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Comparative Analysis of Central-East European Minority Rights Legislation



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Introduction

The question of the management of ethno-cultural and linguistic diversity has been very salient throughout Europe and especially in Central-East Europe¹ in the last two decades (Smith & Cordell, 2008) on the level of individual nations as well as an area for the development of international legal standards and instruments.

The last twenty years have seen a great leap forward in the number of international instruments and institutions designed to expand the international protection regime for minorities (Henrard & Dunbar, 2008). Some of these instruments protect national, ethnic or religious minorities while others provide protection through general human rights provisions or the promotion of the protection of cultural heritage through the diversity brought by the presence of minorities.

In the same time period the formerly Communist states of Central-East Europe have transitioned towards full democracies and market economies. Part of the process was the adoption of human rights standards and improvements of the minority rights protection regimes, even more so as this was one of the requirements of engagement with European and transatlantic international organizations (Smith & Cordell, 2008).

Regardless of international standards and common membership in the European Union, the treatment of national minorities either resident domestically or more often in kin states is one that is highly politicized and kept on the national media agenda in Central-East Europe. The objective of this study is to move beyond the daily politics and examine the legal landscape and the implementation of legislation protecting minorities in light of international standards and obligations.

With the hindsight of the last twenty years, it is useful to look at how the concept of minority protection developed in the region, whether the change in regime has contributed to an increased level and standard of minority protection and whether the states were able to meet their commitments made under international law when joining such international instruments like the Framework Convention on the Protection of National Minorities or the European Charter for Regional or Minority Languages.

¹ As the exact definition of terms like Central Europe, Eastern Europe or East Central Europe are debated and ambiguous (Ágh, 1998, pp. 1-7), this paper will use the term Central-East Europe throughout.

The aim of the present paper is to survey the protection of linguistic and minority rights of minorities in the context of Central-East Europe through a look at national legislation. For the purposes of this study, the minority rights regimes of five Central-East European states that have experienced a political transition from Communism will be scrutinized.

As part of the study, first the development and concept of minority rights and the related concept of linguistic minorities will be expounded upon, followed by an overview of population demographics of the region. While a big part of minority protection regimes, especially before the 20th century, is concerned with religious minorities, this analysis will focus on linguistic rights of national, ethnic and linguistic minorities.

The second part (chapters 4-8) will trace the development and application of the concept in the five countries chosen for study: Poland, the Czech Republic, Slovakia and Romania. A combination of contrasting international commitments, available demographic data and the local legislation of the analysed countries will be used to paint the contemporary state of minority protection in the region.

The concluding chapter will present the result of the underlying research questions of whether the emergence of international minority protection conventions and the European Union's insistence that the newly joined countries adopt them has created a comparable and sufficiently high level of minority protection in Central-East Europe.

Methodology

Poland, the Czech Republic, Slovakia, Hungary and Romania, five Central-East European countries sharing a common pattern of peaceful political transition from communism to free democratic societies will be analysed for their treatment of minority rights using a case-study method and utilizing a public policy analysis approach.

As a consequence of the chosen method of relying on international commitments and national legislation, the level of analysis will be the five chosen states instead of individual minority groups resident in these countries. States may accord different legal status to different minorities and they may implement existing legislation differentially, where this is the case, especially where this is apparent from relevant legislation, expert reports or recommendations, it will be commented upon in the study.

It is noted that there are other Central-East European states sharing the characteristic of having gone through a political transition and being geographically located in Central-East Europe, for example the former Yugoslav states and the Baltic countries that have regained independence through the dissolution of Soviet Union; however, the recent history of armed conflict, ethnic strife and delayed democratization in the case of the former group of countries and the different historical background of the latter differentiate them significantly from the chosen countries. Nevertheless, study of the minority rights regimes of these countries is strongly recommended for further research.

To situate this research in the proper historical, legal and ideological context a general background chapter will examine the development of the concept of minority protection in international law, including separate sections devoted to two treaties of special relevance in Europe, the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities. Finally, this preliminary chapter will also provide a general demographic survey of the status of minorities in the Central European region.

Second, each individual country case study will be introduced by a survey on the presence of any national, ethnic or linguistic minorities based on data supplied by central statistical offices, governments, as well as historical accounts. An important source of this data will be the information provided by the countries upon ratifying the European Charter for Regional or Minority Languages (ECRML) and the Framework

Convention for the Protection of National Minorities (FCNM), as well as census data and demographic surveys.

Each country's undertakings of minority protection will be analysed based on their commitments made under international law – paying particular attention to nuances like differential treatment of languages under Part II and III commitments of the ECRML – and their implementation in national legislation. As usually there are dozens of laws, regulations and ratified international agreements that partially affect the rights of persons belonging to minorities or speaking a minority language, the current examination will focus on legislation that deal with a broad range of rights (minority acts) or the use of minority languages. In the absence of framework legislation, attention will be given to the state's constitution, and laws governing the use of minority languages in various fields (education, naming of municipalities, courts). Preference will be given to legislation referenced in state reports on compliance with the FCNM and ECRML. Bilateral international agreements and sectoral and general anti-discrimination legislation complementing the acts under examination are outside the scope of this analysis.

There is no universal or even regional, easily reachable database of laws with official translations either into international languages or at least the languages spoken in the given country, therefore this paper will rely on translations found through searching the internet for the given legislation's reference number and relevant keywords ("minority", "ethnic", "regional language", etc.). (In case of Hungarian legislation the Hungarian text will be used for analysis, and an English translation for quoting.) Wherever possible, official translations will be utilized; however, when this is not available we will rely on translations provided by NGO's and international organizations on the internet.

It is acknowledged that translations might not accurately reflect the original or be outdated and the reliance on searches based on reference numbers might lead to omissions, which might undermine the validity of some of the comments made based on them. However, the aim of this study is to analyse minority rights protection at a high level in the countries with discoverability of the relevant legal provisions being one of the minor facets of analysis: if a certain legislation is not easily findable through a determined search by a person not speaking the majority language, it is reasonable to suspect that the given legislation would not be well known and understood by the people the legislation is aimed at.

As there can be a gap between the contents of national legislation and international commitments and their application and implementation in real life, the final section of each country chapter will evaluate each state's legislation utilising available data on the status of implementation.

Finally, a comparative evaluation will follow on the basis of individual case studies identifying common themes, major differences and possible areas of development based on the regional and international best practices, thus giving a unitary answer to the research question introduced at the end of the previous chapter.

1 Background

There are two generally accepted goals for minority protection, the desire to provide the groups in question substantive equality in society, understanding that achieving equality might necessitate differential treatment based on the circumstances, as well as protecting the right to identity (Henrard, 2008).

It is difficult to provide a thorough account of the state of minority rights protection regimes without the proper understanding of the definitions, demography and international legal constraints that interact with the unique national solutions. This chapter will set the basis of the individual case studies on the minority rights policies of Central-East European countries by placing the issues, concepts and approaches in the relevant legal, historical and factual context that inform and frame the analyses that are conducted in the chapters that follow.

1.1 Minority rights in International Law

1.1.1 Definition

While there have been attempts to define “minority” in international law, currently there is no universally accepted binding definition of minorities in international law. The difficulties in defining the concept stem from the wide variety of groups the term could be applied to, the desire of certain states to not accord minority status to parts of their population, and sometimes even the groups claiming minority status resist attempts to create firm definitions (Khan & Rahman, 2012).

With the difficulties in mind, based on the definitions created by Capotorti (1991, p. 98 quoted in Wheatley, 2005, p. 18) and Deschênes (1985, para 181 quoted in Wheatley, 2005, p. 18), four common elements of the various definitions are commonly recognized:

1. a minority is a population group with different ethnic, religious or linguistic characteristics from the rest of the population;
2. the group is numerically smaller than the rest of the population;
3. the group is in a non-dominant position; and
4. traditionally, minorities have to be citizens of the country of residence.

A final subjective element is usually considered part of the definition, the common will of the people in the group to preserve their distinct identity, along with the right of individuals to identify as members or not members of a given minority group. (Henrard, 2008).

1.1.2 Minority protection between the two world wars

The first instruments of minority protection were related to religious minorities (Alcock, 2000, p. 6). Such mechanism for protecting these minorities can be traced back to ancient times, for example in the measures adopted in favour of the Jewish community in the Roman Empire or the Millet system of the Ottoman Empire could be argued to fall into this category (Henrard, 2008). There were further developments in 16th century Europe with the Edict of Nantes (Alcock, 2000) and the Treaty of Westphalia in the following century (Pentassuglia, 2002, p. 181).

The first modern international system of recognizing and protecting minority rights was created in the 20th century when under the auspices of the League of Nations a number of treaties were concluded that prescribed the protection of minorities (UN Office of the High Commissioner for Human Rights, 2010), as a way to remedy some of the consequences of minorities living in new nation states created after the First World War. The protection of minorities was not seen as a universal requirement affecting all states; rather it was limited to certain territories and specified minorities in special situations governed by treaties and declarations (Meijknecht, 2010).

The treaties were “placed under the guarantee of the League of Nations”, which could receive petitions and could take action in case of infractions. Individuals and states were allowed to bring to the attention of the League any infractions of the protection of minorities in treaty states and the League’s Council could examine them (Alcock, 2000, p. 55).

The League of Nations system ultimately failed due to a number of factors, including the resentment of states that have regarded it as an imposition from outside, resulting in ever lower rates of compliance (Hofmann, 2007).

The effectiveness of the monitoring regime was further hindered by the fact that the Council had little power to enforce grievances or to censure states submitting false declarations and procedures were slow. Moreover, in the interest of impartiality, the Council of Three that examined petitions often consisted of American and Asian representatives, who at times lacked expertise (Alcock, 2000, pp. 84-85).

While no general regime or customary law of minority protection emerged from the League of Nations system, the Permanent Court of International Justice’s Advisory Opinion on Minority Schools in Albania articulated the two basic tenets of adequate minority protection that are based on protection against discrimination and provision of special rights to protect the separate identity of minority groups (Henrard, 2008). Both tenets can be considered implementations of the principle of equality (Henrard, 2000).

1.1.3 Minority protection after the Second World War

The system of international protection of minorities, based on group rights was abandoned following the Second World War, and the development of a new system began, initially predicated on the universal application of human rights and certain limited rights accorded to persons belonging to minorities. This system was later expanded, especially in Europe in the period following the Cold War with the adoption of treaties aimed specifically at the protection of minorities or the cultural and linguistic diversity they represent.

In 1948 the Universal Declaration of Human Rights recognized the rights to equality, freedom of thought, expression, conscience, association, freedom of choice in the education of children and the freedom to “participate in the cultural life of the community”². The Declaration did not recognize the right to participate in one’s (minority) community, rather referred to “the” general community. Minority rights were specifically avoided in the declaration as it was considered a very difficult topic to tackle universally (Wheatley, 2005).

On the level of general human rights treaties, a number of human rights treaties (including the First Additional Protocol to the [European] Convention for the Protection of Human Rights and Fundamental Freedoms, the American Convention on Human Rights and the African Charter on Human and Peoples’ Rights) also included provisions about right to education, freedom of religion, association, and expression that could be applied in a way to provide protection to minorities (Henrard, 2008).

At the global level, the protection of minorities made its presence in the work of the United Nations with the establishment in 1947 of the United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities of the UN Commission on Human rights. (Henrard, 2000)

Article 27 of the 1966 International Covenant on Civil and Political Rights (ICCPR) provided that in “States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”³

Furthermore, the General Assembly has adopted in 1992 the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities signalling the need that further special measures were warranted in the sphere of minority protection (Henrard, 2008; Kovács P. , 2000). A further step in this direction was the establishment in 2005 of a UN Independent Expert on minority issues, and in 2008 a Forum on Minority Issues was inaugurated that issues recommendations. (UN Office of the High Commissioner for Human Rights, 2010).

² Universal Declaration of Human Rights. (1948, December 10). Retrieved February 25, 2013, from <http://www.un.org/en/documents/udhr/index.shtml>.

³ International Covenant on Civil and Political Rights. (1966, December 12). Retrieved February 23, 2013, from <http://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf>.

In parallel to the slowly on-going United Nations processes on the global level, the main thrust of the continuing development in the sphere of minority protection has taken place at a European, regional level under the auspices of the Conference for Security and Cooperation in Europe (later the Organization for Security and Cooperation in Europe) and the Council of Europe. This process was fuelled by fears that unsettled minority issues could have serious security implications in the forms of ethnic strife and even war, especially in the Balkans region (Agarin & Brosig, 2009).

The Council of Europe has adopted two conventions dealing with either the protection of national minorities (the 1995 Framework Convention for the Protection of National Minorities) or their indirect protection through the promotion of the use of regional or minority languages (the 1992 European Charter for Regional or Minority Languages), which will be described and analyzed in the sections below. The CoE's Parliamentary Assembly has also adopted a series of recommendations and orders on the rights of minorities, including a proposal for an additional protocol on the rights of national minorities to the European Convention on Human Rights, which while never materialized as an actual protocol, Recommendation 1201 (1993) has been used as a term of reference in a number of bilateral treaties concerning the protection of minorities (Kovács P. , 2000).

The CSCE has issued a number of soft law declarations at its meetings in Copenhagen, Paris and Geneva that reinforced the need of the protection of national, cultural and linguistic identities of national minorities (Kovács P. , 2000), which continue to be frames of reference in other international minority protection instruments. The Helsinki summit adopted the mandate of the CSCE High Commissioner on National Minorities (Conference for Security and Cooperation in Europe, 1992), and the commissioners since have adopted seven thematic recommendations on topics like „education rights of national minorities”, „linguistic rights of national minorities”, or „policing in multi-ethnic societies”⁴, that have served as bases for future international standards (Henrard, 2008).

1.2 European Charter for Regional or Minority Languages

The European Charter for Regional or Minority Languages was concluded in 1992 in Strasbourg under the auspices of the Council of Europe and came into force following five ratifications in 1998.⁵

⁴ Organizations for Security and Co-operation in Europe. (2013). Thematic recommendations. Retrieved February 25, 2013, from High Commissioner on National Minorities: <http://www.osce.org/hcnm/66209>. The High Commissioner has also created a thematic recommendation addressing the problems of the Roma and Sinti minorities, who are heavily discriminated against throughout Europe (Bloed & Letschert, 2008).

⁵ Council of Europe. (2012, November 18). European Charter for Regional or Minority Languages: Signatures and ratifications. Retrieved November 18, 2012, from <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=148&CM=8&DF=&CL=ENG>

Adoption of the Charter was the result of a long process where the Council of Europe has recognized that the protections provided to national minorities under the European Convention on Human Rights (ECHR) were not enough to guarantee their fulfilment in their various cultures and that regional and minority languages were being threatened. As a result of political considerations acceptance of a separate treaty on the subject was understood to be more feasible than the expansion of the ECHR with an additional protocol (Kovács P. , 2000).

Work on the text of the treaty began in 1984 and through the involvement of two different working groups has lasted right until 1992 (Woehrling, 2005). The final draft was forwarded to the Committee of Ministers in June 1992 and was opened for signature on 5 November 1992 (Grin, 2003).

The Charter is original in its approach of promoting the cultural value of a diversity of languages and cultural rights instead of focusing on protecting the rights of national minorities or general human rights. The Charter is protecting certain regional minority languages instead of the minorities as groups or persons belonging to minorities (Woehrling, 2005), however, it is presumed that the protection of the language spoken by minorities would enhance their status.

The Charter does not define what a language is. Protection is given to “regional or minority languages” that are traditionally used within the territory of the state, are neither official languages nor dialects of the official languages. Languages of migrants are specifically excluded (Woehrling, 2005). There is no distinction made between regional and minority languages, nor was a definite catalogue of the affected languages made part of the Charter.

Territoriality, the geographical area where a language is used as a mode of expression, is an important concept for a number of protective measures included in the Charter, although it is duly recognized that there are certain languages that may not be identified with a particular area.

The Charter, furthermore, distinguishes a category of non-territorial languages, to which only a limited part of the Charter’s provisions apply. The defining characteristic of these languages are that they “cannot be identified with a particular area”, meaning that the language is not identified culturally with the area where it is used and that their speakers are scattered around the territory of the state. Typical examples of non-territorial languages are those spoken by traditionally nomadic people (e.g. the languages of the Roma) or the languages groups who have arrived in the state through migration (Woehrling, 2005, pp. 68-71).

The Charter is aimed at preserving linguistic diversity and this goal is to be achieved by general and concrete measures and undertakings that build the speakers capacity and skill in the language, provide opportunities for the use of the language and – to a lesser degree – increases the speakers’ desire to use their language. These three elements are seen as necessary for the effective preservation of a language (Grin, 2003).

1.2.1 Structure

The Charter is divided into a Preamble and five Parts with substantive provisions describing obligations to be undertaken by states contained in Parts II and III (Dunbar, 2008).

Part I contains definitions and describes the system used for selecting which parts of the Charter apply to which languages. Part II contains general objectives and principles that need to be applied to all languages and Part III contains a slate of specific undertakings from which the states may choose the ones they wish to implement in relation to a given language.

Part II of the Charter enumerates specific objectives, principles or undertakings that states are required to adopt with respect to all of their regional or minority languages. Undertakings include respecting minority languages as cultural wealth; respecting the geographical areas where minority languages are spoken; accepting the need for “resolute action” to promote and safeguard them; facilitate their use in private and public life; provision for teaching minority languages at all appropriate stages; the elimination of all discrimination against minority languages (positive measures are exempted); to promote mutual understanding between speakers of different languages; and to take into consideration the wishes of groups speaking minority languages.⁶

Part III contains detailed obligations in seven separate articles related to the use of minority languages in education, by judicial authorities, by administrative authorities and in public services, in the media, in cultural activities and facilities, in economic and social life, and finally in transfrontier exchanges. States have a choice in whether to apply the undertakings of Part III to a given language and in case they do they have a considerable level of freedom in choosing which ones to apply to a particular language. Altogether there are 65 paragraphs and subparagraphs in Part III, out of which a state needs to choose 35 to apply to a language.

States should try to match their undertakings to the specific situation of each individual language, as some provisions are better suited for languages with a large number of speakers while others are better adapted to less widely spoken ones. In general, a “sliding scale” approach is recommended where languages with more speakers are accorded stronger protections, while the weaker undertakings are recommended for less widely spoken languages (Dunbar, 2008).

Part IV of the Charter sets up the monitoring procedure with periodical reports and the examination of those reports by a committee of experts. Finally, Part V contains standard concluding provisions on entry into force, accession and denunciation of the treaty.

⁶ Council of Europe. (1992, November 5.). European Charter for Regional or Minority Languages. Retrieved February 26, 2013, from <http://conventions.coe.int/Treaty/en/Treaties/Html/148.htm>. Article 7.

1.2.2 Monitoring

Monitoring of the Charter is based on a state reporting system where each state is required to provide a report a year after the entry into force of the ECRML and every three years thereafter.

State reports are examined by a Committee of Experts established under Article 16 of the Charter. A report is then prepared by the Committee on the implementation of the Charter that also includes recommendations on improvements. The Committee of Experts' report is forwarded to the Committee of Ministers, who usually, although this is not a requirement stipulated in the Charter, adopt recommendations addressed to the state in question by resolution. Furthermore, the Secretary General of the Council of Europe is required to provide a report to the Parliamentary Assembly every two years on the application of the Charter (Dunbar, 2008).

The Committee of Experts base its recommendations not only on information provided by states in their reports and as a response to questionnaires submitted to them by Committee, but also seek input from NGOs representing regional or minority languages and public and administrative institutions active in the implementation of Charter commitments. The Committee, similarly to the Advisory Committee of the FCNM, also conducts country visits where they meet with government, NGO and minority representatives (Dunbar, 2008).

1.3. Framework Convention for the Protection of National Minorities

The Framework Convention for the Protection of National Minorities (FCNM) was adopted by the Council of Europe Committee of Ministers in November 1994 and opened for signatures on 1 February 1995, entering into force following the twelfth ratification on 1 February 1998 (Beco & Lantschner, 2012). The aim of creating a new convention was to give legally binding force to recommendations developed by the CSCE (Hofmann, 2005). The FCNM confirms the application of standard human rights to minorities and introduces a number of new rights to persons belonging to minorities and corresponding obligations on states to protect minorities as groups (Eide, 2008).

The Council of Europe examined a number of options of achieving the goal of securing the protection of minorities in a legally binding instrument. The final decision on the approach was taken at the 1993 Vienna summit of the heads of state and governments of the Council of Europe where an ad hoc committee of experts from member states was set up and tasked with drafting a Convention. The final draft was adopted at the end of 1994 and opened for signatures in February 1995, entering into force exactly three years later. (Beco & Lantschner, 2012).

While the FCNM is the most comprehensive treaty in the field of the protection of minorities, however the decision to have a separate convention instead of an additional protocol attached to the European Convention on Human Rights has meant that the provisions of the treaty would not be enforceable judicially before the

European Court of Human Rights. Furthermore, there is no obligation to make the FCNM directly applicable before domestic courts or administrative institutions, although this is an open option for enhanced compliance with the treaty (Hofmann, 2005).

The Convention does not contain a definition of national minorities as the states could not reach a common position on a definition that would apply to each situation. This diversity of situations has contributed to the decision to base the text of the convention on programme-type undertakings where the states have a considerable level of discretion in finding the correct way of implementing the undertaking in national legislation and government policies.⁷

1.3.1 Structure

The Convention consists of a Preamble and 32 articles divided into five sections.

Section I sets out the general understandings governing the FCNM, including the assertion that the rights and freedoms on persons belonging to national minorities form a part of international human rights and is subject to international cooperation, and confirming each person's right to choose whether to be treated or not as belonging to a national minority and that the rights and freedoms enshrined in the Convention may be enjoyed individually or in community with others.

Section II enumerates concrete undertakings, rights and principles to be accorded to persons belonging to national minorities. These include guaranteeing such human rights as equality before law, effective cultural, social and economic equality; the prohibition of discrimination; freedom of assembly, association, expression, thought, conscience and religion; ensuring access to printed and broadcast media; recognizing the rights to use minority languages. This section also includes the right to use surnames and first names, as well as toponyms in the minority language; provisions for teacher training and minority language use in education and non-interference in international cultural contacts.

Section III contains interpretation provisions; Section IV describes the monitoring procedure; while the final section contains standard concluding provisions on entry into force, accession, denunciation, etc.

1.3.2 Monitoring

The FCNM is not only significant for describing in detail minority rights and corresponding state obligations, but also for its extensive monitoring system that has elucidated the contents of the rights (Eide, 2008). The system is very similar to the one used in the case of the ECRML, although the reporting cycle is five years long instead of the Charter's three-year cycle.

⁷ Council of Europe. (n.d.). Explanatory Report to the Framework Convention for the Protection of National Minorities. Retrieved March 1, 2013, from Council of Europe: <http://conventions.coe.int/Treaty/EN/Reports/Html/157.htm>.

The Committee of Ministers of the Council of Europe is tasked with evaluating the implementation of the FCNM, a task in which they are assisted by an Advisory Committee. The Advisory Committee formulates its opinion based on state reports, information received from NGOs and minority organizations, as well as through country visits and questionnaires based on the reports. Based on this opinion the Committee of Ministers adopts a country specific resolution including conclusions and recommendations. Subsequently, public follow-up seminars are held to assess developments and further measures taken based on the received recommendations (Hofmann, 2009).

1.4 Overview of minorities in Central-East Europe

In order to properly understand the context of the need for a system of minority protection in Central-East Europe a very brief demographic and historical overview, with a particular attention to population movements and events concerning the welfare of minorities, is presented in this section for the area subject to this paper's investigation.

1.4.1 Twentieth century

The First World War has significantly redrawn the map of Central-East Europe creating new multi-ethnic states with significant minority populations.

Austria and Hungary became independent states with significant changes to their former territories. These changes included the creation of a Czechoslovak state from the formerly Austrian and Hungarian territories of a part of Austrian Silesia, Bohemia, Moravia, Slovakia and Ruthenia (Perman, 1962, p. 8). The formerly Hungarian territory of Transylvania transferred to Romania. Furthermore, Poland regained its independence and received former German territories and Austro-Hungarian.

Following the world war there were 14.3 million inhabitants of Czechoslovakia, just slightly more than half of them, 7.2 million Czechs, supplemented by 3.3 million Germans mostly in the Sudeten areas, 2 million Slovaks, 0.6 million Ruthenians and there was a significant 0.7 million people strong Hungarian minority along the frontier with Hungary. Based on data from 1930 Romania was similarly multi-ethnic with its population size of 16 million, out of which about 13 million were ethnically Romanian; 1.4 million Hungarian, 0.7 million Germans and Jews, 0.6 million Ruthenians, as well as significant minorities of Russians, Bulgarians, Roma, Turks, Gagauz, Czechs, Slovaks and other ethnicities. The population of Poland was around 27 million people, out of which 19 million were Poles, 4 million Ukrainian, 2 million Jews, 1.1 million Germans, 1 million Belarussians, 0.7 million Lithuanians and a small population of 30 thousand Czechs was also present (Alcock, 2000, pp. 44-45). Hungary itself had a population in 1920 of around 8 million people (including some immigration from the ceded territories), 90 percent of them Hungarian, with around 0.5 million Germans, 140

thousand Slovaks, 36 thousand Croats, 23 thousand Romanians and 17 thousand Serbs (Gyurok, 1998).

The pre-war ethnic diversity of the region remained after the redrawing of the borders, however large populations who were previously part of majority populations have become minorities without moving their position. The situation was exacerbated by the fact that despite the League's guarantee system for the protection of minorities assimilatory and discriminatory state practice was more often the norm than the exception. The new states acted as if they were nation states and discriminated against their minorities, they were not involved in the governments and administration. Moreover, towards the Second World War a pattern of institutionalized political anti-Semitism emerged in the region (Palotás, 2006).

In the run-up to the Second World War the map of Central-East Europe was again readjusted. The Czechoslovak state was divided, with Germany taking over the Czech parts as a protectorate, Slovakia becoming an independent republic and Ruthenia was occupied by and annexed to Hungary (Fawn & Hochman, 2010). The Czech population of the Protectorate was subjected to Germanization, while the Jews were subjected to the Nuremberg Laws and later deportation to extermination camps (Mahoney, 2011). Hungary also regained some territory as the results of the two Vienna Awards from the Southern parts of Slovakia and Ruthenia and parts of Transylvania from Romania, which also had to transfer southern Dobruja to Bulgaria. Furthermore, the Soviet Union annexed North Bukovina and Bessarabia (Alcock, 2000).

The Second World War itself reversed some of the territorial changes of the pre-war years and had serious demographic consequences as the war took an enormous human toll and the whole region participated in the execution of the Holocaust either on their own or after being subjected to German occupation, as in the case of Poland. Total casualties of the war are estimated at 55 million people, out of which 6 million were in Poland, 1 million in Hungary (Németh, 2006, p. 228), although the exact figures due to the changing borders, deportations and incomplete data are difficult to ascertain (Parker, 2001).

The number of Jewish casualties of the Holocaust is estimated between 5.29 and 6 million people (Orth, 2010, p. 375). It is estimated that about 68 per cent of the European Jewish population perished, a figure that is as high as 90 per cent in the case of Poland. Other victims of the Holocaust included an estimated 220 to 500 thousand Sinti and Roma⁸, estimated at 22 per cent of the total European population. Altogether, 70 per cent of the Roma population of Poland and 50 per cent of those living on the Czech territories fell victim (Alcock, 2000, p. 93).

The post war settlement has restored many of the borders with slight changes and has led to further population movements, waves of refugees, deportation, population exchanges and optations; the international society did not find it problematic to

⁸ United States Holocaust Memorial Museum. (n.d.). Sinti and Roma ("Gypsies"): victims of the Nazi era. Retrieved March 5, 2013, from Holocaust Teacher Resource Center: <http://www.holocaust-trc.org/sinti.htm>.

resettle ethnic groups to conform to the changes in borders, especially when it came to the German minorities (Ther & Siljak, 2001, p. 77).

Czechoslovakia was restored as an independent country without Ruthenia, as part of the government's policy the 2.8 million Germans out of the 3 million living in the Sudeten areas were. This programme was not applied as planned to the 650 thousand Hungarians living in the Slovak part of the country; instead, a more modest population exchange was agreed to whereby 70 thousand Hungarians living in Slovakia and a like number of Slovaks in Hungary would move to the other country. Hungary itself was restored to its pre-war, pre-Vienna Awards and annexation borders. A program to deport the Germans living in Hungary was also instituted resulting in about 250 thousand out of 500 thousand being expelled before the program was halted in 1950. Poland was shifted 200 kilometres westward gaining territories from Germany and ceding its Eastern parts to the Soviet Union. Following the war Germans were deported or induced to flee from Poland, and eventually only half a million Germans remained there (Alcock, 2000, pp. 90-92). Moreover, 800 thousand Poles were resettled from Ukrainian territories of the Soviet Union to Poland in exchange of 500 thousand Ukrainians transferred out of Poland, and as part of a punitive military operation, a further 130 thousand Ukrainians were dispersed on the territories acquired from Germany (Nahaylo, 1999, p. 17).

During the Cold War Central-East Europe was part of the Communist Bloc, where majority-minority relations were not at the forefront of the political agenda of building Socialism and homogenization (Europa Publications, 2003). The countries in the bloc nevertheless have adopted varying policies towards their minorities ranging from support and integration into society to attempts at forced assimilation.

After the end of the Cold War the states started a transformation process into a democratic political system. The reorientation of the foreign policies towards Europe and the European Union's and the international community's insistence that these states follow international standards of minority protection have led to the accessions of these states to such international treaties as the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages. The following chapters will analyse the results of these efforts in five Central-East European states.

2. Poland

Minorities make up a small but very diverse portion of the Polish population. In the field of international commitments to protect minorities Poland is a relative newcomer having joined the FCNM and the ECRML only relatively recently in April 2001⁹ and June 2009,¹⁰ respectively.

This chapter will identify the national and ethnic minorities, as well as their languages spoken and analyse and evaluate the minority rights legislation and voluntary international commitments of Poland in the field of protecting the rights of minorities.

2.1 Identification of Minorities

Based on the 2002 census in Poland, 0.25 million people (representing about 0.7% of the total population) belong to 13 national and ethnic minorities. The biggest minority, with 147 thousand people claiming to belong to it and 196 thousand people using it at home is the German one; followed by Belarusian (47 thousand people, 40 thousand speaking it at home); Ukrainian (27 thousand people; 21 thousand speakers). Smaller groups of minorities are comprised by Roma, Lemko, Lithuanian, Russian, Slovak, Jewish, Czech, Tartar, Armenian and Karaims people and speakers. Furthermore, the Kashubian language is spoken by 52 thousand people (Government of Poland, 2012).

Reflecting the fact that identity is complex, a person may identify with one or more national or ethnic identities including that of the majority population as well as a minority, the methodology of the 2011 census was changed and the interviewed persons could identify with two national or ethnic identities (including Polish). Out of the population of 38.5 million, 1.4 million people declared a non-Polish identity, 60 per

⁹ Treaty Office, Council of Europe. (2013a, January 30). Framework Convention for the Protection of National Minorities. Retrieved January 30, 2013, from <http://www.conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=157&CM=1&DF=30/01/2013&CL=ENG>.

¹⁰ Treaty Office, Council of Europe. (2013b, January 30). European Charter for Regional or Minority Languages. Retrieved January 30, 2013, from <http://www.conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=148&CM=2&DF=30/01/2013&CL=ENG>.

cent of them alongside a Polish identity (Central Statistical Office of Poland, 2012, p. 173). It should be noted that the reliability of the 2011 census data has been questioned on the grounds that irregularities have occurred in administering these questions (Council of Europe, 2011).

The geographical distribution of minority speakers is currently available from the 2002 census data. The Belarusian minority of about 40 thousand people inhabit the south-eastern territories of the Podlaskie Voivodship bordering Belarus and Lithuania. Most of the 5.6 thousand people using Lithuanian at home inhabit the northern parts of the same voivodship. Around 1200 people declared to use the Czech language at home, although only around 300 people declared to belong to the Czech minority, mostly living in areas near the Czech and Slovak borders and in the town of Zelów. Similarly, the 800 people declaring to use the Slovak language are concentrated in the Voivodships bordering Slovakia. The Lemkos have traditionally lived near the borders of Slovakia and Ukraine; however they were resettled in 1947 to the Western territories of Poland, today of the 5.6 thousand Lemkos slightly less than the third live in their traditional territories. People belonging to the largest minority, the German are resident in all 16 voivodships of Poland. People speaking Russian have arrived to Poland through numerous waves of immigration, often fleeing religious prosecution and religion remains the most important identifying factor for the group. The 12 thousand Russian speakers are living in all voivodships of the country. Religion, specifically the Muslim religion, also plays an important part in the life of the circa five hundred people belonging to the Tatar community, the vast majority of them do not speak the language at home. The Kashubian regional language is used by 53 thousand people in the Pomorskie Voivodship surrounding Gdansk, where they make up more than 20 per cent of the local population in 10 communes (Government of Poland, 2010a, pp. 10-14).

Furthermore, 173 thousand people have declared a Silesian ethnic identity in the 2002 census the majority of them living in the Silesian (Slaskie) Voivodship of Poland.¹¹ The Polish government considers the language spoken by Silesians to be a dialect of Polish and is therefore not protected under the ECRML and Silesian is not an officially recognized minority receiving protection under the FCNM (Council of Europe, 2003, p. 9).

¹¹ Główny Urząd Statystyczny. (n.d.). Ludność według deklarowanej narodowości oraz województw w 2002 r. Retrieved March 31, 2013, from http://www.stat.gov.pl/cps/rde/xbcr/gus/PUBL_nsp2002_tabl3.xls.

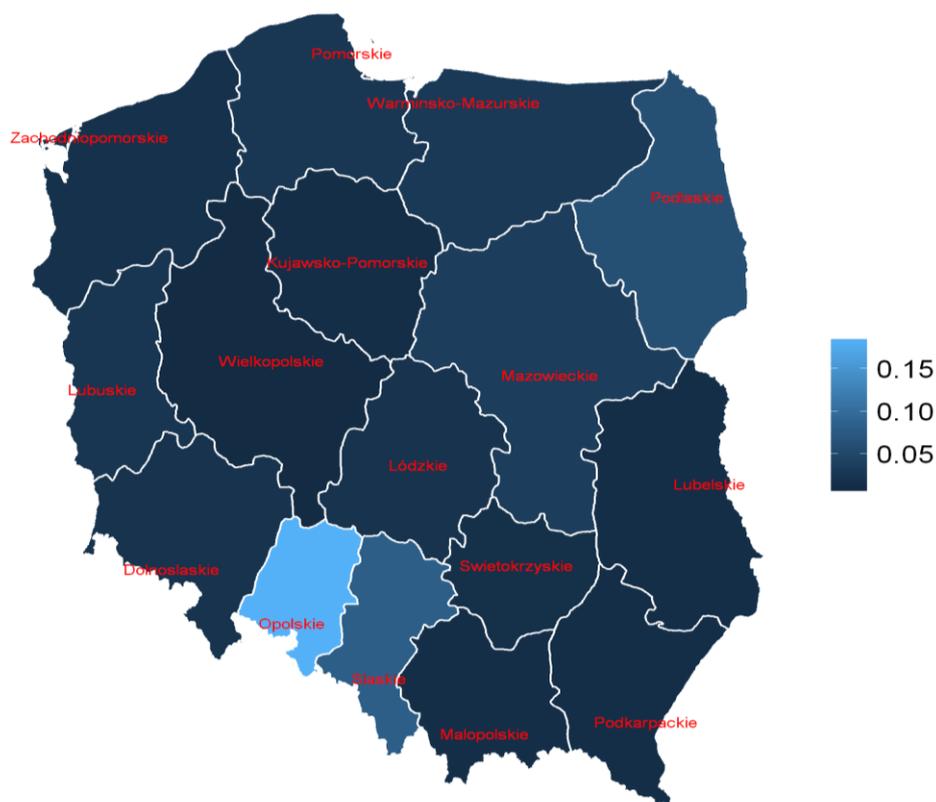


Figure 1 Map of Poland showing proportion of non-Polish people by voivodship¹²

Depending on classification, the Polish government considers 4-5 languages as non-territorial under the ECRML. These include the Karaim language of the 43 Polish citizens declaring themselves to be Karaites, placing this language on to the brink of extinction. The 300 Armenian speakers living in Poland have arrived as a result from repatriation following the Second World War from their colonies around Lviv. The four ethnic groups of the 15 thousand Roma people living in Poland, the Polish Roma, the Carpathian or Bergitka Roma, the Kalderash and the Lovari are the descendants of various nomadic groups who have migrated and settled in Poland over the last six centuries. The Roma currently speak various dialects of the same language, which lacks a widely accepted standardised written form making education in the language more difficult. Finally, there are around 240 speakers of Yiddish and Hebrew, barely a sliver of the previously significant community of Jews who have lived in the territory of Poland since the 10th century; before the Second World War there were 3.5 million Jewish residents of Poland, 90 per cent of whom were killed and the majority of the

¹² Source: Tajti, A. (2013a, April 1). File:Proportion of non-Polish people in each county.png. Retrieved April 5, 2013, from Wikimedia Commons: http://commons.wikimedia.org/wiki/File:Proportion_of_non-Polish_people_in_each_county.png. Licence: Creative Commons Attribution – Share Alike 3.0 Unported.

300 thousand survivors have emigrated (Government of Poland, 2010a, pp. 14-17). There are some signs of revitalization of the community, as in the 2011 census, 7 thousand people identified themselves as Jewish either as their primary or secondary identity (Central Statistical Office of Poland, 2012, p. 173).

The 2002 census data reveals that minority populations contain more people over the age of retirement and less people in the pre-working age than the national average, indicating that minorities form mostly aging communities inside the Polish society. Karaims, Jews, Tatars, Roma, as well as Czechs, Armenians and Russians are predominantly living in urbanized areas. The second group of minorities of Slovaks, Lithuanians and Germans consist of rural communities traditionally living by farming. (Government of Poland, 2012).

2.2 Rights of minorities

The rights of minorities and the obligations agreed to through signing the Framework Convention and the European Charter, which was ratified only in 2009 after a long drawn-out process (Government of Poland, 2010a), are governed by the Act of 6 January 2005 on national and ethnic minorities and on the regional languages.¹³ A number of other parliamentary acts, for example the acts on education or broadcasting, contain provisions relevant to minorities and regional or minority languages.

Poland confers the status of national or ethnic minorities only on those who are resident in Poland and are Polish citizens (Government of Poland, 2002), have a culture, language or tradition that is significantly different from the rest of the population, which the group is aware of and strives to preserve and whose ancestors have been living on the present territory of the Republic of Poland for at least 100 years. The difference in the definition of national and ethnic minorities is that national minorities identify with a “nation organized in its own state”, while an ethnic minority does not.

The Act of 6 January 2005 recognizes 9 national minorities and a further 4 ethnic minorities, which corresponds to the census data: Belarusians, Czechs, Lithuanians, Germans, Armenians, Russians, Slovaks, Ukrainians and Jews are considered national minorities, while the Karaim, the Lemko, the Roma and the Tartar are categorised as ethnic minorities.

In its declaration upon joining the ECRML Poland has identified as a regional language the Kashub language, and as minority languages the languages spoken by the national and ethnic minorities: Belorussian, Czech, Hebrew, Yiddish, Lithuanian, German,

¹³ The source of the English translation is the website of the Polish Ministry of the Interior: Polish Parliament. (2005, January 6). Act of 6 January on national and ethnic minorities and on the regional languages. Retrieved March 6, 2013, from Ministry of the Interior: www.msw.gov.pl/download.php?s=1&id=2327.

Armenian, Russian, Slovak, Ukrainian, Karaim, Lemko, Romani and Tatar. Out of these the Hebrew, Yiddish, Karaim, Armenian and Romani are considered non-territorial languages. Poland has decided to apply Part III of the Charter to all of these languages.¹⁴

Part III commitments include making available pre-school, primary school and secondary education in the regional or minority language, and making provision for the teaching of the regional or minority language as an integral part of the curriculum of technical and vocational education and as subjects of study at university and higher educational institutions. Complementing these educational commitments are the commitment to make arrangements for ensuring the teaching of the minority history and culture, to provide the necessary basic and further training to teachers needed to achieve these commitments and to set up a supervisory body to monitor progress.

In the field of the judiciary the only commitment Poland chose to make, one of the least onerous of the possible choices, was to not deny the validity of legal documents on the grounds that they were drawn up in a minority language.

Poland has also chosen numerous provisions in the field of media and broadcasting, including encouraging the creation of at least one radio and television station in the minority languages, and similarly to encourage the creation of at least one newspaper in the regional or minority language. A further commitment chosen by Poland in this field is to not hinder the reception of radio and television broadcasts from neighbouring countries in the regional or minority languages.

Poland has accepted all possible commitments under the ECRML relating to promoting cultural life and expression in the regional or minority languages except the subparagraph on creating and financing translation and terminological research services. Similarly, the country has committed to undertake all the provisions in the article on transfrontier exchanges.

Additionally, in the field of economic and social life Poland selected the commitments that prohibit discrimination, encourage the use of the regional or minority languages and to promote the use of regional or minority languages in the public sector.

The Act of 6 January 2005 provides every person belonging to a minority to freely decide whether to be treated as belonging or not belonging to a minority. Persons belonging to minorities are not to be discriminated against and are to be provided the right to freely use their minority language in public and private life, and to learn and be instructed in the minority language.

Fulfilling two commitments made under the ECRML, in municipalities (communes) where the proportion of people belonging to a minority reaches 20 per cent, the minority language may be used in relation to municipal authorities, although appeal procedures are to be conducted in the official language (Polish). The introduction of

¹⁴ Treaty Office, Council of Europe. (2013c, March 7). List of declarations made with respect to treaty No. 148. Retrieved March 7, 2013, from <http://conventions.coe.int/treaty/Commun/ListeDeclarations.asp?NT=148&CM=1&DF=&CL=ENG&VL=1>.

the minority language as a supplementary language is dependent on a resolution of the municipality council. Municipality officials who speak the minority language may be granted a salary supplement. Similarly, in municipalities where the ratio of people belonging to a certain minority reaches 20 per cent of the total population traditional place names (names of places and geographical objects, as well as street names) may be used in the minority language alongside those in the Polish language, they may not be used separately from them. These traditional names may not be names given by the authorities of the German Third Reich or the Soviet Union between 1933 and 1945.

Also corresponding to a commitment made under Part III of the ECRML included in the Act on national minorities is the right for persons belonging to minorities to use first and last in the regional or minority languages, alongside a transliterated version for names written in a non-Latin script.

Furthermore, the Act makes provision for a Joint Commission of Government and National and Ethnic Minorities to be a consultative body of the prime minister. Members of the Commission are the representatives of the minorities and the government ministries and departments. The Commission is tasked with evaluating the exercise of rights of minorities and proposing actions to ensure the exercise of these rights; voicing opinions on draft legislation concerning minorities and the budget allocations aimed at supporting the protection, maintenance and development of the cultural identity of minorities and the preservation of the Kashubian language and to take measures to counteract discrimination against persons belonging to minorities.

2.3 Evaluation and application

The adoption of the Act of 6 January 2005 was received as a welcome development by the Council of Europe in their second resolution on Poland since the entry into force of the FCNM. Similarly, the consultative rights given to the Joint Commission, and the work of the Parliamentary National and Ethnic Minorities Committee were praised (Council of Europe Committee of Ministers, 2012b).

The Committee of Ministers have identified a number of areas of concern, including the low number of communes in which minority languages can be used or where geographical indicators are localized, on-going discrimination and social exclusion of the Roma, the lack of adequate education and broadcasting in minority languages and inadequate political representation of the minorities.

The provisions of the Act of 6 January 2005 on using the minority languages in place names or in interaction with municipality officials is applicable in about one per cent of the Polish communes. As of 2010, geographical names in minority languages are used in around 550 villages, colonies and settlements in 30 communes of Poland, the language is German in 22 of them, Belarusian in 5, Kashubian in 2 and Lithuanian in 1

commune.¹⁵ There are 33 communes where the minority language can be used in interacting with municipality officials, German in 24 communes, Kashubian in 7, Lemko and Lithuanian in 1 commune.¹⁶ As there are significant differences in the census date between 2002 and 2011, it is difficult to predict whether further municipalities would become eligible or the existing ones ineligible. With the change of methodology between censuses it is difficult both for the government and the people belonging to minorities to be able to plan ahead.

The Committee of Ministers has urged Poland to extend the possibility of use of regional or minority languages in relation to districts and voivodships in addition to the communes, and to reconsider the application of the 20 per cent threshold (Council of Europe Committee of Ministers, 2011c). Furthermore, the Committee of Ministers have recommended that the supporting language's use should be allowed in interactions with such administrative institutions as the police, health care or the State administration at the local level (Council of Europe Committee of Ministers, 2012b).

Poland has made bold commitments to provide education at pre-school to secondary level in the minority languages. The Belarusian, Hebrew, Kashubian, Lithuanian, Lemkos, German, Armenian, Slovak and Ukrainian languages are used as language of instruction, with 55 thousand students enrolled in minority language education as of the 2009/2010 school year (Government of Poland, 2010a, pp. 44-45). The Committee of Experts for the ECRML (Council of Europe, 2011) have however pointed out that the access to education in the Belarusian, German, Kashubian, should be extended at pre-school to secondary levels to fulfil the commitments Poland has made, and improvements are needed in extending education in Ukrainian to the primary and secondary levels of schooling. A commensurate improvement in teacher training in these languages is also recommended.

Furthermore, the commitment to encourage or facilitate the creation of at least one radio and one television channel in each regional or minority language has been too ambitious in the light that in most languages only some programmes (but not whole channels) are broadcast in the minority language, and even newspapers are only published in Belarusian, German and Ukrainian (Council of Europe, 2011).

In the field of political representation, parties of national minorities are exempted from a 5% electoral threshold in the allocation of parliamentary seats, however this has not led to adequate representation (Council of Europe Committee of Ministers, 2012b). Most minorities are not represented in the Parliament, there are 26 senators and deputies associated with the Kashubian language, and there is one representative

¹⁵ Government of Poland. (2010b, September 30). MIN-LANG/PR (2010) 9 Annexe no. 2. Retrieved March 8, 2013, from European Charter for Regional or Minority Languages: http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/PolandPR1Annexe_2_en.pdf.

¹⁶ Government of Poland. (2010c, September 30). MIN-LANG/PR (2010) 9 Annexe no. 3. Retrieved March 8, 2013, from European Charter for Regional or Minority Languages: http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/PolandPR1Annexe_3_en.pdf.

of the Belarusian and the Ukrainian minority elected from national party lists, and one German representative selected from the list of the election committee of the German minority, and there is a senator from the Armenian minority. Minority representatives have won certain positions at the municipal voivodship council levels (Government of Poland, 2012); however, this is clearly far from adequate.

The non-recognition of Silesian as a regional language or as a recognised ethnic minority protected by law and covered by the ECRML and FCNM remains an on-going issue in Poland.

In sum, the legislative framework of Poland provides a very good level of protection for the rights of minorities that are officially recognized. In addition, Poland has made very ambitious international commitments under the ECRML. Implementation of the legislation and the commitments remains an on-going challenge for Poland and there remain a number of administrative barriers – population and class size thresholds – that should be removed to improve implementation.

3 Czech Republic

The Czech Republic has joined the FCNM in April 1998¹⁷ and the ECRML in March 2006, after a ratification period of six years.¹⁸ In the latest census of 2011 around 7 per cent of the total population declared an ethnicity other than Czech (although 25 per cent of the respondents did not answer this question).¹⁹

This chapter will identify the national and ethnic minorities, as well as their languages spoken and analyse and evaluate the minority rights legislation and voluntary international commitments of the Czech Republic in the field of protecting the rights of minorities.

3.1 Identification of Minorities

Based on available census data, around 7 to 10 per cent of the population of the Czech Republic belongs to a national or ethnic minority. The preliminary results for the 2011 census show that about 7 per cent of the total population declared an ethnicity other than Czech. More detailed results are available from the 2001 census, the first census to be conducted following the dissolution of Czechoslovakia into the Czech Republic and Slovakia, where 90.4 per cent of the population declared a Czech nationality, 7.9 per cent a nationality other than Czech and 1.7 per cent did not provide an answer.²⁰

The largest group is made up of the Moravian community, an identity that about 4-500 thousand people identify themselves with in censuses. Moravian is usually considered a regional identity and so far they do not form a community with a separate language,

¹⁷ Treaty Office, Council of Europe. (2013a, January 30).

¹⁸ Treaty Office, Council of Europe. (2013n, January 30).

¹⁹ Czech Statistical Office. (2012a, October 3). Retrieved March 10, 2013, from Preliminary results of the Census 2011 Population:
[http://www.czso.cz/sldb2011/eng/redakce.nsf/i/tab_6_1_population_by_ethnicity_and_by_municipality_size_groups/\\$File/PVCR061_ENG.pdf](http://www.czso.cz/sldb2011/eng/redakce.nsf/i/tab_6_1_population_by_ethnicity_and_by_municipality_size_groups/$File/PVCR061_ENG.pdf).

²⁰ Czech Statistical Office. (2012b, November 23). Population by nationality: as measured by 1921 - 2001 censuses. Retrieved March 11, 2013, from Czech demographic handbook 2011:
[http://www.czso.cz/csu/2012edicniplan.nsf/engt/B5001FC4EE/\\$File/4032120117.pdf](http://www.czso.cz/csu/2012edicniplan.nsf/engt/B5001FC4EE/$File/4032120117.pdf).

culture and traditions to be considered a national or ethnic minority by the Czech Republic. The same consideration is applied to the circa 10 thousand people declaring Silesian as their ethnicity. (Government of the Czech Republic, 2004).



Figure 2 Map of the Czech Republic showing proportion of non-Czech population by region²¹

The largest group that is recognized as a national minority is the Slovak with 200 thousand people declaring to belong to it and living all around the territory of the Republic. The Slovakian language has been used on the territory of the Czech Republic since 1843 (before which it was considered a dialect of Czech) (Government of the Czech Republic, 2008b); however the number of people declaring Slovak ethnicity before the Second World War was relatively small (around 50 thousand) which has increased due to immigration after the war under Czechoslovakia, many Slovaks came in search for better educational or economic opportunities (Nekvapil & Neustupný, 1998).

There are about 60 thousand people belonging to the Polish minority, with a significant concentration of the population along the Czech-Polish border, and especially in the two districts of Frydek-Místek and Karvina, where they amount to more than 8% of the districts' population (Government of the Czech Republic, 1999).

German settlement in the area of the Czech Republic can be traced back to the Middle Ages (Council of Europe, 2009). Before the Second World War there were 3.2 million Germans in Czechoslovakia, 3 million of whom were expelled and their properties confiscated following the war (Sioras & Spilling, 2010, p. 68). Those who remained were subject to discrimination and the German minority was not recognized until 1968 (Nekvapil & Neustupný, 1998).

²¹ Source: Tajti, A. (2013c, April 5). File:Proportion of non-Czech people in each county.png. Retrieved April 5, 2013, from Wikimedia Commons: http://commons.wikimedia.org/wiki/File:Proportion_of_non-Czech_people_in_each_county.png. Licence: Creative Commons Attribution – Share Alike 3.0 Unported.

Currently, the remaining German minority numbers around 50 thousand and are mainly living in the northern, eastern and western border regions. The current numbers of may be underreported due to the fact that the German minority that was not expelled following the Second World War was discriminated against in the Communist period and there is a distrust in government data collection on nationality especially among the older generations. (Government of the Czech Republic, 2004).

There is a significant Roma population dispersed in the Czech Republic with concentrations in industrial cities in Northern Bohemia and Northern Moravia and the capital (Government of the Czech Republic, 1999). As the Roma population was killed during the war, most of the Roma currently living in the state have emigrated from the territory of Slovakia (Nekvapil & Neustupný, 1998). While only 11 thousand people claimed a Roma ethnic identity in the latest census, qualified estimates of the total size of the Roma community range between 150 and 300 thousand people (Government of the Czech Republic, 2008b), it is believed that many of them registered as Slovakian, Czech or Hungarian in the census, as the societal attitude towards the Roma is still negative in the Czech Republic (Nekvapil & Neustupný, 1998).

Less numerous minority groups include the Bulgarians, Croats, Hungarians, Ruthenians, Russians, Ukrainians, Serbians. The Jewish community has a special status as its members define themselves as a religious and cultural community and not a national minority (Government of the Czech Republic, 2008b).

3.2 Rights of minorities

Rights of minorities in the Czech Republic are governed by the Czech Constitution, the Charter of Rights and Freedoms and the 2001 Act on rights of members of national minorities and amendments of some acts,²² and certain provisions of other legislative instruments. Furthermore, the Czech Republic has taken on a number of commitments under the ECRML in relation to the Slovak, Polish, German and Roma languages.

Articles 24 to 25 of the 1992 Charter of Rights and Freedoms,²³ considered part of the Czech Constitution declare that affiliations with a national or ethnic minority may not be to the detriment of the person; citizens belonging to minorities are guaranteed the right to development, to receive and disseminate information in their own language and to form national associations. Furthermore, citizens belonging to minorities have the right to be educated in their own language, to communicate with officials in their

²² The source of the translation is the Government of the Czech Republic's website. Parliament of the Czech Republic. (2001, July 10). Act from 10 July 2001 on rights of members of national minorities and amendment of some acts. Retrieved March 10, 2013, from Vláda České Republiky: http://www.vlada.cz/assets/ppov/rnm/dokumenty/vladni-dokumenty/menzakon_en_1.pdf.

²³ Source of the Charter's translation is the website of the Parliament of the Czech Republic. Parliament of the Czech Republic. (1992, December 16). Charter of fundamental rights and basic freedoms. Retrieved March 12, 2013, from Parlament České Republiky: <http://www.psp.cz/cgi-bin/eng/docs/laws/1993/2.html>

own language and to participate in the resolution of affairs that concern national and ethnic minorities. Furthermore, article 36 guarantees the right to an interpreter in judicial proceedings for anyone who declares that he does not speak the language of the proceeding. The elaboration of these principles is left to further legislation, such as the 2001 Minorities Act.

The Minorities Act does not enumerate the minorities it applies to, instead it provides a definition under which a national minority is a “community of citizens of the Czech Republic who live on the territory of the present Czech Republic and as a rule differ from other citizens by their common ethnic origin, language, culture and traditions; they represent a minority of citizens and at the same time they show their will to be considered a national minority for the purpose of common efforts to preserve and develop their own identity, language and culture and at the same time express and preserve interests of their community which has been formed during history.”²⁴ The act serves as a catalogue of rights for members of national minorities and leaves the exact details of the rights’ application to special legal regulations. A number of the rights are limited to “members of national minorities living traditionally and for a long time on the territory of the Czech Republic”. Unlike the Charter, the Minorities Act does not differentiate between national and ethnic minorities and simply uses the term national minority.

Under the act and connected special legislation, members of national minorities have a free choice in their membership and public administration bodies cannot keep registers of members belonging to national minorities. Members of minorities may form national associations, political parties and movements who are represented in the government’s Council for National Minorities, a body with consultative and initiative rights in the field of minority rights.

Currently, twelve nationalities are represented on the government Council for Nationalities, signalling their recognized status: Bulgarian, Croatian, Hungarian, German, Polish, Roma, Ruthenian, Russian, Greek, Slovak, Serbian and Ukrainian.²⁵ Jewish is treated as a religious community, and immigrants, especially the sizable Vietnamese and Chinese community currently fall under migration policies,²⁶ and are thus not represented on the Council.

Members of minorities may use their first and given names in the language of the minority, and names of public places and public institutions can be posted in the minority language alongside the Czech language in territories where minorities have lived traditionally. Such use of the minority language is possible if the minority

²⁴ Act from 10 July 2001 on rights of members of national minorities and amendment of some acts §2 (1).

²⁵ Government of the Czech Republic. (n.d.). Národnostní menšiny. Retrieved March 11, 2013, from Vláda České Republiky: <http://www.vlada.cz/cz/pracovni-a-poradni-organy-vlady/rnm/mensiny/narodnostni-mensiny-15935/>.

²⁶ Government of the Czech Republic. (2006, March 30). Ostatní národnostní menšiny. Retrieved March 11, 2013, from Vláda České Republiky: <http://www.vlada.cz/cz/ppov/rnm/mensiny/ostatni-narodnostni-mensiny-16160/>.

population is at least ten per cent of the inhabitants and the local national minorities boards support the request submitted by the minority's representatives (Government of the Czech Republic, 2008a).

Provision is also made for using the minority language in official documentation and discourse and hearing before courts, as well as during elections. Members of minorities traditionally living in the Republic have a right to upbringing and education in their language and to establish private schools. Moreover, members of minorities have the right to maintain and develop their language, culture and traditions and to receive grants of this purpose from the national budget, and finally, to spread and receive information in their language.

The Czech Republic applies Part II of the ECRML to the Slovak, Polish, German and Roma languages. Furthermore, it has made slightly different Part III commitments with respect to the Polish language in the Moravian-Silesian Region, in the territory of the districts of Frydek-Místek and Karviná, and with respect to Slovakian on the whole territory of the Czech Republic.²⁷

The commitments include in the field of education to provide education or a substantial part of education at the pre-school to secondary level, as well as to make available substantial parts of technical and vocational education in Polish, and to facilitate the offering of Polish as a subject at adult and higher education institutions. In case of the Slovakian language the weaker commitments of encouraging pre-school education at the pre-school level and to providing Slovakian language primary school education where a sufficient number of pupils' families so request. Teaching of Slovakian is also to be encouraged at higher education institutions.

In the field of judicial authorities the Czech Republic has chosen a wide range of identical undertakings with respect to Polish and Slovakian. Undertakings include guaranteeing the use of the minority language in criminal, civil and administrative proceeding without incurring a further expense, to produce documents and evidence in the minority language and to make provisions for interpretation and translation without incurring extra expenses for the persons concerned. In addition, the validity of legal documents may not be denied for being drafted in the minority language.

The state has also undertaken to allow family names in Polish and Slovakian and to allow interacting with local authorities in these languages. It has also committed itself in the field of media and broadcasting to encourage and/or facilitate the creation of radio and television programmes (but not complete stations) broadcasting in the two minority languages, and to encourage or facilitate the creation or maintenance of at least one newspaper in the minority languages.

Additionally, the Czech Republic has undertaken to encourage types of cultural expression specific to the two languages, to encourage users of these languages to partake in cultural activities and to facilitate the creation of an archive for works published in the regional or minority languages. Transfrontier exchanges are also to be supported.

²⁷ Treaty Office, Council of Europe. (2013c, March 7).

Finally, in the field of economic and social life, the Czech Republic chose the undertakings to oppose discriminatory practices based on language in connection with economic and social life and to make available information concerning the rights of consumers in the minority language.

3.3 Evaluation and application

The Czech Republic has been cautious in taking on extended commitments for the protection of minorities under the ECRML, especially in the case of Part III commitments, which it applies to Slovakian – a language that is mutually intelligible with Czech and which can be used in public services without the need for interpretation and translation – and Polish.

The legislation in its current form guarantees the important basic rights for members of minorities, including in the field of education, right not to be discriminated, the possibility to use the language in courts and public life and there are appropriate provisions for the participation of minorities in decisions relating to them and for budgetary support for their cultural development.

The minorities legislation does not differentiate between members of individual minorities, the level of international commitments are more relevant from the point of view of international monitoring than the actual application of the rights accorded to persons belonging to minorities. It is important to note though that the legislation does require Czech citizenship as a condition to be considered a minority, and certain rights are retained for minorities traditionally present in the territory of the state.

The Council of Europe has praised the Czech Republic for the legislative steps it has taken to provide for the equal treatment and protection of national minorities; however, it has noted a few areas of concern in terms of implementation and societal attitudes.

A constant area of concern is the situation and treatment of the Roma. Over the last decades the Czech Republic has not been able to fully combat discrimination, negative attitudes, prejudice and racially motivated crimes and rhetoric by neo-Nazi groups. Furthermore, Roma children face challenges in the education system, especially with the system of “practical schools” that a high proportion of Roma children attend that teach a reduced curriculum and do not give them access to higher education. Additionally, there were concerns that the use of the Romania language has been discouraged at schools. Furthermore, in 2005 a report surfaced on cases of Roma women being subjected to a sterilisation programme without their prior informed consent, and while the practice has been stopped, the victims are still to be fully compensated (Council of Europe Committee of Ministers, 2002; 2006a; 2009; 2012c; Council of Europe, 2012a).

In terms of the practical implementation of the legislation, further effort is needed in setting up municipality level committees for national minorities (committees that are responsible for recommending the use of bilingual signs, among others), as of 2011

only 69 were set up out of the possible 283 municipalities meeting the criteria for establishment of such committees (Council of Europe, 2012a). Altogether, there were 31 municipalities meeting the requirements for bilingual signs in the Frýdek-Místek and Karvíná districts and – as of 2010 – 13 of them had opted to install the signs (Government of the Czech Republic, 2010, p. 24).

The Committee of Experts for the ECRML has been generally satisfied with the implementation of the Charter, noting in particular the exemplary Polish language education facilities, but noted that further steps are needed in making members of minorities aware of the possibility to use their own language in education and public administration. The Committee has also noted that administrative barriers to the use of minority languages in front of courts and for setting up the committees for national minorities should be eased (Council of Europe, 2012a).

In conclusion the legislative framework in place in the Czech Republic is generally accepted as proper for the needs of ensuring the rights of people belonging to minorities. The state has made modest but achievable commitments in the field of protecting the Polish and Slovak language that it has been able to fulfil. The main area of concern remains the issue of discrimination in the Czech society against vulnerable groups like the Roma.

4 Slovakia

Slovakia came into existence on 1 January 1993 with the dissolution of Czechoslovakia; it has joined the FCNM in February 1998²⁸ and the ECRML in January 2002.²⁹ The country has a population of about 5.4 million people, 80-86 per cent of them ethnically Slovak, while the rest belonging to various minorities, including the Hungarian making up one tenth of the population (Auer, 2009, p. 196).

This chapter will identify the national and ethnic minorities, as well as their languages spoken and analyse and evaluate the minority rights legislation and voluntary international commitments Slovakia in the field of protecting the rights of minorities.

4.1 Identification of Minorities



Figure 3 Map of Slovakia showing proportion of non-Slovak population by county³⁰

²⁸ Treaty Office, Council of Europe. (2013a, January 30).

²⁹ Treaty Office, Council of Europe. (2013n, January 30).

³⁰ Source: Tajti, A. (2013b, April 1). File:Proportion of non-Slovak people in each county. Retrieved April 5, 2013, from Wikimedia Commons: http://commons.wikimedia.org/wiki/File:Proportion_of_non-Slovak_people_in_each_county.png. Licence: Creative Commons Attribution - Share Alike 3.0 Unported.

Based on the 2011 census, around 12 per cent of the population belong to various national minorities, 80,7 per cent has declared Slovak as a nationality, and 7 per cent have not specified a nationality. The biggest national minorities are the Hungarian, Roma, Czech, and Ruthenian, but there are also smaller Ukrainian, German, Polish, Croatian, Serbian, Russian, Jewish, Moravian and Bulgarian minority communities.³¹

The largest minority of Slovakia is the Hungarian with around 450 thousand members belonging to this minority. There is a mostly contiguous area of Hungarian settlements alongside the Slovak–Hungarian border. About 90 per cent of Hungarians living in Slovakia can speak the majority language, there is a language shift occurring towards Slovak-dominated bilingualism especially in mixed marriages, towards the edges of the Hungarian language area and in Slovak-majority settlements (Lanstyák & Szabó Mihály, 2005).

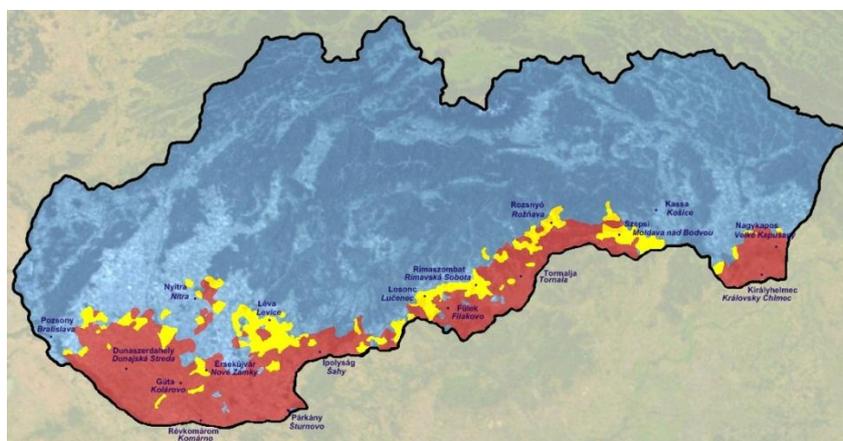


Figure 4 Hungarians in Slovakia (2001).³²

The second largest minority is the Roma. In the 2011 census 105 thousand people (2 per cent of the population) declared this nationality, although estimates, confirmed by a sociographic mapping project consider around 320 thousand people belong to this minority. The Roma population is dispersed around the country with larger concentrations in eastern Slovakia and the southern parts of central Slovakia (Government of Slovakia, 2008).

In the 2011 census 30 thousand people declared a Czech nationality and a further 3 thousand a Moravian identity, distributed relatively evenly around the country.

³¹ Statistical Office of the Slovak Republic. (2012, July 2). Table 10 Population by nationality - 2011, 2001, 1991. Retrieved March 14, 2013, from Statistical Office of the Slovak Republic: <http://portal.statistics.sk/files/table-10.pdf>.

³² Proportion of the total population: red: 50-100%; yellow: 10-50%; light blue: 0-10% Source: Qorilla. (2009, September 2). File: Hungarians in Slovakia 2.jpg. Retrieved March 14, 2013, from Wikimedia Commons: http://commons.wikimedia.org/wiki/File:Hungarians_in_Slovakia_2.jpg. Released into the public domain.

Between 1950 and 1990 around 420 thousand people migrated from the Czech parts of Czechoslovakia to Slovakia, their low numbers in censuses show that Czechs are traditionally assimilated or integrated into Slovak society and do not form a second (or later) generation minority (Votruba, 1998, pp. 261-262).

There is also a Ruthenian minority of 33 thousand people, supplemented by 7 thousand people identifying as Ukrainian, the two groups are generally seen as representing the same ethnicity in Slovakia. Traditional Ruthenian/Ukrainian places of residence are in North-East Slovakia (Votruba, 1998).

Further, smaller minority groups include the German (4.6 thousand people), Polish (3 thousand people), Croatian (1 thousand people), Serbian (0.7 thousand people), Russian (2 thousand people), Jewish (0.6 thousand people), Bulgarian (1 thousand people) and a further 9 thousand people identifying with a different identity.³³

4.2 Rights of minorities

There are at least 32 legislative acts (acts, decrees, etc.) that address the rights of persons belonging to national minorities (Government of Slovakia, 1999, pp. 4-5), including the Constitution, the Act 184 of 10 July 1999 on the user of national minority languages and Act 270 of 15 November 1995 on the State Language of the Slovak Republic (as amended).

The Slovak Constitution³⁴ incorporates the provisions of the 1991 Czechoslovak Charter of Fundamental Rights and Freedoms and is therefore fundamentally identical to the Charter in force in the Czech Republic. Minority specific provisions include the right not to be discriminated against on the basis of belonging to a national minority or ethnic group, the right to development and forming associations, as well as the right to education in one's own language, right to use one's language when dealing with minorities and to participate in the solution of affairs relating to them. The implementation of these constitutional rights is subject to the enactment of specific legislation.

Use of minority languages in certain fields is governed by the Act on the Use of National Minority Languages³⁵ and the Act on the State Language of the Slovak

³³ Statistical Office of the Slovak Republic. (2012, July 2).

³⁴ Source of English translation: Slovak National Council. (1991, September 3). Constitution of the Slovak Republic. Retrieved March 15, 2013, from Constitution Society: <http://www.constitution.org/cons/slovakia.txt>.

³⁵ Source of English translation used: Government of Slovakia. (2005, January 3). Appendices 1 to 7 to the second report submitted by the Slovak Republic pursuant to article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities. Retrieved March 15, 2013, from Council of Europe: http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_SR_SlovakRepublic_Annexes_1to7_en.pdf.

Republic. The Act on the Use of National Minority Languages sets a 20 per cent threshold of minority population. In municipalities reaching the threshold the language of the minority may be used in place names, in interacting with municipality officials, and in running the meetings of the municipality self-government (provided all those present agree). To determine or change the place name in the minority language a vote needs to be held and 80 per cent of those participating need to agree on the change under a separate act on denomination of municipalities in national minority languages.³⁶ Moreover, important public information needs to be displayed in the minority language alongside Slovak.

Conversely, the Act on the State Language³⁷ describes situations where the state language (Slovakian) must be used, even by speakers of minority languages. The preamble declares that the “Slovak language is the most important attribute of the Slovak nation’[s] specificity and the most precious value of its cultural heritage”. The act declares that Slovak is the state language and it is to have priority over the other languages used in the country. Under the act civil servants, pedagogical staff, and those employed in transportation, posts and telecommunications, as well as members of the armed forces and fire brigades must be able to speak the state language. The act requires that in certain situations (e.g. catalogues of cultural institutions, cultural events, inscriptions on monuments, and memorial plaques, etc.) an accurate translation into Slovak must be placed next to (and often preceding) the content in any other language. Furthermore, contracts not in the state language are not recognised before state authorities. Breaches of the obligations included in the act may be fined for an amount between €100 and €5000.

In terms of international commitments, Slovakia as party to the ECRML has designated as regional or minority languages the Bulgarian, Croatian, Czech, German, Hungarian, Polish, Roma, Ruthenian and Ukrainian languages and has taken on commitments under both Part II and Part III of the Charter. Part III commitments are different in the case of each language. Slovakia considers the term “territory in which the regional or minority language is used” to apply to “municipalities in which the citizens of the Slovak Republic belonging to national minorities form at least 20 % of the population”.³⁸

The levels of commitments are the most differentiated among the languages in the field of education. Slovakia undertakes, on the territories where the languages are used to make available the education in Hungarian at all levels, to make available a substantial part of the education in Ruthenian and Ukrainian and to provide facilities for the study of the language at higher and adult continuing education institutions. In the case of Bulgarian, Croatian, Czech, German, Polish and Roma pre-school education

³⁶ Act 191 of 7 July 1994. Source of English translation used: Government of Slovakia. (2005, January 3).

³⁷ Source of English is the Venice Commission: Slovak National Council. (2010, September 28). Act of the National Council No. 270/1995 Coll. on the State Language of the Slovak Republic. Retrieved March 16, 2013, from European Commission for Democracy through Law: [http://www.venice.coe.int/webforms/documents/?pdf=CDL\(2010\)076-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL(2010)076-e).

³⁸ Treaty Office, Council of Europe. (2013c, March 7).

is to be made available upon request, and the languages are to be made an integral part of the curriculum at primary and secondary school level and are to be offered for study at higher and adult continuing education institutions.

In the field of judicial authorities Slovakia has chosen to guarantee the right for the accused and the litigant to use their language and (except in the case of Ukrainian and Ruthenian in case of criminal proceedings) to submit evidence in the minority language. Furthermore, in the case of Hungarian the state undertakes not to deny the validity of legal documents solely because they were drafted in the minority language. Additionally, Slovakia has chosen the undertaking to make available national statutory texts, especially those related to the users of the regional or minority languages in Hungarian, Ukrainian and Ruthenian.

From the undertakings related to administrative authorities and public services, Slovakia has chosen to make it possible to submit oral or written applications to and receive replies from administrative authorities in their language, and to undertake that official documents of regional or local authorities be published in minority languages, as well as to allow family names in these languages. In case of Hungarian the further commitments to ensure that officers of the state that are in contact with the public use the minority languages, to allow the use of the minority language within the framework of the regional or local authority and to allow users of the language to receive replies from administrative authorities in Hungarian were undertaken by Slovakia.

In the field of media, Slovakia has chosen to facilitate the creation of television and radio programmes in minority languages, to facilitate the creation of at least one minority language newspaper, to apply existing measures of financial assistance to audiovisual productions in the minority language, and to allow the reception of broadcast signals from neighbouring countries. Furthermore, in the case of Bulgarian, Croatian, Czech, German, Polish and Roma the stronger undertaking to encourage or facilitate the creation of a radio station in the minority language has been chosen; and in the case of Hungarian Slovakia has undertaken to cover the additional costs of media using the regional language where such media receives financial assistance.

Slovakia has accepted almost all the possible cultural undertakings encouraging and facilitating the creation of cultural works in regional or minority languages.

Undertakings in the field of economic and social life include eliminating from their legislation any provision prohibiting or limiting without justifiable reasons the use of regional or minority languages; an undertaking to prohibit restrictions on the use of minority languages in the regulations of companies, and to ensure that social care facilities, such as hospitals, retirement homes and hostels offer the possibility of treating people using a regional or minority language.

Finally, Slovakia will foster transfrontier exchanges and contacts between language communities and (with the exception of the Roma and Ruthenian languages) between regional or local authorities in whose territory the same language is used.

4.3 Evaluation and application

Slovakia has become an independent state very recently and while it has a significant minority population (including the large size of the Hungarian and Roma minorities) it has declared in legislation Slovakian as the most important part of its cultural heritage.

There is no dedicated minority act, but rights of minorities are governed by the constitution. Use of minority languages is governed by a separate act that grants quite wide rights in territories where the minority inhabitants reach 20 per cent of the municipalities' population; however, the Act on the state language imposes strict requirements on the use of the Slovak language even in interactions between speakers of the same minority language. The requirement to learn and speak the official language as a manifestation of national cohesion is an internationally recognised, legitimate concern, with implications in public order, allowing mutual communication between different communities and the enjoyment of rights of the majority population in minority dominated areas and geographic mobility for persons belonging to minorities (European Commission for Democracy Through Law, 2010).

It is not entirely clear how the two acts on the use of state and minority languages interact and whether the end result guarantees the linguistic rights of speakers of minority languages.

In terms of international commitments, Slovakia has chosen wisely to differentiate the level of support given to each language based on the relative situation of it, thus for example committing to provide a wider range of education in Hungarian than in languages spoken by fewer people. On the other hand, its decision to limit territorial application in case of most languages to areas where the speakers of a given language make up 20 per cent of the municipality population seems to be counteracting many of the commitments especially with regard to smaller minorities living dispersed throughout the country. Indeed, the Committee of Experts for the ECRML has recommended that Slovakia reconsider this threshold and extend the application of its commitments to areas where the minority population does not reach 20 per cent of the population (Council of Europe, 2009).

In its opinion on the State Language Act the Venice Commission has noted that several of its provisions are incompatible with the international obligations of Slovakia, including the commitments made under the ECRML. The Commission has flagged, among others, the non-recognition of contracts not drafted in the state language, and the requirement to use the state language in judicial and administrative proceedings if one has sufficient command of the Slovakian. Furthermore, the Commission has noted that certain provisions of the implementation of the act may have a disproportionate impact, especially the requirements to keep all church and educational records in the state language (even in case of minority language schools), the requirement to use the state language in cultural activities, in bylaws of associations, societies and companies, and the duty to present signs, advertisements and notices intended for the public in the state language (European Commission for Democracy Through Law, 2010, p. 27). These concerns were also echoed by the Committee of Experts for the ECRML (Council of Europe, 2009).

In the application of the existing legislation the Council of Europe has praised as welcome developments the financial subsidies devoted to developing and preserving the culture of minorities – especially the setting up a network of minority culture museums –, as well as steps taken to improve the anti-discrimination legislation, and the fact that people belonging to national minorities are generally well represented in elected positions at the local level. Furthermore the setting up of a Hungarian university in Komarno has been marked as a positive development, and the position of Hungarian in the education system is particularly strong (Council of Europe Committee of Ministers, 2006b; 2011b; Council of Europe, 2009).

Areas of concern include the not entirely clear legislative situation, the negative societal attitudes towards people belonging to national minorities, especially the Roma who continue to face discrimination and social exclusion. A particular concern is the reports on segregation of Roma children in education (Council of Europe Committee of Ministers, 2011b). Furthermore, with the exception of Hungarian, the provision of minority education, teacher training and private media in minority language has been lacking. The absence of private media broadcasting in minority languages has been related to the overly restrictive regulations in the State Language Act (Council of Europe, 2009).

In conclusion the legislative framework in the Slovak Republic and its implementation of international commitments needs to be improved. The relationship between the acts on the state and minority languages needs to be clarified and the provisions of the State Language Act need to be made compatible with commitments under the ECRML and FCNM. In terms of implementation of existing provisions, an improving trend has been presented in the fields of anti-discrimination and education in the Romany language, and the situation of Hungarian, Czech and Ukrainian is relatively favourable, with further improvements indeed to meet commitments in respect of minorities with very few members.

5 Hungary

The FCNM and ECRML treaties came into force in Hungary within a month of each other in 1998.³⁹ Hungary is recognized for having a good compliance record with regards to the implementation of the FCNM; however, the integration of the Roma population remains a persistent failure (Hofmann, 2009). The following sections will identify the minorities and examine and evaluate the measures taken for their protection in detail.

5.1 Identification of Minorities

The ratio of minorities in Hungary since the reshaping of the borders following the first world war have been consistently below ten per cent in the censuses, although it should be noted that there is considerable variation between estimated population sizes and the corresponding census data (Dobos, 2008).

³⁹ Treaty Office, Council of Europe. (2013a, January 30; 2013b, January 30).

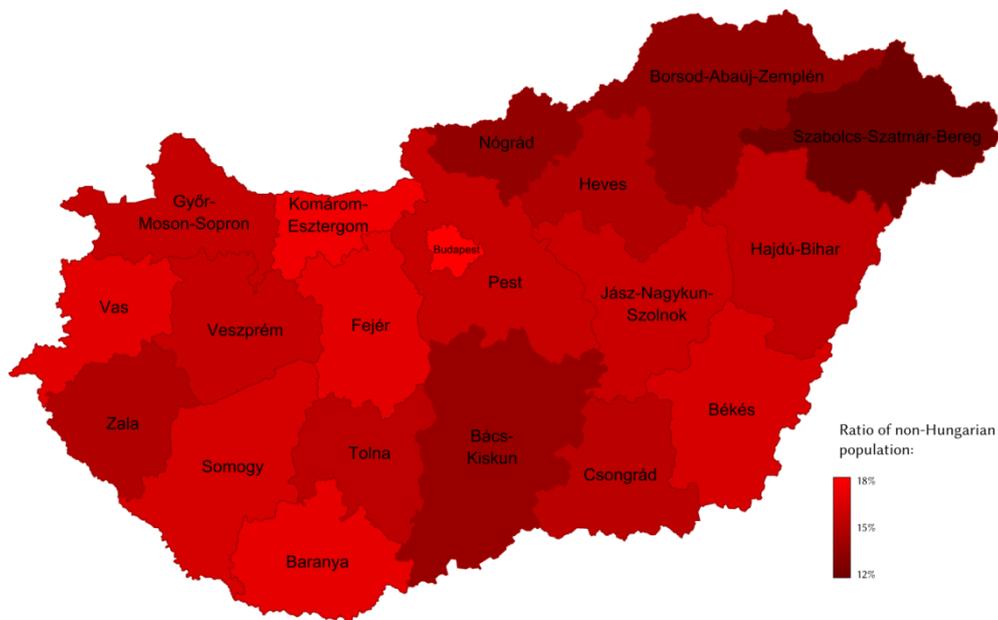


Figure 5 Ratio of minority population by county in Hungary⁴⁰

The recognized “nationalities” before 1989 were the Croat, German, Romanian, Serb, Slovak and Slovene, whose communities are relatively large (with 2003 estimates ranging from 25 to 200 thousand people) and have an extended network of educational and cultural organizations. Following 1989 a further six minorities, Armenian, Bulgarian, Greek, Polish, Ruthenian and Ukrainian, with generally dispersed populations (estimated size of the minorities is between 5 and 10 thousand) were recognized. The largest minority group, estimated between 450-600 thousand people are composed by the Roma, who are resident throughout the country (Dobos, 2008).

Despite the larger estimates, 300 thousand people identified with the Roma minority, 54-60 thousand of whom indicated that they speak either the Romani or Beás languages as a mother tongue and in the family and between friends in 2011.⁴¹ This is

⁴⁰ Source: Damokos, B. (2013, March 31). File: Hungarian counties by proportion of minority residents.svg. Retrieved March 31, 2013, from Wikimedia Commons: http://commons.wikimedia.org/wiki/File:Hungarian_counties_by_proportion_of_minority_residents.svg. Licence: Creative Commons Attribution-Share Alike 3.0 Unported.

⁴¹ 2001 census data taken from: Központi Statisztikai Hivatal. (n.d.). Nemzetiségi adatok: összefoglalás és módszertani megjegyzések. Retrieved March 24, 2013, from Népszámlálás 2001: http://www.nepszamlalas2001.hu/hun/kotetek/04/04_modsz.pdf and Központi Statisztikai Hivatal. (n.d.). 2.1. Nemzetiség. Retrieved March 26, 2013, from Népszámlálás2001: <http://www.nepszamlalas2001.hu/hun/kotetek/04/tabhun/tabl05/load05.html>.
2011 census data taken from: Központi Statisztikai Hivatal. (2013a, March 28). A népesség nemzetiség, anyanyelv, családi, baráti közösségben használt nyelv és kulturális kötődés szerint. Retrieved March 28, 2013, from Népszámlálás 2011: http://www.ksh.hu/nepszamlalas/docs/tablak/teruleti/00/1_1_6_2.xls and Központi Statisztikai Hivatal. (2013b, March 28). A népesség vallás, felekezet és nemek szerint.

a significant increase from the 200 thousand people reported in the 2001 census. The largest identifiable group of the Roma are the Romungro, whose mother tongue is Hungarian (Government of Hungary, 1999, p. 5). As noted above, the Roma are dispersed throughout the country, the largest numbers of them living in Somogy and Baranya counties.

According to the 2011 census, 185 thousand people are connected to the German minority, 38 thousand of whom indicated German as their mother tongue and 98 thousand people use the language in the family and among friends. Germans immigrated to Hungary in multiple waves from the Middle Ages. Following the Second World War around 250 thousand Germans were evicted to Germany (Government of Hungary, 1999, p. 6). Currently, the largest German population is found in Baranya, Bács-Kiskun, Tolna, Pest and Komárom-Esztergom counties, as well as the capital.

Romanians have, as far as their history can be traced back, have always lived in the present territory of Hungary, they are however only a small population having become separated from the Romanian population living in Transylvania (Government of Hungary, 1999, p. 6). The current size of the Romanian community is around 35 thousand people; their largest communities are found in Budapest and Békés counties.

There are around 35 thousand people belonging to the Slovakian minority and 10 thousand of them have indicated Slovak as their mother tongue in the 2011 census, a slight contraction from data reported in 2001. The presence in Hungary of the Slovakian minority is connected to migrations in the 17th and 18th century that have resulted in linguistic islands. The formerly populous minority group shrank as a result of the Czechoslovakian-Hungarian population exchange that have broken up the previously relatively closed communities (Government of Hungary, 1999, p. 7). The largest Slovak populations currently live in Békés and Komárom-Esztergom counties, in addition to Budapest.

Twenty three thousand people declared Croatian as their national identity and thirteen thousand as their mother tongue in 2011. The vast majority of the Croatians are found in southern Hungary (Baranya, Bács-Kiskun counties) and in the counties alongside the western border of Hungary (especially in Győr-Moson-Sopron, Vas and Zala counties). There is also a significant community of Croatians in the capital.

The 2001 census differentiated between the Ruthenian and Ukrainian minority for the first time. In 2011, there were four thousand people declaring a Ruthenian identity and seven thousand people had an affiliation with the Ukrainian minority, most of them concentrated in Budapest. A thousand people each indicated the two languages as their mother tongues.

Based on the 2011 census there were six thousand people belonging to the Bulgarian minority, three thousand of them indicating Bulgarian as their mother tongue. Predecessors of the current Bulgarian community came to Hungary as gardeners and

merchants (Government of Hungary, 1999), the biggest concentration of the Bulgarian minority is found in Budapest and Pest county.

Smaller minority groups include the Greek (4.6 thousand people), Polish (7 thousand people), Armenian (3.5 thousand people), Serbian (10 thousand people) and Slovene (3 thousand people), with significantly increased numbers reported in the 2011 census than in 2001. In addition there were around 125 thousand people with an affiliation to a non-recognized minority, the largest of them the Russian (13 thousand people), followed by Chinese (6.7 thousand people), Arabic (5.4 thousand people) and Vietnamese (3.5 thousand).

Finally, mention should be made of the Jewish community which is not considered a national or ethnic minority in Hungary and was only offered as a choice as a religion in the census. Despite the significant size of the Jewish community before the Second World War (444 thousand people according to the 1930 census), the community has dwindled down due to the Holocaust and emigration (134 thousand people were reported in the 1949 census). It is estimated that there are between 80 and 150 thousand people in Hungary of Jewish descent (Kovács & Forrás-Biró, 2011, p. 7); however, only 11 thousand people who have declared Jewish as their religion in the 2011 census.

5.2 Rights of minorities

The first minority legislation in Hungary after the change of regime was adopted in 1993 (Act LXXVII) provided for non-territorial cultural autonomy through minority self-government. The amendment process of the 1993 act began in 1997 and following a drawn-out process resulted in the adoption of the amendments in 2005 (Dobos, 2008). As part of the implementation of the new Constitution of Hungary (European Commission for Democracy Through Law, 2012), the act was further modified and replaced by the new Act CLXXIX of 2011 on the Rights of Minorities,⁴² which was adopted at the end of 2011.⁴³ Hungary is a party to both the ECRML and the FCNM. This section will give an overview of the rights provided under the 2011 Act and a short summary of specific international commitments made under the ECRML.

⁴² The English translation used for quoting is available on the website of the Hungarian Government. Parliament of Hungary. (2011, December 9). Act CLXXIX of 2011 on the Rights of Minorities. Retrieved March 18, 2013, from Kormányportál: http://www.kormany.hu/download/a/10/80000/A%20nemzetis%C3%A9gek%20joga_EN.pdf.

⁴³ Certain provisions of the act are scheduled to only come into force on 1 September 2013 and on the day of the calling of the 2014 general minority government elections, and transitional provisions are phased out at the same time. This analysis will take into account the state of the act once it is fully in force and the transitional provisions have been phased out.

The Act on Rights of Minorities is a very comprehensive and detailed act. Under the act the status of minority is conferred on “all ethnic groups resident in Hungary for at least one century ... which are in a numerical minority amongst the population of the State, are distinguished from the rest of the population by their own language, culture and traditions and manifest a sense of collective affiliation that is aimed at the preservation of these and at the expression and protection of the interests of their historically established communities.” Appendix I to the act lists Bulgarian, Greek, Croatian, Polish, German, Armenian, Roma, Romania, Ruthenian, Serbian, Slovak, Slovene and Ukrainian as recognized minorities of Hungary.

Additionally, §22 of the Act lists Bulgarian, Greek, Croatian, Polish, German, Armenian, Roma (Romani and Beás⁴⁴), Romanian, Ruthenian, Serbian, Slovak, Slovene and Ukrainian, and further, also the Hungarian language in the case of the Roma and Armenian minorities as the languages used by minorities. The list of languages in the act on the rights of minorities is more extensive than the list of languages for which Hungary has decided to apply the ECRML: Croatian, German, Romanian, Serbian, Slovak, Slovene, Romani and Beás. On the other hand Bulgarian, Greek, Polish, Armenian, Ukrainian and Ruthene are not covered by the undertakings in ECRML,⁴⁵ but the act on the rights of minorities does not differentiate between languages based on their presence or absence in Hungary’s declarations attached to the ECRML.

The act confers a wide range of rights on persons belonging to minorities as individuals and also defines collective rights to be enjoyed through elected representatives in minority self-governments at the local, metropolitan, country and national levels. Minority self-governments are to be elected in localities where the number of people belonging to a given minority is at least 30; as well as at the county level if at least ten local minority self-government elections are held in the given county; and at the national level in the case of every minority. Persons recorded in the minority register have the right to vote or to be nominated.

Rights include the right to use one’s mother tongue in civil and criminal, as well as administrative proceedings. In localities where the ratio of a minority reaches 10 per cent, upon the request of the minority self-government, decrees, announcements, administrative forms, inscriptions on public buildings and street signs and place names need to be translated. Where the ratio of minorities reaches 20 per cent, upon the request of the minority self-government, in local civil servant and public sector employee positions people familiar with the minority language are to be employed.

Individual minority rights include the right to declare an affiliation with a minority, to use one’s mother tongue, to adopt the citizenship of another state without the consent of the Hungarian state, to be educated in their own language, form

⁴⁴ There are numerous names applied to this language in English. The Council of Europe Committee of Ministers resolutions use the term “Beás” to describe the language (e.g. ResChI(2010)3). The Government of Hungary in its 2012 report has adopted the English term “Boyash”, while in its 2009 report the term “Beash” (Government of Hungary, 2012; 2009). This paper will use “Beás” throughout.

⁴⁵ Treaty Office, Council of Europe. (2013c, March 7).

associations and parties, and to use his given and family name in the mother tongue (names in non-Latin scripts are to be transliterated using a phonetic transcription).

Collective minority rights include the right to preserve, foster and pass on their identity, and their historical traditions, culture and mother tongue, to use historically established locality names, street names and other geographical designations, and to use their symbols.

Children belonging to a minority – based on the decision of their parent or guardian – have a right to take part in education in their mother tongue, in minority bilingual education, minority language education or Roma minority education (the latter can be conducted in Hungarian, in which case, upon the request of parents, language education in Romania and Beás needs to be organized). Minimum class size for minority education is eight pupils; if the minimum is not met supplementary minority education may be organized. The Hungarian language is also to be taught as part of minority education.

The act gives minorities the right for information in their own language, including access to media services and press products. Public service media is tasked with creating minority public service programmes, and programmes in Hungarian that present the life of minority communities. Furthermore, in areas where minorities live, the state is to promote the receipt of radio and TV broadcasts from kin states of the minorities.

Commitments under the ECRML, which are slightly different for Romani and Beás than for the other six languages that are covered are generally at par or at slightly lower level than the Act on rights of minorities provides.

In the field of education Hungary has chosen the lowest undertakings, to encourage teaching in minority languages, or to provide education in minority language on the request of the parents; in addition to undertaking to teach the history and culture of the minority groups and to facilitate teacher training for minority language education.

Commitments in the field of judicial authorities are considerably wide, with the exception to holding court proceedings in a regional or minority language, Hungary has undertaken to guarantee the right to use the minority languages in court, to supply evidence and documents in these languages and not to deny the validity of legal documents drawn up in a regional or minority language.

In the field of administrative authorities and public services, commitments include to make possible the submission of documents in regional or minority languages, for administrative authorities to draft documents in these languages. In addition, in the case of Romani, oral and written applications are to be accepted and administrative texts and forms are to be translated to that language in administrative districts where the number of speakers justifies these measures. Further commitments include the possibility to use the minority languages in debates and assemblies of local and regional assemblies – without excluding the use of the official language –, the possibility to use place names in regional or minority languages and to strive to appoint public service employees having a knowledge of a regional or minority language to territories where the given language is used.

Undertakings in the field of the media include the encouragement or facilitation of broadcasting radio and TV programmes in Croatian, German, Romanian, Serbian, Slovak, Slovene, and Beás, and the creation of at least one minority language newspaper in Croatian, German, Romanian, Serbian, Slovak and Slovene and to encourage the production and distribution of audio and audiovisual works in the Romania language. Furthermore, in the case of all covered language, Hungary has undertaken to guarantee free reception of broadcast signals from neighbouring countries in minority languages.

Hungary has committed itself to encourage and support the cultural life of speakers of regional or minority languages, and in the field of economic and social life to eliminate legislation that limits the use of these languages without proper justification. A further commitment of the state is to oppose practices in the economic and social life that discourage the use of the Romania and Beás languages. Finally, transfrontier exchanges are to be facilitated.

5.3 Evaluation and application

The latest iteration of the Act on Rights of Minorities has been praised for the guarantees it provides, however certain provisions, especially the very detailed regulation of minority self-government have been criticized for being too complex (European Commission for Democracy Through Law, 2012).

There have been fears expressed of potentially removed rights based on the reliance of census data as it was not known at the time of the 2011 census that its results would be used to determine the territorial basis of application for certain rights and there is a considerable difference between the census data and the estimated sizes of minority communities. In the end, the 2011 census has shown a significantly increased number of people declaring an affiliation with a minority, possibly assuaging these fears.

Hungary has a very comprehensive and progressive act on rights of minorities that covers both individual and collective rights, including the right to use a minority language in a wide range of situations including education, courts, local authorities, place names and the media.

The act provides for a wide system of cultural autonomy for people belonging to minorities with the system of local, county level and national minority self-governments that have the right to take over and maintain educational and cultural institutions and to represent the interests of the minorities. The system has been expanded over the years; however the 2011 Act will not remedy the shortcoming of the previous acts (Vizi, 2009, p. 125) in only conferring the right to be elected to persons with Hungarian citizenship, but it extends the right to elect minority representatives to non-citizens who are resident in Hungary and declare their belonging to a minority. It is argued, that when the Act is read in conjunction with the Constitution, despite the absence of a citizenship criterion in the definition of minorities provided in the act, it becomes evident that in general, minority rights are

extended only to Hungarian citizens (European Commission for Democracy Through Law, 2012, pp. 8-9).

The act is praised for the wide range of education it provides to members of minorities, the fact that the supplementary costs of minority education are funded by the state and that the act accommodates the specific situation of the different minorities like the fact that many people belonging to the Roma minority have Hungarian as their mother tongue (European Commission for Democracy Through Law, 2012). Despite the widespread educational rights (also present in the previous acts on the rights of minorities), funding of minority language education and provision of full bilingual education, as well as the need to strengthen the situation of the Romani and Beás languages have been repeatedly pointed out as areas needing continued improvement by the Council of Europe (Council of Europe Committee of Ministers, 2010; 2007; 2004; 2001).

The Venice Commission has noted that the Act on Rights of Minorities is too complex which could jeopardise the full application of the rights of minorities. In particular, the inclusion of a long list of transitional provisions that contained substantive rights was deemed a solution that could lead to confusion, and the very detailed and at times not entirely clear provisions on the election, organization, operation and supervision of minority self-governments was noted as possibly negatively affecting the autonomy of the self-governments (European Commission for Democracy Through Law, 2012).

In terms of international commitments, Hungary is party to the relevant international instruments aimed at the protection of national minorities or the languages they speak, and has chosen undertakings under the ECRML that are generally covered by Hungarian legislation. The Council of Europe has not yet published any reports or resolutions that take into account the changes introduced by the latest act, however, their general comments that intolerance and hostility towards and the instances of educational segregation the Roma, racism and hate speech in public (Council of Europe Committee of Ministers, 2011a) are concerns that are apposite regardless of the legislative framework in force.

In conclusion, Hungary has a very ambitious legislative framework for the protection of minorities that is exceptional with the system of cultural autonomy it provides minorities. The act governing rights of minorities have evolved over the last decades following recommendations of international monitoring bodies and based on consultation with minorities. The 2011 Act is a reformulation instead of an amendment of the existing act that have introduced certain provisions that could be improved upon. It is expected that full implementation of the act and the remedying of certain non-clear or complex provisions will likely take a number of years. Meanwhile, despite concerns about societal attitudes and racially motivated crime, the rights of persons belonging to minorities are generally well protected.

6 Romania

Romania is a party to the Framework Convention for the Protection of National Minorities, having signed and ratified the treaty in 1995;⁴⁶ it is also a party to the European Charter for Regional or Minority Languages, which it has signed in 1995 but ratified only in 2008.⁴⁷ Out of the 19 million inhabitants of Romania, around 88 per cent belong to the majority ethnic group, and the rest identify with a minority.⁴⁸

The following sections will expand on the demographic data and provide a description and evaluation of the current legislative framework of minority rights protection in Romania.

6.1 Identification of Minorities

In 1930, 3 million people belonged to an ethnic group other than Romanian accounting for 22 per cent of the population (Benó & Szilágyi, 2005, p. 135). In the last eighty years the minority population has decreased by around 1 million people, while the Romanian population has increased by around 6 million people. Currently around 12 per cent of the population of Romania identify with at least twenty ethnic groups other than Romanian according to the 2011 census.⁴⁹

The largest ethnic and linguistic minority is the 1.2 million people strong Hungarian minority that accounts for 6.5 per cent of the total population, the majority of whom live in counties in Transylvania (Benó & Szilágyi, 2005), including being the largest ethnic group in the counties of Covasna and Harghita (Government of Romania, 1999, p. 11). The size of the Hungarian minority has been showing a decline in the last two

⁴⁶ Treaty Office, Council of Europe. (2013a, January 30).

⁴⁷ Treaty Office, Council of Europe. (2013b, January 30).

⁴⁸ Central Population and Housing Census Commission. (2012, February 2). Press release on the provisional results of the 2011 Population and Housing Census. Retrieved March 28, 2013, from Institutul National de Statistica:
<http://www.insse.ro/cms/files%5Cstatistici%5Ccomunicate%5Calte%5C2012%5CComunicat%20DATE%20PROVIZORII%20RPL%202011e.pdf>.

⁴⁹ 2011 census data taken from: Central Population and Housing Census Commission. (2012, February 2).

decades due to emigration, fertility rates lower than the national average and the fact that two thirds of the children of mixed marriages identify with the Romanian majority (Government of Romania, 2011, p. 22).

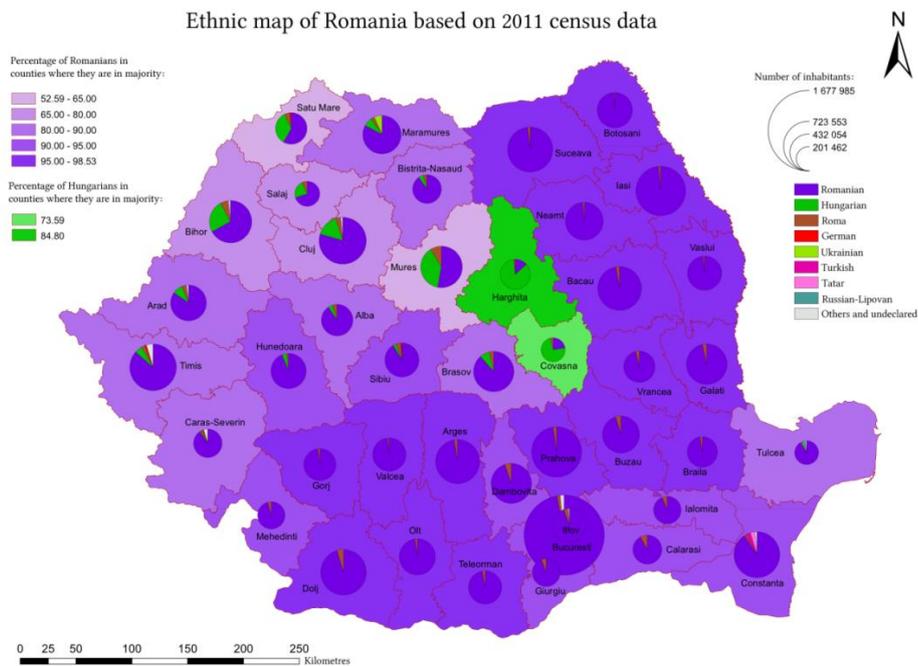


Figure 6 Ethnic map of Romania based on 2011 census data⁵⁰

The second largest ethnic group in Romania is the Roma; the 620 thousand people who declared Roma as their ethnicity in 2011 make up 3.2 per cent of the total population. This ethnic group can be further divided into close to 30 identified subgroups (Government of Romania, 2011, p. 22). About half of the people who identified as Roma in the census speak the Romania language, the rest have indicated either Romanian, or in Transylvania Romanian or Hungarian as their mother tongue (Niessen, 2005, p. 741).

In 2011 there were 52 thousand people who identified with the Ukrainian minority, concentrated in Maramures and Timis counties (Government of Romania, 2010, p. 17).

The German population in 1930 was 800 thousand people, which diminished to around 400 thousand following the Second World War and due to emigration has been in steep decline ever since (Wagner, 2000). As a result the German population of Romania was reported at 37 thousand people in 2011, with the largest number of speakers in Timis, Caras-Severin, Sibiu and Brasov districts (Government of Romania, 2010, p. 15).

⁵⁰ Source: Andrein, & Damokos, B. (2013, March 30). File: Ethnic-map-of-Romania-2011.png. Retrieved March 30, 2013, from Wikimedia Commons: <https://commons.wikimedia.org/wiki/File:Ethnic-map-of-Romania-2011.png> Licence: Creative Commons Attribution-Share Alike 3.0 Unported.

The three main minority groups in Eastern Romania were the Turks, Russians and Tatars. There were 28 thousand people belonging to the Turkish minority in 2011. The vast majority of the Turks in Romania live in Constanta county, with a significant concentration of the rest of the Turkish minority in Tulcea county and the capital. According to the 2011 census, 23 thousand people belong to the Russian Lipovan ethnic groups living in a territory in East Romania, with 88 per cent of the minority living in Tulcea, Constanta, Iasi, Braila and Suceava counties. In the 2011 census 20 thousand people identified with the Tatar ethnic group, 96 per cent of them resident in Constanta County.

Smaller ethnic groups with populations under twenty thousand people include the Serbs, Slovaks, Jews, Bulgarians, Czechs, Croats, Greeks, Poles, Armenians, Ruthenians, Italians, Albanians and Macedonians.

6.2 Rights of minorities

Romania does not have a single act on the protection of national minorities and repeated attempts to have one adopted have failed (Decker, 2008), this section will therefore examine a number of constitutional and legislative provisions that have been referenced in monitoring reports supplied by Romania to the Council of Europe.

There is no single definition of national minorities in Romania, minorities are understood to refer to “historical minorities” resident in Romania “for hundreds of years” (Government of Romania, 2010, p. 4). The Constitution⁵¹ has a number of provisions that provide for the protection of minorities and the use of minority languages, which are further specified and defined by various legal acts.⁵²

Article 6 of the Constitution “guarantees the right of persons belonging to national minorities to the preservation, development and expression of their ethnic, cultural, linguistic and religious identity” and provide that protection measures have to conform to the principles of equality and non-discrimination towards other Romanian citizens.

Under Article 32 of the Constitution persons belonging to national minorities have the right to learn their mother tongue and to be educated in that language. The 2011 revision of the Law on Education reiterates that persons belonging to minorities have a right to education in their language at the pre-university level upon the request of their parent or legal guardian regardless of the number of requests (Council of Europe, 2012c, p. 7). The Law on Education stipulates even in the case of minority language education certain subjects (such as the history of Romanians) are to be taught in Romanian (Benő & Szilágyi, 2005, p. 143), although in 2008 two new subjects,

⁵¹ Source of English translation: Parliament of Romania. (2003, October 29). Constitution of Romania. Retrieved March 28, 2013, from Chamber of Deputies: <http://www.cdep.ro/pls/dic/site.page?id=371>.

⁵² English translations are taken from: Government of Romania (2010, pp. 4-12).

Intercultural Education and History of National Minorities were introduced into the curriculum at secondary and high school level (Government of Romania, 2011, p. 44).

Article 62 of the Constitution provides for the political representation of national minorities in Parliament, each minority whose organizations did not gain a seat in the Parliament have a right to one seat in the Chamber of Deputies.

Under Article 120 of the Constitution in territorial-administrative units where citizens belonging to a national minority have a significant weight provision needs to be made for the oral and written use of minority languages in relations with the local authorities. The law on local administration (no. 215/2001) and numerous government decrees on public administration set the threshold for the use of minority language at 20 per cent of the population. Furthermore, in areas where a minority reaches 20 per cent of the population the agenda and decision of local and county councils need to be translated, and the name of the locality and public institutions is to be displayed also in the minority language. Local and county council meetings can be conducted in a minority language if the minority representatives make up at least one third of the council, although meeting documents need to be drawn up in Romanian. Additionally, under Law no. 360/2002 in areas where the ratio of a minority reaches 20 per cent, police officers who know the language are to be employed.

Article 128 of the Constitution provides for the use of minority languages before courts, and the use of interpreters and translations. The Code of Criminal Procedure, Law no. 303/2004 on the status of judges and prosecutors, and Law no. 304/2004 on the judicial system clarify that a language other than Romanian can be used by people who do not speak or cannot express themselves in Romanian, the use of an interpreter is provided free of charge in this case. The language of proceedings and applications and procedural proceedings are to be Romanian. In territories where the minority make up more than 50 per cent of the population candidates for judicial positions who speak the minority language are to be given preference.

Romania has become a party to the ECRML in 2008 after a long period of ratification following the signature in 1995. Romania applies Charter protection to twenty languages, ten of these enjoy Part II protections (Albanian, Armenian, Greek, Italian, Yiddish, Macedonian, Polish, Romani, Ruthenian and Tartar) and a further ten enjoy a differentiated but higher level of protection under Part III of the Charter (Bulgarian, Czech, Croatian, German, Hungarian, Russian, Serbian, Slovak, Turkish and Ukrainian).⁵³

The differentiation between languages is most noticeable in the field of education, where Romania has committed itself to make available education in Croatian, German, Hungarian, Slovak, Turkish and Ukrainian, and to make available a substantial part of education in Bulgarian, Czech and Serbian and to provide for the teaching of Russian as an integral part of the curriculum.

⁵³ Treaty Office, Council of Europe. (2013c, March 7).

Commitments in the judicial field are common across languages and provide for the use of minority languages in judicial proceedings and an undertaking not to deny the validity of documents drawn up in a minority language.

Romania's undertakings with respect to administrative authorities and public services include ensuring that public officials in contact with minority speakers use the minority language, allowing for written and oral submissions in the minority languages, and to allow the use of adoption of place names and family names in minority languages. Language based differences in commitments include the undertaking to publish official documents by regional authorities in Bulgarian, Czech, German and Hungarian where the number of speakers reach 20 per cent of the population.

In the field of media Romania has undertaken to encourage the creation of radio and TV programmes and of a newspaper in the minority languages, as well as the free reception of broadcast signals in the minority languages. In case of Hungarian Romania has chosen to support the creation of a radio and TV channel, and together with German to cover the additional cost of creating media in these languages.

Romania has chosen all the possible commitments in the fields of promoting and developing cultural life and in the field of transfrontier exchanges.

Finally, a common commitment in the field of economic and social life are to prohibit regulations of companies and private documents restricting the use of regional or minority languages, and with the exception of Turkish and Ukrainian, to eliminate legislation restricting the use of these languages without justifiable reasons. Additionally, in case of German and Hungarian Romania has undertaken to ensure the use of these languages in social care facilities, in safety instructions and in the dissemination of information concerning consumer rights.

6.3 Evaluation and application

Upon examination of the legislative framework of Romania, with the exception of certain deficiencies in implementation of policies by local authorities and in the field of initiatives aimed at improving the situation of the Roma, Romania has achieved a high standard of minority rights protection (Ram, 2009).

Romania does not have a comprehensive law covering the rights of minorities even though there were at least six failed attempts that failed, instead there is a combination of constitutional provisions and lower level legislation (laws and government decrees) that ensure linguistic and minority rights in Romania, including the right for each recognized minority to be represented in the House of Deputies. In terms of international commitments Romania has joined the ECRML relatively late with language based commitments carefully tailored to the status of each individual language spoken in the state.

The Advisory Committee for the FCNM has found the situation in Romania generally satisfactory. It has noted its report that the fact that with the failure to adopt a comprehensive law on minorities there is no clear definition of national minorities or a

mechanism to recognize a minority as such which is an on-going concern. Furthermore, the Advisory Committee has expressed concern that the practice of establishing separate schools for education in the minority languages is reducing the number of interactions between persons belonging to the majority and the minority groups. Despite efforts to curb discrimination and improve the socio-economic status of the Roma the improvement of their access to employment, housing, health care and education requires further resources and immediate action (Council of Europe, 2012c).

In terms of compliance with the ECRML, Romania was praised for the level of minority education and basic cultural infrastructure it provides for almost every language and the guaranteed representation of minorities in the Parliament. Although the use of languages in court is limited in certain cases if the person belonging to a minority understands Romanian, the Committee of Experts has upon consideration found the undertaking related to judicial authorities to be fulfilled. The Committee of Experts have also noted that Romania should improve its educational offerings in Tatar, Turkish and Ukrainian to meet its undertakings, and have invited Romania to reconsider the 20 per cent threshold especially in light of the fact that the ratio of minority population has decreased under the threshold as a result of applying the latest census data (Council of Europe, 2012b).

In conclusion, minority rights are firmly protected in Romanian legislation including strong linguistic rights and the right to political representation. Areas of improvement are related to implementation often at local levels, especially in the educational and broadcasting field in the case of certain languages, as well as the lack of legal definition of minorities, where the adoption of the law on national minorities, more financial resources could be a solution. Finally, as with other countries in the region, further work and resources are needed to address the situation of the Roma population.

7 Regional evaluation

From the previous chapters it has become evident that the analysed countries are all parties to the two relevant European minority rights protection treaties and their corresponding legislation is mostly compatible with the standards set by those treaties. However, the treaties provide a wide margin of appreciation and in the case of the ECRML, very broad discretion in choosing what commitments to take on. The analysed countries therefore have identifiable differences in the levels of protection they provide their nationalities and the effort they make in taking on international obligations and commitments in this field beyond the basic level that the international community expects.

The foregoing country studies have shown that there are important differences in the willingness of countries to take on commitments in the field of minority rights protection, there are differences in the quality of the legislative framework and the way it is implemented.

Outside the scope of this legislative analysis, social inequalities and negative societal attitudes towards certain minorities are prevalent in the analysed states. Political statements and demonstrations concerning minorities, especially minorities with neighbouring kin states have been common throughout the last two decades, but the actual legislation governing minority rights have remained considerably stable in the region.

7.1 International commitments

During the accession period, the European Union has placed a great deal of attention on ensuring adequate minority protection is in place in the Central-East European countries. In doing so, due to the lack of any Union level norms, the Framework Convention for the Protection of National Minorities has been used as the frame of reference (Sasse, 2009). Indeed, as Table 1 shows, all the analysed countries have adopted and ratified the FCNM by the time it has entered into force or slightly thereafter.

In addition to ratifying the FCNM, the accession countries have had to harmonize their existing legislative frameworks with the requirements of the Framework Convention

and to transpose of the European Union’s Race Equality Directive (Rechel, 2009, p. 227).

Table 1 Entry into force of the FCNM and ECRML in the analysed countries⁵⁴

Country	Framework Convention for the Protection of National Minorities	European Charter for Regional or Minority Languages
Czech Republic	1 April 1998	1 March 2007
Hungary	1 February 1998	1 March 1998
Poland	1 April 2001	1 June 2009
Romania	1 February 1998	1 May 2008
Slovakia	1 February 1998	1 January 2002

The ECRML on the other hand has not been part of the European Union conditionality and the analysed states have adopted and ratified it at different paces, with Hungary leading the way in 1998, followed by Slovakia in 2002. The Czech Republic, Romania and Poland have become parties to the Charter following their EU accession in 2007, 2008 and 2009, respectively. The date of accession to the ECRML is significant because complete and satisfactory implementation of the undertakings, can take a number of years.

More important than the time of signing is the level and extent of the commitments made under the ECRML. While many of the analysed states have struggled meeting all their undertakings, the fact that they were made paves the way for continuous progress and the monitoring process provides useful feedback, accountability and incentives to continue implementation.

As has been shown, while Poland has been the last to join the ECRML, it has chosen to apply it to all its minority languages and with regards to a wide range of undertakings in the field of education and cultural life (especially broadcasting and the media). Similarly, Slovakia, Hungary and Romania have all chosen to apply the Charter to a wide range of languages, although with different levels of commitments and at times limited territorial application. In contrast, the Czech Republic has taken a less ambitious, more realistic approach with choosing Part III commitments only with respect to Polish in the north of the country and Slovakian, a language that is in a good situation in the state due to its mutual intelligibility with Czech.

Nevertheless, implementing these undertakings remains a challenge for all countries analysed, with the main areas of concern being the provision of adequate resources and facilities for education and broadcasting in regional or minority languages, the administrative barriers created by the high ratio of minority residents required for the

⁵⁴ Source: Treaty Office, Council of Europe, 2013a & Treaty Office, Council of Europe, 2013b.

application of Charter undertakings and instances of discrimination and negative attitudes towards the Roma.

7.2 Legislative framework

Minority rights protection is usually influenced by dozens of legislation that govern different aspects of non-discrimination, special measures for the use of the minority language, provisions on judicial procedures and budget allocations, political representation, and so on. In addition certain states have chosen to adopt special minority acts that summarize and govern definitions and rights of people belonging to minorities or on the use of minority languages.

Out of the countries analysed, three (Poland, the Czech Republic and Hungary) have enacted minority acts that provide definitions, a catalogue of rights and the responsibilities of state, regional or local governments and self-governments in implementing the rights. Slovakia and Romania has not enacted comprehensive minority acts, minority rights are instead governed by constitutional provisions and sectoral legislation.

An important condition of the full implementation of minority rights is that the authorities, public institutions and persons belonging to minorities are properly informed about their rights and obligations. It is my opinion that having a comprehensive act, even if it relies on specialized legislation to define its provisions – like in the case of the Czech Republic – facilitates members of minorities in getting acquainted with and exercising their rights.

7.3 Definition of minorities

As has been established, there is no internationally accepted definition of what a minority is and the analysed states have used similar but slightly different definitions on deciding which people to apply provisions concerning persons belonging to minorities or people speaking regional or minority languages.

Countries that have specific definitions of minorities tend to choose a definition that is similar to the internationally used approximation of a common definition (a group numerically smaller than the majority of the population with a distinct language, culture or religion that wants to preserve this culture and identifies with the nation).

There is a common tendency to confer minority status only on persons with a citizenship of the state. While a citizenship criteria is not contradictory to international obligations, it is considered a restrictive element that should be eliminated to the extent possible to ensure that rights are not refused to certain individuals based on citizenship (European Commission for Democracy through Law, 2007).

Romania and Slovakia do not have formal definitions of minorities or for the official recognition of minorities. Romania claims to apply minority rights protections to

“historical minorities” while Slovakia uses census data as the basis of enumerating recognized minorities.

Certain countries, like Poland and Hungary, furthermore either require that ancestors of members of minorities have to have lived on the territory of the state for a certain amount of time: 100 years in the case of Poland and Hungary. While the Czech Republic does not have such a requirement, certain rights are conferred only upon minorities traditionally living in the territory of the state. Some commentators have indicated that a criterion of three generations instead of 100 years would be more suitable (European Commission for Democracy Through Law, 2012, p. 8 para. 33), especially in light of recent waves of immigration and the free movement of people inside the European Union.

Furthermore, Poland applies a difference in terminology where “national minorities” have a kin state whereas “ethnic minorities” do not. Hungary has introduced the term “nationality” to replace its previous use of the terms national and ethnic minority in its legislation that relied on the same differentiation as applied Poland.

In general terms the lack of an internationally accepted definition has not precluded the development of international protection standards for minorities. Most states have found a definition that produces the correct results, although most states are yet to adopt the recent international recommendations to expand definitions to include non-citizens. At the local level there are certain concerns with the definitions of minorities, for example the lack of a definition in case of Romania prevents the recognition of new minority groups and the status of people of Silesian identity in Poland is yet to be resolved satisfactorily.

7.4 Population thresholds

The application of rights to allow the use of place names in the minority languages and the possibility to interact with local authorities in the minority language and similar linguistic rights are usually tied to thresholds of a ratio of minority population in the given locality and other administrative steps.

A common threshold is that of 20 per cent of the population, although the Czech Republic and in the case of certain specified rights Hungary apply a lower threshold of ten per cent (5 per cent at the regional level in the Czech Republic). Administrative barriers can take the form of requiring a decision by committees of national minorities (which presupposes the existence of such a committee), a request submitted by the local population or even a plebiscite. These additional administrative requirements usually result in the non-application of the facilities granted to minorities even in municipalities that meet the population threshold.

The relative threshold can mean in practice that the exact same number of speakers might qualify in one municipality for certain linguistic rights and not qualify in another. Furthermore, the reliance on census data coupled with the fact that estimates for the size of minority groups – especially those that suffer negative social attitudes – are

often higher than numbers reported in censuses could prevent certain people belonging to minorities in the enjoyment of their rights.

The Council of Europe has repeatedly recommended, especially for Slovakia, Romania and Poland (Council of Europe, 2012b; 2011; 2007; 2009), that states reconsider the 20 per cent threshold and strive to extend rights to people belonging to minorities even in localities where they do not reach the threshold, especially as there are certain minorities who do not reach the set ratio anywhere in their country.

7.5 Education

Education plays an important role in the preservation of the language of the minorities. Monolingual education for minority students can lead to minority language loss and relative monolingualism. Bilingual education can be used as a potent tool for language preservation of minorities, and the resulting bilingualism can have cognitive, social and psychological advantages. Use of minority languages in an educational setting is especially needed for the maintenance and development of low-status languages (Garcia, 1998).

The role minority language education plays in the maintenance of identity is internationally recognized, while at the same time the need to gradually include education of the official state language and certain practical or non-theoretical subjects should be thought in it to allow the students to integrate and participate in the wider national society (High Commissioner on National Minorities, 1996). An important aspect to fulfilling these ambitions is the wish of the minority concerned and the parents of the students. Practical implementation should take into account the size and characteristics of the minority in question and provide for adequate resources for the training of bilingual teachers.

Central-East European states have committed themselves to provide education with varying intensity (ranging from education in the minority language to various levels of offering the minority language as a subject on the curriculum), usually based on the size of the minority. Larger minorities usually receive higher levels of educational undertakings and support than smaller minorities. States often undertake to facilitate teacher training in minority languages to enable minority language or bilingual education.

At the level of implementation a common experience in the region is that states are able to live up to their undertakings to provide minority language education in case of their largest minorities but are having difficulties fulfilling commitments made toward lesser spoken language and in particular in case of languages spoken by the Roma. Furthermore, adequate teacher training facilities and textbooks are often lacking and the shortage of trained teachers is hindering the implementation of the commitments.

7.6 Political participation

Participation of minorities in public affairs is an important element and a guarantee of minority rights. The form of participation can take many forms at local, regional or national levels and Central-East European states have adopted a wide range of solutions. Main strategies of ensuring participation in public life are consultation with representatives of minorities, the direct involvement of minority representatives in decision-making bodies or the self-government of the minorities in certain policy fields.

At the national level, Poland, Romania and the Czech Republic have a government consultative body that includes representatives of minorities and the various government departments tasked with implementing policies affecting the minorities. More direct involvement is guaranteed by the inclusion of minority representatives in Parliament, this is either possible through the regular election processes or through special allowances made to minorities. In this regard in Romania each recognized minority is entitled to a seat in the lower house, and Hungary is planning to implement a similar system starting with the 2014 elections. In Poland election thresholds for parties of minorities are waived. Slovakia has no preferential rules of parties of national minorities.

Similarly, minority representatives may be elected into regional or local authorities. Additionally, the Czech Republic has set up a system of committees for national minorities

Hungary has established a system of minority self-governments at the local, regional and state level with wide powers to take over and maintain educational and cultural institutions, effectively creating a system of cultural autonomy.

The field of participation in public affairs remains an area where further efforts are needed to achieve the effective participation of minorities. Better implementation of existing facilities is needed in Poland to ensure that more minorities are represented in decision-making bodies and the Sejm, and in the Czech Republic to ensure that committees of national minorities are established everywhere where the local minority community has the right to establish them. Countries that do not yet have facilities for guaranteeing the participation in public life of national minorities should consider adopting measures in this field.

7.7 Inclusion of the Roma

Relying on a purely textual analysis of minority rights legislation in the five countries it would not be apparent that are major shortcomings in guaranteeing equal social and economic rights to the Roma minority. Usually, the legislation applies equally to people belonging to the Roma or any other minority community; however, in assessing the

impact of minority policies, it becomes evident that the analysed countries struggle with ensuring not only legal but also substantive, factual equality to people belonging to the Roma community.

Negative societal attitudes, discrimination, hate speech and racially motivated crimes, as well as segregation in the education system are common in relation to the Roma. Statistics generally indicate that the average socio-economic status of people belonging to the Roma minority is lower than the average of the majority population.

Many governments⁵⁵ and even the European Union⁵⁶ have adopted various integration programmes and initiatives to improve the situation focusing on such areas as improving education, rights of women and children, housing, and employment opportunities. Success in these strategies and other programmes is required in the analysed countries to achieve full compliance with commitments made under the FCNM and the ECRML. Achieving this goal does not necessarily necessitate changes in the existing minority rights legislation, but full implementation of existing legislation and the provision of information to the members of the Roma minority on how to exercise their existing rights could be required.

7.8 Summary and recommendations

Central-East European countries have made great strides in the past two decades in consolidating their democracies and building effective legal frameworks for the protection of their minorities. Basic legislative guarantees for rights enumerated in international conventions are present in the analysed countries; however, there are common areas where further improvements throughout the region and the application of international best practices could raise the level of minority rights protections higher.

The five analysed countries have all ratified the FCNM that was part of the conditions of EU accession. Additionally, all five countries have ratified at different times the ECRML and have taken on commitments to protect and promote regional or minority languages on their territories. These treaties are important because they provide an objective monitoring system and non-biased recommendations that is tailored to the states' individual undertakings. The general experience is that states have to work continuously on reaching their commitments and the monitoring cycles of the Council of Europe treaties provide a good yardstick to measure improvements against.

⁵⁵ National Roma integration strategies are published on the European Commission's website: European Commission. (2012, October 4). National strategies. Retrieved March 21, 2013, from European Commission > Justice > Tackling discrimination > EU and Roma: http://ec.europa.eu/justice/discrimination/roma/national-strategies/index_en.htm.

⁵⁶ European Commission. (2011, April 5). An EU framework for national Roma integration strategies up to 2020. Retrieved March 21, 2013, from European Commission: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0173:FIN:EN:PDF>.

One area where the Central-East European states have adopted different approaches is in selecting the legislative form for codifying minority rights in national legislation, some opting for framework laws covering minorities, while others relying on a combination of constitutional provisions and sectoral acts. We believe that having a single act that clarifies the definition of minorities and the rights they enjoy, even if the law itself refers to constitutional provisions and specialized acts that govern the details of application, can be beneficial in signalling the commitment of the state for the protection of the rights of minorities and can help ensure that persons belonging to minorities can easily get acquainted with and avail themselves of their rights. For the same reasons, it is recommended that legislation concerning minorities is translated into the languages the minorities speak.

There are no international definitions of minorities or for regional or minority languages and each country is free to come up with their own interpretation. In the region, the countries in practice apply definitions compatible with those put forward by Capotorti and Deschênes, with some countries requiring recognized minorities to have lived on the territory of the state for a century. International developments point in the direction that citizenship should not be a condition for the enjoyment of minority rights and that a shorter period of living in a given country before recognition as a minority would allow more flexible responses to demographic changes.

In addition to a definition of minorities an important condition affecting the enjoyment of rights are rules on territorial application of certain provisions. States have to balance their available resources against the need to provide adequate resources to support minority communities and a common way to set the balance is to fix ratios of minority population needed for the application of certain rights, with 20 per cent being a ratio commonly used. These ratios are at times supplemented with further administrative barriers. Given that the thresholds are relative and two minority groups of equal sizes could enjoy different levels of linguistic rights based on the size of the non-minority population at their place of residence. It is recommended that states re-examine their existing thresholds in light of actual demographic data and available state resources and to remove or lower other administrative barriers to ensure that the maximum number of people can enjoy these rights.

Political participation of minorities in decision-making affecting them is an area where states have adopted different solutions including setting up consultative bodies or setting aside special seats for minority representatives. Regardless of measures taken, political participation of minorities has not reached ideal levels in the region. It is recommended that states ensure that such measures are properly implemented and result in the actual participation of all minorities.

An additional area where states struggle with implementation and fulfilling their commitments is the provision of education in minority languages, a service that is recognized as of paramount importance to the maintenance and development of minority culture, identity and language. The analysed states have generally had education provisions that are compatible with international standards but have had shortcomings in providing enough resources, teacher training and textbooks to achieve implementation. Further budgetary resources and international cooperation in the exchange of teachers could improve the situation.

Finally, during the review of reports it has become evident that good legislation is not enough to ensure the equality of persons belonging to minorities. This is especially striking in the case of the situation of the Roma, where additional governmental programmes and strategies are required to eliminate discriminatory and segregatory practices, ensure social integration and general equality with the majority populations.

Conclusion

International interest in minority rights protections in one form or other is traced back hundreds of years, but it is only recently in the last century and in particular, after the cold war that protection of national minorities was internationalized. Given that Central-East Europe has had a history of tension surrounding minorities, this study has set out to examine through national legislation whether international standards of minority rights protection are applied in national legislation and whether this leads to an adequate level of protection for minorities.

There are majorities and minorities in almost every state in the world, except the very small ones, there are a great variety of people who populate Central-East Europe, many (but not all) of them present in a number of states in either a titular or a minority position leading to a constantly high level of interest in the need to protect minorities but also a desire to strengthen the role of the titular majorities. States in the region have resorted to slightly different methods of ensuring the protection of their own minorities and supporting kin minorities in their neighbouring countries.

Our focus was to examine internal legislation applied to all minorities in the light of international commitments undertaken in the process of preparing for EU membership. The aim was to provide a high level view of the demographic and legislative situation in Poland, the Czech Republic, Slovakia, Hungary and Romania. This was followed by a regional synthesis to identify areas where the countries have chosen distinctly different approaches and areas where all or almost all of the examined countries could apply additional effort.

A welcome result of the examination is that most states have a satisfying legislative framework that guarantee the basic rights for members belonging to minorities. However, some of these frameworks could be improved or extended, for example in Slovakia or Romania where there is no framework law governing rights of minorities which lead to uncertainties in either the relationship of different acts or a lack of a clear definition and process for recognizing minorities.

In the process of the analysis it has become evident that a good legislative framework is not sufficient for ensuring that minorities enjoy equality in society and can avail themselves of the rights addressed to them. The main areas of concern are in the fields of education, broadcasting and anti-discrimination especially in the case of smaller minorities or ones that generally face negative societal attitudes like the Roma. Successful implementation requires that persons belonging to minorities are informed of their rights; that authorities and public officials are informed of their obligations;

monitoring and adequate financial resources are also required. In cases where members of a minority suffer inequality in health, housing and employment further concentrated strategies and programmes are required in addition to general legislation protection the rights of minorities.

In conclusion, either as a result of international pressure or internal motivations each of the examined countries have adopted legislative frameworks that provide good guarantees of minority rights. The situation of minorities deserves further study and on-going monitoring in the foreseeable future. Following EU accession the international pressure on the countries of the region has eased, however they have all signed up and continue to participate in monitoring processes connected to Council of Europe treaties that continue to give clear signals that establishing good legislation is only the first step on the road towards adequate levels of minority rights and equality for all citizens of the state.

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List of abbreviations

CSCE Conference for Security and Co-operation in Europe

ECHR European Convention on Human Rights

ECRML European Charter for Regional or Minority Languages

FCNM Framework Convention for the Protection of National Minorities

ICCPR International Covenant on Civil and Political Rights

OSCE Organization for Security and Co-operation in Europe