 9).

²⁹⁴ European Commission against Racism and Intolerance (2007) *Second report on Azerbaijan adopted on 15 December 2006*, CRI (2007) 22, Strasbourg, 24 May 2007, http://www.coe.int/t/dghl/monitoring/ecri/activities/countrybycountry_en.asp, 2012-03-09. Popjanevski, J. (2006) “Minorities and the State in the South Caucasus: Assessing the Protection of National Minorities in Georgia and Azerbaijan”, *Silk Road Paper*, September 2006. Washington-Uppsala: Central-Asia Caucasus Institute & Silk Road Studies Program – Joint Transatlantic Research and Policy Centre.

Although general guarantees exist in the domain of non-discrimination, the monitoring reports display concern as to the poor compliance with the laws. Whereas the absence of any criminal charges is taken as evidence from the Azerbaijani authorities that discrimination does not exist in Azerbaijani society, the monitoring reports interpret the lack of prosecutions and convictions differently. Indeed, discrimination against ethnic minorities is a recurrent problem as evidenced by several reports which attest of “cases of racist and inflammatory speech or the promotion of religious intolerance by some media, members of the general public and politicians, particularly against Armenians, Russian citizens from Russia and members of some religious minorities” (ECRI Report 2006: 6). Incitement to harassment, especially against Armenians living in Azerbaijan, is particularly worrisome and calls for specific action. Thus, the ECRI report recommends the Azerbaijani authorities “to ensure an adequate response to all instances of discrimination and hate-speech against Armenians and contribute actively to generating a climate favourable to a fair and peaceful solution of the Nagorno-Karabakh conflict” (ECRI Report 2006: 6). To increase the effectiveness of protecting national minorities from discrimination and harassment, the recommendations of the ECRI are two-fold, namely, that the Azerbaijani authorities “ensure the proper implementation of the civil and administrative law provisions”, at the same time as they are recommended to “complement the existing provisions”, by adopting more comprehensive anti-discrimination legislation. (ECRI Report 2006: 11-12)

To ensure more effective implementation of existing legislation, there is a need to enhance the competencies among the judicial officials and increase the awareness of existing legislation in this domain. Thus, the ECRI report recommends that the “Azerbaijani authorities substantially increase their efforts to provide training to the police, prosecutors, judges, lawyers and trainees in the judicial system on the application of the legislation on racist offences” (ECRI Report 2006: 10) Awareness-raising and training of the judicial staff is also set as priorities in the EU-Azerbaijan Action Plan in order to increase the effectiveness of human rights and minority rights protection. (EU Report 2006: 14) Another incitement to increase awareness and competencies, thereby increasing the effectiveness of the implementation, would be to “enhance the capacity of institutions dealing with the protection and promotion of

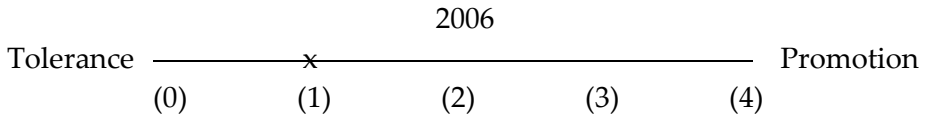
human rights, in particular the Office of the Ombudsman” (EU Report 2006: 14). Although the ECRI Report welcomes the work carried out by the Human Rights Commissioner (Ombudsperson), the ECRI is however sceptical towards increasing the capacities of this institution, since “it does not seem to ECRI that there is a special emphasis in the office’s work on the fight against racism, religious intolerance, racial discrimination or other forms of discrimination” (ECRI Report 2006: 12). Thus, the ECRI recommends that the Azerbaijani authorities could either increase the responsibilities, as well as strengthen the capacities of the existing institution, or preferably “to set up in the near future an independent specialised body to combat racism and racial discrimination” (ECRI Report 2006: 13).

The recurrent problem as regards non-discrimination legislation, in particular, is the weakness of the judicial system, in general, which inhibits the “strengthening (of) the stability and effectiveness of institutions guaranteeing democracy and the rule of law” (EU Report 2006: 14). In consequence, this state of affairs, in parallel with the negative climate, especially as concerns the Armenians, greatly reduces the likelihood that cases of discrimination will be brought to justice. Paradoxically, the Azerbaijani authorities point to the lack of criminal charges as evidence of the high level of tolerance within society, which explains that “no complaint of racial discrimination (...) has been brought to their attention”, and therefore there is no need for more comprehensive anti-discrimination legislation to be adopted. (ECRI Report 2006: 11) Thus, the recommendations of the ECRI, that Azerbaijani authorities complement existing legislation, “by adopting comprehensive provisions prohibiting racial discrimination in a precise and exhaustive manner to ensure that all areas of life such as education, access to housing, to public services and to public places”, does not constitute a basis for discussion in Azerbaijan at present. (ECRI Report 2006: 11)

The legal provisions pertaining to non-discrimination exist, where the equality provisions are constitutionally protected, and non-discrimination provisions are integrated both in the Labour Code, as well as in the Criminal Code. However, and as emphasised by the ECRI Report, to encounter the existing discrimination in the Azerbaijani society, which also permeates the judiciary system, it is important that existing legislation is complemented by more comprehensive anti-discrimination

provisions. On the basis of the index-scale, Azerbaijan is positioned on the level of 1.0.

Fig. 14.1. Azerbaijan and level of rule adoption in non-discrimination upon gaining status as ENP-state



- (0): Absence of any non-discrimination norm;
- (1): General provisions such as an equality clause in the Constitution;
- (2): Non-discrimination laws are inserted in specific laws;
- (3): Comprehensive anti-discrimination legislation which then means that there has been a complete transposition of the EU anti-discrimination *acquis*;
- (4): Non-discrimination laws exceed the minimum requirements of the Directive.

Minority language use in official contexts

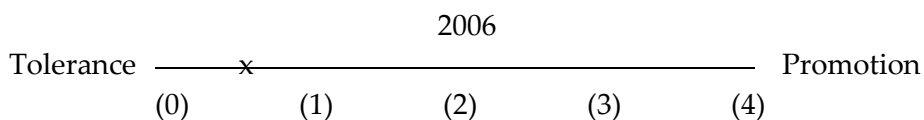
In 1995, the Azerbaijani language received the status of sole official language, as articulated by the Constitution. (Art. 21, Constitution, 1995) However, at the same time the Constitution enshrined the right for national minorities to freely use their mother tongue, as well as to have the right to receive education in “any language, as desired” (Art. 45, Constitution). However, in recent years and most likely as a reaction to the special position of the Russian language, which still largely is in use in administrative communications, the Azerbaijani authorities have, by way of reform, strengthened the use of the state language to the detriment of minority languages. (Popjanevski 2006: 65) Indeed, in 2002, the Azerbaijani Parliament adopted a new Law on State Language which stipulates that “all services, procedures in state agencies, NGOs, and trade unions must be in Azerbaijani or in a foreign language with a translation into Azerbaijani” (Popjanevski 2006: 65). The new Law, as its title indicates, is primarily concerned with provisions regulating the State language, and does not provide for any specific minority language rights, apart from the passage granting “the right of minority representatives to use other languages than Azerbaijani in parliamentary work” (Popjanevski 2006: 65). Provisions regulating minority language rights in

the judiciary are, however, provided for, both in the realm of civil law and criminal law. This means that parties in court proceedings are entitled to “select the procedural language, depending on the majority language of the locality” (Popjanevski 2006: 66). Furthermore, and according to the Criminal Procedural Code, “any person, suspected of, or charged with, a crime, has the right to make statements, address the court, and file complaints in his or her own language, and to receive translation free of charge” (Popjanevski 2006: 66).

The trend towards strengthening the state language to the detriment of minority languages is also seen in the fact that, although Azerbaijan signed the European Charter for Regional or Minority Languages (ECRML) in December 2001, this legal instrument has not yet been ratified. The non-ratification has been explained, not by a lack of political will, but by a lack of financial resources “for financing all the measures that need to be taken in order to fully implement this instrument” (ECRI Report 2006: 7). The non-ratification is pointed out by the ECRI Report which “reiterates its recommendation that Azerbaijan ratify (...) the European Charter for Regional or Minority Languages” (ECRI Report 2006: 8). Minority language rights are, however, neither an area of priority in the EU-Azerbaijan Action Plan, nor call for any specific assessment in the ECRI Report. The reason for this is presumably related to the fact that minority representatives, generally, seem content with the laws regulating the use of the State language. Thus, the stance of the ECRI is lukewarm and only points out that the Azerbaijani authorities should “monitor the implementation of the legislation on languages in order to identify any problems that national minorities may face in this regard. Where necessary, the authorities should take steps, ensuring that this legislation and its implementation do not impact negatively on the development of national minorities’ languages” (ECRI Report 2006: 19).

The assessments of the use of minority language rights in official contexts are, particularly, sparse in the monitoring reports. However, what is clear is that the legislative provisions, enabling minorities to use their language in official contexts, are almost non-existent and apart from the Constitution, which enshrines the right for national minorities to freely use their minority languages, this does not seem to apply to the official realm. Thus, on the basis of the index-scale, Azerbaijan is positioned on the level of 0.5.

Fig. 14.2. Azerbaijan and level of rule adoption in minority language use in official contexts upon gaining status as ENP-state



- (0): No recognition of minority languages;
- (1): The right to use the minority language in official contexts (before judicial and administrative authorities; i.e. the right to a translator);
- (2): The minority language can be used in Personal and Place Names (public signs);
- (3): The minority language can be used in official documents;
- (4): Minority language having status as official language.

Minority language rights in education

Just as the strengthening of the state language is pertinent in the domain of minority language use in official contexts, the same trend is blatant also in the laws regulating minority language use in education. Thus, with the recent educational reforms, where the strengthening of the State language is part of the efforts to standardise the curriculum, the legal status of minority languages has been weakened. Indeed, whereas the previous 1992 Law on Education provided for “rights for national minorities to receive education in their own language”, the newly reformed Law on Education seriously weakens this right, by increasing “the number of subjects taught in Azerbaijani as well as the use of the Latin alphabet” (Popjanevski 2006: 68). Thus, although minority language rights in education are constitutionally protected, in that it is stipulated that “Everyone has the right to be educated, carry out creative activity in any language, as desired” (Art. 45, Constitution 1995), the new Law on State Language does not provide any guarantees of this constitutionally protected right. (Popjanevski 2006: 68)

The strengthening of the state language in education does not mean, however, that instruction in minority languages no longer exists in Azerbaijan. Although instruction in the Azerbaijani language in educational establishments accounts for 93.3%, there are minority-run educational establishments which provide instruction in minority languages. Apart from a great many schools which provide for

instruction in the Russian language, mainly in Baku, there are also some Jewish and Georgian schools. Indeed, in the western parts of Azerbaijan, there are still Georgian schools where “ethnic Georgians receive education in Georgian”, on the basis of the Georgian curriculum. (Popjanevski 2006: 68). Apart from these minority-run schools, in the remaining 400 Azerbaijani schools, minorities are offered the possibility to learn their minority languages as a separate subject. Indeed, in regions where minorities live compactly, “in general, two hours a week are devoted to teaching minority languages, from the first to the fourth grade” (ECRI Report 2006: 18).

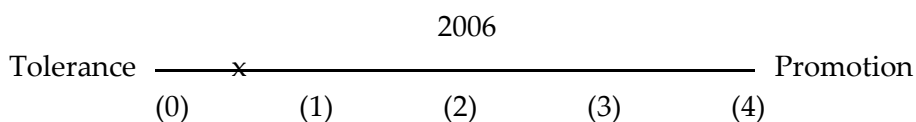
Minority language rights in education neither seem to be an issue of controversy amongst the minority communities themselves, nor from the monitoring bodies, whose assessments are, just as in the domain of minority language use in official contexts, sparse. Since the strengthening of the state language does not go counter to the principles of the FCNM, and is not considered “an illegitimate objective”, the legal status of minority rights in education does not call for great concern in the monitoring reports. (Popjanevski 2006: 68) It is, however, noted that the rapid transition from one curriculum to another might have negative consequences for persons belonging to certain minority groups, who “may be unable to compete with ethnic Azeris, or other minority groups who use Azerbaijani, in the education and labour fields” (Popjanevski 2006: 69). At the same time, it is noted that the recent educational reforms seem to have had a positive impact on particularly the Chechen children, who, up until 2003, were prohibited access to local public schools. In this regard, the ECRI Report notes, with interest, “that the government started to allow Chechen children to register in public schools in 2003” (ECRI Report 2006: 26).

Regarding the teaching of minority languages, the quality of minority language textbooks has called for some concern. Whereas the ECRI Report welcomes the initiatives of the Azerbaijani authorities to have improved the textbooks for the Lezgin and the Talysh minorities, the poor quality or the outright lack of minority language textbooks, as concerns other minority communities, is a recurrent problem. In fact, and as underlined by the ECRI report, “textbooks for learning other minority languages, such as Tats and Avar are still unsuitable” (ECRI Report 2006: 18). Furthermore, as regards these particular minority groups, the lack of

teachers, qualified to teach these minority languages, raises concern. Although the Azerbaijani authorities have stated that the Ministry of Education is in the process of taking action in order to improve this situation, the ECRI report, nevertheless, recommends the authorities “to step up their efforts to improve the quality of teaching of minority languages and cultures in public schools” (ECRI Report 2006: 19).

Although minority language rights in education are constitutionally protected, the recent educational reforms strongly limit the legal status of minority languages in education. Indeed, the standardisation of the Azerbaijani curriculum entails the strengthening of the State language to the detriment of minority languages. Hence, although minority schools still do exist *de facto*, these are not *de jure* provided for in the recent Law on Education. According to the Law on Education, Azerbaijan would be positioned at the far left end of the index scale. However, since Article 45, of the Constitution, does enshrine the rights for minorities to freely choose the language of instruction, Azerbaijan is positioned on the level of 0.5.

Fig. 14.3. Azerbaijan and level of rule adoption in minority language rights in education upon gaining status as ENP-state



- (0): No education of or in minority language;
- (1): Children belonging to minorities have the right to learn their mother tongue in school;
- (2): At least parts of the curriculum (e.g. history or religion) are taught in the minority language;
- (3): Minorities have the right to educate their children completely in the mother tongue, either in state schools with a complete syllabus taught in the minority language or in specific minority schools;
- (4): Minorities have their own universities.

LEVEL OF RULE ADOPTION IN MINORITY LANGUAGE RIGHTS LEGISLATION UPON INITIAL STATUS

Prior to presenting the results of how the three categories have fared as concerns rule adoption in minority language rights, initially, it is indispensable to reiterate a few considerations of importance for the analysis. In some states, minority language rights are graded, which, consequently, means that some minorities are provided with more legislative rights than others. In these cases, pertinent for instance in Macedonia, Kosovo as well as in Moldova, I have chosen to focus on the rights granted to those minorities where the deepest conflictive lines have produced the most ethnic tension and conflict. Thus, in Macedonia the focus of attention is the Albanian minority, in Kosovo the Serb minority and in Moldova the Russian minority, where the rights granted to these minorities have been singled out in terms of the measurement of rule adoption. Another issue of relevance, which has to be pointed out, is the quality of the monitoring reports. In some states the monitoring reports have been rather scarce, particularly pertinent as regards the ENP states, and in these cases additional sources have been consulted. Furthermore, although the monitoring reports focus equally much on legislation adopted, as well as on implementation, this study is only concerned with measuring the legislation adopted.

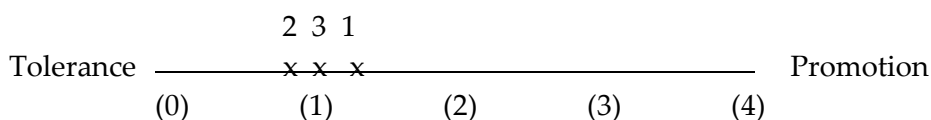
Non-discrimination: Inter-category variation

One would have expected that the states, when initially acquiring status as candidate state, potential candidate state and ENP-state, respectively, would have been positioned according to their temporal location to the prospective EU membership reward. Consequently, it was assumed that the category of candidate states (category 1), would have adopted more extensive legislation in the domain of minority language rights than the potential candidate states (category 2), which, in turn, were expected to have proceeded further than the ENP states (category 3). In the domain of

legislation pertaining to non-discrimination, the results show that even though category 1 does score higher than the other two categories, the same is not true for category 2, which actually scores lower than category 3. Indeed, when we calculate the means of the first category we notice that the candidate states attain the level of 1.25. As shown in figure 15.1., the distance between categories 1 and 2 is the most pronounced, since the potential candidate states only attain the level of 0.83, not even amounting to having provided for general legal provisions in the domain of non-discrimination. Category 3 acquires an intermediate position, having attained the level of 1.0, providing for general legal guarantees against discrimination.

What is possibly even more striking is that the variation between the three categories is minor, and all three categories conglomerate around position 1.0, which means that all three categories, more or less, have provided for general legal guarantees against discrimination. When we proceed to calculate the Eta square value, which amounts to 0.208, the modest relationship between the categories' temporal location to the prospective EU membership reward and the level of rule adoption is confirmed, since the variation in the level of rule adoption in the area of non-discrimination is only explained by 20.8% of the categories' temporal location to the prospective EU membership reward.

Fig 15.1. Initial status: Non-discrimination and inter-category variations: Eta square value: 0.208; significance value: 0.558



- (0): Absence of any non-discrimination norm;
- (1): General provisions such as an equality clause in the Constitution;
- (2): Non-discrimination laws are inserted in specific laws;
- (3): Comprehensive anti-discrimination legislation which then means that there has been a complete transposition of the EU anti-discrimination *acquis*;
- (4): Non-discrimination laws exceed the minimum requirements of the Directive.

Non-discrimination: Intra-category variation

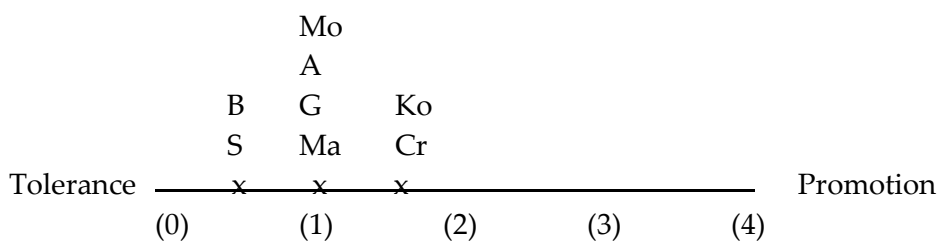
When we scrutinise the results, however, by focusing more closely on the individual states, one concludes that the intra-category variations are more important and, in fact, substantial, in some cases. Indeed, as shown in figure 15.2., Croatia scores higher (1.5) than Macedonia (1.0), even though one has to acknowledge that the variation is rather minor. However, when we proceed to category 2, the variation between the states is substantial, and in this category Kosovo stands out since, by having adopted the Anti-Discrimination Law in 2004, they have positioned themselves on the same level of rule adoption as Croatia (1.5). In comparison to both Bosnia and Serbia, which both provide for very weak non-discrimination legislation, and which score a mere 0.5, the variation is substantial between the states forming category 2. In the case of Serbia, the weak position is primarily related to the difficult legal situation the country finds itself in. Indeed, 2003 marks the year when the Former Republic of Yugoslavia, consisting of Serbia, including the Autonomous Regions of Vojvodina and Kosovo (*de jure*), and Montenegro, becomes void and a loose confederation, the Union of Serbia and Montenegro is established. Thus, in 2003 Serbia finds itself in a constitutional limbo which entails that the status of the legal system is weakened, which obviously has a detrimental effect upon the legislation pertaining to non-discrimination.

The case of Bosnia in 2003 is less transitional and relates more to the problematic constitutional status that the Dayton Peace Agreement from 1995 has imposed on the Bosnian constitutional design, in which the ethno-territorial autonomies, carved out during the war, have been preserved. This has subsequently entailed a complex legal federative system, where the levels of the Entities have been strengthened to the detriment of the State level, creating two phantom states within a weak whole. Thus, the lack of legal harmonisation between the State level and the Entities, on the one hand, and between the Entity of the Federation and the Cantonal levels, on the other, has created a problematic politico-legal situation. Additionally, the overarching privileged status of the three constituent nations, Serbs, Croats and Bosniaks, constitutionally enshrined, creates a situation where the legal protection of those not belonging to the constituent nations is heavily reduced. In fact, one of the negative consequences of the Dayton Peace Agreement has been the

construction of a legal situation where national minorities, or the “Others”, actually have become legally discriminated against. Although both Bosnia and Kosovo are internationally administered states, thus, constituting semi-protectorates, the legal status of their respective minorities differs substantially. In fact, whereas there is quite extensive non-discrimination legislation in Kosovo, these legal rights are heavily curtailed in Bosnia. However, from a conflict-resolution perspective, whereas the guaranteeing of the equality of the three constituent nations in Bosnia was paramount to ending the conflict, the Kosovo case was very different. Indeed, in the case of Kosovo, as manifested by UN resolution 1244, the conflict resolution mechanisms centred on extensive rights for national minorities, in general, and for the Serb minority, in particular.

As far as the ENP states are concerned, there is no variation whatsoever between these three states, which are the furthest away from the prospective EU membership reward. As shown in figure 15.2., they all have adopted general legal guarantees against discrimination and are positioned on the level of 1.0, according to the index scale. The three states of category 3 are, thus, positioned along with candidate state Macedonia, in between Serbia and Bosnia, to the left, and Croatia and Kosovo, to the right.

Fig 15.2. Initial status: Non-discrimination and intra-category variations

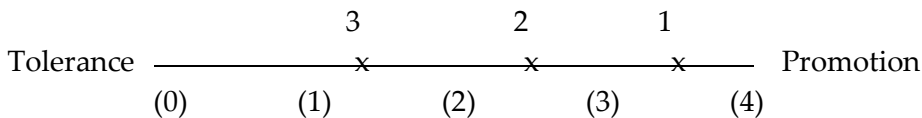


- (0): Absence of any non-discrimination norm;
- (1): General provisions such as an equality clause in the Constitution;
- (2): Non-discrimination laws are inserted in specific laws;
- (3): Comprehensive anti-discrimination legislation which then means that there has been a complete transposition of the EU anti-discrimination *acquis*;
- (4): Non-discrimination laws exceed the minimum requirements of the Directive.

Minority language use in official contexts: Inter-category variation

Whereas the variations between the three categories are minor, pertaining to the non-discrimination norm, the same is not true for the other two norms, the right to use minority languages in official contexts, and the right for minorities' to get educated in the minority language. Indeed, as regards particularly minority language use in official contexts, the ranking is spread along the index scale according to the categories' temporal location to the prospective EU membership reward. As shown in figure 15.3., there is fairly good variation between category 1 and 2, where the candidate states are positioned at the far right of the index scale (3.5). Category 2 has acquired an intermediate position (2.5), between category 1 and 3, where the ENP-states have been left on the margins, having adopted very moderate legislation in the domain of minority language rights use in official contexts (1.33). This is confirmed when we calculate the measures of association and conclude that the Eta square value amounts to 0.342. This consequently means that the variation in the level of rule adoption in this domain is explained by 34.2% of the categories' temporal location to the prospective EU membership reward. However, not only is there substantial inter-category variation, the variations within the different categories are even more substantial.

Figure 15.3. Initial status: Official use of minority languages and inter-category variations: Eta square value: 0.342; significance value: 0.351



- (0): No recognition of minority languages;
- (1): The right to use the minority language in official contexts (before judicial and administrative authorities; i.e. the right to a translator);
- (2): The minority language can be used in Personal and Place Names (public signs);
- (3): The minority language can be used in official documents;
- (4): Minority language having status as official language.

Minority language use in official contexts: Intra-category variation

The variation is relatively minor within the first category, as compared with the other two categories. As shown in figure 15.4., in the first category, Macedonia has adopted the most extensive legislation in this domain and scores the maximum 4.0, and Croatia is close, having attained the level of 3.0. The very extensive rights in the case of Macedonia are primarily a result of the peace agreement, established by the Ohrid Framework Agreement, and are, thus, very much limited to the granting of very extensive minority language rights, including official language status, to the Albanian language, since this was seen as a prerequisite for the prevention of future ethnic conflict in Macedonia. In category 2, the dispersion between the three states is considerably greater since Bosnia stands out from both Serbia and particularly Kosovo. Indeed, whereas Kosovo scores the maximum 4.0, Serbia has attained the level of 3.0, consequently, leaving Bosnia far behind. Indeed, Bosnia only scores 0.5, providing for very limited rights in the sphere of minority language rights use in official contexts. Thus, whereas both Serbia and Kosovo are ranked on the same level as the candidate states, respectively, and where the official language status granted to the Serbian language in Kosovo is a direct consequence of UN Resolution 1244, and the establishment of the UNMIK governance, Bosnia scores the same low level of rule adoption as the two ENP states, Georgia and Azerbaijan. In the case of Bosnia, the focus on the equality of the languages of the three constituent nations has been the centre of attention, which consequently has relegated legislative provisions of minority language use to the background.

Just as the intra-category variations are substantial as regards category 2, the same applies to category 3, in which both Georgia and Azerbaijan are ranked low (0.5), as opposed to Moldova which ranks substantially higher (3.0), being positioned on the same score as both Croatia and Serbia. The substantial variation within the ENP-category is interesting, since the Georgian and the Moldovan cases are quite similar as regards the sensitivity of the linguistic issue in both states. Indeed, both states struggle with weak state languages, and the necessity to strengthen the same are part of the state-building processes in both countries. This problem is, particularly, acute in the case of Georgia, where the

segregation of the numerically large minorities primarily is a result of national minorities' poor command of the Georgian language. In Georgia, the low score can, thus, be seen as a result of the policy stance of the Georgian authorities, which has been to strengthen the state language to the detriment of the use of minority languages.

The Moldovan case, although similar as regards the prerequisites of the weak state language, is, however, substantially different as regards the outcome of the legislative rights granted to minority language use, since Moldova scores high (3.0). Indeed, in the Moldovan case, the sensitivity of the Russian minority language, that has *de facto* official language status, is very much linked to the Transnistrian conflict. In regards to the conflict, the policy of the Moldovan authorities has been to stall any discussions on the linguistic issue for fear that the frozen conflict with the breakaway republic would flare up again if the Moldovan authorities would decide to promote the strengthening of the state language. Hence, as regards the extensive rights granted to the official use of minority languages, this largely concerns the status of the Russian minority language, even though the rights granted to the Gagauz language, however primarily limited to the Autonomous region of Gagauzia, are also extensive. Although Azerbaijan scores as low as Georgia, the promotion of the state language to the detriment of minority languages in Azerbaijan, is rather "unproblematic", in the sense that the linguistic issue and the civic integration campaign is not as controversial in the authoritarian state as it is in the Georgian case. Indeed, the strengthening of the Azerbaijani state language does not entail the same language impediments as in Georgia since national minorities have a good command of the state language. In fact, minorities' command of the Azerbaijani state language is, generally, good, and the monitoring reports on the whole don't indicate that the strengthening of the state language causes concern among minority communities. However, it has to be underlined that any opposition to the state policies has been effectively crushed by the authoritarian regime, so even if these minority language rights claims exist, they are not voiced for fear of severe repression.

Figure 15.4. Initial status: Official use of minority languages and intra-category variations

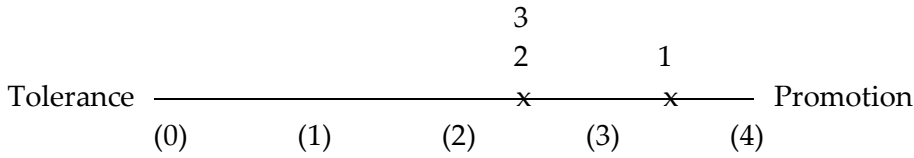


- (0): No recognition of minority languages;
- (1): The right to use the minority language in official contexts (before judicial and administrative authorities; i.e. the right to a translator);
- (2): The minority language can be used in Personal and Place Names (public signs);
- (3): The minority language can be used in official documents;
- (4): Minority language having status as official language.

Minority language rights in education: Inter-category variation

Legislative provisions, in the area of minority language rights in education, seem less controversial than in the domain of minority language use, and do not entail the same inter-category variation. Indeed, as shown in figure 15.5., all three categories have quite extensively provided for legislation in this field, with the candidate states having adopted the most extensive legislation (3.5). There is, however, some variation with regard to both the potential candidate states, as well as the ENP states, which both score 2.5. However, when we proceed to calculate the measures of association, to find out to what extent the temporal location of the prospective EU membership reward explains variations in the level of rule adoption, we can conclude that this relation is quite insignificant and only amounts to 10% (Eta square: 0.1). However, even though the inter-category variation is almost insignificant, when one proceeds to scrutinise the results on a more individual level, by studying the intra-categorical variations, one notices huge discrepancies, primarily, in the two categories the furthest away from the prospective EU membership reward.

Figure 15.5. Initial status: Minority language rights in education and inter-category variations: Eta square value: 0.10; significance value: 0.768



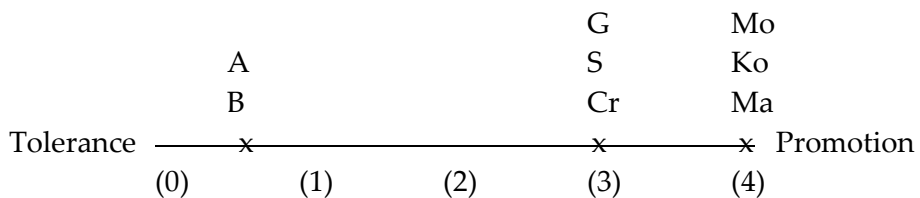
- (0): No education of or in minority language;
- (1): Children belonging to minorities have the right to learn their mother tongue in school;
- (2): At least parts of the curriculum (e.g. history or religion) are taught in the minority language;
- (3): Minorities have the right to educate their children completely in the mother tongue, either in state schools with a complete syllabus taught in the minority language or in specific minority schools;
- (4): Minorities have their own universities.

Minority language rights in education: Intra-category variation

On an individual state level basis, the variations within the three categories are substantial, and the distribution of states is, not surprisingly, quite similar to the situation of rule adoption pertaining to minority language rights in official contexts. As shown in figure 15.6., in the category of the candidate states, the variation is minor with Croatia scoring 3.0 and Macedonia 4.0. In the same vein as in the context of the official use of minority languages, in Macedonia the extensive rights granted to minority languages in education is, primarily, a result of the Ohrid Framework Agreement, just as the rights provided for are principally directed towards the Albanian minority. As concerns category 2, however, the discrepancies between the potential candidate states are huge and, primarily, relates to the very low score of Bosnia, which is consistent in its policy towards minority language rights, thus, scoring a low 0.5. Serbia is also consistent and scores a high 3.0, with finally Kosovo having provided for the most extensive legislation, since the Kosovo Serbs have their own university (4.0).

As concerns category 3, the same huge discrepancies as in category 2 are noticeable. Moldova scores the maximum 4.0, Georgia is positioned on the level of 3.0, and Azerbaijan scores a low 0.5. The extensive rights, provided for in the Moldovan case, concerns the very extensive minority language rights granted to the Russian language, where Russian-speaking universities are still provided for in Moldova. The educational rights of minorities in Georgia, in 2006, might seem astonishing in view of the restricted legislation in the area of official use of minority languages. However, it is clear that the legislative provisions in this area are, indeed, a relic from the Soviet era, and although these rights are legally provided for in 2006, the Georgian authorities have already made extensive plans, as laid out in the Law on Education, to reduce these rights in favour of compulsory instruction in the Georgian language in numerous subjects. However, in 2006, national minorities still had the legal right to receive education in full in the minority language. Just like Bosnia, Azerbaijan is consistently pursuing a rather hostile approach towards minority language rights in education, even if *de facto* minority education exists.

Figure 15.6. Initial status: Minority language rights in education and intra-category variations

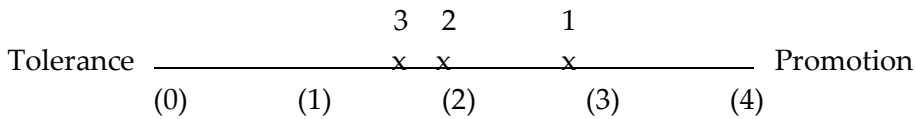


- (0): No education of or in minority language;
- (1): Children belonging to minorities have the right to learn their mother tongue in school;
- (2): At least parts of the curriculum (e.g. history or religion) are taught in the minority language;
- (3): Minorities have the right to educate their children completely in the mother tongue, either in state schools with a complete syllabus taught in the minority language or in specific minority schools;
- (4): Minorities have their own universities.

Addition of all three norms upon initial status

When adding up the three norms and the status of the level of rule adoption of the different categories, as well as the sum pertaining to the states individually, we find that category 1 has adopted the most extensive legislation (2.75), preceding category 2 that ranks second (1.94). Even though category 3 scores the lowest (1.61), the variation between category 2 and category 3 is minor.

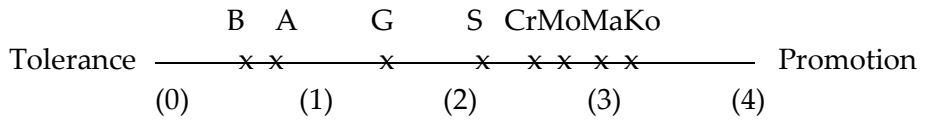
Fig. 15.7. Addition of all three norms: Inter-category variations



As expected, and as shown in figure 15.8., the variations especially within category 2 but also category 3 are substantial and the results show an important dispersion, where we notice that Kosovo, belonging to category 2, in fact, has adopted the most extensive legislation, when adding up the results from the three individual norms (3.17). Also interesting but not surprising is that Bosnia, also belonging to category 2, has fared the least well by being positioned to the far left of the index scale (0.5), closely followed by Azerbaijan (0.67). Macedonia (3.0) precedes Croatia (2.5), and what is even more surprising, so does Moldova (2.67) which belongs to category 3 and is the furthest away from the prospective EU membership reward. Georgia is positioned on an intermediate level (1.5) and is preceded by Serbia (2.17). Thus, when we have scrutinised the results from the sum of all three norms, we can conclude that even though there are inter-category variations, which are indeed displayed according to the categories' temporal location of the prospective EU membership reward, these variations are minor, compared to the substantial variations that exist within the three categories. This confirms the strong heterogeneity of the states of especially category 2, but also of the states being the furthest away from the prospective EU membership reward, category 3. Whether these intra-category variations will prevail under the impact of the speed of the prospective EU membership reward, in terms of the progress made, will be clarified in the coming chapter. However, if our hypothesis is

confirmed, not only will the inter-category variations become even more important under the impact of the speed of the prospective EU membership reward, but this would also entail that the heterogeneity within the different categories would become less manifest.

Fig. 15.8. Addition of all three norms: Intra-category variations



PROGRESS IN RULE ADOPTION IN RELATION TO THE SPEED OF THE PROSPECTIVE EU-MEMBERSHIP REWARD

Before proceeding to the analysis, it is necessary to reiterate one of the central claims around which this investigation centres, which is that the prospective EU membership reward is considered to be an effective mechanism to induce non-member states, on track of EU accession, to comply with EU minority language rights conditionality. On the basis of this claim, it has subsequently been hypothesised that the closer recipient states are to the prospective EU membership benefits, the more likely they are to have progressed to a high level of rule adoption in the three categories of minority language rights under investigation. Thus, the temporal distance to the prospective EU membership reward is argued to be a strong incentive as to the progression in the level of rule adoption. Furthermore, as already stated, even though the monitoring bodies integrate assessments of the *de facto* situation in each state under investigation, it is only the *de jure* situation that forms the basis of the measurement of this investigation. The time span of the analysis is confined to 2004 – 2010. In the case of category 1, the progress reports, that form the basis of the analysis, are limited to the time frame 2005 – 2010. The material pertaining to category 2 is limited to the time span 2004 – 2010 and, finally, the progress reports of category 3 are confined to the period between 2005 and 2010.

Non-discrimination: Inter-category variation

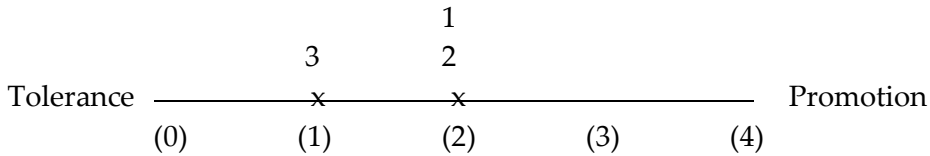
The pattern of inter-category variation is highly different when we measure how the three categories have progressed, in terms of the level of rule adoption in the area of non-discrimination, during the time span of the investigation. However, on the basis of the analytical framework, it is only partially that our expectations are confirmed. Indeed, as shown in figure 16.1., whereas the distance between categories 1 and 3 has substantially increased, positioning category 1 way ahead of category 3,

the distance between categories 1 and 2 has been nullified, since they score the same level of rule adoption. In fact, category 1, forming the candidate states and for whom the adaptation pressure is argued to be the strongest since they are temporally the closest to EU membership, scores 2.0. This consequently means that this category has made fairly good progress compared to their initial level of rule adoption (1.25). The potential candidate states, forming category 2 and for whom the adaptation pressure is argued to be less constraining since these states are temporally more distant to the prospective EU membership, surprisingly, score an equally high 2.0, levelling with category 1. The progress made in this category is substantial, compared to their initial very low score which amounted to 0.83, which, in fact, invalidates our hypothesis, partly at least. Finally, category 3 which consists of the three ENP states and for whom the prospective EU membership reward is the most distant, has not progressed at all and remains positioned on the same low score as they did initially (1.0).

The lack of progress in the third category is not surprising and only confirms our hypothesis since being temporally the furthest away from the prospective EU membership reward, there is, in fact, very little incentive to provide for a higher level of rule adoption. This, in turn, explains the substantial increase in variation which becomes clear when we proceed to calculate the Eta square which displays a significantly higher value than initially. Even though the Eta square value should be taken with precaution, since the number of cases only amounts to 8, it is nevertheless a clear indication of the direction of the association between the two variables. Indeed, whereas the relationship between the speed of the prospective EU membership reward and the level of rule adoption was quite weak initially (Eta square value: 0.208), it is clear that this correlation has substantially been strengthened when we analyse the progress made during the time span of investigation. In fact, at the end of 2010, the variation in the level of rule adoption is explained by more than 65% (Eta square value: 0.652) by the speed of the prospective EU membership reward. Although these results are in no way unexpected, and only confirm our postulated hypothesis, it is, at the same time, evident that the nullification of the distance between categories 1 and 2 goes completely counter to what was hypothesised. This, in turn, makes us question, not only, the impact of the speed dimension as an effective mechanism of adaptation pressure, but also the relevance of the

categorisation of the states of the Western Balkans. Hence, in order both to explain the unexpected, as well as the expected results, an analysis of the intra-categorical specificities calls for a closer investigation.

Fig 16.1. Progress as of 2010: Non-discrimination and inter-category variations: Eta square value: 0.652; significance value: 0.71



- (0): Absence of any non-discrimination norm;
- (1): General provisions such as an equality clause in the Constitution;
- (2): Non-discrimination laws are inserted in specific laws;
- (3): Comprehensive anti-discrimination legislation which then means that there has been a complete transposition of the EU anti-discrimination *acquis*;
- (4): Non-discrimination laws exceed the minimum requirements of the Directive.

Non-discrimination: Intra-category variation

The individual results pertaining to the two categories of the Western Balkan states are indeed highly interesting. As shown in figure 16.2., one notices that Croatia has progressed to 2.5 (from an initial 1.5), having almost transposed the whole EU *acquis* in the area of non-discrimination. Macedonia, on the other hand, has progressed only slightly having adopted moderate legislation in this domain, having progressed to 1.5 (from an initial 1.0). Even though the Croatian score of 2.5 is not exclusively limited to Croatia, since Kosovo (as one of the potential candidate states) has adopted the same extensive legislation, the Croatian case is exclusive since it is the sole case which has been assessed as having regressed from one year to another. Indeed, in the 2009 monitoring report, the EU Commission concluded that Croatia had *de jure* transposed the whole EU non-discrimination *acquis*, since the Ombudsman’s Office finally had been “transformed into an independent Equality Body” (EU Report 2009: 47). Although the EU assessment of 2009 entailed that Croatia had progressed to the level of 3.0, the following

year the EU Commission went back on its assessment, which, consequently, relegated Croatia back to its final score, 2.5, in 2010.

The EU Commission does not mention whether this decision is a result of Croatia having gone back on their previous legislation, or whether, and, what is more likely, the EU Commission had actually overlooked the lack of specific legislation in their 2009 report. However, the reasons provided by the EU Commission were that even though “the relevant directives have been transposed (...), some provisions require further alignment with the *acquis*, with regard to the exceptions to the principle of non-discrimination” (EU Report 2010: 43). Further explanation to the relegation of Croatia’s position was given by the EU Commission which stated that, even though “there is good alignment with the *acquis* and preparations are on course (...), some gaps remain in alignment of the legislation, notably on transposing labour law directives outside the scope of the Labour Act, and in the fields of anti-discrimination and gender equality” (EU Report 2010: 44). The assessment of the EU is interestingly more severe than the assessment of the Council of Europe, which reports, that same year, that the Discrimination Prevention Act “reflects the standards set in the European Council Directive on Racial Equality (2000/43/EC), and the European Council Directive on Employment Equality (2000/78/EC), and provides a clear legal basis for the protection against discrimination, *including in the field of employment*” (CoE Report 2010: 14, emphasis added). However, since the non-discrimination norm is based on the EU directives, which, in turn, are part of the EU *acquis*, the EU assessment is argued to be of higher relevance and, thus, constitutes the basis of the measurement.

The case of Croatia is also interesting in other regards since even though temporally the closest to the EU membership reward, Croatia was very slow, at least initially, to react to the recommendations of primarily the EU, but also the Council of Europe. Indeed, from 2005 up until 2007, the progress made in the area of non-discrimination is rather insignificant and even though the monitoring bodies, and especially the EU, consistently stress that Croatia needs to adopt comprehensive anti-discrimination legislation, very little progress was noted. In fact, it was not until 2008 that Croatia finally adopted a “comprehensive law on anti-discrimination”, which furthermore means good progress since “this law is aimed at full alignment with the EU *acquis*” (EU Report 2008: 12). What

is more, the moderate progress, provided for by Croatia in the first three years, should also be viewed in light of a very proactive and persistent EU Commission which, as early as 2005, is pressuring Croatia to advance in terms of adopting new legislation, stating that “a comprehensive national strategy for the elimination of discrimination has not been adopted *according to schedule*. Legislation, transposing the *acquis* in this field, will have to be introduced and implemented. Further efforts will be needed in order to ensure full conformity, including the establishment of the Equality Body, required by the *acquis*” (EU Report 2005: 78, emphasis added).

The proactive stance of the EU Commission is also noted in the fact that to press for further legislation in this domain, the EU Commission attempted, already in 2006, to speed up the adoption of legislation by the Croatian authorities, when referring to the fact that Croatia, in 2006, still had not adopted the comprehensive anti-discrimination law, which is “an important partnership priority”, and that “this process should be accelerated” (EU Report 2006: 53). In 2007, there is some progress noted since the Croatian authorities had started work on a “National Plan to Combat Discrimination” (EU Report 2007: 44). Furthermore, in July 2008, Croatia adopted a “comprehensive law on anti-discrimination”, which meant good progress since “this law is aimed at full alignment with the EU *acquis*” (EU Report 2008: 12). However, as noted by the EU Commission, the legislation adopted was “still not in line with EU standards”, which could be seen in that the Ombudsman’s Office had “not yet been transformed into an independent Equality Body” (EU Report 2008: 47-48). This criterion had, however, been complied with by 2009, when the EU Commission assessed that Croatia had *de jure* transposed the whole EU non-discrimination *acquis*, an assessment which however was revised in 2010.

What is striking is that even though Macedonia is also a candidate state, and actually scores very low in comparison to Croatia, having adopted very moderate legislation in the domain of anti-discrimination (1.5), the EU Commission neither addresses any time-schedules, nor refers to any partnership priorities in the Macedonian case. In fact, the lack of a proactive stance from the EU is surprising, seeing as how Macedonia is temporally as close as Croatia is to the prospective EU membership reward. Indeed, the low level of anti-discrimination legislation in

Macedonia does not seem to be of great concern to the EU Commission, which overall limits its recommendations to point out that Macedonia has not done enough in this domain. However, in the 2007 Report, the EU Commission did stress that, “in the area of anti-discrimination policies, further efforts are required to fight against all forms of discrimination. A comprehensive law on anti-discrimination should allow for more effective mechanisms to identify, pursue, and penalise all forms of discrimination by state, and non-state bodies against individuals or groups” (EU Report 2007: 15). The same recommendation, or rather the same findings, from the EU is consistently repeated up until 2010. In 2008, for instance, the EU Commission pointed out that “in the area of anti-discrimination policies, neither a framework law on anti-discrimination has yet been enacted, nor has this issue been clearly regulated in the existing legal provisions” (EU Report 2008: 19). This is repeated in 2009 when the EU Commission stated that “little progress has been made in the area of anti-discrimination policy” (EU Report 2009: 19-20).

Even though the Macedonian authorities, finally, seem to have acknowledged the EU “call” for a framework law on anti-discrimination, since they did adopt one in 2010, Macedonia is only assessed as having made “partial progress in the area of anti-discrimination policy”, since this law “has important gaps” (EU Report 2010: 19-20). The more relaxed stance of the EU Commission in the Macedonian case is difficult to comprehend, not only in light of the low level of anti-discrimination legislation, but also in light of an apparent reluctance from the Macedonian authorities to provide for more extensive legislation in this domain. This reluctance became evident in 2006, when the Advisory Committee, during an interview with Macedonian state officials, took note of the fact that some of the interviewees did not see the need for a “special anti-discrimination law” (CoE Report 2006: 11).

Taken into account that the progress of Croatia is considerable, even though Croatia did not proceed as far as the level required for EU accession in this domain, and that of Macedonia is minor, we are confronted with a situation where actually the heterogeneity of category 1 is more manifest than was initially the case. Thus, instead of observing a decrease in the intra-category variation, as we expected, the opposite has occurred. If rule adoption in the domain of non-discrimination were to be indicative of the entire conditionality-compliance process, one would be

inclined to suspect that the Macedonian EU accession might very well become a time-consuming endeavour. In fact, a possible scenario could be that some of the potential candidate states, most presumably Serbia, could acquire EU membership before Macedonia.

Just as the results pertaining to category 1 are interesting, since they go counter to what was to be expected, so are the developments within category 2, since these states have indeed adopted the same level of extensive legislation as category 1. Thus, the progress made, compared to their initial status, is substantial, and especially the Serbian case stands out in this regard since they have progressed from the very low level of 0.5, in 2003, to 2.0, in 2010. Bosnia, which attained the same low result as Serbia, upon potential candidate state accession, has proceeded to 1.5, and, finally, Kosovo, which had, by far, the most extensive legislation adopted in 2004, has progressed from 1.5 to 2.5, positioning itself on the same high level of rule adoption as Croatia. This, furthermore, has entailed that the strong intra-categorical variation, that was noted initially, has remained. Although the Serbian progress is remarkable, one has to take into account the difficult legal situation that Serbia found itself in, upon accession to potential candidate state, which obviously negatively impacted on the level of rule adoption in the area of non-discrimination in 2003. At the same time, it can be noted that, since the legal transition of Serbia was prolonged in that also the Union of Serbia and Montenegro was dissolved, in 2006, when the Republic of Serbia was finally proclaimed, the legal progress in terms of non-discrimination legislation has, in fact, been remarkably quick. Indeed, whereas the progress reports between 2004 and 2006 indicated a rather worrisome legal situation, in the domain of non-discrimination, it is clear that this situation had been altered from 2007.

In 2007, the EU Commission commended the new Constitution of the Republic of Serbia, adopted in November 2006, and stipulating the prohibition of “all forms of direct and indirect discrimination” (EU Report 2007: 14). Even though the report of the European Commission against Racism and Intolerance (ECRI)²⁹⁵ also recognised the progress entailed by the new Constitution, at the same time the ECRI noted that “a

²⁹⁵ The European Commission against Racism and Intolerance, established by the Council of Europe, is an independent human rights monitoring body which assesses issues pertaining to racism and intolerance in the member states of the Council of Europe.

number of measures remain to be taken” (ECRI Report 2007: 6). In fact, and as underlined by the ECRI, “there is no single law in Serbia prohibiting racial discrimination in areas such as education, employment or access to public places” (ECRI Report 2007: 12). Even though the EU Commission did refer to the lack of a comprehensive anti-discrimination law, as early as 2005, since they stated that “there has been no progress” in this domain, a more elaborated concern started to be voiced in 2008, coinciding with the unilateral proclamation of Kosovar independence. (EU Report 2005: 20)

Although the proclamation of Kosovo independence contributed to fuel inter-ethnic tensions in Serbia, obviously this did not impact negatively on rule adoption since, in March 2009, Serbia adopted the “Law on Prohibition of Discrimination” (...), which marks a “step forward in the protection of human rights” (EU Report 2009: 17). The evaluation of the EU in terms of the Law is that it “is a welcome step towards the implementation of the European standards in this field. However, certain definitions, relating to discrimination, still need to be better formulated. A number of exceptions are wider than allowed for under European standards, and the rights of NGOs and associations to pursue discrimination before the courts still need to be clarified” (EU Report 2009: 37). In 2010, the EU Commission concluded by stating that “overall, the legal framework on the respect for and protection of minorities in Serbia is in place” (EU Report 2010: 17). Thus, although the Law on the Prohibition of Discrimination has been criticised for certain shortcomings, and the National Minority Councils “are yet to become operational”, the progress made by Serbia is considerable, viewed the constitutional limbo that Serbia found itself in, not only once, but twice, during the period of investigation. (EU Report 2010: 17).

Even though the EU reports neither refer, specifically, to any time-tables or schedules, nor pressurise Serbia by referring to the Partnership priorities, it is clear that the monitoring reports focus more attention on non-discrimination legislation in Serbia than was the case in Macedonia. Thus, the more proactive stance of the EU Commission in the Serbian case is surprising on two counts. Firstly, since Serbia is a potential candidate state, and, thus, temporally further away from the prospective EU membership reward than Macedonia, one would have expected that the attention from the EU Commission would have been less focused on

the level of rule adoption in Serbia than in Macedonia. This is not the case. Secondly, since the level of rule adoption in the domain of non-discrimination is lower in Macedonia (1.5) than in Serbia (2.0), the relaxed stance of the EU Commission towards Macedonia is even more perplexing.

The Bosnian case is very similar to the Macedonian one regarding the level of attention from the monitoring bodies, at least from the EU. Furthermore, in terms of the level of rule adoption in the domain of non-discrimination, the Bosnian case is similar to the Serbian one in that both had a very low level of rule adoption, upon gaining status as potential candidate state. However, the Bosnian shortcomings, although legally anchored just like the Serbian ones initially, are of another order, less transitional, and more persistent, which, furthermore, explain the relatively moderate progress achieved by Bosnia in 2010 (1.5). Indeed, the problematic constitutional order, implemented on the basis of the Dayton Peace Agreement in 1995, persists, and even though both monitoring bodies do recognise that the constitutionally enshrined rights of the constituent nations have discriminatory effects upon the rights of national minorities, this constitutional solution is recognised as having been indispensable in order to end the Bosnian war in 1995. This situation, in turn, creates a dilemma for the monitoring bodies, which both adopt a prudent stance, which, in turn, possibly explain the lower level of attention directed towards non-discrimination legislation in Bosnia. However, the monitoring bodies do raise the issue of the problematic ethnically-based policies that override the equality provisions, and which, actually, should call for an amendment to the Constitution. Thus, in 2006, the EU Commission stated that “failure to adopt reforms to the constitution has perpetuated the exclusion of the national minorities from institutions, (which) has an adverse effect on the protection of minorities that do not belong to these “constituent peoples”. It also hampers Bosnia and Herzegovina’s evolution towards a State based on citizenship, rather than on ethnic representation” (EU Report 2006: 17). In 2008, this constitutional “cul-de-sac” was raised by the Council of Europe which stressed that “there is a need for moving from a system based on group rights towards a more balanced approach, that pays adequate attention to individual rights, in order to ensure long-term stability and social cohesion of the country” (CoE Report 2008: 5).

However, even though the EU Commission found that there had been no amendment to the Constitution, legislation in the area of non-discrimination does exist. (EU Report 2007: 18). In fact, not only by referring to the State and Entity Constitutions, which all “guarantee equal treatment of all people”, the EU Commission also noted that even though Bosnia had not adopted a comprehensive anti-discrimination law, “anti-discrimination legislation exists in several areas” (EU Report 2007: 18). The following year, although the EU Commission concluded by stating that although no comprehensive anti-discrimination law had been adopted, positive steps had been taken in that the introduction of Councils of National Minorities had been made on the State level. (EU Report 2008: 21).

Indications of further progress was noted by the Advisory Committee, which pointed out that Bosnia “has fairly well-developed legislation for the protection of national minorities”, although there are shortcomings in implementing the law. (CoE Report 2008: 5) In 2009, finally, and “after long delays, a comprehensive State-level anti-discrimination law has been adopted” (CoE Report 2009: 19). Although the law “represents a positive step towards uniform protection across Bosnia and Herzegovina”, the Advisory Committee is concerned about deficiencies of the law, since it “exempts religious groups and provides only limited protection to several groups of vulnerable individuals” (CoE Report 2009: 19). Although the EU Commission also took note of the progress entailed by the Law, the Commission also underlined its shortcomings in that, although covering “a wide range of sectors (employment, social security, education, goods and services, housing) (...), several aspects of the law remain unclear, or not fully in line with the *acquis*, in particular as regards the grounds covered (age and disability are not covered), and the broad scope of exceptions to discrimination” (EU Report 2009: 41-42).

Neither the deficiencies of the Constitution, nor those of the Law, had been corrected as of 2010. However, in terms of the inconsistencies of the Constitution, a court ruling had rendered a necessary amendment to the Constitution even more acute. In fact, “in December 2009, the European Court of Human Rights (ECtHR) issued a legally-binding decision (Dejdic-Finci vs. Bosnia and Herzegovina case) that found ethnicity-based ineligibility to stand for election ‘incompatible with the general principles

of the European Convention for the protection of Human Rights and Fundamental Freedoms” (EU Report 2010: 5).

One could argue, on the basis that much of the executive and legislative powers have, in fact, been held by an international protectorate, although the “dependence on the international community in terms of legislative drafting is declining”, that the constitutional amendment would be easily imposed. (EU Report 2006: 7) However, the sensitivity of this task, considering that inter-ethnic animosity is still prevalent between the three constituent peoples, would entail very high stakes whose consequences are difficult to predict. Furthermore, and also constituting one of the Partnership priorities, is that in order for EU accession to become possible, Bosnia needs to become a self-sustaining state. (EU Report 2003: 3). This also explains why the EU is adamant about the fact that a “constitutional reform cannot be imposed. It should be decided by consensus amongst the population of Bosnia and Herzegovina” (EU Report 2006: 6).

The semi-protectorate status has also been a challenge in the case of Kosovo, where governance has been divided between the UNMIK administration and the Kosovo’s Provisional Institutions of Self-Government. Although Kosovo became independent in 2008, by unilaterally proclaiming independence, the majority of states of which five are EU member states²⁹⁶, have not yet recognised Kosovo’s independence. It is blatant that in the Kosovo case, however, the monitoring bodies, and especially the EU, are much more proactive and pay great attention both to the level of non-discrimination legislation, as well as the level of *de facto* discrimination. In fact, the *sui generis* status of Kosovo, and the tense relationship with Serbia, which has not yet recognised Kosovo independence although Serbian EU membership is conditional upon its recognition, has merited substantial scrutiny on the part of the monitoring bodies. This probably also explains why Kosovo, in 2004, and in the aftermath of the 2004 riots, had adopted an Anti-discrimination law. However, it is obvious that not only the EU Reports but also the Council of Europe Reports centre much of their attention on the implementation of the extensive legal framework, which Kosovo had

²⁹⁶ Cyprus, Greece, Romania, Slovakia and Spain do not formally recognise the Republic of Kosovo. Among the states of our investigation Serbia, Bosnia and Herzegovina, Georgia and Moldova have refused to recognise Kosovo independence.

adopted as of 2010 when they reached the same high level of rule adoption as Croatia, namely 2.5. Indeed, the focus on the *de facto* situation in Kosovo is blatant in the recurrent observations, which stress that “creating a society free from discrimination of any kind, and promoting the integration of disadvantaged groups is a key European Partnership priority” (EU Report 2009: 15-16).

Indeed, the progress reports between 2005 and 2006 focus much of their attention on the implementation of the Anti-Discrimination Law, which is assessed as unsatisfactory since “Kosovo Serbs continue to be subject to incidents such as harassment and intimidation” (EU Report 2006: 15). However, positive effects of the “action plan for the implementation of the anti-discrimination law”, which the government adopted in October 2005, can be noted since “there has been a decline in serious crimes with an ethnic motivation” (EU Report 2006: 14-15). In 2007, the EU Commission noted that “the legal framework with regard to anti-discrimination incorporates important parts of the Community directives” (EU Report 2007: 19). In this regard, the report specifically highlighted that the “human rights units within the ministries, which are also charged with monitoring the implementation of the anti-discrimination legislation”, had become operational. (EU Report 2007: 19) Although deficiencies as to the administrative capacities of these human rights units were noted, the EU, nevertheless, concluded that “overall, the legal framework is nearly comparable to European standards” (EU Report 2007: 19). In 2009, the legal anti-discrimination framework was further reinforced by the “adoption of the strategy and action plan on human rights 2009-2011” (EU Report 2009: 33). That same year, the Advisory Committee recognised that “the current legislative framework, generally, reflects the principles of the Framework Convention” (CoE Report 2009: 5).

However, since *de facto* discrimination is prevalent in the Kosovo society, primarily directed against the Kosovo Serbs and the Roma, the importance of “creating a climate of reconciliation, inter-ethnic tolerance, and sustainable multi-ethnicity” is stressed in 2009, underlining that this is “a key European Partnership priority” (EU Report 2009: 19). Indeed, the Advisory Committee raised the issue of the gap between the *de jure* and the *de facto* situation, since the implementation of existing legislation still is poor. In fact, as noted by the Advisory Committee, “inter-ethnic

relations in Kosovo remain characterised by mutual distrust and divisions along ethnic lines, in particular between persons belonging to the Serbian and the Albanian communities” (CoE Report 2009: 7). Considering this worrying trend, the Advisory Committee, thus, “regrets the absence of a general strategy for reconciliation and inter-ethnic dialogue” (CoE Report 2009: 7).

However worrying the situation of *de facto* discrimination in Kosovo, the Advisory Committee, nevertheless, noted that “there is a well-developed legal basis, providing for equality before the law and prohibition of discrimination. Besides the anti-discrimination provisions, contained in the 2004 Anti-discrimination Law, the 2008 Constitution guarantees equality of all and anti-discrimination, *inter alia*, on grounds of language, religion, national origin, race, colour and relation to any community” (CoE Report 2009: 14). However, and as underlined by the EU Commission in their 2010 Report, “the high level of formal protection, provided by law, has to be effectively implemented” (EU Report 2010: 18).

By the end of 2010, it is blatant that the heterogeneity of the states making up category 2 remains. The category of the potential candidate states is, not only diverse as concerns the level of the *de jure* situation, but also as concerns the *de facto* situation. Indeed, even though *de jure*, the level of anti-discrimination legislation in Kosovo is higher than in Serbia, it is obvious that the *de facto* situation in Kosovo is more worrying, as is clear in the reports of both monitoring bodies. This most probably explains why the EU Reports never mention whether Kosovo is close *de jure* of having transposed the EU non-discrimination *acquis* even though Kosovo, legally, has provided for the same level of rule adoption as Croatia. Indeed, there is never any reference to whether Kosovo has partially transposed the non-discrimination *acquis*, or whether Kosovo is on its way of complying with the EU directives. Hence, even though Serbia has not reached the same high level of rule adoption as Kosovo in 2010, considering that the *de facto* discrimination in Serbia has not called for the same concerns by the monitoring bodies as is the case in Kosovo, it is highly probable that Serbia, in the not too distant future, will have proceeded further than Kosovo, at least in the domain of non-discrimination. Furthermore, the *sui generis* situation of Kosovo most probably also explains that even though the EU Commission is proactive,

it is a prudent proactive stance, where it seems too premature to speak of at least nearly full compliance with the non-discrimination *acquis*.

As opposed to the categories of the Western Balkan states, the three ENP-states, making up the third category, remain highly homogenous and there is absolutely no variation as concerns rule adoption compared with their initial status. Indeed, just as Moldova remains on the same low score as in 2005 (1.0), so do both Georgia and Azerbaijan. However, as opposed to the two Caucasus states, Moldova had “started work on comprehensive anti-discrimination legislation”, as noted by the EU Commission in 2007. (EU Report 2007: 4) Another indication of potential progress, which was welcomed by the Advisory Committee, was that work had started on a new “Human Rights Action Plan for 2009-2011 (which) should, according to the information provided to the Advisory Committee, include a chapter on combating discrimination” (CoE Report 2009: 11). However, as of 2010, neither the anti-discrimination legislation, nor the Action Plan, had been adopted and, as underlined by the EU Commission, “no significant progress was made with regard to minority rights and the fight against discrimination” (EU Report 2010: 6-7). Thus, it is too early to tell whether these steps are indicative of a more progressive stance from the Moldovan authorities, as regards non-discrimination legislation, or whether these steps are attributed to other non-governmental actors. In fact, the ECRI reported that a coalition of NGOs, supported by the OSCE Mission in Moldova, in fact, were the initiators of establishing “a strategy for the promotion of non-discrimination policies in Moldova”, of which one of the “main objectives of this strategy is to promote the adoption of comprehensive anti-discrimination legislation” (ECRI Report 2007: 13). Thus, even though the Moldovan authorities had “taken a number of steps to combat illegal behaviour on the part of law enforcement officials”, it is nevertheless questionable as to how effective these steps will be, since the authorities persist in claiming that “there is hardly any intolerance in the country”, which goes counter to reports that inform of racism and racial discrimination, directed towards “several minority groups” (ECRI Report 2007: 27).

Just as the monitoring bodies are more prone to assess the *de facto* situation rather than the existing non-discrimination legislative provisions in Moldova, the same is true for Georgia. Where one can see inclinations of a more proactive stance from the Moldovan government,

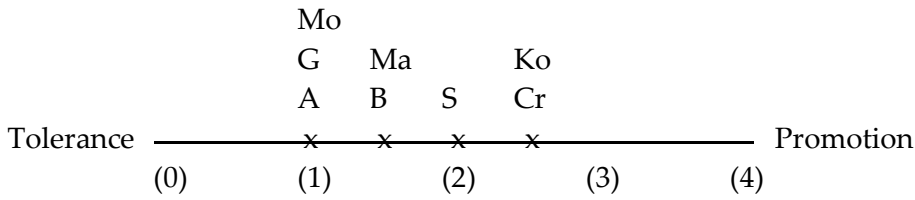
however initiated by other non-governmental actors, the Georgian authorities seem to be more reluctant to provide for anti-discriminatory provisions based on ethnic belonging. In fact, the Georgian authorities have made it clear that “they have no plan to introduce positive measures to promote the equality of persons belonging to national minorities” (CoE Report 2009: 14). It is blatant that the Georgian authorities consider that any minority rights provisions would be counterproductive to the strategy of promoting civic integration, which has been the active policy of the Georgian authorities. The focus on civic integration, as opposed to specific minority rights provisions, can, for instance, be seen in the “National Concept for Tolerance and Civil Integration and of its Action Plan”, which was adopted by the Prime Minister on the 8th of May 2009. (EU Report 2010: 6). However commendable the National Integration Strategy, which aims to achieve full equality for all citizens, at the same time as creating “the necessary conditions for the preservation and development of ethnic minorities’ culture and identity”, it is, at the same time, underlined by the monitoring bodies that since there has been no “follow-up report on the state of the implementation of the action plan”, an assessment of its effectiveness is impossible. (ECRI Report 2011: 33; EU Report 2010: 6). Indeed, in 2010 the EU Commission took the opportunity to underline that “there has been no progress reported on the integration and the rights of ethnic, religious and sexual minorities in Georgia” (EU Report 2010: 6).

In fact, in 2009, the Advisory Committee noted that however indispensable the civic integration campaign is in order to integrate the segregated national minorities into the mainstream of Georgian society, they recommended the Georgian authorities to “incorporate in existing legislation a prohibition of discrimination – particularly that based on ethnic origin – in other fields, including access to housing, social protection and public goods and services. The authorities should also review the existing laws and consider elaborating comprehensive anti-discrimination legislation” (CoE Report 2009: 13). However, since such measures are firmly believed to go against the promotion of civic integration and, by extension, could even threaten the territorial integrity of the Georgian state, it is not surprising that the FCNM “has not been fully transposed into domestic legislation, and the European Charter for Regional and Minority Languages has still not been signed by Georgia” (EU Report 2010: 6).

The Azerbaijani situation is close to the Georgian one, in that civic integration is viewed as key to the survival of the Azerbaijani state, and, consequently, any promotion of minority rights is inherently looked upon as destabilising, and potentially threatening to lead to secessionist claims. Indeed, during one of the interviews carried out by the Advisory Committee, they were informed by the Azerbaijani officials that “the adoption of measures to promote equal opportunities for persons belonging to national minorities, including in the framework of a law on national minorities, is considered inappropriate, as such measures could be interpreted as a sign that there exists differences in society and could, therefore, go against the overall objective of integration in society” (CoE Report 2007: 10). Therefore, the calls from the monitoring bodies that the Azerbaijani authorities should “develop a more comprehensive and detailed anti-discrimination legislation, so as to complement existing acts and ensure that potential victims of discrimination in various spheres of life are adequately protected”, remain unanswered. (CoE Report 2007: 10)

There are no indications, during the time span of investigation, that Azerbaijan is making progress in terms of adopting more extensive legislation in the domain of anti-discrimination. Indeed, both monitoring bodies are not only concerned about the lack of a more comprehensive anti-discrimination law, Azerbaijan had not progressed towards ratification of “Protocol 12 to the European Convention on Human Rights on the general prohibition of discrimination, and the European Charter for Regional or Minority Languages” (EU Report 2009: 5). Indeed, even though legislation on the freedom of Assembly had been amended, as of May 2008, in order to meet “most of the international standards”, the repressive nature of the Azerbaijani regime strongly limits these rights in practice. (EU Report 2008: 2) In fact, as reported by the EU Commission that same year, “freedom of media and expression, in particular, remain causes for serious concern” (EU Report 2008: 2). As underlined by the EU Commission in 2008, just as the poor implementation of human rights and fundamental freedoms constitute a challenge, “further work in the area of justice, freedom and security (...) will be key reform challenges in 2009” (EU Report 2008: 2). Although the government had publicly committed itself, in 2009, “to decriminalise defamation and draft legislation to that end”, in 2010, no progress was reported, neither in the legislative domain, nor *de facto*. (EU Report 2009: 4; EU Report 2010: 5).

Fig 16.2. Progress as of 2010: Non-discrimination and intra-category variations



The lack of progress in rule adoption is, however, not in the least surprising in the case of Azerbaijan, nor in the other ENP states. Hence, being the furthest away from the prospective EU membership reward, they are not expected to have made substantial progress since the adaptation pressure is, indeed, low. The low level of attention from the monitoring bodies, and primarily the EU, is also indicative of the low level of incentive of this category, which has remained as homogenous as it was initially, since no intra-categorical changes have been noted. Thus, as opposed to categories 1 and 2, the low level of rule adoption of this category confirms the strong explanatory power of the speed dimension's impact upon the level of rule adoption.

Minority language use in official contexts: Inter-category variation

The general character of the Articles of the Framework Convention, regulating minority language use in official contexts, gives the monitoring bodies' great flexibility of interpretation depending on the national contexts of the States under investigation. This, in turn, explains why the assessments sometimes generate very different concerns and recommendations. Here, it is apparent that the balance between collective rights and ethnic accommodation, on the one hand, and individual rights and civic integration, on the other, is rooted in the context of security related concerns, specific for each State. The contextualised security-based approach of minority language rights also becomes clear in that rule adoption in this area is heavily determined by the different peace agreements, which specifically regulate minority language rights provisions of the Western Balkan states, and which have been instrumental both to establishing peace, but also in laying out the groundwork for the prospective EU membership. This, in turn, produces

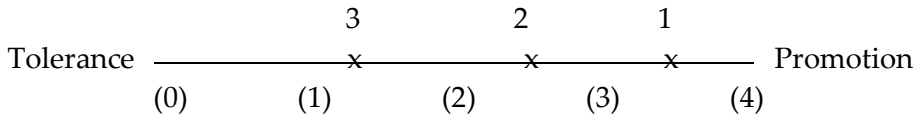
a situation where the assessments made by the monitoring bodies, and especially the reports published by the Council of Europe, are primarily directed towards evaluating how well the existing legislative provisions have been implemented, thus, focusing much more on the *de facto* situation than whether the states have adopted more extensive legislation.

As opposed to rule adoption in non-discrimination, there is absolutely no variation when we measure how the speed of the prospective EU membership reward has impacted on the progress made in the domain of rule adoption pertaining to the use of minority language rights in official contexts. Indeed, and as shown in figure 16.3., the pattern of inter-category variation, which was established initially when the states gained their respective statuses, has remained intact, with category 1 ranked at 3.5, category 2 positioned at 2.5 and category 3 finally remaining at 1.33. Even though the variation in the level of rule adoption, initially, was established at being explained by 34.2% of the impact of the speed dimension, the relevance of this result nevertheless has to be questioned. However, the issue at stake is not the questioning of the results *per se*, but rather the relevance of the measurement itself. It is obvious that the conflict resolution mechanisms, at stake in each of the states forming categories 1 and 2, at least initially, set the bar in terms of the extensiveness of the legislative provisions, and generally these were set extensively, except in the case of Bosnia.

At the same time, it should be noted that on the basis of the assessments made, which primarily focus on the *de facto* situation, these assessments might very well constitute the basis for legislative changes in the future, even though these are likely to be time-consuming endeavours since they entail very high stakes. Indeed, the politicisation of linguistic issues is inherent in any state-building process and therefore, necessarily, part of any conflict resolution mechanism, which in turn produces a balancing act between civic integration and ethnic accommodation. At the same time, it is clear that, should the ENP states, forming category 3, have been closer to the prospective EU membership reward, it is probable that these states would have been more responsive to the recommendations of the monitoring bodies, at least as far as Georgia and Azerbaijan are concerned. Hence, even though no variations have been detected, neither in-between, nor within the three categories, it is nevertheless interesting

to investigate the individual states more closely since this should at least give an indication as to the likelihood of legislative change in the future.

Figure 16.3. Progress as of 2010: Official use of minority languages and inter-category variations: Eta square value: 0.342; significance value: 0.351



- (0): No recognition of minority languages;
- (1): The right to use the minority language in official contexts (before judicial and administrative authorities; i.e. the right to a translator);
- (2): The minority language can be used in Personal and Place Names (public signs);
- (3): The minority language can be used in official documents;
- (4): Minority language having status as official language.

Minority language use in official contexts: Intra-category variation

The individual results of the level of rule adoption in the domain of the use of minority language rights in official contexts are interesting, and highly diverse, as was the case initially. When studying the assessments of the two candidate states, and as shown in figure 16.4., it becomes clear that although Macedonia provides for the maximum level of rule adoption (4.0), the Macedonian case retains much more attention from the monitoring bodies than does Croatia, which has remained on the level of 3.0. Indeed, as concerns the legislative provisions adopted by Croatia, the monitoring bodies have few issues to raise and especially the EU Commission contents itself by stating that “both Croatian citizens and foreign nationals who are party to criminal or civil proceedings have the right to have documents served on them in the *language* they understand and, during oral hearings, to have access to an interpreter paid for by the state budget” (EU Report 2005: 86). Furthermore, a good sign of the legislative status of minority language rights protection in Croatia, which was provided for in 2005, was that Croatia had signed and ratified “all the Council of Europe’s conventions it had committed itself to”, including

the European Charter for Regional and Minority Languages. (EU Report 2005: 20)

The more encompassing assessments of the Council of Europe's Advisory Committee, however, do raise concerns, especially as regards implementation of existing legislation. Indeed, in the reports of the Advisory Committee, it becomes clear that, even though the legislative provisions are extensive in Croatia, shortcomings in their implementation are noted. Whereas effective implementation has been reported regarding the use of the Italian minority language in the Istria region, violation of existing legislation has been noted as concerns the use of the Serbian and the Hungarian minority languages. Furthermore, the Advisory Committee has questioned the threshold of one-third, that conditions application of the legislative provisions, by recommending the Croatian authorities to revise it, in order to permit the use of minority languages in locations where minorities constitute a substantial number, but not amounting to one-third. The wording, "substantial number", however, is never specified, and since there are no numerical criteria set in Articles 10 and 11 of the FCNM, such recommendations are uneasily met, which can also be seen in the fact that this recommendation is not responded to. Whereas the Croatian case, however, does not call for any serious changes, it is blatant that the Macedonian case is more challenging. The very extensive minority language rights in Macedonia have raised concerns by the monitoring bodies, which have noted an increasing divide between the Macedonian-speaking and the Albanian-speaking communities.

To provide for extensive minority language rights, especially for the numerically large Albanian community, was a solution that was imposed by the international community with the establishment of the Ohrid Framework Agreement. Thus, even though the Macedonian authorities previously had refused to give in to the Albanian claims of official language status, with the signing of the Ohrid Framework Agreement, they finally had to abide by these demands. According to the EU Commission the Agreement "remains a crucial guarantee of the rights of ethnic communities in the country" (EU Report 2007: 15). Hence, the lack of effective implementation of the Agreement gives cause for concern, since it is stressed that "sustained commitment to implementing the regulatory framework for the use of minority languages is lacking" (EU

Report 2007: 53). Deficiencies in implementation notwithstanding, the very extensive minority language rights, granted to the Albanian minority, have paradoxically created a situation where the Albanian minority has become increasingly segregated, and the lack of bilingualism has accentuated the ethnic division in the country. This concern was raised by the EU Commission when they noted that “integration of ethnic communities remains limited”, however, noting, at the same time, that “effective implementation of the Ohrid Framework Agreement needs to be maintained, in a spirit of consensus” (EU Report 2009: 22).

Apart from concerns on the deficiencies of the implementation of the Agreement, and concerns on the lack of integration between the Albanian minority and the Macedonian majority, the monitoring bodies also point to shortcomings in the legislative provisions granted to smaller minority languages. Thus, on the basis of these concerns, the Advisory Committee considered that “by adopting a comprehensive language law, the country would dispose of a clear and coherent legal basis in this field, which would also bring solutions to the difficulties so far reported” (CoE Report 2007: 23). Even though opinions within the Macedonian state officials differed as to the necessity of such a law, in 2008, a Law on the use of Languages was, however, adopted, which aimed at clarifying the criteria for the use of minority languages. However, whereas the Law on the use of Languages had created conditions for more effective implementation for the use of the Albanian language, visible, for instance, in that “some chairpersons of parliamentary committees began using Albanian”, little progress had been noted “regarding use of the languages of the smaller ethnic communities” (EU Report 2009: 20).

The sensitivity of the status of minority languages, and the reluctance of the Macedonian authorities to regulate legislative provisions for smaller ethnic minorities, as well as to ensure proper implementation of both the Ohrid Framework Agreement, as well as the new Law is, however, blatant. Indeed, despite the legislative efforts made, it is apparent that serious shortcomings as to their implementation are still noted. In fact, the Advisory Committee reported, in 2010, that, “in practice, representatives of national minorities claim that the possibilities to use minority languages, other than Macedonian, in relations with the administrative authorities, remain limited, on account of the lack of

qualified interpreters and translators”, which, furthermore, has been reported as a recurrent problem in Macedonia. (CoE Report 2010: 21) However, at the same time, it should be noted that positive signs in the implementation of the use of minority languages for local place names have been detected during the course of 2010. Indeed, as noted, satisfactorily, by the Advisory Committee, “according to persons belonging to national minorities, the implementation of the legislative provisions has improved in recent years. Bilingual (Macedonian and Albanian language), and trilingual (Macedonian, Albanian and Turkish language) signs are in use in municipalities, where the number of persons belonging to a national minority is not lower than 20% of the local population” (CoE Report 2010: 22).

Even though the Macedonian authorities are commended for having created a clearer and more coherent legal framework for the use of minority languages, however, limited to primarily the Albanian one, the increasing inter-ethnic divide has become an issue of concern. (CoE Report 2010: 5) Whether the lack of interethnic communication and the resulting interethnic tensions are a direct consequence of the very extensive minority language rights is, however, difficult to tell. Nevertheless, it is clear that the creation of a linguistic gap has done nothing to facilitate interethnic communication and, especially in predominantly Albanian-populated areas, Albanians have become less and less fluent in the Macedonian language.

As opposed to the candidate states, the dispersion of the potential candidate states in category 2 is important, with Bosnia remaining on the low score of 0.5, Kosovo still scoring the maximum level of 4.0, and finally Serbia remaining at the level of 3.0. As concerns Serbia, the reports from both the EU and the Council of Europe are rather scarce. Furthermore, most of the assessments concern the *de facto* situation, where great variations as to implementation have been noted. For this reason, the Advisory Committee recommended that existing legislation be revised, in order to “further clarify the existing legal regulations, governing the right to use personal names in minority languages and its official recognition, and remove any territorial limitations to this right” (CoE Report 2009: 6). Some minor progress in this area had been noted in 2008, however, when the EU Commission pointed out that “new legislation extends the requirement for local administration to use official

seals in minority languages, where those languages are in use” (EU Report 2008: 19). However, these legislative changes were minor, and according to an update of the Council of Europe in 2011, there is still “a need to ensure a more consistent approach to the use of minority languages in the public sphere” (CoE Report 2011: 2).

The *de facto* situation had called for concerns, especially in the regions of Vojvodina, Southern Serbia, and the Sandzak region in North-western Serbia. In Vojvodina, the Serbian authorities had dealt rather successfully with the situation, since “a number of measures concerning the official use of minority languages and scripts” had been taken. (EU Report 2006: 14) The resolve from the authorities was underlined by a report, of the Ombudsman’s Office in Vojvodina, which had informed the ECRI, in 2007, that “the right of national or ethnic minorities to use their mother tongue in the media, and public administration, is broadly respected” (ECRI Report 2007: 27). Concerning the situation of the Albanian minority in Southern Serbia, the EU Commission had reported, as early as 2004, that there had been “progress in the use of minority languages (...) with the official use of Albanian” (EU Report 2004: 15). Progress notwithstanding, when the EU Commission monitored the situation on the ground, in 2007, it was obvious that, whereas the *de facto* situation in Vojvodina had improved, and the situation in the Albanian-dominated areas of Southern Serbia had “remained stable, but tense, with sporadic incidents”, the situation in the Bosniak-dominated Sandzak region had worsened. (EU Report 2007: 15) However, the situation in Serbia, neither *de jure* nor *de facto*, calls for any alarming assessments from the monitoring bodies.

As opposed to Serbia, the very modest legislative provisions in Bosnia remain a problem. Indeed, even though legislative provisions in this domain exist, the very high thresholds that condition them, in fact, invalidate their application. At the same time, and as underlined by the Advisory Committee, the Bosnian authorities have made some progress, since the legal provisions pertaining to the official use of minority languages have been incorporated in legislation on the Entity level. In this regard, the Advisory Committee “welcomes the fact that the Law on National Minorities of the Republika Srpska *allows* municipalities, where persons belonging to national minorities are traditionally resident, but do not constitute an absolute or relative majority of the population, *the*

possibility of taking steps to permit the use of minority languages in relations with the authorities, without applying a minimum threshold” (CoE Report 2008: 28, emphasis added). The Federation’s Law “includes a similar provision, stipulating that municipalities, where persons belonging to national minorities do not constitute the majority of the population, *may take measures to permit the use of minority languages in relations with authorities*” (CoE Report 2008: 28, emphasis added).

These changes were introduced as a consequence of the amendment, made in 2005, to Article 12, of the State Law on National Minorities, which eliminates “the need for a national minority to constitute an “absolute or relative” majority of the population, in order to have the possibility of using its language in relations with the administrative authorities, even where persons belonging to these minorities do not constitute a majority of the population, a minimum threshold of one-third of the local population is still required” (CoE Report 2008: 28). The same threshold of one-third regulates the use of minority signs and symbols, since “for municipalities that decide, in accordance with Article 12 of the Law on National Minorities, *to permit the display of topographical and other indications in minority languages, even where persons belonging to national minorities do not constitute a majority of the population, a minimum threshold of one-third of the population is still required*” (CoE Report 2008: 29, emphasis added).

The problematically high threshold, although lowered from an absolute or relative majority to one-third, is apparent as concerns the applicability of existing legislation. This is also confirmed by the monitoring report of the Council of Europe, which stressed that during one of its visits to Bosnia, it became apparent that “minority languages are not used in relations with the administrative authorities” (CoE Report 2008: 28). Subsequently, even though the threshold has been lowered, the main criticism of the Advisory Committee is that it is still too high, considering that the use of minority languages is inexistent in Bosnia. Hence, the Advisory Committee “considers that this requirement, in practice, impedes the use of minority languages, including in areas traditionally inhabited by persons belonging to national minorities” (CoE Report 2008: 28). Even though the ECRI Report from 2010 does not assess the situation of the use of minority languages, *per se*, the poor visibility of national minorities, in general, and minority languages, in particular, are raised as

recurrent problems. Indeed, as the ECRI Report underlined, in 2010, one of the main concerns of national minority representatives is “the need for greater visibility of their languages and cultures – whether in school textbooks, public broadcasting, or public life more generally” (ECRI Report 2010: 40).

The questioning of the level of thresholds is problematic, since the Articles of the FCNM don't determine any levels, and, thus, leaves this decision to the discretion of the State authorities. What is more problematic in the context of the Bosnian legislation, however, is that, independently of the level of thresholds, although existing legislation has been delegated to the Entity level, consistently, it is stressed that these legislative provisions are up to the discretion of the municipalities. Thus, the legislative provisions, based on the lower threshold of one-third, don't give any guarantees to the national minorities but it is left to the discretion of municipalities to decide whether they should allow, permit, or to take measures in favour of the use of minority languages, and to allow these rights on the basis of the *lowered* one third threshold. Therefore, the legislative provisions can be argued to be more recommendations than legislative guarantees, and, independently of the lowering of the threshold, they do not secure any rights of minorities to use their languages in official contexts, at least not on the basis of the one-third threshold. This, consequently, reduces the discussion on the question of the threshold of one-third to irrelevance, since the legislative guarantees are still conditioned by the threshold of the absolute or relative majority.

The Kosovo case is opposite to the Bosnian case but very similar to the Macedonian one, in that both have provided for very extensive legislation in the domain of minority language use. Just as the Albanian language has been recognised as having official language status in Macedonia, the Serbian language has official language status in Kosovo. Thus, the monitoring bodies are primarily concerned with assessing how well the extensive minority language rights have been implemented in practice. The lack of effective implementation was, for instance, pointed out in 2006 when the EU Commission stated that “in many cases there has been insufficient allocation of resources to ensure compliance with language standards” (EU Report 2006: 15). However, and just as in the case of Macedonia and the focus on the Albanian language, it is apparent that in

Kosovo, existing minority language rights have been very much centred on the status of the Serbian language to the detriment of smaller linguistic minorities. Thus, in view of providing for a clear legal basis for the use of smaller minority languages, as well as creating a more coherent legal framework for more effective implementation of the use of the Serbian language, the monitoring bodies recommended the Kosovo authorities to adopt a comprehensive Language Law. This recommendation was complied with, in 2006, when Kosovo adopted the Law on the Use of Languages. (EU Report 2007: 20-21) The new Law gave rise to satisfactory statements by the Advisory Committee, which noted that the “Albanian and Serbian languages remain the two official languages in Kosovo. The Language Law has contributed to clarify the legal provisions as regards the smaller minority communities also which is the most important contribution” (CoE Report 2009: 35). Furthermore, in connection with the adoption of the Law, the Assembly of Mitrovica, simultaneously, “adopted the Turkish language for official use” (EU Report 2007: 20-21).

It is, nevertheless, blatant, that there are still shortcomings, since it has been pointed out that “implementation of the 2006 Law on the Use of Official Languages, at central and local level, is hampered by the absence of municipal regulations and appropriate resources” (EU Report 2008: 24). Whereas the lack of regulations had, partly, at least, been rectified in 2010, as the EU Commission pointed out that “a large majority of municipalities have adopted the regulations according to the Law”, the lack of sufficient allocation of resources was still a major impediment towards more effective implementation. (EU Report 2010: 19) This, consequently, had resulted in a situation where “the decreasing knowledge of the second official language by civil servants and employees of public companies raises legitimate concerns” (EU Report 2010: 19). Indeed, the lack of bilingualism in the Kosovo society is an alarming trend, which probably has more to do with the highly segregated school system and less with ineffective implementation of the existing legislative provisions. Hence, in order to overcome the lack of proficiency in the official languages in public institutions, “language courses among civil servants are not sufficient to enhance bilingualism within the administration” (EU Report 2009: 18). The lack of bilingualism in the Kosovo society raises concern from the monitoring bodies, since the aim of enhancing integration in the Kosovo society has instead seen an

increasing divide, which limits the “progress on integration of minority communities” (EU Report 2010: 21).

The internal linguistic prerequisites are somehow different as concerns the three ENP states, as are the extent of their legislative provisions in the domain of minority language use. However, whereas Georgia and Azerbaijan have remained on the very low score of 0.5, Moldova continues to provide for the same extensive minority language rights as they did initially, and remains on the level of 3.0. However modest the rights regulating minority language use in Georgia are, the monitoring reports are much more focused on the necessity to enable national minorities’ to increase their level of proficiency in the state language. This is due to the fact that the segregation, of especially the numerically large national minorities in Georgia, is primarily related to the low proficiency in the Georgian language. This is why the Advisory Committee “calls on the authorities to step up their efforts to assist the persons concerned in acquiring an adequate level of command of the Georgian language” (CoE Report 2009: 15). Seeing as how the increased level of proficiency in the state language is a long-term project, the Advisory Committee, at the same time, is concerned, that the strengthening of the legislative provisions of the official language, “does not give rise to direct or indirect discrimination against persons belonging to national minorities, who have insufficient command of this language” (CoE Report 2009: 15).

Hence, although minority languages, in practice, are still used in relations with the State authorities, in order to prevent that persons belonging to national minorities find themselves in a legal void, it is necessary to legislatively provide for the rights which, however flexibly, are currently provided for, in practice. Thus, the Advisory Committee “urges the authorities to ensure that persons belonging to national minorities are able effectively to benefit from their linguistic rights, as protected by Articles 10 and 11 of the Framework Convention” (CoE Report 2009: 32). However, since the perspective of the Georgian authorities is anchored in an understanding that minority language rights could only be counterproductive to the state-building process, and, by extension, to the survival of the Georgian state, the calls from the Advisory Committee are not responded to. However, potential progress might be in the cards, since “the authorities have indicated that the public debate on the ratification of the European Charter for Regional or Minority Languages

is underway, and that they envisage signing and ratifying it” (ECRI Report 2010: 11). Furthermore, even though the poor command of the state language still constitutes the main impediment to integration of national minorities into the mainstream of Georgian society, the ECRI interestingly had noted “efforts on the part of the Georgian authorities in favour of teaching Georgian, the official language of the State, to adults who are members of ethnic minorities” (ECRI Report 2010: 27).

The strengthening of the Moldovan state language seems to be of even greater concern to the monitoring bodies, which, to a large extent, have left assessment of minority language rights provisions on the sidelines. At the same time, this is not surprising seeing as how Moldova does provide for extensive legislative provisions in the domain of minority language use. Furthermore, the weakness of the state language does not entail the same high stakes in the Moldovan case, since, even though the level of command of the Moldovan language is low, and at times, very low, amongst national minorities, they still have recourse to the Russian language, which still has *de facto* status as official language and is largely used in public administration.

In the 2007 report, the recommendations of the ECRI were nevertheless two-fold: on the one hand, the authorities were encouraged to “provide more opportunities to learn Moldovan for those who want to” (ECRI Report 2007: 24). At the same time, however in very general terms, the Moldovan authorities were recommended to “take care to preserve and encourage minority cultures and languages. In regards to this connection, the ECRI reiterated its recommendation that the Moldovan authorities ratify, as speedily as possible, the European Charter for Regional or Minority Languages” (ECRI Report 2007: 24). In 2009, the Advisory Committee expressed concern over the weakness of the state language and stated that “provision of teaching of the State language for persons belonging to national minorities, at school and in other contexts, continues to be insufficient, despite the various programmes implemented by different actors in recent years” (CoE Report 2009: 8). Thus, in order to enable substantial changes to be made in this area, the Advisory Committee recommended the Moldovan authorities to adopt a comprehensive strategy, in order to “increase substantially the availability and quality of teaching in this field, as many persons belonging to national minorities continue to have little or no command of

the State language” (CoE Report 2009: 8). However, these recommendations had come to nothing the following year, since it was stressed that the “provision of adequate teaching of the state language to persons belonging to national minorities continues to be insufficient” (CoE Report 2010: 2). Furthermore, the calls on the Moldovan authorities to “ratify, as speedily as possible”, the ECRML, had neither bore fruit. (CoE Report 2009: 24)

Whereas the linguistic prerequisites, as well as the legislative provisions, are highly different in the case of Azerbaijan, as opposed to that of Moldova, the legislative provisions on minority language rights are as modest as in the Georgian case, remaining on the same low score of 0.5, as they did initially. The Azerbaijani case differs from the Georgian one, however, since national minorities in Azerbaijan generally do have a good command of the Azeri state language. Hence, the assessments made, which in this case also are limited to the reports of the Council of Europe, as well as the ECRI, are restricted to recommendations on more extensive legal provisions in the domain of minority language use in official contexts. In this regard, the Advisory Committee recommended the authorities “to consider supplementing the Law on State Language with specific legislation on the use of minority languages, with a view to ensuring that persons belonging to national minorities can effectively enjoy the rights contained in Article 10 of the Framework Convention” (CoE Report 2007: 22). The same recommendations were made in the domain of topographical indications, where the Advisory Committee urged “the authorities to take steps, including at the legislative level, to ensure that persons belonging to national minorities are allowed to display in a minority language signs, inscriptions, and other information of a private nature visible to the public” (CoE Report 2007: 23). These legal provisions were, furthermore, advised to be integrated within the framework of “a draft law on the protection of national minorities” (CoE Report 2007: 22).

However, the reluctance of the Azerbaijani authorities to provide for these rights is apparent since this Law still has not been adopted, even though already upon accession to the Council of Europe, Azerbaijan “committed itself to adopting, within three years of accession (i.e. before 25 January 2004), a law on minorities” (ECRI Report 2011: 15). At the same time, it should be noted that Azerbaijan does not seem temporally

far from ratifying the ECRML. As indicated by the ECRI Report of 2011, the Azerbaijani authorities “have stated that certain provisions of the European Charter for Regional or Minority Languages are already, partially, implemented in practice; the instrument’s ratification is planned, but will necessitate the identification of additional human and financial resources” (ECRI Report 2011: 11).

Figure 16.4. Progress as of 2010: Official use of minority languages and intra-category variations

	A			Mo	
	G			S	Ko
	B			Cr	Ma
Tolerance	x	x	x	x	x
	(0)	(1)	(2)	(3)	(4)
					Promotion

The approach of the monitoring bodies as concerns the three ENP- states is rather different than the stance taken in the cases of the Western Balkan states. Indeed, the focus of attention has very much shifted to the importance of strengthening weak state languages, which primarily is made to the detriment of promoting legislative guarantees for minority languages. At the same time, and as evidenced by the assessments of the monitoring bodies, the strengthening of the state language is sometimes, at least in the Georgian case, not easily made without at the same time providing for minority language rights. Thus, what is clear is that the balancing act between ethnic accommodation and civic integration is problematic, and, depending on security related concerns, calls for different solutions in the individual states. Indeed, even though the focus of the monitoring bodies is much more directed towards minority language rights in the case of the two categories of the Western Balkan states, it is evident that the recommendations made in these cases as well are based on the contextualised settings of each case which, furthermore, in certain cases entail recommendations on the strengthening of the official languages.

The cases of Macedonia and Kosovo are the most pertinent where the extensiveness of the rights granted to the numerically largest minorities have created a situation of a linguistic gap, which is an alarming trend of

increasing ethnic division. Hence, although the monitoring bodies stress the importance of guaranteeing the effective implementation of these legislative rights, concomitantly, they press for further efforts from the state authorities to introduce measures of bilingualism. These efforts have, to date, proven rather futile and it is evident that the legislative guarantees provided for in the peace agreements, setting the terms for peace, at the same time as paving the way for integration into the European structures, are indeed difficult to negotiate away. The counterproductive effects of the Dayton Peace Agreement in Bosnia are also indicative of this trend, although with the exception that, in Bosnia, the legislative provisions for minority language use are very modest.

Confirming what we initially suspected in the case of the Western Balkan states at least, it is evident that the level of legislation had already been established, prior to the temporal setting of this investigation, by the different peace agreements, which, in turn, explain the lack of change in the level of rule adoption in this area. Thus, even though the variation in the level of rule adoption initially was explained by 34.2% by the speed of the prospective EU membership reward, the relevance of the impact of the speed dimension on the level of rule adoption in this area has to be seriously questioned at least as far as categories 1 and 2 are concerned. Indeed, in the assessments of the Western Balkan states, possibly with the exception of Bosnia, the monitoring bodies are primarily concerned with assessing the *de facto* situation, which in turn sometimes leads to recommendations on legal revisions within the framework of existing legislation. Regardless of category, these recommendations are more or less responded to. Whereas both Kosovo and Macedonia are, indeed, responsive to the recommendations of the monitoring bodies, the non-responsiveness of Croatia, Bosnia and Serbia is blatant. At the same time, it has to be underlined that the situation on the ground in Serbia and Croatia is much less worrying than are the situations in Macedonia and in Kosovo. The case of Bosnia is particular, since the Dayton Peace Agreement was nearly oblivious to minority language rights, which, in consequence, ties the hands of the monitoring bodies to seriously push for legislative change, at the same time as it facilitates for the Bosnian authorities to legitimately stay relatively passive to the prudent recommendations of the monitoring bodies.

When we turn to the states forming category 3, however, it is clear that we cannot entirely dismiss the impact of the speed dimension on the level of rule adoption. Indeed, the modest level of rule adoption and the lack of legislative change in the ENP-states, which are temporally the furthest away from prospective EU membership, are not surprising, and, in fact, in line with our stipulated hypothesis. Given the fact that the adaptation pressure is low, neither Georgia nor Azerbaijan has responded to the recommendations of the monitoring bodies. Thus, since the incentives to provide for more extensive legislation are negligible, the Georgian and Azerbaijani authorities have remained on the very modest level of rule adoption and are not likely to make legislative changes as long as the incentives to do so are almost insignificant. In this regard, it is important to point out that the EU Commission neither assesses the legislative provisions, nor the *de facto* situation of minorities' possibilities to use their minority languages. Hence, it is likely that should Georgia and Azerbaijan have been nearer to the prospective EU membership, than is the case at present, it is probable that the EU Commission would have exerted some pressure and possibly then would have made the state authorities more responsive to the calls and concerns, not only of the EU Commission, but also of the Advisory Committee of the Council of Europe. The Moldovan case is different, since the state authorities initially provided for extensive legislation in the domain of the official use of minority languages. Furthermore, in the Moldovan case the monitoring bodies are almost exclusively directed towards the necessity to introduce more serious efforts to enhance minorities' proficiency in the state language.

Indeed, as concerns both Moldova and Georgia, the focus of attention is, in fact, more directed towards the necessity of strengthening minorities' proficiency in the state language. Whereas the calls from the monitoring bodies are, in fact, responded to in the Georgian case, the same is not true for Moldova. Even though the Moldovan authorities would be anxious to meet the external demands, it is obvious that the heavily politicised linguistic issue in Moldova still impedes any change in this direction, which furthermore also explains why the Russian minority language still has such a predominant position. In Georgia, the external calls to strengthen the state efforts in view of increasing minorities' level of proficiency, are, however, responded to. At the same time, since it is in the national interest of Georgia, as part of the civic integration

programme, to increase minorities' level of command in the Georgian language, these measures would presumably have been made even without the external recommendations.

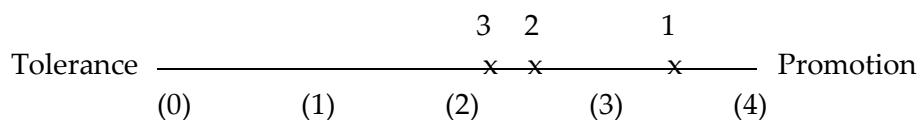
Minority language rights in education: Inter-category variation

The more contextualised security based approach is apparent also as concerns provisions of minority language rights in education, where a similar situation prevails as was the case pertaining to legislative provisions in the domain of the official use of minority languages. Thus, much of the legislation provided for in the states of the Western Balkans had already been regulated, as part of the various peace agreement packages, established prior to the time-span of measurement of this investigation. This, furthermore, entails that progress on the basis of our index-scale is highly unlikely, as evidenced by our results shown in figure 16.5., which indicate that no variation as concerns the states of categories 1 and 2 have been detected. Consequently, we conclude that there is no variation as concerns either the candidate states or the potential candidate states that have remained on the levels of 3.5 and 2.5, respectively. Thus, on the basis thereof, the assessments of the monitoring bodies are more prone to investigate how effective existing legislation is implemented in practice, even though these findings sometimes produce calls for legislative change. The static dimension, produced by the peace agreements, is also blatant as concerns Bosnia, which, here again, stands out since Bosnia has provided for very modest legislation. Thus, just like the peace agreements in the cases of the other states implicitly make legislative progress highly unlikely, the same goes for Bosnia. The static nature of this norm is, however, slightly altered when we turn to the results of the ENP-states, which do point to a certain change, however minor.

Indeed, when we analyse the results on the basis of the assessments of the ENP-states, we can conclude that some variation has occurred, even though this development points to a regression in terms of minority language rights in education. Indeed, the modest variation is explained by the legislative change provided for by Georgia. The Georgian regression from the level of 3.0 to 2.0 entails, on the whole, that whereas initially the variation in the level of rule adoption was explained by an

insignificant 10% by the speed of prospective EU membership, this correlation has slightly increased as of 2010. As a result of the Georgian regression, category 3 falls behind category 2 and, thus, regresses from 2.5 to 2.17. Thus, when we proceed to calculate the Eta square value, on the basis of the change made, we can conclude that the Eta square value has increased to 0.144, which, furthermore, entails that the variation in rule adoption in this domain is explained by 14.4% by the speed of the prospective EU membership reward. Whether this change should be viewed as a consequence of the impact of the speed dimension is more doubtful and necessitates further investigation. Indeed, an analysis of the assessments pertaining to each of the recipient states might give an indication as to both the temporal impact upon rule adoption, and, at the same time, an indication as to potential legislative change in the future.

Figure 16.5. Progress as of 2010: Minority language rights in education and inter-category variations: Eta square value: 0.144; significance value: 0.679



- (0): No education of or in minority language;
- (1): Children belonging to minorities have the right to learn their mother tongue in school;
- (2): At least parts of the curriculum (e.g. history or religion) are taught in the minority language;
- (3): Minorities have the right to educate their children completely in the mother tongue, either in state schools with a complete syllabus taught in the minority language or in specific minority schools;
- (4): Minorities have their own universities.

Minority language rights in education: Intra-category variation

The intra-category variation is even more diverse in the domain of minority language rights in education, than was the case in the domain of minority language use in official contexts. As shown in figure 16.6., Macedonia scores the maximum 4.0, followed closely by Croatia, which remains ranked at the level of 3.0. Just as in the context of the official use

of minority languages, the Macedonian case receives the most attention from the monitoring bodies and this is primarily understood in the context of the worrying trend of increasing segregation, primarily between the Albanian-speaking and the Macedonian-speaking communities. In the case of Croatia, neither the legislative situation, nor the *de facto* situation calls for any real concerns from the monitoring bodies. Indeed, in the 2010 assessment, the Advisory Committee stated that “a well-developed system of minority language education exists in Croatia, permitting students belonging to national minorities to receive instruction in, or of their languages” (CoE Report 2010: 2). This was further emphasised by the EU Commission, which stated that “the education provisions of the CLNM and other laws relevant to minorities are generally being implemented satisfactorily” (EU Report 2007: 13). This finding was confirmed in 2010, when the EU Commission, once again, stated that “the education provisions of the Constitutional Law, and other laws relevant to minorities, are generally continuing to be implemented satisfactorily” (EU Report 2010: 14).

It is clear, however, that the *de facto* situation varies as to how effectively the legislative provisions are implemented. Indeed, in the Serb-dominated area of Eastern Slavonia, the extensive legislative provisions, regulating especially the language rights of the Serb minority in education, are successfully being implemented, “in line with Croatia’s obligations under the Erdut Agreement” (EU Report 2006: 11). However, it has been noted that the Serb minority has met with more difficulty outside the area of Eastern Slavonia, since it has been reported that “there is often a lack of resources for Serbian sections of schools and translation of Croatian books into Serbian is slow” (EU Report 2006: 12). Even though the poor integration of the Roma minority in education has also been a recurrent problem in Croatian society, as is the case in the other states of the Western Balkans, the EU Commission noted, with satisfaction, that the adoption of the Croatian government’s action plan for Roma inclusion seems to have made an impact. Although the EU Commission advised the Croatian authorities to adopt more systematic policies as regards inclusion of Roma pupils into the education system, the Commission noted, satisfactorily, that “the number of Roma children completing primary education and pre-schooling has increased” (EU Report 2008: 15).

In comparison to Croatia, the Macedonian case is severely more challenging, and the main concern of the monitoring bodies is the highly segregated school system, between the Albanian-speaking and the Macedonian-speaking communities. (EU Report 2006: 15) Indeed, the very extensive minority language rights, granted to the Albanian minority in education, have generated an educational system based on two parallel tracks, one Albanian and the other Macedonian. This, in turn, has contributed to accentuate an increasing sharp dividing line between the Albanian-speaking and the Macedonian-speaking communities. Thus, concern, over the lack of interaction between the two numerically largest communities, was voiced by the EU Commission, in 2006, when they found that “there are still insufficient opportunities for interaction between the different communities, particularly in the sphere of education (...). There appears to be no comprehensive policy to bridge the gap between the different communities through the education system” (EU Report 2006: 15). The same concern was voiced by the Council of Europe the following year, when the Advisory Committee stressed the need for integration efforts, since “the education of children from the majority and minority (especially Albanian) communities is too often separated” (CoE Report 2007: 26). Furthermore, since the separation of the Albanian-speaking and the Macedonian-speaking pupils is not limited to the academic sphere, but has been “extended to extracurricular activities of children and youth from majority and minority communities, including in leisure, sport and cultural activities”, this is an alarming trend that needs to be dealt with more seriously. (CoE Report 2007: 26-27)

Hence, even though the Advisory Committee has acknowledged that minority education might indeed require separate classes or schools, at the same time, they have underlined that “there are different ways to accommodate such needs, including bilingual education” (CoE Report 2007: 26-27). However, whereas the lack of bilingualism is prevalent in the educational system, in especially the Albanian-dominated areas, some positive developments have been noted in ethnically-mixed regions. Indeed, in these regions, “greater attention has been paid, over the last few years, to the learning of Macedonian by persons belonging to the different ethnic communities, particularly the Albanians” (CoE Report 2007: 32). Furthermore, the Advisory Committee has noted “encouraging signs of a growing interest in studying Albanian on the part of the Macedonians” (CoE Report 2007: 32).

However, even though the adverse situation of stark segregation in education in the Albanian-dominated areas prevails, and continues to be one of the main challenges, outbursts of ethnic strife were, in fact, reported in the ethnically-mixed schools. In their 2008 report, the EU Commission pointed out that “in several mixed secondary schools, there were severe incidents of violence between students from different ethnic communities” (EU Report 2008: 20). In order to prevent these ethnic clashes from emerging, the EU Commission reiterated the need for “mutual understanding and intercultural dialogue (...) between the different components of society, in particular in the field of education” (EU Report 2008: 20). In 2010, the Macedonian government had responded to the calls for closer integration and, on the basis of a dialogue with the OSCE High Commissioner on National Minorities, adopted a Strategy on Integrated Education. One of the aims of this strategy was to promote “the learning of each others’ languages and increasing inter-ethnic interaction between pupils” (EU Report 2010: 20-21). As part of promoting the official language, the decision was taken to “introduce state language teaching as of the first year for pupils from non-majority communities” (EU Report 2010: 21). However, this decision instantly fuelled resentment among minority community representatives, which, subsequently, led to the annulment of the decision by the Constitutional Court, on the basis that “the Minister’s decision was not in line with the Law on primary education of 2008” (EU Report 2010: 21). In 2010, segregation remained an issue of paramount challenge, as evidenced by the ECRI Report which urged “the authorities to tackle the issue of ethnic segregation in the school system” (ECRI Report 2010: 9). Furthermore, although no outbursts of ethnic strife were reported in 2010, the ECRI Report noted that “relations between the majority population and the Albanian minority have not become less tense” (ECRI Report 2010: 8).

Whereas the extensiveness of language rights for the Albanian minority in education is problematic, so is the lack of legislative provisions for the smaller linguistic minorities. The Advisory Committee underlined that “the opportunities for persons belonging to smaller communities to learn their languages or study in them are at present limited” (CoE Report 2007: 33). Whether there will be any changes in this regard, when the “Agency for protecting the rights of minorities which represent less than 20% of the population”, becomes operational, is difficult to tell. (EU Report 2010: 21) The situation of the Roma minority in education is

particularly worrisome. Not only is the Roma minority largely excluded from the Macedonian education system, those who attend school are more regularly than not improperly sent “to educational facilities for pupils with a mental disability” (ECRI Report 2010: 9). This is why the ECRI recommended the Macedonian authorities to “take specific measures to improve the situation of the Roma in the field of education” (ECRI Report 2010: 22).

The heterogeneity of the potential candidate states is as important as was the case initially, and whereas Bosnia scores the same low level of 0.5, Kosovo remains on the very extensive level of 4.0, with Serbia left positioned on the intermediate level of 3.0. The assessments of the monitoring bodies are quite scarce as concerns both the *de jure* status, as well as the *de facto* situation, of minority language rights in education in Serbia. However, the monitoring bodies recognise that the *de jure* status is quite unproblematic since the legislative framework is in place. However, seeing as how there have been variations recorded as to the effectiveness of implementation, the monitoring bodies call on the Serbian authorities to introduce more specific regulations, which would clarify the existing legislative provisions. Whereas existing legislation seems to be applied without further ado as concerns the Albanian and Hungarian language rights in education in Southern Serbia and Vojvodina, respectively, deficiencies in implementation have been noted as concerns other minorities’ possibilities to be instructed in, or of, their minority languages, “in particular for the Vlachs living in North East Serbia” (CoE Report 2009: 6).

Thus, as underlined by the Advisory Committee, “the Serbian authorities should consolidate the legislative framework regarding minority language teaching” by more specific regulations. (CoE Report 2009: 41). This recommendation was reiterated the following year with calls for “promotion of tolerance and better regulation of use of minority languages in education” (EU Report 2009: 18). However, by 2010, it is evident that the Serbian authorities had not been responsive to the recommendations of the monitoring bodies, since the EU Commission reiterated its recommendation that “education in minority languages remains to be improved and the relevant legal framework clarified” (EU Report 2010: 16). Furthermore, the lack of more specific legislation had been detrimental, not only to the Vlach minority, but had also affected

other minorities, like the “Bosniak, Bulgarian, Bunjevci”, as reported by the EU Commission in 2010. (EU Report 2010: 16) However, the minority that calls for the strongest reactions from the monitoring bodies in Serbia is the Roma minority, since “Roma children face a wide range of obstacles in their access to education” (EU Report 2006: 15). In the same vein as in Macedonia, pupils from the Roma minority “are often considered mentally disabled” and, thus, uncalled for, placed in special schools for pupils with mental disabilities. Even though the Serbian Ministry of Education made “Roma education one of the priorities of its Strategy for Education (2005-2010)”, which was commended by the monitoring bodies, discrimination against Roma pupils is still reported as a serious problem in Serbia. (ECRI Report 2007: 24)

Minority education in Bosnia is, however, more alarming than in Serbia, since the legislative provisions are very modest, indeed. Furthermore, the problem of a highly segregated educational system, along ethnic lines, is more of a generalised problem. As opposed to Macedonia, ethnic segregation in Bosnia is primarily centred on the division between the three majority communities, the Serbs, Croats and Bosniaks. Thus, even though the monitoring bodies are concerned about the very modest minority language rights provisions in Bosnia, which, in turn, has entailed that “national minorities accordingly continue to be “invisible” within the education system”, more attention is paid to the worrying segregation between the three constituent nations. (EU Report 2007: 39) Indeed, the highly segregated school system in Bosnia manifests itself in the educational system of “two schools under one roof – which separates pupils in schools along ethnic lines” (EU Report 2007: 39). Furthermore, even though the constituent nations do not have status as national minorities, the *de facto* situation has entailed that Croats and Bosniaks have found themselves in a minority position in the Republika Srpska, and, vice versa, that Serbs have been treated as a minority in the Federation. This, consequently, led the Advisory Committee to recommend the Bosnian authorities to consider whether a person, having *de jure* status as constituent nation, however being in a *de facto* minority situation, could be allowed to be treated as a national minority under the Framework Convention. This recommendation had not been responded to by 2010.

Minorities' language rights in education are, however, very modest and the primary impediment is constituted by the very high thresholds that regulate application of the legislative provisions. Although the Advisory Committee pointed out, in their 2008 Report, that there seems to have been a relaxation as regards the level of the threshold, enabling the teaching of minority languages in education, these changes seem more cosmetic than anything else since they, in fact, in no way obligate the municipalities to implement these provisions in practice. This problem was highlighted in the 2008 Report, in which the Advisory Committee pointed out that, "the amendments made to the State Law on National Minorities in 2005 have not really relaxed the conditions to be met for teaching to be dispensed in minority languages. This is because the requirement that the minority should constitute an absolute or relative majority of the population of the municipality concerned, has been replaced by the criterion that, *to be able to ask to be taught in their language*, pupils belonging to a national minority must form one-third or one-fifth (in the case of optional classes) of the populations of the school concerned" (CoE Report 2008: 33, emphasis added). Thus, even though one is led to believe that there has been a relaxation of the threshold, these lower thresholds are only guarantors of possibilities for the national minorities, and not guarantors as to any obligation that would befall the State authorities. This, in turn, has led to a situation where "the cultural heritage, history and languages of national minorities are virtually absent from school syllabuses and textbooks" (CoE Report 2008: 7). Even though some progress had been made by 2010, in that some minority classes were reported to have been held, the ECRI Report commented that, however commendable the amendments made to the Law of 2005, "in practice the criteria remain difficult to fulfil and the number of classes in which minority languages are taught remains low" (ECRI Report 2010: 40).

Paradoxically, however, the low level of minority language rights provisions in education does not seem to concern the monitoring bodies a great deal, and few recommendations are actually made as to the need to make these more extensive. Indeed, the recommendations in this regard are limited to one of the Advisory Committee Reports which recommended, to little avail however, the state authorities to rapidly "make the history, culture and languages of the national minorities a component part of school syllabuses and to train teachers to inculcate

knowledge of these subjects" (CoE Report 2008: 31). Much more attention and concern is raised in relation to the ethnically-based school system, which is perceived as a far greater challenge to the national cohesion of the weak Bosnian state. In fact, as early as 2006, this issue was raised by the EU which found that "little progress has been made in preventing the separation of children in schools along ethnic lines. This is a serious issue that needs to be addressed" (EU Report 2006: 16). This issue is consistently stressed by both the EU and the Council of Europe, and although improvements had been recorded in some areas of the Federation in 2008, the EU Commission noted that this problem "remains a serious issue" (EU Report 2008: 42). The same year, the Advisory Committee urged the authorities of the Entities and the Cantons to "take far more determined measures to end segregation of pupils according to their national or ethnic origin" (CoE Report 2008: 31). In 2009, it was reported that the measures taken were far from satisfactory and that the segregated school system had "already created tension at the community level" (EU Report 2009: 43). However, in 2010, the EU Commission made note of some progress since the number of divided schools had seen a rapid decrease from 83 to 19. Whether this decrease actually means progress is too early to tell, since, in parallel to this development, "the number of mono-ethnic schools has grown, making longer term integration more difficult" (EU Report 2010: 18).

The lack of integration, and the problem of a strictly divided education system, is also a challenge in Kosovo and resembles both the Bosnian case as well as the Macedonian one since, here too, "parallel and ethnic-based structures, using different curricula and textbooks, are a source of segregation" (EU Report 2008: 41). However, as opposed to Bosnia, in Kosovo, the division along ethnic lines is primarily cemented between the Kosovo Albanian majority and the Serb minority. In fact, the very extensive minority language rights, granted to the Serb minority in education, have consequently made way for parallel educational structures, similar to the Macedonian situation. Thus, the concerns of the monitoring bodies is both the lack of integration, between particularly the Serb minority and the Kosovo Albanian majority, but also the poor inclusion of the Roma, Ashkali and Egyptian minority communities in the Kosovo education system.

Efforts to bridge the divide between the Kosovo Serbs and the Kosovo Albanians have been consistent, as evidenced by the monitoring bodies' assessments, which, for instance, reported in 2006 that the Ministry of Education "is making efforts to offer Albanian and Serbian language classes to all communities in order to integrate them into the Kosovo educational system" (EU Report 2006: 28). The following year, efforts were made to facilitate inclusion of minorities into the higher education system, by adopting a "Strategy for pre-university education with inclusive and progressive measures for minorities in Kosovo" (EU Report 2007: 21). However, the persistency of the problem is evident, since, in 2009, the parallel education system was addressed by the EU Commission as one of the main barriers to "reconciliation and multi-ethnicity", which, furthermore, are main priorities in the European Partnership Priorities. (EU Report 2009: 17) Indeed, as stated by the Advisory Committee, "resolute and urgent action must be taken by the authorities to implement initiatives, promoting inter-ethnic contacts, at schools, and among children in general" (CoE Report 2009: 9). One measure, seen as primordial by the Advisory Committee, is to increase the opportunities for pupils of minority communities to learn the official languages. At the same time, it is important to provide "opportunities for pupils belonging to the majority community to learn minority languages" (CoE Report 2009: 41). It is apparent though that not enough had been done in this area by 2010, since the EU Commission found that "learning Albanian or Serbian language is not compulsory for the Serbian and Albanian communities, respectively. Trainings are urgently needed to ensure the use of new language curricula, which is key to develop interactions between communities" (EU Report 2010: 19).

More concerted efforts as to integration of smaller linguistic communities are also raised, and especially worrying is the lack of integration of the Roma, Ashkali and Egyptian communities in the Kosovo education system. In order to systematically address this issue, the Ministry of Education adopted a Strategy for the education of the Roma, Ashkali and Egyptians, in July 2007. (EU Report 2007: 21) However, progress for more effective inclusion of these vulnerable minority communities has been slow, and, already in 2007, the EU Commission pointed out that these groups "continue to face very difficult living conditions and discrimination, especially in the areas of education, social protection, health care, housing and employment" (EU Report 2007: 22-23). Although

there had been noted some progress in 2010, the EU Commission still stressed that “their situation remains a very serious concern” (EU Report 2010: 20).

When we turn to the states forming category 3, we notice that at least Georgia and Moldova are confronted with the same problem of weak state languages and problems of national cohesion, at the same time as minority language rights in education have been extensive in the Georgian case (3.0), and very extensive in the Moldovan case (4.0). The Azerbaijani case stands out with very weak legislative provisions for minorities in education (0.5), at the same time as the status of the state language does not call for any concerns. The Georgian case is interesting, since it is the only case that has accounted for legislative change in this domain. Indeed, although the internal linguistic prerequisites in Georgia are similar to the Moldovan one, Georgia is the only State that has actually succeeded in increasing the legislative status of the state language in education. In fact, with the adoption of the 2005 General Education Act, limiting minorities’ language rights in education from 2010, not only does the revised curriculum make learning of the Georgian language compulsory, other subjects instructed in Georgian are also made obligatory. This, subsequently, entails that the legislative rights of minorities in education have been reduced from 3.0 to the level of 2.0, since only parts of the curriculum can, henceforth, be taught in the minority language.

As a consequence, the assessments from the monitoring bodies are very much focused on the necessity to improve the teaching of the state language to national minorities, since “inadequate command of the Georgian language is one of several factors accounting for their marginalisation” (CoE Report 2009: 3). At the same time, and due to the fact that the strengthening of the state language in education has been made to the detriment of minority language rights, the monitoring bodies are concerned that “the implementation of the reform to education does not have discriminatory effects for persons belonging to national minorities” (CoE Report 2009: 50). In fact, the expansion of subjects, taught in Georgian, requires substantial measures to increase national minorities’ level of proficiency in the Georgian language, without which access to both higher education and employment would be severely limited. In fact, under the prevailing circumstances, which entail that the

university entry requirement “comprises a test in (the) Georgian language and literature, (this) forms a considerable obstacle for students who have studied in the education system in a minority language” (CoE Report 2009: 50). The negative consequences of the new requirements have already been noted, seeing that there has been a significant drop in admittance of students of national minorities to higher education. (CoE Report 2009: 36) Thus, the recommendations from the monitoring bodies are primarily focused on the necessity of taking measures to increase the level of proficiency in the Georgian language, even though it is stated that this should not be “pursued to the detriment of the linguistic rights of persons belonging to national minorities, the effective enforcement of which requires more resolute measures, both in the legislative framework and in its implementation” (CoE Report 2009: 3).

In 2007, the EU Commission pointed to the fact that the State initiatives, regarding increasing the learning of the State language, were insufficient. (EU Report 2007: 18) Although some progress had been noted, it was clear, in 2009, that the State authorities’ “efforts are far from adequate and do not constitute an appropriate response to existing needs” (CoE Report 2009: 3). However, several measures had been implemented with the adoption of the Georgian language curriculum in 2009, of which one aim is to “improve the teaching of Georgian in pre-school education centres, which will be established in the Samtskhe-Javakheti and Kvemo Kartli regions” (ECRI Report 2010: 16). In order to raise the quality of the teaching, measures will be taken both as concerns more adapted textbooks, distributed free-of-charge, as well as increased skills of the teachers. However, as concerns the more specialised teachers, the ECRI noted that “further efforts are needed to ensure that these teachers know the local minority language, as this is considered by specialists to be one of the conditions for improving the quality of teaching Georgian as a second language” (ECRI Report 2010: 16). Furthermore, to reduce the inequality of access to higher education, the State authorities had introduced a series of measures which already seem to have borne fruit, since “the number of minority students passing the centralised exams is increasing again” (ECRI Report 2010: 17). Indeed, the introduction of both a quota system, permitting pupils from Armenian-speaking and Azerbaijani-speaking schools to receive a university grant, as well as a system of preparatory language courses for minority pupils had been successfully implemented by 2010.

The focus on the strengthening of the state language is evident also in the Moldovan case. Even though the monitoring reports do mention the necessity to ensure that minority language rights in education are implemented in practice, especially for the non-Russian minority languages, it is obvious that this area is not their primary concern. Indeed, the necessity to strengthen the low, and sometimes very low, level of minorities' command in the Moldovan language, is, consistently, stressed throughout the monitoring reports, since proficiency in the state language is vital in order to guarantee that when pupils of national minorities "leave school they will have equal opportunities in access to higher education and employment" (ECRI Report 2007: 31). Even though it is important that national minorities' acquire a good command of the state language, concern is raised as to the inadequacies of State incentives in this regard. As underlined by the ECRI, "the present situation remains unsatisfactory as far as teaching the state language for children belonging to national minorities is concerned" (ECRI Report 2007: 30).

Worrying signals of the lack of efforts from the state authorities, which even seem to have been relaxed, were detected by the ECRI report which stressed that the prevailing situation is "far from improving in this field, which is regrettable as the state language is an important tool for the integration of the whole society" (ECRI Report 2007: 30-31). Furthermore, the educational efforts, so far carried out, have been flawed due to the poor quality of teaching, as well as the poor quality of textbooks, which consequently entail that minority pupils "do not attain sufficient command of Moldovan by the end of their schooling" (ECRI Report 2007: 30-31). Although some improvements had been noted, it is apparent that the measures taken were not encompassing enough, since the Council of Europe report stressed, in 2010, that the State authorities need "to make every effort to improve, substantially, the availability and quality of teaching of the state language" (CoE Report 2010: 3). Concomitantly, however, it should be noted that the authorities were also recommended to find an "educational approach that reconciles the desire to promote teaching of the state language with the need to protect minority languages" (ECRI Report 2007: 30). This recommendation was reiterated in 2010. (CoE Report 2010: 3) A serious impediment, however, towards realising both an increased level of proficiency in the state language, in parallel with ensuring minority language rights in education, is the privileged position of the Russian minority language, which still has *de*

facto status as official language, and is still largely used as the main *lingua franca*.

Just as in Georgia, the strengthening of the state language has been part of the civic integration programme in Azerbaijan. However, the stakes for the national minorities of Azerbaijan are much less aggravating than for those in Georgia, since minorities' command of the Azeri state language is, generally, very good. Thus, the more "unproblematic" situation of minorities in education in Azerbaijan is also apparent in the monitoring reports, whose assessments are very limited, indeed. The little attention is, however, surprising, since the legislative provisions in the area of minority language rights in education are almost non-existent (0.5). In fact, even though the Advisory Committee had previously urged the Azerbaijani authorities "to provide adequate legal guarantees for persons belonging to national minorities, to receive education in their minority language", the urgency of the matter seems to be reduced, since *de facto* minority education exists. (CoE Report 2007: 25) Even though not legislatively provided for, the Advisory Committee "welcomes the fact that schools with the entire curriculum in Russian or Georgian continue to be available, besides schooling in Azerbaijani" (CoE Report 2007: 6). Furthermore, and once again *de facto*, it is possible to study other minority languages as part of primary education, in regions "where persons belonging to national minorities live in substantial numbers" (CoE Report 2007: 6).

Even though the *de facto* situation is assessed as quite satisfactory, the Advisory Committee nevertheless recommends the Azerbaijani authorities "to consider ways of extending possibilities to learn minority languages in the educational system" (CoE Report 2007: 26). Furthermore, and notwithstanding the quite extensive possibilities that exist, in practice, for minorities' to get instructed in, or of, their minority languages, the Advisory Committee "invites the authorities to ensure that any future legislation adequately guarantees the right", which already is provided for in practice. (CoE Report 2007: 26) However, in 2010, no legislative provisions had been adopted and, *de facto*, the Azerbaijani authorities continued to "provide the general school curriculum in three languages (Azerbaijani, Russian and Georgian), as well as teaching at primary school level of several minority languages" (ECRI Report 2011: 7).

Figure 16.6. Progress as of 2010: Minority language rights in education and intra-category variations

		A		S	Mo
		B	G	Cr	Ko
					Ma
Tolerance	x	x	x	x	Promotion
	(0)	(1)	(2)	(3)	(4)

To sum up, it is evident that even though some change has been recorded, compared to the initial level of rule adoption, variation is minor, and resembles the situation pertaining to the domain of official use of minority languages. However, whereas the “explanatory power” of the speed dimension accounted for 34.2% of the variation in the level of rule adoption in the domain of the official use of minority languages, the impact of the speed dimension is almost insignificant as concerns minority language rights in education. Although the legislative change, made by Georgia, has meant that the Eta square value has increased from 0.10 to 0.144, which, subsequently, entails that the variation in the level of rule adoption would be explained by 14.4% by the speed dimension, the increase is minor. Furthermore, and in the same vein as within the domain of the official use of minority languages, the relevance of the impact of the speed dimension on the level of rule adoption in this area has to be seriously questioned. Since the basis of the legal framework primarily was established by the different peace agreements, prior to the investigation, the likelihood for legislative change is minor, at least in the categories pertaining to the States of the Western Balkans.

Even though change has been recorded in one of the ENP-states, temporally the furthest away from the prospective EU membership reward, the change has meant a regression in terms of minority language rights in education. What is more, whether this legislative regression is a direct consequence of the recommendations of the monitoring bodies, or, whether it is a logical consequence of national strategic considerations of Georgia, is a matter of speculation. However, what is clear is that irrespective of category, recommendations on the promotion of the state language in minority education and increased efforts of bilingualism, are, consistently, stressed by the monitoring bodies, although these should

not be implemented to the detriment of minorities' language rights in education.

The argument that questions the relevance of measuring the speed dimension's impact on the level of rule adoption in this area is that, irrespective of category, the majority of the recipient states already initially provided for extensive rights (Croatia, Serbia and Georgia), and very extensive rights (Macedonia, Kosovo and Moldova). Apart from Croatia and Serbia, the counterproductive effects of these extensive rights have contributed to create parallel education systems, enhancing the linguistic gap between the linguistic communities, which, in turn, has led to increased ethnic segregation. Thus, apart from stressing more effective implementation of minorities' language rights in education, the recommendations of the monitoring bodies are, however, consistently, more directed towards urging state authorities to increase efforts of bilingualism, with the aim of strengthening the national cohesion of the recipient states. The calls for integrative efforts are particularly blatant in the cases of Macedonia, Kosovo, Georgia and also Moldova. In the Kosovo case, efforts aiming at "reconciliation and multi-ethnicity" are a priority, explicitly defined in the European partnership priorities. (EU Kosovo Report 2009: 17) Whereas the recommendations of the monitoring bodies have largely been responded to by the authorities of Macedonia, Kosovo, and by Georgia to some extent, the non-responsiveness of the Moldovan authorities is evident. In the Moldovan case, the reluctance should, primarily, be seen in light of the highly politicised linguistic issue, which makes any change in this area highly unlikely at present. In the same vein, it has to be recognised that, although responsive, the "integrative" measures, introduced by the authorities of both Kosovo and Macedonia, have, in fact, been inconclusive. Indeed, the most striking example is the decision to introduce learning of the Macedonian language from primary school; a decision that was violently reacted to by the minority communities and, which, subsequently, led to its annulment.

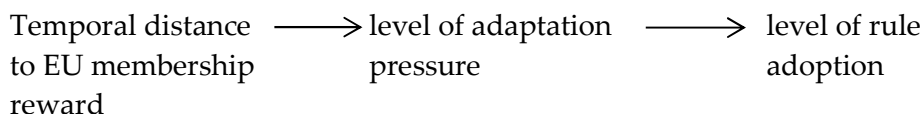
Viewed the sensitivity of the linguistic issue in education, since the strengthening of the state language in education necessarily means the weakening of minority language rights, it is a balancing act. In fact, not only the monitoring bodies, but also the state authorities in the recipient states, have to navigate between ethnic accommodation and civic integration. Furthermore, since the rights granted by the peace

agreements are hard to negotiate away, it is not surprising that Georgia, in fact, was the only state that successfully managed to strengthen the state language to the detriment of minorities' rights in education. However, the consistent calls from the monitoring bodies for introducing bilingual measures, with the aim of strengthening the national cohesion of the majority of the recipient states, indicate that the Georgian example could be followed by others. Consequently, this might entail that instead of predicting a progression in terms of the level of minority language rights in education, as we had expected, in the future we might instead see a regression. Whether this process will be embarked upon or not, is not the issue of investigation here. However, what is clear is that the relevance of measuring the progress in minority language rights in education, and what impact the speed dimension, consequently, has on this area of investigation, can seriously be questioned.

WHAT HAVE WE LEARNT AND WHERE DO WE GO FROM HERE?

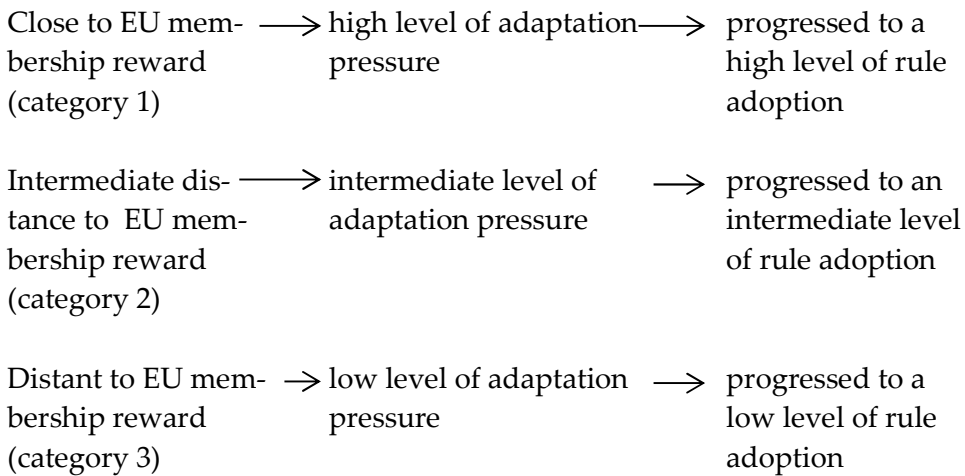
This investigation started out as an interrogation as to the widespread understanding of the effectiveness of EU political conditionality. In research on EU conditionality, the strategy of reinforcement by reward has proven particularly successful in explaining norm compliance. Thus, on the basis of the External Incentives Model of Governance, whose central claim is that the EU membership reward is an effective incentive to induce non-member states, on track of EU accession, to comply with EU conditionality, the research at hand set out to test the validity of the model. The scope of research was limited to EU minority language rights conditionality, where the norms of non-discrimination, the use of minority languages in official contexts, as well as minority language rights in education were investigated. While the explanatory power of the speed dimension, as one source of variation, has never been properly analysed, since it has been overshadowed by the size dimension, this investigation set out to do just that. Thus, based on the rationalist perspective, the speed of the prospective EU membership reward was understood to constitute both a constraint and an opportunity, constituting the main driving force of adaptation pressure, in the conditionality-compliance process. Since norm compliance was operationalised as the level of rule adoption, variation in the level of rule adoption in minority language rights conditionality was argued to be heavily impacted by the temporal distance to the prospective EU membership.

Fig 17.1. Speed of reward hypothesis and level of rule adoption



Following from this, it was, subsequently, hypothesised that the nearer the recipient states are to the prospective EU membership reward, the higher the adaptation pressure, and the more likely the level of rule adoption would be high. Vice versa, the further away the recipient states are from the prospective EU membership reward, the lower the adaptation pressure, and the more likely the level of rule adoption would be low. On the basis of our empirical base, we, accordingly, expected the level of rule adoption to have progressed to be the highest in Croatia and Macedonia (category 1: candidate states), to have acquired an intermediate level in Bosnia, Kosovo and Serbia (category 2: potential candidate states), and to be the lowest in Azerbaijan, Georgia and Moldova (category 3: ENP states).

Fig. 17.2. Speed of reward hypothesis and categorisation of the empirical base



When having measured the level of rule adoption, on the basis of the progress made in the respective categories during the time frame of the analysis, the results of the investigation, however, only partially confirmed our postulated hypothesis. The results pertaining to the non-discrimination norm showed that the speed of the prospective EU membership reward did constitute an effective mechanism of adaptation pressure, but only partly. On the one hand, we observed that whereas the relationship between the speed of the prospective EU membership reward and the level of rule adoption was quite weak initially (eta square value: 0.208), it had been substantially strengthened when we had

measured the progress made by 2010. In fact, in 2010, the variation in the level of rule adoption between the three categories was explained by more than 65% by the speed of the prospective EU membership reward (eta square value: 0.652). On the other hand, however, it became evident that the strengthened association, between the temporal distance and the level of rule adoption, was, primarily, explained by the increased variation in the level of rule adoption between the ENP-states (category 3), which had remained on the same low level of rule adoption as initially, and both categories of the Western Balkan states. Since the candidate states (category 1), and the potential candidate states (category 2), had progressed to the same high level of rule adoption, this had entailed a levelling out of the expected differences in rule adoption between the two categories. Obviously, this result was highly unexpected, since the candidate states are temporally closer to the EU membership reward than the potential candidate states, thus, rendering that the hypothesis was partially invalidated.

The results pertaining to the norms of minority language use and minority language rights in education were highly different from those of the non-discrimination norm. Whereas we had confirmation on the strengthened relationship between speed and rule adoption in non-discrimination, almost no progress was noted in the level of rule adoption pertaining to the other two norms. In fact, in regards to rule adoption in the area of the use of minority languages in official contexts, no progress had been recorded by 2010. Thus, even though initially the variation in the level of rule adoption had been established at being explained by more than 34% by the speed dimension (eta square value: 0.342), a result which in itself is not insignificant, by 2010, the same pattern of inter-category variation remained. The results observed in the domain of minority language rights in education, further confirmed the non-dynamic relationship between the speed dimension and rule adoption pertaining to these two norms. Indeed, although we did observe a slight change in the pattern of inter-category variation (from an eta square value of 0.10 to 0.144), the change was insignificant. Initially, the association between the two variables was negligible, since only 10% of the variation in the level of rule adoption could be derived from the temporal distance.

It became evident that the weak association between the temporal distance and the level of rule adoption, especially pertinent in the case of

minority language rights in education, was primarily due to the peace agreements of the Western Balkan states, which, prior to this investigation, had set the bar in terms of the extensiveness of the legislative provisions. This largely explains the non-dynamic association between the temporal dimension and the level of rule adoption in these contextualised security-based norms. At the same time, the results strongly question the relevance of the measurement, which is anchored in a categorisation that appears *ad hoc*, at best. The problem of the categorisation is even more manifest as concerns the results in the non-discrimination norm, where the uncertainties, surrounding the temporal location of SAp-conditionality, in fact, have eradicated the demarcation between the categories.

The principle of differentiation in relation to uncertainties surrounding the temporal location

On the basis of the same structures as the pre-accession conditionality of 1993, SAp-conditionality was launched, in 2000, as a mechanism to integrate the former warring states of the Western Balkans into the structures of the EU. However, as opposed to the conditionality of the large Eastern European enlargements of 2004 and 2007, three distinct features, specific of SAp-conditionality, were introduced. Firstly, SAp-conditionality was not directly linked to enlargement, since no explicit promise of EU membership was made.²⁹⁷ Second, the principle of differentiation was retained as a lesson drawn from the previous Eastern enlargement, which, consequently, introduced the categorisation, on the basis of the recipient states' presumptive possibilities of compliance, into candidate states and potential candidate states. Lastly, SAp-conditionality was based on the principle of contextualisation in that it was country-specific. These three specificities are argued to have limited the impact of the temporal dimension on rule adoption, particularly blatant in the area of non-discrimination.

²⁹⁷ In fact, the only "promise" of future EU membership seems to be the statement of the Thessaloniki Agenda which was reiterated in 2005 and which stipulated that regardless of category "the future of the Western Balkans lies in the European Union". Cf. European Council (2005) "Conclusions of the Presidency", DOC 10255/1/05 REV 1, Brussels, 15 July 2005, p. 12, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/85349.pdf, 2010-10-10.

Since the *finalités géographiques* of SAp-conditionality were left undetermined, the temporal location of the potential EU membership reward was left undefined. In the area of non-discrimination, the uncertainties surrounding the temporal location seem to have been instrumental as to the reduction of the temporal dimension's impact on the adaptation pressure, and therefore on the legal behaviour of the recipient states of the Western Balkans. Indeed, the lack of temporal devices, especially timetables, with fixed dates and sequences associated with each category, strongly indicates that the recipient states perceive that they are competing on the same temporal footing. This, in turn, abolishes any temporal frontiers, thus invalidating any variation in the level of adaptation pressure, and, consequently, in the level of rule adoption. Therefore, in the cases where there is uncertainty, not only as to how speedily the prospective EU membership reward will benefit the recipient states, but also as to the duration of the whole conditionality-compliance process, the effectiveness of the speed dimension is seriously reduced in favour of other considerations. These considerations seem to have more to do with the level of motivation, i.e. political will and capacities, of the individual states. Interestingly, we noted that the uncertainty, surrounding the time-frame between compliance and reward, effectively produced very different legal behaviours in the recipient states. Whereas the temporal uncertainty seemed to have created what Goetz has called "trans-temporal policy problems" in Macedonia and Bosnia, constraining these states into a low level of rule adoption, the opposite legal behaviour was noted in the cases of Croatia, Serbia and Kosovo. (Goetz 2009: 208)

The low level of rule adoption in the Macedonian case is particularly interesting, since it is a candidate state, and thereby being temporally the closest to the EU membership reward, at the same as it enjoys most of the financial assistance of the SAp-conditionality. Financial assistance notwithstanding, in the Macedonian case the uncertainties surrounding the temporal location seem to have constrained the Macedonian government into a situation of legal relaxation. The low level of rule adoption in the Bosnian case is, however, more comprehensible, since it seems to be more related to the dysfunctional effects of the Dayton Peace Agreement than to the Bosnian level of motivation. At the same time, though, it is highly likely that the prerogatives granted to the three constituent nations, enshrined in the peace treaty, might very well have

constituted a legal pretext for the Bosnian government to abstain from adopting more extensive legislation in the area of non-discrimination. As opposed to Bosnia, and particularly Macedonia, the legal behaviours of Croatia, Kosovo and Serbia indicate that they have taken advantage of the opportunities of the uncertainties surrounding the temporal location, since they all have progressed to a high level of rule adoption. Thus, whereas the legal behaviour of Macedonia runs counter to Avery's argument, which is that the uncertainty surrounding the temporal location would predispose applicant states "to try harder to meet the EU requirements", the legal behaviours of Croatia, Serbia and Kosovo are completely in line. (Avery 2009: 262)

Whereas the lack of temporal devices, and especially set time-tables specific for each category, most probably constitutes an impediment towards more effective rule adoption, in general, and for the states having been the least prone to adopt extensive legislation (Macedonia and Bosnia), in particular, one is tempted to question the strategy of the EU pertaining to the categorisation. Bearing in mind, however, that our domain of investigation only constitutes one small area of the conditionality package, the categorisation nevertheless raises questions. On the basis of the level of rule adoption, in the domain of non-discrimination at least, a more measured categorisation would have been to place Croatia, Kosovo and Serbia in the category of the candidate states, whereas it would have been more relevant to place Macedonia, along with Bosnia, in the category of the potential candidate states. At the same time, however, it is highly probable that the categorisation is not only determined by the level of the extensiveness of legislation adopted, but also is explained by the *de facto* situation of discrimination, as well as challenges pertaining to the legal order of the recipient states.

In this regard, it is obvious that the situation in Kosovo is problematic and most probably explains why Kosovo is placed in the category of the potential candidate states. Even though *de jure*, the level of anti-discrimination legislation is higher in Kosovo than in Serbia, it is evident that the *de facto* situation in Kosovo is more alarming than in Serbia, as indicated by the reports of the monitoring bodies. Furthermore, the *sui generis* situation of Kosovo, which still can be characterised as a semi-independent state and, in fact, still is monitored on the basis of UN Resolution 1244, is another sensitive issue. Not only is it sensitive from

the perspective particularly of those EU member states that have not recognised the independence of Kosovo, it is also challenging from the perspective of the recipient states, and particularly Serbia, whose non-recognition not only complicates the future accession of Kosovo but also prolongs Serbia's own road to the prospective EU membership. This also explains the EU stance, which is proactive at the same time as it is restrained, which can be seen in the fact that although Kosovo scores the same high level of rule adoption as Croatia, the EU Commission never speaks of near compliance in the Kosovo case. It is clear that Serbia is less controversial, since neither Serbia's legal situation, nor its *de facto* discrimination, causes any real concern from the EU. Not surprisingly then, Serbia had, in fact, been upgraded to the status of candidate state by March 2012. Notwithstanding Serbia's level of rule adoption in the area of non-discrimination, since our investigation is limited to 2010, it is however highly probable that the progress to candidate status was also due to progress in other areas of the conditionality process.²⁹⁸

The categorisation of Macedonia as candidate state is harder to explain, since there is neither a proactive stance from the Macedonian authorities, nor from the EU. One might speculate though, that the decision to accept Macedonia as a candidate state in 2005 might have had more to do with politico-strategic considerations, than any considerations based on the progress made in the level of rule adoption in the domain of non-discrimination. To this effect, status as candidate state might have been seen as an important incentive to the Macedonian authorities, in order to ensure the effective implementation of the Ohrid Framework Agreement, which is consistently stressed in the EU reports as being crucial to the political stability of Macedonia. Thus, the categorisation of the Western Balkan states, which, at first sight, seemed to have been made in an *ad hoc* fashion, at closer inspection, it would seem that strategic considerations were at the core of the categorisation. This would, consequently, mean that although the level of the *de jure* situation had a bearing on the categorisation, the impact of the *de facto* situation, measured on the basis of security-related concerns, seems to have been equally important.

²⁹⁸ The fact that Serbia had finally agreed to extradite the remaining war criminals to the International Criminal Tribunal for the former Yugoslavia (ICTY) was most probably crucial to the decision to upgrade Serbia from potential candidate state to candidate state.

The categorisation, in relation to the lack of temporal devices, might seem to be an ineffective mechanism when preparing the Western Balkan states for eventual EU membership. However, it is highly likely that this is a well thought-out strategy, since it enables the EU to stay non-committal towards these recipient states, at the same time as keeping them on a leash of membership expectations, regardless of the category they belong to. The EU strategy is comprehensible since it leaves the EU with the utmost flexibility of action. The non-committal strategy seems to be based both on a sense of enlargement fatigue in parallel to a lack of consensus from the member states on the end-goal of the SAP-conditionality-compliance process. It has to be acknowledged that the strategy has proven to be effective since the results show that, even in the absence of membership guarantees, the recipient states, in general, were decidedly prepared to comply with the EU conditions, at least in the domain of non-discrimination. In light of these considerations, the non-committal strategy and the lack of an explicit promise as to when, and, consequently, how speedily the ultimate reward might benefit the recipient states, is comprehensible, however, precarious, in a long-term perspective. Precarious, in the sense that the lack of a temporal location of the prospective EU membership reward, as well as the blurring of the temporal distance, can create a sense of fatigue, at least on the part of some of the recipient states, whose motivations to comply might stagnate, as already noted in the cases of Macedonia and Bosnia.

The strategy is precarious also from the perspective of the political instability which still characterise Bosnia, Macedonia and Kosovo, in particular, whose societies are still permeated with inter-ethnic tensions. Consequently, a sense of temporal infinity, in regards to the ultimate EU membership benefit, might aggravate the inter-ethnic tensions, which paradoxically were the main reasons for the launching of the SAP-conditionality. Furthermore, the complexity of the very nature of the contextualised security-based norms, based not only on the various peace treaties but also on the articles of the Framework Convention, give rise to uncertainties, which, in turn, create problems as to the implementation of the very regulations that have been set as conditions.

Security-based conditionalities: Problems and perspectives

Both moral reasons as well as self-interested calculations are certain to lie behind the EU decision in the late 1990s to tie the states of the Western Balkans closer to the European structures. Indeed, it is evident that the incapacity of the EU to help resolve the violent conflicts in the Western Balkans left imprints on the EU, at the same time as there was a necessity to secure the external stability of the EU, once the violent conflicts had been terminated. Thus, in the aftermath of the Kosovo war, it is clear that the EU perceived that they had an obligation to act in order to prevent the re-emergence of violent ethnic conflicts on the doorstep of the EU. Since the pre-accession conditionality of the CEEs had been perceived as a success, SAP-conditionality was developed, primarily, as a conflict resolution mechanism, an EU variant of the Responsibility to protect norm, however with specific conditional criteria attached to it. Even though the Copenhagen criteria are part of the conditionality package, the contextualised security-based conditions, largely regulated by the various peace treaties, are an important part of SAP-conditionality.

Furthermore, since the prevention of inter-ethnic tensions underpins much of the SAP-conditionality, assessments of the *de jure* situation were also complemented by assessments of the *de facto* situation, which was blatant also in the area of the non-discrimination norm. However, as opposed to the universal justice-based norm, which accounts for a high level of legal precision, the complexity of the more contextualised security-based norms is two-fold, which makes compliance difficult, not in terms of *de jure* rule adoption, but in terms of meeting the recommendations of the monitoring bodies, which are more focused on the *de facto* situation. First, the content of the norms is stipulated in a very general fashion, allowing for different interpretations, not only from the recipient States' authorities, but also from the monitoring bodies, depending upon the security contexts of the recipient states. Second, and added to the legal imprecision of the norms, even though the regulatory frameworks of the peace treaties had initially set the bar as to the level of the extensiveness of legislation in each of the states of the Western Balkans, concomitantly, the assessments are made on the basis of the articles of the FCNM. Whereas the basis of the peace treaties had almost exclusively been centred on guaranteeing that minorities would be

provided with extensive language rights²⁹⁹, the articles of the FCNM, and the recommendations of the monitoring bodies, are, equally, focused on the fact that these minority language rights provisions should not be made to the detriment of the strengthening of the State languages.

The inconsistencies, between the legal frameworks and the recommendations of the monitoring bodies, are, particularly, pertinent both in the cases where extensive minority language rights are provided for (Macedonia and Kosovo), and also in the case where these language rights are very modest (Bosnia). In Kosovo and Macedonia, the construction of political stability was considered to require far-reaching minority language rights, particularly for the Serb and the Albanian minorities, respectively. Thus, one component of UN resolution 1244 was to provide for very extensive language rights for the Serb minority. In Macedonia language rights for the Albanian minority was the pivot of the Ohrid Framework Agreement that set the regulations which provided for the same extensive language rights as in Kosovo.

At the same time, and on the basis of concerns over increasing segregation between the major communities in the two states, and based on the articles of the FCNM, the recommendations of the monitoring bodies also point to the importance of the introduction of bilingualism, as a means of overcoming the division between the former warring parties. With the aim of bridging the gap between the linguistic communities in both states, the strengthening of the official languages has been recommended, since this has been seen as vital for the promotion of the national cohesion of the respective states. However, the challenges that these recommendations entail, are enormous, because guarantees of extensive minority language rights have been seen as instrumental to resolve the inter-ethnic violence, as enshrined in the peace treaties. The introduction of the Albanian language as obligatory in the Kosovo-Serbian curriculum has not been an easy task, and neither has the reverse, i.e. to make the learning of Serbian compulsory to Albanian pupils. Even though some efforts of bilingualism were noted in the Macedonian case, the results have, so far, been quite fruitless. Increasing the complexity of the conditions set is the ambiguous stance of the monitoring bodies.

²⁹⁹ Except for the Dayton Peace Agreement which was almost exclusively centred on guaranteeing equal rights of the constituent nations which was made at the detriment of protecting minorities' language rights.

Recognition is given to the importance of implementing the regulations of the peace treaties, since these are seen as vital to the political stability of these states.

On the other hand, the regulations of the peace treaties, although not expressed directly by the monitoring bodies, seem to constitute part of the problem in terms of promoting reconciliation and multi-ethnicity, which are seen as the key to the viability of the political stability. The Bosnian case is very different, although equally challenging. Indeed, although the modest minority language rights have been recognised as a problem by the monitoring bodies, the challenges of the highly segregated Bosnian state are primarily found in the stark division between the three constituent nations. Indeed, the prerogatives granted to the three constituent nations, enshrined by the Dayton Peace Agreement, constitute both the foundation of the ethnic-based policies, as well as their preservation, which, in consequence, has led to very modest minority language rights provisions.

The ambiguous stance of the monitoring bodies, as concerns the dilemma between ethnic accommodation and civic integration, is prevalent in the ENP-states as well, especially in the cases of Moldova and Georgia, where the weakness of the state languages is manifest, at the same time as minority language rights are very extensive in the Moldovan case, and decreasingly weak in Georgia. However, the ambiguous stance of the monitoring bodies does not have the same bearing on difficulties of compliance, since these states are temporally much more distant to the prospective EU membership reward. Since the incentives are less important, the adaptation pressure is considerably lower. Furthermore, even though the linguistic issue is highly politicised, particularly, in Georgia and Moldova, the ENP minority language rights conditionality is less complex, since it is limited to the legal framework of the FCNM, however vague the stipulated articles are. In addition, the ENP-conditionality is less challenging to the EU. In fact, even though the path-dependency of the ENP-conditionality has been argued to be strong, its end-goal is certainly less anchored in enlargement than the SAP-conditionality. At the same time, it is true that even for the ENP-states, the Commission did leave the gate of membership expectations open, when declaring that this new relationship “would not *in the medium-term*

include a perspective of membership” (Kochenov 2008: 15, emphasis added).

It is clear that even in the absence of an explicit promise of EU membership, as well as a lack of temporal devices, especially SAp-conditionality has proven quite effective, at least as far as Croatia and Serbia goes. However, in those states which are the most ethnically segregated, it is blatant that SAp-conditionality, at least without an explicit temporal location, has largely failed. Not surprisingly, this situation is prevalent also in the ENP-states where the influence of the EU has been almost non-existent, at least in the areas of investigation. The risks of compliance *fatigue* in these weak states are challenging, and would call for greater incentives from the EU. These greater incentives would not necessarily have to entail the determination of the end-goals of either SAp-conditionality or ENP-conditionality, nor how speedily these could be reached. However, since the road to prospective EU membership most probably will be both cumbersome and time-consuming for the weakest states, it would probably be wise to develop a system of gradual incentives, where the financial and political assistance would be tied to a system of gradual compliance. At the same time as a gradual conditionality-compliance approach seems urgent, in order to facilitate the road to the end-goal, in parallel, it seems highly risky to avoid a more explicit determination of the end-goal of full compliance. Risky in the sense that in cases where the recipient states have fully complied with the conditions set and the presumptive reward, i.e. EU membership, will not be awarded, this could create situations of heightened tensions in the near neighbourhood that the EU would be ill-equipped to respond to. Furthermore, this plausible situation would in fact discredit the very essence of the conditionality policy, which, up until now, has been quite effective, at least in terms of making states adopt legislation to meet the EU requirements.

The explicit determination of the end-goal of the security-based conditionalities, and particularly SAp-conditionality, is, however, highly unlikely, and is not only due to an enlargement *fatigue* and a lack of consensus pertaining to enlargement *per se* between the 27 EU member states. In fact, the lack of an end-goal to the current enlargement process points to a more generalised problem, which is anchored at the very nexus of the EU project itself. Indeed, since there has never been

consensus on the end-goal of the EU project, consequently, both, the enlargement process as well as the integration process, have been allowed to move in an *ad hoc* and unpredictable fashion. However, concerning especially the majority of the recipient states of SAp-conditionality, the stakes are much higher than during previous enlargement rounds, both to the recipient states themselves, but also to the EU. Although EU membership has not been explicitly promised, the EU has obligated itself to tie the future of these states into the European Union, without however giving the recipient states any serious incentives to be able to deliver on the unofficial promise. This has proven particularly problematic for the most ethnically segregated states. In fact, not only is the lack of temporal devices, in parallel to insufficient economic incentives, a problem, the lack of providing for clear political guidelines, as to the balance between ethnic accommodation and civic integration, is, equally, challenging, and does neither facilitate compliance nor ethnic reconciliation.

The lack of consensus as to the end-goal of both SAp-conditionality and ENP-conditionality is likely to remain, and to constitute an enduring compliance problem for those states that are the most in need of support. Indeed, given that the EU, at present, is at a turning point where the euro-crisis, at least temporarily, has put the integration process on hold, this is likely to have negative implications also for the enlargement process. However, just as the stagnation of the integration process is detrimental to handling the euro-crisis, a stagnation of the enlargement process is likely to produce tensions in the weakest states, whose consequences are difficult to predict, not only for the recipient states themselves, but also for the EU.

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