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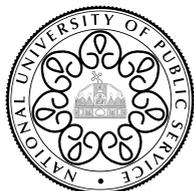
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Authors

ARON COCEANCIG holds a PhD in “History of East Europe” and a master degree in “Analysis of the conflicts, the politics and the ideologies in the contemporary world” at the University of Modena and Reggio Emilia (Italy). He is currently a researcher at the Adria-Danubia Study Center (Italy) and he is a member of the Joint Institutional Committee for Slovenian minority issues.

SÁNDOR DOBOS, Junior researcher at the Tivadar Lehoczky Social Sciences Research Centre and assistant lecturer in History at the Department of History and Social Sciences at Ferenc Rákóczi II Transcarpathian Hungarian Institute; PhD-student with certificate of completion at the Doctoral School of History and Ethnography at University of Debrecen.

ESZTER KISS, Graduated on Communication and Media Studies MA at Eötvös Loránd University in 2016. Her recent research field is migration to Hungary, the media representation and political communication connected to this issue and the narrative structures connecting immigration and terrorism together. On these topics she has delivered several presentations on international conferences. She is currently a junior researcher of Eötvös Károly Policy Institute and a communication assistant at the Center for Independent Journalism, Budapest.

CSILLA VARGA, Doctoral candidate of the International Relations Multidisciplinary Doctoral School at the Corvinus University of Budapest. The topic of her doctoral research is the minority protection policy of the European Union from legal and sociological point of view in connection with national minorities. She works currently at the Ministry of Justice in Budapest at the Department of Criminal Law and Human Rights.

The Legal Framework for the Protection of the Slovenian Minority in Italy

COCEANCIG ARON

Introduction

This article is inspired by the presentation made at the Global Minority Rights Summer School, organized in Budapest in 2016. During the Summer School, dedicated to the importance of minority protection, we discussed several issues related to different legal frameworks in use around the world. Within this context, the analysis and evaluation of the legal framework for the protection of the Slovenian minority in Italy could serve as an interesting source of comparison.

The subject of examination encompasses the legal framework used for the protection of the Slovenian community in Italy, in particular two laws: the States Law No. 482/1999 and Law No. 38/2001. These two pieces of legislation created a new situation for the Slovenian community succeeding in raising the standards of protection. The article aims to analyse this situation by highlighting the positive and critical aspects of the protection of the Slovenian minority.

Before analysing the legal framework, the paper makes a historical, geographical and linguistic introduction in order to understand and define the Slovenian minority. It then proceeds to analyse the context in which the laws of protection developed, with a stress on the problem of the unequal protection provided to Slovenian residents in various provinces. This brings us to the new situation initiated by the law No.482 and No.38. Particular attention will be given to the role played by the Joint Institutional Committee, a body created in 2001 with the task of monitoring the implementation of protective laws.

Special attention is given to the different situation created for Slovenians in some of the provinces, protected by international treaties and State laws, and Slovenians in the Province of Udine who had not been recognized as a minority until 2001. The reason for this different treatment stems from the different approach of the Italian State towards the Slovene community. While the Slovenian community in the south-eastern part of the Friuli Venezia Giulia region could be considered in fact a “national minority”¹ with a strong sense of national identity, distinct from the Italian one, the Slovenians in the Province of Udine could be better characterized as an “ethnic group” or a “linguistic minority”.

1 In Italy the Constitution stipulates only the protection of “language minorities”, groups that speak non-Italian languages. Italy does not use the term “national minority” in legal language.

Socio-geographic context

The Slovenian community in Italy is located in the north-eastern part of the country, in the Autonomous Region of Friuli Venezia Giulia (FVG). The FVG Region was created in 1948 and attained autonomy in 1963, although its development had been long and difficult. The FVG is a peculiar union of two widely different historical areas: Friuli, and the Provinces of Gorizia and Trieste, often called Venezia Giulia.² If Friuli has been part of Italy since 1866, the Provinces of Gorizia and Trieste were part of the Austrian Littoral until the World War One, and were culturally, economically, politically influenced by the Central European historical and political legacy.

The FVG created after World War Two was in a strategic geographical position: on the border with the Germanic world to the north and the Slavic world to the east. The FVG's borders were thus not only administrative, but partially coincided with political boundaries between two "different worlds". Precisely because of this position, four different recognized linguistic communities – the Italian, Friulian, German and the Slovenian – have coexisted, and coexist, in it.

The Slovenian community, on which this paper focuses, is settled in a long strip of land running along the border with Slovenia. The territory, in which the minority is settled, includes three of the region's four provinces: Udine, Gorizia and Trieste. The characteristics and identity of the Slovenian community differs greatly among the Province of Udine on one hand, and those of Gorizia and Trieste on the other.

The Provinces of Gorizia and Trieste became part of Italy in 1920, while previously they were part of the Austro-Hungarian Empire. The Slovenian community in these two provinces lives in two major cities, in their satellite towns and in most of the rural areas within several kilometres from the Slovenian border. It is a community with a strong and well-developed network of cultural and economic associations, enjoying a high level of social integration and maintaining strong connections with its so-called "outside motherland",³ Slovenia. The numerous border crossings, most densely located in the vicinity of major urban areas on the other side of the border, enable the maintenance of intense cultural and economic ties with Slovenia. These ties are strong also from the historical point of view. The cities of Trieste and Gorizia played a significant role in the genesis and development of Slovenian national identity.⁴

Also from a linguistic point of view, these areas maintain strong contacts with the contiguous areas of the Slovenian linguistic domain. Slovenian is, in fact, a language with as many as 40 dialects, divided into seven major dialect groups. All the linguistic varieties of Slovenian spoken in the FVG region belong to the Primorska (Littoral)

2 The name Venezia Giulia was invented by Graziadio Isaia Ascoli an Italian linguist during the XXth century and until nowadays are questioned, while the border and the location of Venezia Giulia is still under debate.

3 Regarding the definition of motherland, Rogers BRUBACKER: *I nazionalismi nell'Europa ceontemporanea*. Editori Riuniti, Roma, 1996.

4 At the outbreak of World War One Trieste was the city with the largest Slovenian population in the world.

dialectal group, except the Slovenian spoken in the Canale Valley, which belongs to the Carinthian Dialect Group; the taxonomy of the linguistic variety spoken in the Resia Valley is heavily disputed, both in the political and linguistic sphere.

In the province of Udine the Slovenians live in two distinct areas. The Canale Valley, which was acquired by Italy after WWI, and the “Friulian Slavia” or “Benečija”, part of Italy since 1866.

The Canale Valley is an area in the north-eastern corner of FVG, as all four official languages of the region are present in its small territory: Italian, Friulian, German and Slovenian. Until World War One, it was part of the Duchy of Carinthia, a Kronland of the Austro-Hungarian Empire.

The Friulian Slavia is located further south, and encompasses a wider geographical area. It is roughly divided into three valleys: the Natisone Valley, the Torre Valley and the Resia Valley. Slovenians live in small mountainous villages, which in the last decades have witnessed a massive emigration to the cities of the plains due to economic marginalization. Because of this situation many municipalities lost more than 60% of the population.⁵ The crisis persists nowadays, too, and economic marginalization is still causing social problems that have an impact on minority protection standards. Due to geographical isolation and the historical Italian (and Venetian) influence/assimilation, the relation with Slovenia is weaker and the sense of a distinct Slovenian “national identity” is significantly more elusive, if present at all. A persistent situation of dyglossia enforces these trends. Few local Slovenian speakers have a working knowledge of standard Slovenian, which is albeit completely absent in daily communication. Instead, three related dialects are spoken; although belonging to the “Littoral Slovenian”, they have maintained several archaic features and, in the case of Resian, a range of unique linguistic innovations. The strongly related dialects in the Natisone and Torre Valleys, which both extend into parts of Slovenia, are locally known simply as “po našin” (roughly translatable as “our /speech/”).

The situation of the Resia Valley is more specific: in this narrow glacial valley in the northern part of the Friulian Slavia, the inhabitants speak what themselves refer to exclusively as “Resian”, a unique form of the Slovene language. The origin of “Resian” is still debated by linguistic experts, although the consensus is now that it followed a separate development since the early Middle Ages. This interpretation is, however, highly disputed in the political sphere, as most Resians tend to view their linguistic form as a separate language. This claim is supported by the fact that Resian and standard Slovenian are mutually unintelligible (not a unique case among Slovenian dialects); while the intelligibility with neighbouring Slovenian dialects is much higher, it has historically not given rise to a sense of ethnic kinship.

From this brief introduction, we can understand how the differences between the Slovenian community in Gorizia and Trieste and the valleys of the province of Udine are relevant and affect the perception of Slovenian identity. For the Slovenian com-

5 Antonio BANCHIG: *Il gruppo linguistico delle Valli del Natisone*. Master thesis in Political Science on Trieste University, 2009, 12.

munity of the Littoral we can use the definition of “national minority”, because the minority has a clear national character that is identified with an outside state, Slovenia, with which there are strong cultural and economic relations. However, we cannot say the same for Slovenians in the Province of Udine. They have maintained weaker ties with Slovenia (in the last few years, however, relations have intensified and this probably started a change of identity perception at least in part of the community). This minority cannot be defined as a “national minority”, but rather as “linguistic minority” or “ethnic group”, in the sense that it keeps its traditions, its local dialect and its identity, but does not have a direct relationship with Slovenia and with the Slovenian national idea. This different perception of belonging to the “Slovene community” clearly reflect on the laws of protection and in particular activism of civil society in the defence of minority rights.

Census

How many Slovenians live in Italy? We know that determining the number of a minority is always a complicated issue. Surveys do not always show the real data, while estimates can only indicate an approximation and they are often influenced by who made them. The circumstance of the Slovenian minority in Italy is particular since the census data on the number of Slovenian speakers has not been updated for some time. The last census that included the question of language was held in 1971, since then the representatives of the Slovenian community have always rejected the idea of making a new census. The reason for this rejection and the effects that the lack of data has had on the implementation of laws will be discussed later in this article.

The last census of 1971, carried out only in the provinces of Gorizia and Trieste, showed 24,076 Slovenian speakers in the province of Trieste, or 8.2% of the total population, and 10,533 in the province of Gorizia, or 7.4%.⁶

However, recent estimates put the number of Slovenian speakers at between 40,000 to 80,000. One of the most reliable estimates suggests 46,000 Slovenians in FVG (3.7% of the total population), split between 10,000 in the province of Udine (1.9%), 11,000 in the province of Gorizia (7.8%) and 25,000 in the province Trieste (10.6%).

The presence of Slovenian is concentrated in certain well-defined areas. In the two biggest cities Gorizia and Trieste, Slovenian speakers are under 10% of the population, while they are present mainly in small municipalities close to these cities where they reach rates over 70%.

Protection laws before 1999

With the annexation of Friuli, Italy has had a Slovenian minority on its own territory since 1866. This minority was considerably expanded after World War One with the

⁶ Pavel STRANJ: *La comunità sommersa*. Založba tržaškega tiska, Trieste, 1992.

annexation of Gorizia and Trieste, but we can only speak of legal protection of state minorities for the Slovenian community after the London Memorandum in the 1954. Before there had been no specific laws referring to the Slovenian minority. However, the Italian Constitution recognizes the protection of linguistic minorities in the country.

Before World War Two, the Italian State had initiated assimilation policies towards Slovenians: nonviolent cultural assimilation between 1866 and 1920 was followed, after World War One, with the annexation of large areas compactly inhabited by Slovenians, by a phase of forced assimilation. It included the prohibition of Slovenian language usage in both the public and private sphere, the Italianization of geographical names, as well as personal names and surnames, the shutdown of all Slovenian language schools and associations, and political violence against persons and organizations. This violence had already started with the occupation of the territories by the Kingdom of Italy but increased during the Fascist period (1922–1945).

The Memorandum established the reunification of Trieste with Italy, and recognized certain minority rights for the protection of the Slovenian population of these territories (Trieste). But it was only the Treaty of Osimo in 1975, with the permanent recognition of the borders between Italy and Yugoslavia, that officially expanded the legislation of minority rights to the Province of Gorizia. The Slovenians in Udine not only did not have legal protection, but they were not even recognized by the State. During this period one of the major steps to claim a system of protection for the Udine Slovenians took place with the presentation of the “Charter of the Slovenes in the Udine province” drafted by the Slovenian cultural associations in 1977. The basic demand was the recognition of the Slovenian community in Udine.

During the ‘70s, successive drafts of bills advanced by the leftist parties and the Slovenian associations demanded an equal treatment for all the Slovenians living in the FVG. However, these proposal had never been approved.

After these unsuccessful projects, the Italian government committed itself to the development of the protection of minorities by establishing, in 1977, a special commission, the Commission Cassandro with the task of analysing the problems of minorities and resolving them. However, the Commission’s work was hindered by the opposition between those who claimed the same treatment for all Slovenians and those who wanted a separate protection. Soon the work of the Commission was stopped when the government representatives began to doubt the existence of a Slovenian community in the province of Udine. To verify this decision the Commission sent questionnaires to the mayors of the area without involving the Slovenian associations. The results of the questionnaire recognized the existence of a minority, however, deciding that it was nota Slovenian one, but rather a minority characterized “by the use of a Slavic dialect”. Because of this verdict, conflicts grew in the Commission and the Slovenian delegation decided to leave it. So the attempt to provide a legal framework for all Slovenians failed.

The State laws 482/1999 and 38/2001

These two laws open a new scenario for the protection of minorities in Italy. This new context is influenced by the new political season that opened in Italy and in Europe. The collapse of the Iron Curtain, the independence of Slovenia in 1991, the new focus at a European level on regional and minority languages,⁷ together with the new political course in Rome, “Tangentopoli” and the birth of the “Second Republic” created a fertile ground for the drafting of minority laws. Therefore, laws were passed during centre-left governments (1996–2001), as leftist parties usually paid more attention to minority issues in Italy.

Law No. 482 of 15 December 1999 named “Rules on protection of historical language minorities” established the promotion of minority languages. The Italian legal terminology has never used the term “national minorities”; instead, it is used the form “linguistic minorities”⁸ The law recognizes and mentions twelve historical linguistic minorities, including the Slovenian.

However, it was two years after that, that defined in detail the framework of protection of the A new law was passed concerning the Slovenian minority: law No. 38 of 2001 named “Rules for the protection of the Slovene linguistic minority in the Friuli Venezia Giulia”. The fundamental innovation was the recognition and protection of the rights of Italian citizens belonging to the Slovene linguistic minority present in the Provinces of Trieste, Gorizia and Udine. The law therefore establishes that in the territories of the Province of Udine, there is a Slovene minority and this minority has the same rights as the Slovenes in Trieste and Gorizia. The equality of all Slovenes in Italy was thus sanctioned for the first time. Thanks to this law, all the protections provided for the Provinces of Gorizia and Trieste were automatically extended to the Province of Udine.

The new law includes: the use of Slovenian names written according to the Slovenian orthography and the change of the names to the original if the names had been Italianized (art.7), the use of the Slovenian language in public administration with the exception of the armed forces and the police (art.8), the use Slovenian in oral and written form in the elected bodies (art.9), the use bilingual public signs (art.10), the recognition of the educational institutions in the Slovenian language (art.11), declaration of regional support to the cultural, artistic, recreational, scientific, educational, informational and publishing activities carried out by institutions and organizations of the Slovenian minority (art. 16), the recognition of the Slovenian Theatre (art.18), the return of immobile property expropriated by the Italian State (art.19), and the protection of historical and artistic Slovenian heritage (art.20). The same law provides special provisions for the Province of Udine (art.12). It declared that in schools topics “related to the traditions, the language and the local culture” shall be taught in the

7 In 1992 the European Charter for Regional or Minority Languages was adopted.

8 This is due to historical reasons, because during Fascism the term “nation” was overused and after the collapse of the Regime this word acquired a negative connotation.

Slovenian language, and finally decreed the nationalization of the Slovenian bilingual private school of San Pietro al Natisone.

One of the most important points of the new law concerns the territorial delimitation of minority rights, i.e. in which municipalities the law has to be implemented. Article 4 states that the law should be implemented “in the territory in which the minority is traditionally present”. The indication of the municipalities included in this territory is the task of the Institutional Joint Committee which has to draw up a table within 18 months of its constitution on the basis of the received requests. The requirements for a request are: the signature at least of the 15% of the citizens or a third of the municipality’s councillors.

From the point of view of the territorial delimitation it is essential to underline two important criteria: censuses or estimates are not used to determine the territory; the signers of the request can be not members of the Slovenian community. These two are very important and peculiar elements, in fact, in different contexts, especially in Central Eastern Europe, minority laws are strictly connected to census and requests of members belonging to the minority.

The list of the municipalities subject to the minority law has to be established by the Institutional Joint Committee for Slovenian minority issues, set up by law 38 (art.3). The Committee has the task not only to identify the municipalities where the minority is traditionally present but to monitor the application of the law and the problems related to it.

The Joint Institutional Committee for Slovenian minority issues

The Joint Institutional Committee is composed of twenty members, ten of them are the members of the Slovenian minority. The Italian Council of Ministers appoints four members, the Regional Council of FVG six, the Assembly of the Slovenians three, the Regional Assembly seven. The Committee has a key role in the implementation of Law No.38 and in the solution of issues relating to the protection of the Slovenian minority. It is the body that connects the Slovenian community to local and State institutions, by monitoring the implementation of the law. Despite this important task, the Committee’s power is extremely limited, in fact, it does not have any possibility to impose or sanction bodies to enforce the law.

In the 15 years that Law No.38 was implemented, the Committee played different roles. His work has been influenced by the political climate in Italy and FVG. The atmosphere, in some cases facilitated, while in others undermined its operation.

The first session took place sixteen months after the adoption of Law No.38. The cause of this delay was the new government established in Rome after the elections of 13th May 2001 (just a few months after the approval of Law No.38). The new government⁹ (a right wing one) was unwilling to implement the minority law and to appoint

9 The second Berlusconi government.

the governmental members to the Committee. When the nominations were completed, the first session took place on 19th June 2002. In this session Rado Race was elected President of the Committee, and he remained in office until 2007.

Political tensions marked these early years influencing the Committee's operation and the implementation of the minority protection law. Law No.38 was approved under the centre-left governments in Rome. However the right wing won the national elections of 2001¹⁰ and minority laws, especially law No.38 lost the institutional support.

Due to the 2001 change the Committee could not work on the drafting of the list of municipalities subject to law No.38. Writing this list was one of the first and most important steps that the Committee had to take,¹¹ and that had to be completed within 18 months of its establishment. However, it was only completed in mid-2004.

The work was obstructed by the Italian speaking members who abandoned the meetings of the Committee, and with the lack of the quorum (the legal number were fixed in five members by each two language communities) the Committee could not work. The main reasons for the conflict were the territorial delimitation and the implementation process.

During the drafting of the municipalities list subject to law No.38 the main problems obviously did not concern the areas where the Slovenian community is in majority and where, in previous years, others protection laws in effect, such as the smallest municipalities of the province of Gorizia and Trieste. The main discussion was about the cities (Gorizia, Trieste and Cividale) and the questions of the Slovenian minority in Udine province, especially Resia Valley.

On the inclusion of the two county seats (Gorizia and Trieste) the main problem was posed by the respective city councils, both cities in fact were headed by right wing mayors that hindered the application of the law. The course of events was changed by the 2002 election in Gorizia, when mayor Brancati was elected, supported by a leftist alliance.¹² The political change in the council created a greater collaboration between the city and the Joint Committee. With the step taken by Gorizia the relationship with the administration of Trieste became easier.

The inclusion of Cividale del Friuli, a town in Udine province adjacent to the Natisone Valleys, was interesting. This town involved recently emigration of Slovenes from neighbouring areas. In this case the registration of the municipality in the list did not take place through the establishment of a relationship with the mayor and the town council, but thanks to the initiative of the minority councillor¹³ causing a heated debate. In fact, the Slovenian minority is not "historically present" in the town, however, eight councillors (six from the opposition) not belonging to the Slovenian-speaking

10 The coalition also included an Italian post-fascist party: Alleanza Nazionale with a strong nationalist and anti-minority position.

11 Law No.38/2001, Art. 4.

12 Brancati was the first mayor in Gorizia supported by a leftist coalition.

13 BANCHIG: *op. cit.*, p. 31.

community supported the requests to include the town in the implementation area. Consequently, the request was accepted by the Joint Committee.

The “first period” of the Committee ended with the drafting of the municipalities list and the first steps towards the implementation of the law. President Rado was replaced by Bojan Brezigar (from 2007 to 2012), then followed by Jole Namor (2012–2014).

During this period the activity of the Committee proceeded with less tension, but not without problems. The support of regional governments improved the implementation thanks to regional law No.26 of November 2007. However, in several fields numerous problems are still present, particularly visible bilingualism is lacking, especially in municipalities where Slovenians are in minority. Administrative offices only partially use the minority language. However, the Committee continues with the goal to decrease tension and not to break relations with local administrations. The Committee intends to proceed with the policy of small steps.

The most controversial issue during Brezigar’s and Namor’s presidency was the situation of the Slovenians in Udine. The main problems concern the slow implementation of the law, especially in Cividale and the Natisone Valleys, and the so-called “Resian issue”.

In the Natisone Valley the protection of the Slovenian minority generated the reaction of those who claim the strangeness of the Slovenian identity. The Italian nationalist movements started to mobilize to prevent the extension of law No.38 to municipalities in the province of Udine. This revival of Italian nationalism brought about demonstrations and acts of tensions which, however, never resorted to violence. The movements opposing law No.38 argue that local communities do not speak Slovenian, therefore cannot be classified as a Slovenian minority, even though they speak Slavic languages. This debate gives rise to more separation between Slovenians and Italians. The Committee recognized the different local language varieties, but never questioned the belonging of the local population to the Slovenian minority. Also, in order draw the attention to Udine’s Slovenian community, in 2012 the Committee appointed President Jole Namor, a member of Slovenian community of Natisone Valleys.

The “Resian question” is a more complex issue, related again to the relationship between national and local identity. In 2007 the City Council of the municipality of Resia passed a resolution to request the inclusion in the area under protection of the law No.38,¹⁴ despite the mayor’s insistence on the indigenous “Resian culture”. However, in 2010 the municipally elected a new mayor Sergio Chinese, founder of the “Identity and protection of Resia Valley”(association that fight against the Slovenian language in Resia) who requested the exclusion of the municipality from the safeguard area of law No.38. This decision subsequently was reaffirmed on several regional, national and international events¹⁵ and was brought to the Joint Committee. The Committee

14 Probably to take advantage of the possibility to gain public funds.

15 The last open letter, on 16th May 2016, was send to the Joint Committee, the President of the Italian Republic, the Italian Prime Minister, the FVG Region and to the Council of the European Union.

debates the “Resia issue” and decided that the municipality had to be part of the list of towns where law No.38 is implemented. Moreover, the Committee decided to take measures to safeguard local dialects.

In recent years, after these tensions the Committee has had period of significantly less tension and has thus been able to concentrate on improving the protection services offered to the Slovenian community. Visual bilingualism, institutional service offices in the Slovenian language and an educational system now form the core of the debate. In addition, in 2014 Ksenjia Dobrila was elected new president.

Conclusions

This brief explication of the legal framework for the protection of the Slovenian minority in Italy allows us to observe the peculiarities of the law No.38, highlighting successes, problems and differences from the protection of other minorities.

The first major fact that we can identify is the lack of census data concerning the minority. From my point of view, the lack of statistical data is a positive example. We can see that, especially in Central Eastern Europe, minority laws are directly related to census data, therefore, legal protection is available for only a certain percentage of the minority population. This means that a census, instead of being a statistical tool, can become cause of political and nationalist fights. Furthermore, this way not only a territory where the minority is protected may lose its protection in case of a decrease in the minority’s population, but during the census, the political climate can be affected by linguistic and nationalistic tensions.

Census data, although strongly demanded by international organizations (in the case of FVG, the Council of Europe demanded the execution of the census several times), often has negative implications. In this sense, the FVG system is different from other Italian cases like South Tyrol. In fact, in South Tyrol the use of three languages is compulsory and omnipresent (from education to political/administrative level). This compartmentalized system does not exist in FVG, probably because of the area’s history, a traditional mix between language and national identity.

As a result of not using statistical data to determine the areas of the implementation of the law, the protected area cannot easily lose its status, as the case of the municipality of Resia shows. The rigidity of law No.38 in this sense provides a strong stability, necessary for any minority-protection policy.

Despite its considerable advantages (there is no doubt that law No.38 has greatly improved the protection of minority), there are still some problems.

The Joint Committee, although it was a fundamental institution for strengthening the law, has serious gaps. The most important is the lack of real power. In fact, the Committee can only monitor the situation and recommend improvements. Taking into account that the law does not provide sanctions, this greatly reduces the possibility of action where the law is not respected. Exactly because of this, implementation has been slow, consequently, even after 15 years, a significant number of fields are not

satisfactorily developed. The slow implementation, especially in the bigger cities and where the Slovenian community is in minority, is similar to other Central European cases.

Still, new and old challenges lie ahead that the legal framework will have to face in terms of minority protection in FVG and the Slovenian minority. Now, 15 years after the release of law No.38, even though several steps have been taken, numerous gaps remain: from the restoration of property to visual bilingualism. Because of the small size of the Slovenian community, the lack of Slovenian teachers in schools and people in translation service is particularly problematic, a problem that can only be solved with the help of Slovenia.

As shown throughout the article, the complexity of the Slovenian community and the differences inside the Slovenian linguistic group with particular attention to the local identity that characterize the Slovenians of FVG makes it a difficult challenge to safeguard the Slovenian minority.

As of now there are other problems related to the economic crisis affecting Italy and the institutional reorganization of the country. The economic crisis has severely affected the marginal areas where part of the Slovenian community of Udine province lives, highlighting the lack of state intervention in that area that did not stop emigration and the economic crisis. Due to the economic crisis, the institutional reorganization carried out by the Italian government is likely to jeopardize some vested rights for the Slovenian minority, by merging municipalities or abolishing provinces. Measures therefore need to be assessed in detail by the Joint Committee, which will thus continue to play the important role of the guarantor of the protection of the Slovenian community in Friuli Venezia Giulia.

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The Restoration of the Historical Hungarian Names of Hungarian-Populated Settlements in the Territory of the Present-Day Transcarpathia from 1989 to 2000

SÁNDOR DOBOS

Transcarpathia is the western region of Ukraine, officially called Закарпатська область/Zakarpatszka oblaszty¹ (See Map 1 and Map 2 in the Appendix, which show the administrative divisions of Ukraine and the territorial structure of Transcarpathia).² Its administrative centre is Uzhgorod and the official language is Ukrainian.³ It is a multi-ethnic territory. According to the Ukrainian census data of 2001, the population of Transcarpathia is about 1 254 614 people. The majority of the population is Ukrainian (80.5%). We can also find people of several other nationalities: Hungarians, Russians, Romanians, Ruthens, Slovaks and some others. The largest national minority is the Hungarian community, about 151 516 Hungarians (12.1% of the population) live near the border between Hungary and Ukraine.⁴

During the 20th century several territorial and governmental changes occurred in the Carpathian Basin that caused several regularizations of settlement names by the authorities in the territory of present-day Transcarpathia – especially because of political and ideological purposes, without taking the cultural traditions and historical backgrounds of the local Hungarian community and other ethnic groups into consideration. In this way, settlement names have been changed about five times in the region (See

- 1 Latin alphabet versions of Slavic words are written in their Hungarian-based transliterations throughout this study.
- 2 MOLNÁR József: *Természeti környezet. Természeti áttekintés, tájszerkezet. Földrajzi fekvés = Kárpátalja*, ed.: BARANYI Béla, Magyar Tudományos Akadémia Regionális Kutatások Központja – Dialóg-Campus Kiadó, Budapest-Pécs, 2009, 107–108. [MOLNÁR József: *The Natural Environment. The Natural Review, Landscape Structure. Geographical Position = Subcarpathia*, ed.: BARANYI Béla, Centre for Regional Studies of the Hungarian Academy of Sciences – Dialóg-Campus Publisher, Budapest-Pécs, 2009, 107–108.]
- 3 MOLNÁR D. István: *Településrendszer. Városhálózat. A megye városai = Kárpátalja*, ed.: BARANYI Béla, Magyar Tudományos Akadémia Regionális Kutatások Központja – Dialóg-Campus Kiadó, Budapest-Pécs, 2009, 239–242. [MOLNÁR D. István: *The Settlement System. System of Cities and Towns. Cities and Towns of the Region = Subcarpathia*, ed.: BARANYI Béla, Centre for Regional Studies of the Hungarian Academy of Sciences – Dialóg-Campus Publisher, Budapest-Pécs, 2009, 239–242.]
- 4 MOLNÁR József: *A népesség összetétele. A népesség nemzeti és nyelvi összetétele = Kárpátalja*, ed.: BARANYI Béla, Magyar Tudományos Akadémia Regionális Kutatások Központja – Dialóg-Campus Kiadó, Budapest-Pécs, 2009, 187–193. [MOLNÁR József: *Composition of Population. Composition of Population by Nationality and Language = Subcarpathia*, ed.: BARANYI Béla, Centre for Regional Studies of the Hungarian Academy of Sciences – Dialóg-Campus Publisher, Budapest-Pécs, 2009, 187–193.]

Table 1 in the Appendix that includes several settlement names showing the changes of place names during the 20th century in the territory of present-day Transcarpathia):⁵

- the first regularization of settlement names took place between 1898 and 1912 when the territory of present-day Transcarpathia belonged to the Austro-Hungarian Monarchy;
- the second one was during the period between the two World Wars, when the region was integrated to the first Czechoslovak Republic from 1919 to 1938;
- the names of the settlements were modified for the third time between 1938 and 1944 when the region became part of Hungary again;
- after the Second World War the settlement names were changed again, for the fourth time, when the territory of present-day Transcarpathia was attached to the Soviet Union from 1945 to 1991;
- the fifth changing of city-, town- and village-names began after the collapse of the Soviet Union, when the region became part of the independent Ukraine (1991).

The subject of the given study is connected to the fifth regularization of settlement names in the territory of present-day Transcarpathia that began in the Soviet era, at the end of 1980s, but its official approval occurred in the time of independent Ukraine. It differed from earlier regularizations of place names because the local Hungarian minority initiated the restoration of traditional and historical Hungarian names of settlements populated by them based on updated international and Ukrainian contracts and laws relating to the rights of national minorities.

As a first step, Hungarian names of Transcarpathian settlements began to be used in the local Hungarian-language press, first mentioning their Ukrainian names as well, later only the historical Hungarian names.⁶ However, that did not solve the problem of the usage of historical Hungarian place names because Ukrainian place names approved in 1946 remained official.⁷

5 DOBOS Sándor: *Changes of Place Names in the Territory of Present-Day Transcarpathia from 1898 to 2000 = Nyelvhazsnálat, kétnyelvűség: Tanulmányok a Hodinka Antal Nyelvészeti Kutatóközpont kutatásából II.*, ed. HÍRES-LÁSZLÓ Kornélia, Autdor-Shark, Ungvár, 2016, 187–206. [DOBOS Sándor: *Changes of Place Names in the Territory of Present-Day Transcarpathia from 1898 to 2000 = Language Usage, Bilingualism: Studies of the Antal Hodinka Linguistic Research Centre of Ferenc Rákóczi II Transcarpathian Hungarian Institute. Volume II*, ed. HÍRES-LÁSZLÓ Kornélia, Autdor-Shark, Uzhgorod, 2016, 187–206.]; DOBOS Sándor: *Magyar helységnevek Kárpátalján. Kodifikációs kísérletek és eredmények (1989–2000) = Határhelyzetek VII.: Közösség és identitás a Kárpát-medencében*, eds. FEDINEC Csilla, SZOTÁK Szilvia, Budapest, Balassi Intézet Márton Áron Szakkollégium, 2014, 454–479. [DOBOS Sándor: *Hungarian Place Names in Transcarpathia. Codifying Attempts and Results from 1989–2000 = Community and Identity in the Carpathian Basin. Border-Situations VII.*, eds. FEDINEC Csilla, SZOTÁK Szilvia, Márton Áron Specialized College of Balassi Institute, Budapest, 2014, 454–479.] (Hereafter: DOBOS: *Magyar helységnevek Kárpátalján*[*Hungarian Place Names in Transcarpathia*]..., *op. cit.*)

6 SEBESTYÉN Zsolt: *Magyar helynévkutatás Kárpátalján*, Névtani Értesítő 30(2008), 198. [SEBESTYÉN Zsolt: *Research on Hungarian Toponyms in Transcarpathia*, Névtani Értesítő, 30(2008), 198.]

7 LIZANEC Péter: *A nép kultúráját, hagyományait őrzik*, Kárpáti Igaz Szó, 1991. január 19, 4. [LIZANEC Péter: *They preserve the people's culture and traditions*, Kárpáti Igaz Szó, 19th January 1991, 4.] (Hereafter: LIZANEC: *A nép kultúráját*[*They preserve*]..., *op. cit.*)

In addition, the use of the Hungarian names of settlements in the written language raised another problem because journalists, editors of publishing houses, proof-readers, teachers and all meticulous and conscious users of their Hungarian native language often wavered when they had to write the Hungarian names of settlements. Such questions were raised: *How is this then? Which one is the correct form? What suffix shall I connect to the name of this or that village or town?* Consequently, there were journalists and reporters who wrote the name of “Nagyszőlős” as “Nagyszöllős”, the name of “Tiszaágtelek” as “Ágtelek” or “Telek” and so on. Their confusion and perplexity came from the fact that the Hungarian place names had disappeared from the written language during the last few decades, they were used only in everyday conversations where there was not a problem to use the different versions of Hungarian names of settlements.⁸

Thus, the restoration of settlement names was not an easy task. On the one hand, the Transcarpathian Hungarians had to decide which versions of historical Hungarian place names should be restored, and on the other hand, they also had to achieve that the use of the chosen historical Hungarian place names would be approved officially by authorities. These tasks were also mentioned by Anikó Beregszászi who wrote the followings: “The task was two-fold. Status planning had to be instituted to make the use of the Hungarian names of Subcarpathian places *legal* in *written* language use, and corpus planning tasks had to be carried out by *choosing* among the variants that existed in *spoken* discourse.”⁹

Two institutions dealt with the restoration of the historical Hungarian names of Hungarian-populated towns and villages: a) Transcarpathian Hungarian Cultural Association,¹⁰ founded in 1989, as the main initiator of holding referendums to change names of Hungarian settlements;¹¹ b) Hungarian Studies Centre of the Soviet Union (now Uzhgorod Hungarian Studies Institute), established in 1988, as the linguistic

8 MÓRICZ Kálmán: *Hogyan helyes? Megérkezett az MTA Nyelvtudományi Intézetének állásfoglalása a kárpátaljai magyar helységnevekről*, Kárpáti Igaz Szó, 1990. december 2, 3. [MÓRICZ Kálmán: *What is correct? The official opinion of the Linguistics Institute of the Hungarian Academy of Sciences on “Transcarpathian Hungarian place names” has arrived*, Kárpáti Igaz Szó, 2nd December 1990, 3.] (Hereafter: MÓRICZ: *Hogyan helyes?*[*What is correct?*]..., *op. cit.*)

9 BERECSZÁSZI Anikó: *Language Planning Issues of Hungarian Place Names in Subcarpathia*, Acta Linguistica Hungarica, 49(1995/1996)/3-4, 374.

10 Transcarpathian Hungarian Cultural Association is the English name-version of the official Ukrainian name of the institution: Товариство Угорської Культури Закарпаття/Tovarisztvo Uhorszkoji Kulturi Zakarpattya. It can also be translated into English as Subcarpathian Hungarian Cultural Association based on the Hungarian name of the institution: Kárpátaljai Magyar Kulturális Szövetség. The author of the cited paper uses the latter English name-version of the institution.

11 BERECSZÁSZI Anikó: *Magyar helységnevek Kárpátalján a nyelvi tervezés tükrében = A Magyar névtani kutatások legújabb eredményei. I. kötet*, ed.: B. GERGELY Pirooska, HAJDÚ Mihály, Gondolat Kiadó, Budapest, 1997, 358. [BERECSZÁSZI Anikó : *Language Planning Issues of Hungarian Place Names in Subcarpathia = The Latest Results of the Researches of Hungarian Onomastics. Volume I.*, ed.: B. GERGELY Pirooska, HAJDÚ Mihály, Gondolat Kiadó, Budapest, 1997, 358.] (Hereafter: BERECSZÁSZI: *Magyar helységnevek Kárpátalján*[*Language Planning Issues of Hungarian Place Names*]..., *op. cit.*)

scientific institute of Uzhgorod State (now: National) University that was asked by the authorities to check and form an opinion on the results of the referendums.¹²

Hungarian Studies Centre of the Soviet Union considered itself competent to control the way of the restoration of historical Hungarian place names. It formed its own scientific opinion about it by emphasizing that the usage of place names should be based on historical, cultural and linguistic principles. The following principles considered to be the most important by it:¹³

- We should keep those names of settlements that could be found in historical documents, withstood the different governmental and administrative changes and preserved their original forms, for example: *Bilki, Zahattya, Kusnica, Oszij, Dorobratovo and so on.*
- We should reconsider those names of towns and villages that changed during history and choose versions that are based on historical and linguistic principles, while also taking into the local inhabitants' usage.

The Hungarian Studies Centre of the Soviet Union in agreement with the Department of Hungarian Philology at Uzhgorod State (now: National) University established the following principles of changing the names of Hungarian-populated settlements into historical Hungarian place names:¹⁴

- We should write the place names in Hungarian as they are accepted in linguistic usage and as they can be found in historical documents. Cyrillic alphabet should be used in the case of transliteration of them into Russian and Ukrainian languages by taking into consideration phonetic and morphological rules of the languages, for examples: *Császlóc – Часлівці/Csaszlivci, Barkaszó – Баркасово/Barkaszovo, Bökény – Бекень/Bekeny and so on.*
- The multi-element place names should be written in accordance with the orthography of the Hungarian language. In the case of the transliteration of them into Russian and Ukrainian languages the first element of them (that is an attributive common noun) should be translated, for example: *Feketepatak – Чорний Потік/Csornyij Potyik, Kisbégány – Мала (Малая) Бийгань/Mala (Malaja) Begany, Nagydobrony – Велика (Великая) Добронь/Velika (Velikaja) Dobrony and so on.*
- The names of Ukrainian-inhabited settlements should be used in Hungarian in accordance with phonetic and morphological rules of the Hungarian language, for example: *Воловець/Volovec – Volóc, Квасово/Kvaszovo – Kovászó, Свалява/Szvaljava – Szolyva, Веряця/Verjaca – Veréce and so on.*
- In the case of the transliteration of multi-element Ukrainian place names into Hungarian the first element of them (that is an attributive common noun) should be translated, for example: *Мала Копаня/Mala Kopanya – Kiskopány, Верхні Ремети/Verhnyi Remeti – Felsőremete and so on.*

12 LIZANEC Péter: *Helységnevek Kárpátalján*, Ung-vidéki Hírek, 1990. december 25, 3. [LIZANEC Péter: *Place names in Transcarpathia*, Ung-vidéki Hírek, 25th December 1990, 3.]

13 LIZANEC: *A nép kultúráját[They preserve]...*, *op. cit.*, 4.

14 LIZANEC: *A nép kultúráját[They preserve]...*, *op. cit.*, 4.

- Several place names in Ukrainian literary language usually get a suffix “-e”: Арданове/*Ardanove*, Берегове/*Berehove*, Мукачеве/*Mukacseve* etc. However, in Transcarpathia Ukrainian place names became widely used with suffix “-o”: Арданово/*Ardanovo*, Берегово/*Berehovo*, Мукачеве/*Mukacsevo* etc. In this way, we should take this into consideration and must not insist on the usage of Ukrainian place names with suffix “-e” except those ones that were established from the old versions of place names with suffix “-oe”: Вербовое/*Verbovoje* – Вербо́ве/*Verbove*, Глубо́кое/*Hlubokoje* – Глубо́ке/*Hluboke*, Діло́вое/*Gyilovoje* – Діло́ве/*Gyilove*, Дубо́вое/*Dubovoje* – Дубо́ве/*Dubove* and so on.

At the Transcarpathian Hungarian Cultural Association the Mother Tongue and Language Policy Committee dealt with the issues and questions of the usage of Transcarpathian Hungarian place names. To get closer to the solutions to the problems and the answers to the disputed questions it sent a letter to the Research Institute for Linguistics of the Hungarian Academy of Sciences on 25th of September, 1990 requesting the Institute’s opinion on the following questions:¹⁵

- In the case of the multi-element place names the shorter forms of them are widely used in the spoken language. Which one is recommended in the formal and semi-formal written language: the longer or the shorter form (for example: *Beregdéda* or *Déda*, *Mezőkasszony* or *Kasszony*, *Sárosroszi* or *Oroszi*, *Makkosjánosi* or *Jánosi*, *Tiszaújlak* or *Újlak*, *Nevetlenfalva* or *Nevetlen*, *Kisrátság* or *Nagyrátság* and so on)?
- Would it be appropriate to use the historical Hungarian place names in those settlements where there is not an ethnic Hungarian population or the number of them is very low (for example: *Beregszentmiklós* – Чинадієво/*Csinagyijevo*, *Ökörmező* – Міжгір’я/*Mizshirja*, *Királymező* – Усть-Чорна/*Uszty-Csorna*, *Bercsényfalva* – Дубрініч/*Dubrinyics* and so on)?
- Which one is recommended in the case of place names that have more than one variant in spelling (local Hungarian inhabitants prefer mainly the first variant: *Bátyú* or *Bátyu*, *Borzsova* or *Borzsa* and so on)?
- Transcarpathian Hungarians use place names that can receive both *in*-cases and *on*-cases in a different way from those Hungarian speakers who live outside the given linguistic area. Local Hungarian population prefers mainly the *in*-cases (for example: *Beregszászba* for “to *Beregszász*”, *Beregszászban* for “in *Beregszász*”) instead of the suitable *on*-cases (for example: *Beregszászra* for “to *Beregszász*”, *Beregszászon* for “in *Beregszász*”). Which variants of place names are recommended to use?

On 20th of November, 1990 the Research Institute for Linguistics of the Hungarian Academy of Sciences sent its position and recommendations on the usage of Tran-

15 Letter to the Research Institute for Linguistics of the Hungarian Academy of Sciences sent by the Mother Tongue and Language Policy Committee of the Transcarpathian Hungarian Cultural Association. Ungvár (officially called Uzhgorod), 25th September, 1990. It can be found in the *Antal Hodinka Linguistic Research Centre of Ferenc Rákóczi II Transcarpathian Hungarian Institute in Beregszász* (officially called Berehove).

scarpethian Hungarian place names to the Mother Tongue and Language Policy Committee of the Transcarpathian Hungarian Cultural Association. They are the followings:¹⁶

- Hungarian place names should be written in accordance with the rules of the standard Hungarian orthography. Thus, multi-element place names should always be written as one word (for example: *Tiszaújlak*, *Makkosjánosi* and so on); common words and nouns as components of place names should be usually used in colloquial forms (for example: *szőlős*, *kút*, *víz* and so on)
- From the point of view of the exact identification those place names that consist of one element and are used for representing more than one settlement in the Hungarian linguistic area should get attributive components (distinctive prefixes) and be used in the longer forms. Thus, in the case of the settlements *Oroszi*, *Újlak*, *Jánosi* etc. the longer forms of their names: *Sárosoroszi*, *Tiszaújlak*, *Makkosjánosi* etc. are recommended for use. This procedure is likely to cause a situation where the place names known and used by the local Hungarian community would differ from the official ones used in the local Hungarian press but it would not be a unique problem. In Hungary we can find several examples of this situation like in the case of the settlement *Balatonszabadi*: its official name is *Balatonszabadi* but most of the local inhabitants call it just *Szabadi*.
- It is natural to use the historical Hungarian place names as official and administrative names of settlements and to show them on place name signs at entrances and exits of settlements, in towns and villages where Hungarian inhabitants are in a majority. However, it is recommended to use a Hungarian name with a long history as a nonofficial name in the Hungarian press and in everyday conversations even if the official administrative name of the settlement is not its Hungarian name, for example: in the case of *Ökörmező*.¹⁷ From this point of view it is acceptable that alongside with their official names, ethnic Hungarians refer to villages *Чинадієво*/Csinagyijevo and *Усть-Чорна*/Uszty-Csorna as *Szentmiklós* and *Királymező* (see the example of the official place name Bratislava that is used in Hungarian as *Pozsony*). It is possible that the younger generation would not know the historical Hungarian names of settlements which can cause difficulties in the identification and usage of place names. But it is believed that by the continuous reuse of the Hungarian place names in everyday conversation difficulties would disappear in a short time.
- Between suffixes that can be connected to the names of settlements both *in*-cases and *on*-cases are acceptable, neither of them can be considered nonstandard

16 Letter to the Mother Tongue and Language Policy Committee of the Transcarpathian Hungarian Cultural Association sent by the Research Institute for Linguistics of the Hungarian Academy of Sciences. Budapest, 20th November, 1990. It can be found in the *Antal Hodinka Linguistic Research Centre of Ferenc Rákóczi II Transcarpathian Hungarian Institute in Beregszász* (officially called Berehove).

17 Its official name is Міжгір'я/Mizshirja.

colloquial language. The norms of the local linguistic usage show which place names get *in*-cases and which ones get *on*-cases. The language of the press should follow the standards of local usage as well.

- It is important to make and publish the list of the Hungarian names of Transcarpathian towns, villages, mountains and rivers in the interest of the proper and correct use of place names. That list also should show which Hungarian place names can be used as official and administrative names of settlements (in Hungarian-majority towns and villages) and which ones can be used as nonofficial names in the Hungarian press and in everyday conversations (in towns and villages populated by non-Hungarians).

After the recommendations of the Research Institute for Linguistics of the Hungarian Academy of Sciences on the usage of Transcarpathian Hungarian place names – according to Móricz – the Mother Tongue and Language Policy Committee of the Transcarpathian Hungarian Cultural Association immediately started making the list of Hungarian geographical names of Transcarpathia in order to publish a source for the right and correct use of Hungarian place names in Transcarpathia.¹⁸

Unfortunately, the Hungarian Studies Centre of the Soviet Union and Transcarpathian Hungarian Cultural Association disagree on several points of the restoration of the historical Hungarian names of Hungarian-populated towns and villages in Transcarpathia. For instance, both institutions emphasized that the main task is the restoration of historical names of settlements, but they defined the notion differently.¹⁹ The Transcarpathian Hungarian Cultural Association stated that historical place names should be the longer-forms of Hungarian names of settlements approved in accordance with the 4th article of the 1898 Act,²⁰ while Hungarian Studies Centre of the Soviet Union stressed that traditional place names should be the shorter-forms of Hungarian names of settlements used before the first place name regularization.²¹ The Transcarpathian Hungarian Cultural Association also stated that the opinion of local inhabitants should be the primary decisive factor in selection of traditional place names instead of the rather science-oriented view of Hungarian Studies Centre of the Soviet Union.²²

Moreover, the Transcarpathian Hungarian Cultural Association disagrees with Hungarian Studies Centre of the Soviet Union on the transliteration of the names of several Transcarpathian settlements into Hungarian and Ukrainian as well. Thus, the Transcarpathian Hungarian Cultural Association saw the solution in the use of

18 MÓRICZ: *Hogyan helyes? [What is correct?]*..., *op. cit.*, 3.

19 BEREGSZÁSZI: *Magyar helységnevek Kárpátalján [Language Planning Issues of Hungarian Place Names]*..., *op. cit.*, 359.

20 MÓRICZ: *Hogyan helyes? [What is correct?]*..., *op. cit.*, 3.

21 MÓRICZ Kálmán: *Térjünk vissza a természetes állapotokhoz! Kárpátalja*, 1991. május, 9. sz. (II. évf.). 4. [MÓRICZ Kálmán: *Let us return to the natural state*, Kárpátalja, 2(May 1991)/9, 4.]

22 MÓRICZ Kálmán: *Csak kellő tisztelettel...* Kárpáti Igaz Szó, 1991. február 6, 2. [MÓRICZ Kálmán: *Only with due respect*, Kárpáti Igaz Szó, 6th February 1991, 2.] (Hereafter: MÓRICZ: *Csak kellő [Only with]*..., *op. cit.*)

dual bilingual place names, that is, each settlement should have an official name in the state language (in Ukrainian) and another official name in Hungarian.²³ The use of dual bilingual place names for towns was supported by the Institute for Linguistics of the Academy of Sciences of the Soviet Union.²⁴ However, the usage of dual bilingual place names was not possible in accordance with the 1989 law “*On the languages in the Ukrainian SSR*” because it said that each settlement could have only one official name which should be established and used in Ukrainian.²⁵ On the other hand, it is worthy of attention, that while the authorities were against the use of dual bilingual place names, in practice each settlement in Transcarpathia had two official names: a Russian and a Ukrainian one,²⁶ for example: Минеральное/Mineralnyoje–Мінеральне/Mineralyne,²⁷ Берегово/Berehovo–Берегове/Berehove,²⁸ Узловое/Uzlovoje–Вузлове/Vuzlove,²⁹ Межгорье/Mezsgorje–Міжгір’я/Mizshirja,³⁰ etc.

To resolve the disputed questions of restoring historical Hungarian place names, the Transcarpathian Hungarian Cultural Association, Hungarian Studies Centre of the Soviet Union and the Institute of Hungarian Studies (Budapest) held a professional meeting in Ungvár (officially called Uzhgorod), on 11th of May, 1991.³¹ The result of the meeting was an eight-point statement. The statement mainly considered desirable: a) the official place names should be used parallelly in the state language and in the languages of Transcarpathian minorities in accordance with the international practice of the usage of settlement names in multinational regions; b) the minority population of a town or a village should be allowed to officially use their own form of the name of the place if they constitute at least 5% of the total local population or number at least 1000 people; c) the official names are to be formed according to the

23 MÓRICZ: *Csak kellő [Only with]...*, *op. cit.*, 2.

24 Here we can only refer to the press. We should find other sources to reveal more details. Source: MÓRICZ: *Csak kellő [Only with]...*, *op. cit.*, 2.

25 Закон Української радянської соціалістичної республіки Про мови в Українській РСР (in Hungarian: *Az Ukrán Szovjet Szocialista Köztársaság törvénye az Ukrán SZSZK-beli nyelvekről*). *Küib*, 28 жовтня 1989 року. Джерело: <http://zakon3.rada.gov.ua/laws/show/8312-11> (2016.05.21) [*The law of the Ukrainian Soviet Socialist Republic “On the languages in the Ukrainian SSR”*. Kyiv, 28th October 1989. Source: <http://zakon3.rada.gov.ua/laws/show/8312-11> (21.05.2016)]

26 MOÓR: *A vita még nem dőlt el. Beregszász VAGY Beregovo? – Beregszász ÉS Beregovo!* Kárpátalja, 2(1991. június)/11, 10. [MOÓR: *The debate is not over. Beregszász or Beregovo? – Beregszász and Beregovo!* Kárpátalja, 2(June 1991)/11, 10.]

27 Hungarian name of this settlement is: Tiszaásvány. Source: BOTLIK József, DUPKA György: *Ez hát a hon...*, Mandátum – Universum Kiadó, Budapest–Szeged, 1991, 261. [BOTLIK József, DUPKA György: *This is our homeland...*, Mandátum – Universum Publisher, Budapest–Szeged, 1991, 261.] (Hereafter: BOTLIK, DUPKA: *Ez hát a hon [This is our]...*, *op. cit.*)

28 Hungarian name of this settlement is: Beregszász. Source: BOTLIK, DUPKA: *Ez hát a hon [This is our]...*, *op. cit.*, 261.

29 Hungarian name of this settlement is: Bányú. Source: BOTLIK, DUPKA: *Ez hát a hon [This is our]...*, *op. cit.*, 261.

30 Hungarian name of this settlement is: Ökörmező. Source: BOTLIK, DUPKA: *Ez hát a hon [This is our]...*, *op. cit.*, 264.

31 *Kárpátalja településneveiről (Állásfoglalás)*, Kárpátalja, 2(1991. május)/9, 4. [*Participants of the meeting: Official opinion on Transcarpathian Hungarian place names*, Kárpátalja, 2(May 1991)/ 9, 4.]

rules of the formation of proper nouns in each language; d) the historical index of Transcarpathian place names should be completed.

However, differences remained on some points even after the meeting, and the historical index of Transcarpathian place names was never completed either.³²

To make the traditional, historical Hungarian place names officially approved local Hungarians with the help of the Transcarpathian Hungarian Cultural Association initiated referendums in villages. The results of local referendums were confirmed by councils of villages and districts that forwarded them to the council of the Transcarpathian region. The council of the region, before making its official decision on the historical Hungarian place names supported by local referendums, asked the Hungarian Studies Centre of the Soviet Union to form an opinion on them.³³ On that level of the administration the process of restoration and official authorization of the traditional names of Hungarian-populated settlements were slowed by the above mentioned differences between the opinions of Transcarpathian Hungarian Cultural Association and Hungarian Studies Centre of the Soviet Union on the historical Hungarian names of settlements.³⁴

Fortunately, in most cases the council of the Transcarpathian region approved the historical Hungarian place names supported by local referendums instead of the place names variants suggested by the Hungarian Studies Centre of the Soviet Union.³⁵ Based on the 1978 Constitution³⁶ (article 108, paragraph 6) of the Ukrainian Soviet Socialist Republic and the 1996 Constitution³⁷ (article 85, paragraph 2) of Ukraine, the results of the local referendums were forwarded to the Supreme Council of Ukraine (also known as: Verkhovna Rada (Parliament) of Ukraine) for approval (See Figure 1 in the Appendix, which shows the way of initiating local referendums, forming scientific opinion on them and approving the results of them).

Finally, thanks to the initiation of the Transcarpathian Hungarian minority, the parliament of Ukraine made a positive decision on the official restoration and use of the traditional names of Hungarian-populated settlements four times between 1991 and 2000. Consequently, about fifty Hungarian settlements got back their traditional,

32 BEREGSZÁSZI: *Magyar helységnevek Kárpátalján [Language planning issues of Hungarian place names]...*, op. cit., 360.

33 ДОВОС: *Magyar helységnevek Kárpátalján [Hungarian place names in Transcarpathia]...*, op. cit., 467–468.

34 *Ibid.*, 471.

35 *Ibid.*, 471.

36 Конституція (Основний Закон) Української Радянської Соціалістичної Республіки (in Hungarian: *Az Ukrán Szovjet Szocialista Köztársaság Alkotmánya*). Київ, 20 квітня 1978 року. Джерело: <http://gska2.rada.gov.ua/site/const/istoriya/1978.html> (2016.05.21) [*Constitution of the Ukrainian Soviet Socialist Republic*. Kyiv, 20th April 1978, Source: <http://gska2.rada.gov.ua/site/const/istoriya/1978.html> (21.05.2016)]

37 Конституція України (in Hungarian: *Ukrajna Alkotmánya*). Київ, 28 червня 1996 року. Джерело: <http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80/page4> (2015.12.21) [*Constitution of Ukraine*. Kyiv, 28th June 1996, Source: <http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96%D0%B2%D1%80/page4> (21.05.2016)]

historical names, for example: Яворове/Javorove became Есень/Eszeny, Заставне/Zasztavne –Запсонь/Zápszony, Юлівці/Julivci – Дюла/Gyula, Дрисіна/Driszina – Дерцен/Dercen etc. But, in the case of two villages: Бодолів/Bodoliv and Вузлове/Vuzlove the historical Hungarian names *Badaló* and *Bátyú* were not given back because the parliament of Ukraine changed Бодолів/Bodoliv into Бадалово/Badalovo and Вузлове/Vuzlove into Батьово/Batyovo. (See Figure 2 and Table 2 in Appendix, which show the results of the fifth place name changes in the territory of present-day Transcarpathia based on the relating decrees of Verkhovna Rada (Parliament) of Ukraine).

Furthermore, the Transcarpathian Hungarian minority also made attempts to restore the historical name of a Hungarian-majority town officially called Берегове/*Berehove*. In the town two referendums were held on the official restoration of the historical town-name *Beregszász*. On the first referendum that took place in 1990 66% of the eligible voters participated in it and 89.9% of them were in favour of the replacement of the official town name Берегове/Berehove with the historical place name *Beregszász*.³⁸ However, the result of the referendum was not approved by the Supreme Council of Ukraine with reference to the lack of law on referendums. The second referendum was held in 2010 51.4% of the eligible voters took part in it and only 46.6% of them supported to restore the historical town name *Beregszász*. Thus, based on the law of national and local referendums³⁹ accepted in 1991 the second referendum was also unsuccessful. However, it is suspicious that many ballots were invalid.⁴⁰

38 FOGARASI: *Berehovo=Beregszász*, Beregi Hírlap, 2010. július 26, Forrás: http://www.beregihirlap.uz.ua/index.php?option=com_content&view=article&id=679:berehovo-beregszasz&catid=4:kozelet&Itemid=4 (21.05.2016) [FOGARASI: *Berehovo=Beregszász*, Beregi Hírlap, 26th July 2010. Source: http://www.beregihirlap.uz.ua/index.php?option=com_content&view=article&id=679:berehovo-beregszasz&catid=4:kozelet&Itemid=4 (21.05.2016)]

39 Закон України Про всеукраїнський та місцеві референдуми (in Hungarian: *Ukrajna törvénye az országos és helyi népszavazásokról*). Kiűv, 3 липня 1991 року. Джерело: <http://zakon5.rada.gov.ua/laws/show/1286-12/page2> (2016.05.21) [*The law of Ukraine "On the national and local referendums"*, Kyiv, 3rd July 1991. Source: <http://zakon5.rada.gov.ua/laws/show/1286-12/page2> (21.05.2016)]

40 I. Gy.: *Eredménytelen volt a referendum*. Kárpátinfo, 14(2010. november 18.)/46 (14. évf.), 2. Forrás: http://www.karpatinfo.net/hetilap/2010/info_201046.pdf (2016.05.21) [I. Gy.: *It was an unsuccessful referendum*. Kárpátinfo, 14(18th November 2010)/46, 2. Source: http://www.beregihirlap.uz.ua/index.php?option=com_content&view=article&id=679:berehovo-beregszasz&catid=4:kozelet&Itemid=4 (21.05.2016)]; Берегівці таки не підтримали перейменування Берегова на Бергсас. Закарпаття онлайн, 09.11.2010. Джерело: <http://zakarpattya.net.ua/News/75177-Berehivtsi-taky-ne-pidtrymaly-pereimenuvannia-Berehova-na-Berehsas> (2016.05.21) [*Inhabitants of Berehove did not support to change Berehove into Beregszász*, Zakarpattya online, 09th November 2010. Source: <http://zakarpattya.net.ua/News/75177-Berehivtsi-taky-ne-pidtrymaly-pereimenuvannia-Berehova-na-Berehsas> (21.05.2016)]

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Указ Президії Верховної Ради Української РСР Про відновлення деяким населеним пунктам Ужгородського району Закарпатської області колишніх найменувань (in Hungarian: *Az Ukrán SZSZK Legfelsőbb Tanácsa Elnökségének rendelete Kárpátalja Ungvári járásához tartozó települései történelmi neveinek visszaállításáról*). Київ, 22 лютого 1991 року. [The decree of the Presidium of the Supreme Council of the Ukrainian Soviet Socialist Republic on the restoration of historical names of settlements belonged to the Ungvári district (officially called Uzhgorodszkij rajon). Kyiv, 22nd February 1991]. Source: <http://zakon2.rada.gov.ua/laws/show/765-12> (2015-12-21)

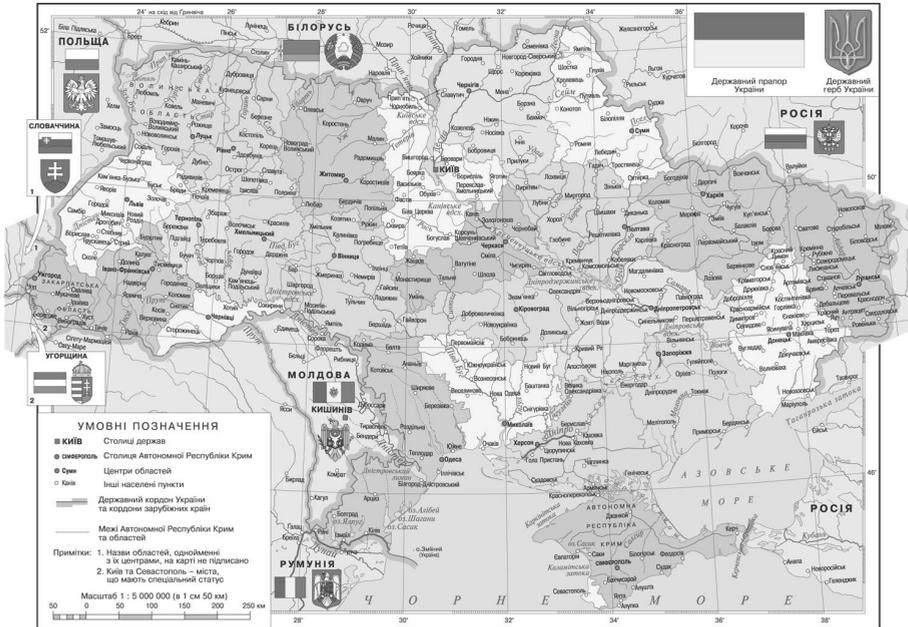
Maps:

Political and Administrative Map of Ukraine. Source: Raster Maps: http://www.raster-maps.com/images/maps/rastr/ukraine/atlas/political_and_administrative_map_of_ukraine.jpg (21.05.2016)

Administrative Map of Present-day Transcarpathia (officially called Закарпатська область/Zakarpatszka oblaszty). Source: Ukrmap: <http://ukrmap.su/en-gr/497.html> (21.05.2016)

APPENDIX

Map 1 Political and Administrative Map of Ukraine



Source: Raster Maps: www.raster-maps.com/images/maps/rastr/ukraine/atlas/political_and_administrative_map_of_ukraine.jpg (2016-05-21)

Map 2 Administrative Map of Present-day Transcarpathia (officially called *Закарпатська область/Zakarpatszka oblaszty*)



Source: Ukrmap: <http://ukrmap.su/en-gr/497.html> (2016-05-21)

Table 1 Changes of Settlement Names during the 20th Century in the Territory of Present-Day Transcarpathia (illustrating with several names of settlements)

No.		Regularizations of Settlement Names				
Country		1.	2.	3.	4.	5.
		Austro-Hungarian Monarchy (1898–1912)	First Czechoslovak Republic (1919–1938)	Hungary (1938/39–1944)	Soviet Union (1944/45–1988)	Soviet Union (1989–1991) Ukraine (1991–2000)
No.		Place names in 1900 before the first planned place name changes	Czech place names according to the second planned place name changes	Names of settlements according to the third planned place name changes (Hungarian and Hungarian-Russian [Русьні])	Russian and Ukrainian names of settlements according to the fourth planned place name changes	Names of settlements after the fifth place name changes (in Ukrainian/Hungarian)
1		Beregszász	Berehovo	Beregszász	Берегово, Берегове	Берегове ⁴¹
2		Munkács	Mukačevo	Munkács	Мукачево, Мукачеве	Мукачеве
3		Nagy-Szőllős	Sevluş	Nagyszöllős	Виноградів, Виноградів	Виноградів
4		Ungvár	Užhorod	Ungvár	Ужгорода, Ужгорода	Ужгорода
5		Ágtelek	Agovo	Tiszaágtelek	Тисянка, Тисянка	Тисянка (02.03.1995) Тисаагтелек/Тисзаагтелек
6		Ásvány	Ašvan	Tiszaasvány	Мінеральное, Мінеральне	Мінеральне (22.02.1991) Тисашвань/Тисзаасvány
7		Badaló	Bodolovo	Badaló	Бодолово, Бодолов	Бодолов (21.09.1991) Бадалово/Badalovo
8		Bátyú	Batovo	Bátyu	Узлове, Узлове	Узлове (02.03.1995) Батьово/Batyovó
9		Bereg-Ujfalu	Nové Seló	Beregújfalú	Новое Село, Нове Село	Нове Село (21.09.1991) Берегуйфалу/Beregújfalú

41 To restore the historical name (*Beregszász*) of the town Берегове/Berehove was unsuccessful.

No.	Country	1.	2.	3.	4.	5.
		Austro-Hungarian Monarchy (1898–1912)	First Czechoslovak Republic (1919–1938)	Hungary (1938/39–1944)	Soviet Union (1944/45–1988)	Soviet Union (1989–1991) Ukraine (1991–2000)
No.		Place names in 1900 before the first planned place name changes	Czech place names according to the second planned place name changes	Names of settlements according to the third planned place name changes (Hungarian and Hungarian-Russian [Rusyn])	Russian and Ukrainian names of settlements according to the fourth planned place name changes	Names of settlements after the fifth place name changes (in Ukrainian/Hungarian)
10		Bökény	Bekeň	Tiszabökény	Бобовое	Бобове (19.10.2000) Тисобикень/Tiszabökény
11		Déda	Dědovo	Beregdéda	Делово	Ділове (02.03.1995) Дийда/Déda
12		Derczen	Dryszina	Derczen	Дрисина	Дрисіна (02.03.1995) Дерцен/Derczen
13		Eszeny	Eseň	Eszeny	Яворово	Яворове (22.02.1991) Есень/Eszeny
14		Fertős-Almás	Fertőalmás	Fertőalmás	Заболотье	Заболоття (19.10.2000) Фертешолмаш/Fertőalmás
15		Fornos	Fornoš	Fornos	Ліскове	Ліскове (02.03.1995) Форнош/Fornos
16		Gyula	Dula	Szöllősgyula	Юлівці	Юлівці (02.03.1995) Дюла/Gyula
17		Makkos-Jánosi	Janošovo	Makkosjános	Ивановка	Іванівка (02.03.1995) Яноші/János
18		Nevetlenfalu	Dakova	Nevetlenfalu	Дьяково	Дьякове (19.10.2000) Неветленфалу/Nevetlenfalu
19		Péterfalva	Petrovo	Tiszapéterfalva	Петрово	Петрове (19.10.2000) Пийтерфалво/Péterfalva
20		Som	Šom	Beregsom	Деренковец	Деренковець (02.03.1995) Шом/Som

No.	Country	1.	2.	3.	4.	5.
	Austro-Hungarian Monarchy (1898–1912)	Place names according to the first planned place name changes	First Czechoslovak Republic (1919–1938)	Hungary (1938/39–1944)	Soviet Union (1944/45–1988)	Soviet Union (1989–1991) Ukraine (1991–2000)
No.		Place names in 1900 before the first planned place name changes	Czech place names according to the second planned place name changes	Names of settlements according to the third planned place name changes (Hungarian and Hungarian-Russian [Русын])	Russian and Ukrainian names of settlements according to the fourth planned place name changes	Names of settlements after the fifth place name changes (in Ukrainian/Hungarian)
21		Szernye	Serně	Szernye	Ровное, Рівне	Рівне (02.03.1995) Серне/Szernye
22		Szürte	Surty	Szürte	Струмковка, Струмківка	Струмківка (02.03.1995) Сюрте/Szürte
23		Holibina	Holibinné	Holibina/Голубинное	Голубине, Голубине	Голубине
24	Kis-Kurány (Mála Korpány)	Alsóveresmart	Malá Koráňa	Alsóveresmart/Мала Копаня	Малая Копаня, Мала Копаня	Мала Копаня
25	Kőrösmező	Kőrösmező	Jasňa	Kőrösmező/Ясния	Ясния, Ясния	Ясния
26	Német-mokra	Németmokra	Németká Mokrá	Németmokra/Ньюмецька Мокра	Комсомольськ, Комсомольськ	Комсомольськ (04.02.2016) Ньюмецька Мокра
27	Ökörmező	Ökörmező	Volové	Ökörmező/Воловое	Воловое, Волове (1953) Межгорье, Міжгір'я	Міжгір'я
28	Tisova	Csendes	Tisov	Tiszova/Тисова	Тиснев, Тишів	Тишів
29	Veresmart (Velikov Korpány)	Felsőveresmart	Veliká Koráňa	Felsőveresmart/Велика Копаня	Великая Копаня, Велика Копаня	Велика Копаня

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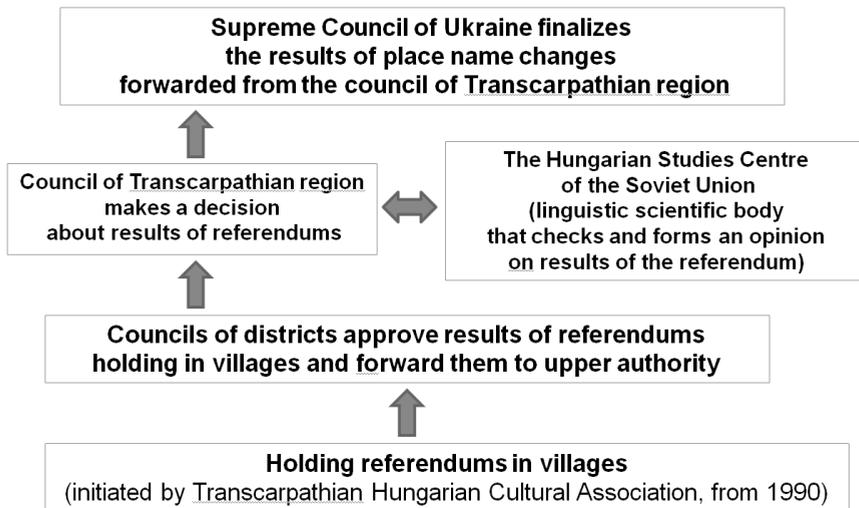
Melléklet a 14.500/1939. B. M. számú rendelet 1. §-ának (2) bekezdéséhez: „A kárpátaljai terület községeinek jegyzéke”, *Belügyi Közlöny*, 44(1939. július 6.)/30. 781–802. [Supplement to the order no. 14500 B.M. from 1939 on “The list of the settlement names of the Subcarpathian territory”, *Belügyi Közlöny*, 44(1939. július 6.)/30. 781–802.]

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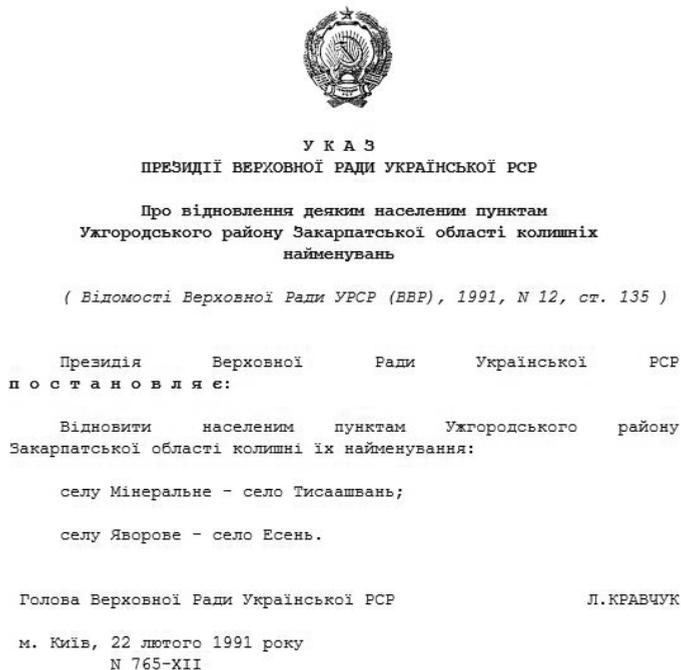
Історія міст і сіл Української РСР: В 26 т. ЗАКАРПАТСЬКА ОБЛАСТЬ / Ред. кол. тому: Белоусов В. І. (гол. редкол.), Балега Ю. І., Балла Л. К., Гончаренко А. О., Гранчак І. М., Коструб Г. М. (заст. гол. редкол.), Магарита В. І., Мельникова І. М., Міщенко С. О., Пітра Ю. Ю., Попович Д. П., Пруниця С. Ю. (відп. секр. редкол.), Русин О. І., Співак Б. І., Федоренко В. Г., Хайнас В. В., Чепур Д. В. (заст. гол. редкол.), Шульга І. Г. АН УРСР. Інститут історії. – К.: Голов. ред. УРЕ АН УРСР, 1969. 810 с. [History of the Cities, Towns and Villages in the Ukrainian Soviet Socialist Republic. Volume 26., Transcarpathian Region, ed.: Bjelouszov V. I., The Institute for Historians of the Academy of Sciences of Ukrainian SSR, 1969, 810.]

Figure 1 The Way of Initiating Local Referendums, Forming Scientific Opinion on Them and Approving the Results of Them



Source: Edited by the author of this study – © Sándor Dobos (2016)

Figure 2 Some Decrees of the Verkhovna Rada(Parliament) of Ukraine Relating to the Changes of Names of Hungarian-Populated Settlements





**ПОСТАНОВА
ПРЕЗИДІЇ ВЕРХОВНОЇ РАДИ УКРАЇНИ**

**Про відновлення окремими населеними пунктам
Берегівського, Виноградівського, Мукачівського
та Ужгородського районів Закарпатської області
колишніх найменувань**

(Відомості Верховної Ради (ВВР), 1995, N 14, ст. 98)

Президія Верховної Ради України постановляє:

Відновити колишні найменування населеними пунктам
Закарпатської області:

у Берегівському районі: селищу міського типу Вузлове -
селище міського типу Батьово, селу Гараздівка - село Гут, селу
Деренковець - село Шом, селу Дзвінкове - село Горонглаб, селу
Ділове - село Дийда, селу Добросілля - село Бене, селу Іванівка -
село Яноші, селу Косини - село Косонь, селу Липове - село Гетен,
селу Сонячне - село Мале Попово, селу Четове - село Четфалва;

у Виноградівському районі: селу Юлівці - село Діла;

у Мукачівському районі: селу Бородівка - село Варбово, селу
Дрисіна - село Дершен, селу Ліскове - село Фornoш, селу Нове Село
- село Шенборн, селу Рівне - село Серне;

у Ужгородському районі: селу Антонівка - село Анталовці,
селу Дереші - село Ватфа, селу Комарівці - село Паладь-Комарівці,
селу Лемківці - село Ляхівці, селу Павлове - село Палло, селу
Прикордонне - село Вотфалва, селу Солонці - село Малі Селменці,
селу Струмківка - село Скрте, селу Тисянка - село Тисааттелек,
селу Цеглівка - село Тийглаш.

Голова Верховної Ради України

О.МОРОЗ

м. Київ, 2 березня 1995 року
N 137/95-ПВ



**ПОСТАНОВА
ВЕРХОВНОЇ РАДИ УКРАЇНИ**

**Про відновлення окремими населеними пунктам
Виноградівського району Закарпатської області
колишніх найменувань**

(Відомості Верховної Ради України (ВВР), 2000, N 49, ст.433)

Верховна Рада України постановляє:

Відновити колишні найменування окремими населеними пунктам
Виноградівського району Закарпатської області:

селу Бобове - село Тисобикень, селу Братово - село Ботар,
селу Дівичне - село Форголань, селу Дяково - село Неветленфолу,
селу Заболоття - село Фертешолмаш, селу Клинове - село Оклі, селу
Клиновецька Гора - село Оклі Гедь, селу Петрово - село
Пийтерфолво.

Голова Верховної Ради України

І.ПЛЕШЧ

м. Київ, 19 жовтня 2000 року
N 2060-III

Source: Офіційний веб-портал Верховної Ради України. Джерело: www.rada.gov.ua/ (2016-05-21) [Official web portal of Verkhovna Rada (Parliament) of Ukraine. Source: www.rada.gov.ua/ (2016-05-21)]

Table 2 Results of the Fifth Place Name Changes in the Territory of Present-Day Transcarpathia Based on the Relating Decrees of Verkhovna Rada (Parliament) of Ukraine

No.	Date	Districts	Names of Hungarian settlements before the fifth place name changes	Names of Hungarian settlements after the fifth place name changes (in Ukrainian/Hungarian)
1	22th February 19911	Ужгородський/ Uzhgodszkij (in Hungarian: Ungvári)	<ol style="list-style-type: none"> 1) Яворове (Javorove) 2) Мінеральне (Mineralne) 	<p>Есень/Eszeny</p> <p>Тисаашвань/Тисзаашвань</p>
2	21st September 19912	Берегівський/ Berehivszkij (in Hungarian: Beregszászi)	<ol style="list-style-type: none"> 1) Грабарів (Hrabariv) 2) Заставне (Zasztavne) 3) Зміївка (Zmijivka) 4) Лужанка (Luzsanka) 5) Нове Село (Nove Szelo) 6) Бодолія (Bodolya) 	<p>Галабор/Halábor</p> <p>Запсонь/Zápszony</p> <p>Кідьош/Kígyós</p> <p>Астеї/Asztely</p> <p>Берегуйфалу/Beregújfalu</p> <p>Бадалово/Badalovo</p> <p>Батьово/Batyovó</p>
3	2nd March 19953	Берегівський/ Berehivszkij (in Hungarian: Beregszászi)	<ol style="list-style-type: none"> 1) Вузлове (Vuzlove) 2) Гаразівка (Harazgyivka) 3) Деренковець (Derenkoves) 4) Дзвінкове (Dzvinkove) 5) Дідове (Gyidove) 6) Добросілля (Dobroszilja) 7) Іванівка (Ivanivka) 8) Косини (Koszini) 9) Ліпове (Lipove) 10) Сонячне (Szonyacsne) 11) Четове (Csetove) 	<p>Гут/Gút</p> <p>Шом/Som</p> <p>Горонглаб/Harangláb</p> <p>Дийда/Déda</p> <p>Бене/Bene</p> <p>Яноші/Jánosi</p> <p>Косонь/Kaszony</p> <p>Гетен/Hetyen</p> <p>Мале Погорово/Kisororovo</p> <p>Четфалва/Csetfalva</p>
		Виноградівський/ Vínogradivszkij (in Hungarian: Nagyszőlősi)	<ol style="list-style-type: none"> 1) Юлівці (Julivci) 	<p>Дюла/Gyula</p>
		Мукачівський/ Munkacsivszkij (in Hungarian: Munkácsi)	<ol style="list-style-type: none"> 1) Арісіна (Drizsina) 2) Ліскове (Liszkove) 3) Рівне (Rivne) 	<p>Дерцен/Dercen</p> <p>Форнош/Fornos</p> <p>Серне/Szertnye</p>

No.	Date	Districts	Names of Hungarian settlements before the fifth place-name changes	Names of Hungarian settlements after the fifth place-name changes (in Ukrainian/Hungarian)
3	2nd March 1953	Ужгородський/ Uzhgodszkij (in Hungarian Ungvári)	<ol style="list-style-type: none"> 1) Деревці (Derevci) 2) Комарівці (Komarivci) 3) Павлове (Pavlove) 4) Прикордонне (Prikorodonne) 5) Солонці (Solonci) 6) Струмківка (Strumkivka) 7) Тисянка (Tiszjanka) 8) Цеглівка (Cehlivka) 	<p>Батфа/Bátfa</p> <p>Паладь-Комарівці/Palágykomoró</p> <p>Палло/Palló</p> <p>Ботфалва/Botfalva</p> <p>Малі Селменці/Kisszelmenc</p> <p>Сюрте/Szürte</p> <p>Тисаагтелек/Tiszaágtelek</p> <p>Тийлаш/Téglás</p>
4	19th October 2004	Виноградівський/ Vinogradivszkij (in Hungarian Nagyszőlősi)	<ol style="list-style-type: none"> 1) Бобове (Bobove) 2) Брагово (Bratovo) 3) Дівичне (Gyivicsne) 4) Дяково (Gyakovo) 5) Заболоття (Zabolottya) 6) Клинове (Klipove) 7) Клиновецька Гора (Klipovetska Hora) 8) Петрово (Petrovo) 	<p>Тисобикень/Tiszabökény</p> <p>Ботар/Batár</p> <p>Форголаш/Forgolány</p> <p>Неветленфолу/Nevetlenfalu</p> <p>Фертешолмаш/Fertőszalmás</p> <p>Оклай/Akli</p> <p>Оклай Теаь/Aklihegy</p> <p>Пийтерфолва/Péterfalva</p>

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“The Hungarians Have Decided: They Do Not Want Illegal Migrants” Media Representation of the Hungarian Governmental Anti-Immigration Campaign

ESZTER KISS

Hungary faced a great influx of asylum seekers during 2015. As response to that the Hungarian government launched a controversial anti-immigration campaign, which consisted of two main elements: the National Consultation on Immigration and Terrorism and a connected billboard campaign. In this essay I have analysed this campaign and its mainstream media representation, which crucially shaped the perception of migration and asylum issues in Hungary. First, I will present those discourses, in which this campaign and the related media coverage could be positioned. Secondly, by applying quantitative and qualitative media investigation techniques and critical discourse analysis I will show that the media reflect the polarized nature of the Hungarian society and the various media outlets construct significantly different understandings of these cases. Furthermore, this case study is also able to reveal some media practices of misrepresentation of migrants, refugees and asylum seekers.

Keywords: *migration, media representation analysis, anti-immigration campaign, minority representation, media practices, refugee crisis*

During 2015 migration suddenly became the most discussed issue and there is a high chance that it will continue to be one of the most important questions in the future. It is not surprising that radical and quite hostile voices have also appeared in such a heated debate. However, the extensive and controversial anti-immigration campaign that the Hungarian government launched in February 2015 as a reaction to the refugee flow was quite unexpected. The leading part of this campaign was the “*National Consultation on Immigration and Terrorism*”, which was a printed letter containing a prologue and a questionnaire. The National Consultation was sent to every adult Hungarian citizen and it was coupled with a governmental billboard campaign.

In a broader research I have analysed these cases and their mainstream media representation. As a conclusion, I could argue that the campaign was able to remarkably influence the perception of migration issues, it was based on bias and fuelled tension in the society. In this essay I will introduce the main findings of this detailed

case study. By analysing the mainstream media representation of these cases with quantitative and qualitative investigation techniques I will shortly demonstrate how the different media outlets constructed different understandings of these cases. Furthermore, I will delineate what misrepresentation and framing techniques can be discovered in the media coverage of migrants, refugees and asylum seekers in the mainstream Hungarian media in connection with these cases.

The National Consultation on Immigration and Terrorism, billboards and counter-billboards

The *National Consultation on Immigration and Terrorism* was first publicly mentioned on 6th February 2015 as an immigration and asylum policy measure that could help to solve the problems and conflicts in connection with the migrant flow. On 24th April the Hungarian Post Office started to deliver the printed consultation letters to every Hungarian citizen above 18. The letter contained a propagandistic prologue and a questionnaire with 12 questions in connection with immigration *and* terrorism.¹



Tisztelt Magyar Polgár!

Mi, magyarok 2010-ben úgy határoztunk, hogy minden fontos kérdést megbeszélünk egymással, mielőtt döntéseket hozunk. Ezért indítottunk nemzeti konzultációt többek között az ország új alaptörvényéről, mindannyiunk szociális biztonságáról, a nyugdíjasok helyzetének javításáról. És ezért indítunk most is nemzeti konzultációt a megélhetési bevándorlás kérdéséről.

Mint bizonyára emlékszik, Európát az év elején példátlan terrorcselekmény ráta meg. Párizsban ártatlan emberek életét oltották ki kegyetlen hidegvérrrel és ijesztő brutalitással. Mindannyiunkat megdöbbentette mindaz, ami történt. Ez az emberi ésszel felfoghatatlan szörnyűség ugyanakkor azt is megmutatta, hogy Brüsszel és az Európai Unió nem képes megfelelő módon kezelni a bevándorlás kérdését.

A megélhetési bevándorlók törvénytelenül lépik át a határt, és miközben menekültnek állítják be magukat, valójában a szociális juttatásokért és a munkalehetőségért jönnek. Csak az elmúlt néhány hónapban mintegy húszszorosára nőtt a megélhetési bevándorlók száma Magyarországon. Ez egy új típusú fenyegetést jelent, amit meg kell állítanunk.

Mivel Brüsszel kudarcot vallott a bevándorlás kezelésében, Magyarországnak a saját útját kell járnia. Nem fogjuk hagyni, hogy a megélhetési bevándorlók veszélyeztessék a magyar emberek munkahelyeit és megélhetését.

Döntést kell hoznunk arról, hogyan kell védelemezni Magyarországnak a törvénytelen határléptéssel szemben. Dönténünk kell, hogyan korlátozzuk a robbanásszerűen növekvő megélhetési bevándorlást.

Tisztelettel arra kérem, lépjen velünk kapcsolatba, mondja el nekünk is, hogy mit gondol a főttem kérdésekről, töltsse ki, és küldje vissza a kérdőívet. Számítok a véleményére.

Üdvözlettel:

Orbán Viktor

1 Figure 1 and Appendix 1.

NEMZETI KONZULTÁCIÓ

a bevándorlásról és a terrorizmusról

FELELŐS KÁRDÓ - MINISZTERELNÖKSÉG

Töltse ki a kérdőívet!

1] Sokféle véleményt lehet hallani az erősödő terrorcselekményekkel kapcsolatban. Ön mennyire tartja fontosnak a terrorizmus tényrészét és franciavárosi vétségét, az ISIS riasztó cselekményét) a saját élete szempontjából?
 Nagyon fontos Fontos Nem fontos

2] Ön szerint az elkövetkező években lehet-e terrorcselekmény célpontja Magyarország?
 Komoly esély van rá Előfordulhat Teljesen kizárt

3] Vannak, akik szerint a Brüsszel által rosszul kezelt bevándorlás összefüggésben van a terrorizmus tényrészével. Ön egyetért ezzel a véleményekkel?
 Teljesen egyetértök Inkább egyetértök Nem értek egyet

4] Tudta-e Ön, hogy a megilletései bevándorlók törvénytelenné lépik át a magyar határt és az elmúlt időszakban hátszorosára nőtt a bevándorlók száma Magyarországon?
 Igen Hallottam róla Nem tudtam

5] Sokféle véleményt hallani a bevándorlás kérdésével kapcsolatban. Vannak, akik szerint a megilletései bevándorlók veszélyeztetik a magyar emberek munkahelyeit és megilletésüket! Ön egyetért ezzel a véleményekkel?
 Teljesen egyetértök Inkább egyetértök Nem értek egyet

6] Vannak, akik szerint Brüsszel politikája a bevándorlás és a terrorizmus kérdésében megakadott és ezért új megközelítésre van szükség ezekben a kérdésekben. Ön egyetért ezzel a véleményekkel?
 Teljesen egyetértök Inkább egyetértök Nem értek egyet

7] Támogatná-e Ön a magyar kormányt, hogy Brüsszel megengedő politikájával szemben szigorúbb bevándorlási szabályokat vezessen be?
 Igen, teljes mértékben támogatnám Részben támogatnám Nem támogatnám

8] Támogatná-e Ön a magyar kormányt, hogy szigorúbb szabályokat vezessen be, ami alapján őrizetbe vehetők a magyar határt törvénytelenné átlépő bevándorlók?
 Igen, teljes mértékben támogatnám Részben támogatnám Nem támogatnám

9] Egyetért-e Ön azaz, hogy a véleményével, hogy a magyar határt törvénytelenné átlépő bevándorlót a lehető legrövidebb időn belül vissza kell fordítani a saját hazájukba?
 Teljesen egyetértök Inkább egyetértök Nem értek egyet

10] Egyetért-e Ön azaz, hogy a megilletései bevándorlók, amíg Magyarországon tartózkodnak, saját maguk biztosítsák az ellátási költségeiket?
 Teljesen egyetértök Inkább egyetértök Nem értek egyet

11] Egyetért-e Ön azaz, hogy a bevándorlás elleni küzdelem legjobb eszköze, ha az Európai Unió tagországai segítik azon országok fejlesztését, ahonnan a bevándorlók érkeznek?
 Teljesen egyetértök Inkább egyetértök Nem értek egyet

12] Egyetért-e Ön a magyar kormányval abban, hogy a bevándorlás helyett inkább a magyar családok és a születendő gyermekek támogatására van szükség?
 Teljesen egyetértök Inkább egyetértök Nem értek egyet

Figure 1: The National Consultation on Immigration and Terrorism

The consultation received a wide range of criticism. Primarily because it suggested that immigration and terrorism are inherently related issues. The prologue spoke consistently about “economic migrants,” who “cross our borders illegally” and just “present themselves as asylum seekers” but “in fact they are coming to enjoy our welfare systems and employment opportunities.” It also presents “illegal immigrants” and migration in general as a threat against which “Hungary should defend itself.”² Leading sociologists and pollsters criticized the questionnaire because it did not offer real answers and the questions themselves are capable of producing fear.³ Zoltán Kovács, spokesperson of the government, reacted to these with a statement “this is not a public opinion poll (...); this is a political questionnaire (...), which asks questions in accordance with the government’s political intentions.”⁴

2 Appendix 1

3 *Ezt gondolják Orbán trükkjeiről azok, akik értenek a bevándorláshoz.* In: Magyar Narancs Online: <http://magyarnarancs.hu/belpol/ezt-gondoljak-orban-trukkeirol-azok-akik-ertenek-a-bevandorlashoz-94726> (31. 08. 2016.); HORVÁTH Bence (2015, April 30). *Társadalomkutatók szerint a bevándorlásról szóló konzultáció visszaél a közvélemény-kutatás módszereivel.* In: 444.hu: <http://444.hu/2015/04/30/tarsadalomkutatok-szerint-a-bevandorlasrol-szolo-konzultacio-visszael-a-kozvelemeny-kutatas-modszerivel/> (31. 08. 2016.)

4 RTL Klub Híradó, 06. 05. 2015, 32:43–35:33

The National Consultation cost 960 million HUF⁵ and until the extended deadline, 15th July, only 1 million people from the 8 million recipients had answered and sent it back. Not surprisingly, more than two-thirds of the respondents agreed with the government.⁶ Prime Minister Viktor Orbán himself announced these results in his speech at Bálványos Festival in Tusnádfürdő, Romania on 25th July 2015.⁷ He commented the answers with that,

*“we have to talk about the clear connection between immigration and terrorism, immigration and unemployment, and the increase of criminality in connection with immigrants. (...) The Hungarians have decided. They do not want illegal immigrants and they are not willing to participate in the intellectual rampage of the European left wing politics.”*⁸

The government communicated the results through the media and through billboard advertisements as a huge success by using these slogans *“The Hungarians have decided: they do not want illegal migrants”* and *“The Hungarians have decided: the country should be defended.”*⁹

The National Consultation was coupled with a governmental billboard campaign launched on 1st June 2015. The government called it an “informational campaign” that presents the government’s opinion in questions related to immigration. This nation-wide campaign, which cost 381 million HUF, contained the following types of billboards.¹⁰



Figure 2: Governmental billboard: “If you come to Hungary, you must respect our culture.”

- 5 *Súlyosan demagógra sikerült a nemzeti konzultáció 12 kérdése.* In: hvg.hu: http://hvg.hu/itthon/20150424_Sulyosan_demagogra_sikerult_a_nemzeti_kon (31. 08. 2016.)
- 6 *Hungarians have decided; they do not want illegal migrants.* In Website of the Hungarian Government: www.kormany.hu/en/the-prime-minister/news/hungarians-have-decided-they-do-not-want-illegal-migrants (31. 08. 2016.)
- 7 This festival has a special importance in governmental and right-wing circles, partially because of the connection to the Hungarian community living in Romania. Viktor Orbán gave his controversial speech about Hungary as an illiberal democracy in 2014 on this same festival.
- 8 M1 Híradó, 25. 07. 2015. 00:50–06:11
- 9 *Nemzeti Konzultáció.* In the website “Nemzeti Konzultáció”: <http://nemzetikonzultacio.kormany.hu/> (31. 08. 2016.)
- 10 Figure 2–4.



Figure 3: Governmental billboard: “If you come to Hungary, you must respect our laws.”



Figure 4: Governmental billboard: “If you come to Hungary, you mustn’t take the Hungarian’s jobs.”

These lines seem to be addressed to the immigrants or refugees but they were written in Hungarian. When Prime Minister Viktor Orbán was addressed with the question, what the target group was, he said, “these billboards are addressed to everyone, but particularly to human smugglers.”¹¹ He added,

*“the governmental billboards are not problematic; their message is also positive (...). Their phrasing is rather moderate, because it emphasizes that Hungary is an open and friendly country. They do not tell that nobody can come here. They say, those who are coming here, have to take a few things into account.”*¹²

To express their disagreement, opposition party leaders and private individuals ruined, painted or tore off the governmental billboards from the day they appeared.¹³ Governmental-party politicians considered this as an act of vandalism and several of the people who participated in these actions were arrested. However, on 7th July the Hungarian court declared that ruining billboards in these cases is under the protec-

11 TV2 Tények, 09. 06. 2015. 35:03–39:45

12 RTL Klub Híradó, 12. 06. 2015. 35:40–38:55

13 Figure 5.

tion of the freedom of expression; it is a form of expressing political opinion, therefore, the perpetrators cannot be penalized.¹⁴



Figure 5: Ruined governmental billboard. The remained sign says: "Hungary needs culture; Not consultation"

Moreover, a joke political party, the *Two-Tailed Dog Party*, and a political blog site, *Vastagbőr* launched a counter-campaign and asked for small donations from people. They collected more than 33 million HUF from small-amount donations and displayed more than 500 billboards¹⁵ with humorous lines between 1st and 31st July nationwide.¹⁶



14 *Ha a szándék véleménynyilvánítás, mehet a gyűlölet-plakát rongálás a bíróság szerint.* In: Kettős Mérce Blog: http://kettosmerce.blog.hu/2015/07/17/ha_a_szandek_velemenynyilvanitas_mehet_a_gyulolet-plakat_rongalas_a_birosag_szerint#gallery-1437127243_1 (31. 08. 2016.)

15 *Elkészült a könyvelés.* In: Vastagbőr: <http://vastagbor.atlatszo.hu/2015/07/13/elkeszult-a-konyvelés/> (31. 08. 2016.)

16 Figure 6–9.

“The Hungarians Have Decided: They Do Not Want Illegal Migrants”



Figure 6–9: Some counter-billboards displayed by the Two-Tailed Dog Party and Vastagbőr (sign on the first billboard: “Immigrants don’t work and take our jobs”)

Both the Consultation and this billboard war got significant media attention. Furthermore, in June the European Parliament released a joint motion, in which they denounced

“the public consultation on migration and the related country-wide billboard campaign initiated by the Hungarian Government, and stressed that the content and language used in the particular consultation launched in Hungary, on immigration and

*terrorism, are highly misleading, biased and unbalanced, establishing a biased and direct link between migratory phenomena and security threats; (...) called, therefore, for this consultation to be withdrawn.*¹⁷

Social and political context and the Hungarian media landscape

In order to fully understand the results of this study I will shortly introduce the complex Hungarian social and political context and the significantly polarized media system.

Since May 2010 Hungary has a right-wing populist government with a great majority in the parliament.¹⁸ The governing party, Fidesz-KDNP strongly opposes immigration to Hungary. Hungarian Prime Minister, Viktor Orbán is one of the loudest antagonists of the European Union's migration and asylum policy. However, the governmental and far-right anti-immigration efforts are not fully supported; the Hungarian society is politically divided. Furthermore, by the 15th September the government closed the southern borders of Hungary both physically with a fence and legally with the declaration of Serbia as a "safe third country".¹⁹

Hungary has never been a destination of major migratory movements. In January 2015 only 145,968 people from the approximately ten million population of Hungary did not hold a Hungarian citizenship.²⁰ Besides more than two-thirds of these people are European citizens and a significant part of them are from the neighbouring countries. Before 2015 the number of asylum seekers and refugees were also relatively low in Hungary. In 2014 42,777 applications for asylum were filed and only 503 people were recognized as refugees or became a beneficiary of subsidiary protection.²¹

In 2015 the situation of Hungary in connection with asylum issues significantly changed. 177,135 asylum applications were filed in 2015,²² most of them in July

17 *Joint Motion for a Resolution on the Situation in Hungary*. In: The European Parliament : www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+P8-RC-2015-0532+0+DOC+XML+V0//EN (31. 08. 2016.)

18 Until 22nd February 2015 the governing Fidesz–KDNP coalitional party possessed more than two-thirds of the Parliamentary mandates, which made it possible to them to change or file any laws, including the constitution, without the approval of the opposition parties.

19 Hungarian Helsinki Committee (2015): *Building a Legal Fence – Changes to Hungarian Asylum Law Jeopardise Access to Protection in Hungary*. In: <http://helsinki.hu/wp-content/uploads/HHC-HU-asylum-law-amendment-2015-August-info-note.pdf> (31. 08. 2016.)

20 KSH (Hungarian Central Statistical Office), 2015, July 03. *Foreign Citizens Residing in Hungary by Continents, Countries, Sex 1st January (1995–)*. In: www.ksh.hu/docs/eng/xstadat/xstadat_annual/i_wvn001b.html (31. 08. 2016.)

21 BÁH (Office of Immigration and Nationality), 2015, February 10. *Statistics Issue 2013–2014*. In: www.bmbah.hu/images/statisztikak/KIADV%C3%81NY_2013_%202014_INTER-NET_2015_01_16_ENG.xls (31. 08. 2016.)

22 BÁH (Office of Immigration and Nationality), 2016, January 21. *Statistics Issue 2014–2015*. In: www.bmbah.hu/images/statisztikak/160119%20KIADV%C3%81NY_2014_%202015_%C3%89VES%20angol.xls (31. 08. 2016.)

(31,287)²³ and in August (47,094).²⁴ Most of the asylum seekers arriving to Hungary were from Syria (37%), Afghanistan (26%), Kosovo (14%) and Pakistan (8.5%).²⁵ The majority of the asylum seekers travelled on to Western Europe within a few days; more than the 152,000 asylum proceedings were suspended and only 508 people received refugee status or became a beneficiary of subsidiary protection.²⁶

In spite of the low number of foreigners living in the country (or exactly because of the lack of own experience) a significant part of the population is considered as xenophobic according to one of the most significant social opinion poll institutes, TÁRKI Social Research Institute. They reported that "*in April 2015 the level of xenophobia was 46% (reaching an all-time highest level), by July it decreased to 39%, and by October there was a further and significant decrease.*"²⁷ TÁRKI explains this extremely high level of xenophobia in April with the governmental anti-immigration campaign.²⁸

Similarly to the society, the Hungarian media system is also unbalanced and polarized, a strong right-wing dominance characterises it. The current governmental elite has a significant influence on the media through ownership and advertisements. According to the report of a leading media monitoring organisation, Mérték Media Monitor, the major characteristics of the Hungarian media in 2014 were "*centralization of state advertising spending, growing government pressure on the media market, overt political intervention in newsroom practices and forced removal of editorial teams.*"²⁹ Besides the public service media functions basically as the mouthpiece of the government. (Mérték, 2015, pp. 47-50.) These trends have a crucial role in a country where the media is the only source of information regarding migrants and refugees for a great part of the society.

Theoretical background

In this section I will review the theoretical framework and the literature that shaped my understanding in the questions discussed below.

23 BÁH (Office of Immigration and Nationality), 2015, September 15. *Statistics Issue July 2015*. In: www.bmbah.hu/images/statisztikak/150915%20Mened%C3%A9kk%C3%A9relmek%20j%C3%BAlius.xls (31. 08. 2016.)

24 BÁH (Office of Immigration and Nationality), 2015, September 15. *Statistics Issue August 2015*. In: www.bmbah.hu/images/statisztikak/150915%20Mened%C3%A9kk%C3%A9relmek%20augusztus.xls (31. 08. 2016.)

25 BÁH (Office of Immigration and Nationality). *Statistics Issue 2014–2015, op. cit.*

26 *Ibid.*

27 TÁRKI (TÁRKI Social Research Institute): *Attitudes Towards Refugees, Asylum Seekers and Migrants – First Results (October 2015)*, 5, 2015. Source: www.tarki.hu/hu/news/2015/kitekint/20151203_refugee.pdf (31. 08. 2016.)

28 *Ibid.*, p. 5.

29 Mérték Media Monitor: *Gasping for Air – Soft Censorship in the Hungarian Media in 2014*, 2015. Source: <http://mertek.eu/en/reports/gasping-for-air-soft-censorship-in-hungarian-media-2014> (31. 08. 2016.)

I share the argument that the media do not only mirror the reality but actively construct it into meaningful wholes³⁰ and reproduce the dominant sense of reality.³¹ The media have a gatekeeping function,³² they create a new mediatized reality by arbitrary selection,³³ produce stories and social facts through narrativization and repetition,³⁴ that many accept as “how things are”.³⁵ However, in this constructed media reality certain social groups get significantly more time and attention while others become invisible.³⁶

Subaltern groups usually cannot speak in the media;³⁷ and they are getting invisible through the practice of “whitewashing”; the media consider the minority issues not important enough to be reported about.³⁸ On the other hand, when minorities do appear in the media, it often leads to misrepresentation; the majority media represent the minorities through a “colonializing gaze”.³⁹ Therefore, I find it crucial to analyse the media representation of minorities; I argue that the mainstream media coverage is able to significantly shape the social attitudes towards minorities.

Because of the very low number of immigrants and refugees living in Hungary only few media representation studies focusing on migrant minorities were published during the previous decades in Hungary.⁴⁰ My approach and the findings of this essay strongly connect to these articles and especially to Gábor Bernáth & Vera Messing’s (2015) recent media content analysis study. They focused on the mainstream media news and political speeches connected to migration in January 2015 with the starting point of Prime Minister Viktor Orbán’s speech after the terrorist attack against Charlie Hebdo. They originate from here the Hungarian moral panic about the migration

30 MILIVOJEVIC, Snjezana: *Media Monitoring Manual*. Media Diversity Institute, London, 2013, p. 15.

31 FISKE, John: *Television Culture*. Routledge, London, 1987, p. 23.

32 WILSON, Clint. C. – GUTIÉRREZ, Félix: *Race, Multiculturalism and the Media – From Mass Communication to Class Communication*. Sage Publications, London, 1995, p. 151.

33 VIDRA Zsuzsanna – KRIZA Borbála: *A többség fogságában – Kisebbségek médiareprezentációja = Etnicitás – Különbségetemtő társadalom*. Ed. M. FEISCHMIDT. Gondolat – MTA, Budapest, 2010, 392–406. o.

34 Lentin & Titley, 2012, p. 128.

35 MILIVOJEVIC: *op. cit.*, p. 16.

36 VIDRA Zsuzsanna – KRIZA Borbála: *op. cit.*, p. 393.

37 SPIVAK, Gayatri C.: Can the Subaltern Speak? In: C. Nelson, – L. Grossberg: *Marxism and the Interpretation of Culture*. MacMillian Education, Basingstoke, 1988, pp. 271–313.

38 VIDRA Zsuzsanna – KRIZA Borbála: *op. cit.*, 393–394. o.

39 CSEPELI György: Kinek a képe? *Jel-Kép*, 20(2001)/2., 4. o.

40 For example: TÓTH Judit: *Kína és kínaiak a magyar sajtóban = Táborlakók, diaszpórák, politikák*. Eds. SÍK E. – TÓTH J. MTA, Budapest, 1996, 139–158. o.; *Nyilvánosság Klub: A Nyilvánosság Klub Monitor Csoportjának jelentése = Idegenek Magyarországon*. Eds. SÍK E. – TÓTH J., MTA, Budapest, 1998, 129–135. o.; LIGETI György: *Kisebbségek és bevándorlók a médiában*, Médiakutató, 2007. Source: www.mediakutato.hu/cikk/2007_03_osz/02_kisebbssegek_bevandorlok_media (31. 08. 2016.); PRISCHETZKY Réka – SZABÓ Elvira: *Migránsok a magyar médiában 2011*. Magyar Helsinki Bizottság (Hungarian Helsinki Committee), 2011. Source: http://helsinki.hu/wp-content/uploads/Migransok_a_magyar_mediaban_HelsinkiBiz_2011.pdf (31. 08. 2016.); ZÁDORI Zsolt: *Pánik a sötétben – Migránsok a magyar médiában 2014*. In Magyar Helsinki Bizottság (Hungarian Helsinki Committee): http://helsinki.hu/wp-content/uploads/P%C3%81NIK-A-S%C3%96T%C3%89TBEN_Migr%C3%A1nsok-a-magyar-m%C3%A9di%C3%A1ban-2014.pdf (31. 08. 2016.)

flow and the governmental anti-immigration media campaign, which includes the National Consultation and the billboard campaign.

Furthermore, there is a constantly growing tendency to connect immigration and terrorism, especially since the terrorist attacks of 11th September 2001. The inherent connection between "(Muslim) Immigrant" and "Terrorists" became an extremely common belief in the Western societies; the world is practically divided to "Us", non-immigrant citizens and the unknown, threatening "Others", in which all our fears are embodied. In this global risk society⁴¹ fear becomes the central emotion, which dominates our decisions, attitudes and even policy measures. This fear is produced, shaped and managed by several actors, as Frank Furedi calls them, "fear-entrepreneurs";⁴² including states, governments, media, advertising, arts, industrial companies and civil organizations of all kind. The National Consultation is a salient product of these processes.

Media representation analysis

Methodology

I have analysed seven Hungarian mainstream, nationwide news media outlets. The two most influential online news sites (*Index*, *Origo*), the two largest daily print newspapers (*Népszabadság*, *Magyar Nemzet*) and three television news programmes: the news programme of the public service television channel (*M1 Híradó*) and the news programmes of the two dominant commercial television channels (*RTL Klub Híradó*; *TV2 Tények*). By these choices my aim was to cover the main information sources that Hungarian people use every day. At the beginning of the research I categorized the media outlets as "government-friendly" (*M1*, *TV2* and *Origo*) or "government-critical" (*Index*, *RTL Klub*, *Népszabadság* and *Magyar Nemzet*) based on my preliminary knowledge of their ownership structure, major scandals⁴³ and other circumstances.⁴⁴ My hypothesis was that mainstream media would reflect the polarised nature of the Hungarian society and one can conjecture to certain media outlets' attitude to these cases from their ownership background.

I reviewed six months of articles and reports between 1st February 2015 and 31st July 2015. I analysed only those pieces of news that explicitly mentioned or dealt entirely with the National Consultation or the billboard campaign. Neither tabloid media nor smaller, more specified media outlets that produce longer reports were included. Therefore, those contents that reported about the migration, immigrants or

41 BECK, Ulrich: *Risk Society: Towards a New Modernity*. SAGE, 19992.

42 Cited by STEARNS, Peter N.: *Fear and History*. *Journal of Social History*, 40(2006)/2., p. 24.

43 Such scandals were for example introducing an advertisement tax which disadvantaged *RTL Klub* over *Tv2*; removing the editor-in-chief of *Origo* after publishing an article about an extraordinarily expensive foreign trip of János Lázár, member of the cabinet; and the public confrontation of Lajos Simicska, owner of *Magyar Nemzet* and Prime Minister Viktor Orbán.

44 I am aware of the subjective nature of this classification and I only used it to create a hypothesis.

asylum issues in general and could also influence the audience's attitudes significantly were left out of this investigation. I used both quantitative and qualitative media-investigation techniques and critical discourse analysis during this research.

Quantitative analysis

During my research I have examined 375 items (articles and television news blocks) published in the above listed media outlets. I have identified 208 pieces of news connected to the National Consultation and 167 pieces of news connected to the billboard campaign. From these 375 items altogether 33 pieces of news mentioned both the Consultation and the billboard campaign; this is less than 9% of the whole sample.

Interestingly, the case of the billboard campaign and the billboard war proved to be the more intensively discussed topic; within six weeks most of the media outlets published almost the same amount of news about it as about the National Consultation within six months.⁴⁵ The great majority of the investigated items were found in the home politics (or in similarly titled) sections, few in the foreign section, one on Index in the culture section and none in social sections. Consequently, the mainstream media considered the Consultation and the billboard campaigns as utterly political issues, not as social ones, which is notable, because they are inherently connected to social cohesion and the core questions of society and culture through migration.

Table 1: Number of publications in each analysed media outlets

Media outlet	National Consultation	Billboard Campaign	Both
Index (online)	48	41	1
Origo (online)	25	28	4
Népszabadság (print)	31	43	7
Magyar Nemzet (print)	36	19	9
M1 Híradó (TV)	37	10	5
RTL Klub Híradó (TV)	17	17	4
TV2 Tények (TV)	14	9	3
Total	208	167	33

⁴⁵ Table 1

Attitude analysis

It was an essential part of the research to describe the attitude of the pieces of news to the National Consultation and to the governmental billboard campaign. A piece of news was considered positive (“+”), if the represented opinions dominantly claimed or suggested that the Consultation or the governmental billboards were good/useful/successful/necessary/valid etc. measures to handle the current migration/asylum situation. It was considered negative (“-”), if the represented opinions dominantly claimed or suggested that

a) the Consultation or the governmental billboards are bad/unnecessary/manipulative/maleficent/inefficient etc. measures; or

b) damaging the governmental billboards is a form of civil disobedience and/or acceptable; or

c) the counter-billboards are funny/necessary/effective/sympathetic etc.

However, the opinions that condemned the damaging of the governmental billboards or the counter-billboards as such cannot be considered as positive automatically, this does not inherently mean the approval of the governmental campaign. Furthermore, a piece of news was considered neutral (“n”), if it did not judge the Consultation, only delineated facts in connection with it or represented balanced opinions. These categories indicate the attitude of the media outlets but they could be fully understood only in the context of a more detailed qualitative analysis.

These evaluations⁴⁶ demonstrate that *Index*, *Népszabadság* and *RTL Klub* are the most critical media outlets regarding these issues, while *M1* and *Magyar Nemzet* seem to agree with the governmental standpoint, namely that the National Consultation and the governmental billboard campaign is a positive / good / useful measure. *Origo* could be described as moderately government-critical and *TV2* as moderately government-friendly. This is interesting, because the results regarding *Magyar Nemzet* and *Origo* are divergent from my preliminary expectations.

Table 2: Attitudes of the pieces of news to the National Consultation

Media outlet	Positive attitude	Negative attitude	Neutral attitude	Total
Index (online)	1	34	13	48
Origo (online)	6	10	9	25
Népszabadság (print)	3	17	11	31
Magyar Nemzet (print)	18	7	11	36
M1 Híradó (TV)	18	11	8	37
RTL Klub Híradó (TV)	2	9	6	17
TV2 Tények (TV)	8	3	3	14

⁴⁶ Table 2 and 3

Table 3: Attitudes of the pieces of news to the governmental billboard campaign

Media outlet	Positive attitude	Negative attitude	Neutral attitude	Total
Index (online)	3	30	8	41
Origo (online)	2	16	10	28
Népszabadság (print)	1	39	3	43
Magyar Nemzet (print)	5	12	2	19
M1 Híradó (TV)	2	0	8	10
RTL Klub Híradó (TV)	0	17	0	17
TV2 Tények (TV)	0	4	5	9

The general attitude of *Magyar Nemzet* in the issue of the National Consultation is worth to be highlighted. Its articles, especially editorials, criticized the Consultation as a measure, they found it useless and too expensive, and they argued that it is obvious without any consultation that nobody wants here, in Hungary refugees or immigrants (“illegal immigrants”); therefore the government should act instead of engaging in pointless discussions. This standpoint was also the basis of the criticism of the governmental billboard campaign, and not the billboards xenophobic nature criticised by other media outlets. Hence *Magyar Nemzet* criticized the governmental campaign itself, but not its aims or ideology.

One also has to underline that no critical pieces of news in connection with the governmental billboard campaign has appeared on *M1*. At the same time one could not find any positive news about this case either on *TV2* or on *RTL Klub*, and the latter one reported about it entirely critically. This sharp contrast between the public service television and the commercial television channels is very telling.

Agenda setting

The agenda setting analysis⁴⁷ showed that the government’s agenda (e.g. launching the Consultation, reports about the number of respondents, launching the online version of the Consultation) dominated the media representation of these cases even on the critical media outlets. (For the chronology of events connected to the National Consultation and the billboard campaigns see in Appendix 2.)

However, the most striking result of the agenda setting analysis is that the public service television channel, *M1* did not say a single word about the counter-billboard campaign and *Magyar Nemzet* only marginally mentioned it two times. On the other hand, *Index* and *RTL Klub* reported in detail about the counter-campaign, following its every step, including the crowd-funding, billboard drafts and the event of in-

47 McCOMBS, Max E. – SHAW, Donald E.: The Agenda-Setting Function of Mass Media. *The Public Opinion Quarterly*, 36(1972)/2., 1972, pp. 176–187.

stallation of the first billboards. It is also very telling that all media outlets reported about that activists ruining governmental billboards, but *MI* never mentioned their motivation. Only *Népszabadság*, *Magyar Nemzet* and *RTL Klub* reported about the court ruling that declared that, in this particular case, ruining billboards is not simply vandalism but an act of expressing political opinion, therefore, protected by the right of freedom of expression.

Terminology

Similarly to the findings of Bernáth & Messing’s study,⁴⁸ the terminological chaos is still a characteristic of the mainstream media reports connected to migration. All media outlets tend to use the terms “migrant,” “immigrant,” “refugee” and “asylum seeker” as if synonyms, and they do not even acknowledge that they blur important legal and social differences among these terms. It is also a common phenomenon that media workers use the umbrella term “migrant” for all these categories in order to avoid differentiation. The problem is that in the framework of the recent Hungarian governmental rhetoric, the originally neutral term “migrant” has been filled with derogatory connotations and due to the term’s foreign origins, it also could be alienating. Therefore, using this term should also require reflection from journalists.

However, one could encounter willingly used, pejorative terminology as well. *Magyar Nemzet*, *TV2* and *MI* consistently emphasized the illegal aspects of migration, generally used the term “illegal immigrants”, or sometimes the term “economic immigrants” and “for-profit immigrants” to describe those people who crossed the Hungarian border irregularly and filed asylum applications but usually without the intention to settle in Hungary. Moreover, *TV2* used several times the utterly meaningless “illegal refugee” term for these people. It was also characteristic of these media outlets to speak about “increasing migration pressure,” which is a prominent example of this panic-mongering terminology. The reporters spoke several times about “settlements near to the border that are threatened by migration” and all media outlets emphasized sometimes the “unstoppable flow” or “stream” of refugees, which is “beyond control”. These terms are able to intensify the general anxiety in connection with migration issues.

Two governmental narrative structures, which dominated the discussion, should also be mentioned here. At first, the governmental communication generated binary oppositions between “the Hungarian national interests” and “the migrants”. In this rhetorical construction everybody who helped refugees or argued against the governmental anti-immigration campaign confronted the Hungarian nation itself. Secondly, the government consider only those people as “rightful refugees”, who “flee for their lives”. However, people’s lives are not in danger in Serbia, therefore the vast majority of asylum seekers must be only “for-profit migrants”.

48 BERNÁTH Gábor – MESSING Vera: Bedarálva – A menekültekkel kapcsolatos kormányzati kampány és a tőle független megszólalás terepei. *Médiakutató*, 16(2015)/4., 2015, 7–17. o.

Voices

In every media coverage it is essential who is asked or permitted to articulate their opinion in their own voice. In the whole sample 186 different actors could be identified, including 146 individuals, who appeared altogether 796 times in the analysed 375 items. I have established the following categories to mark in which role these actors appeared:

- politician: governing party, opposition party, foreign/international politician;
- expert: migration expert; expert of other area (e.g. pollster, security expert);
- representative of authorities;
- migrant, refugee or asylum seeker;
- activist of the counter-billboard campaign or somebody who ruined governmental billboards.

Predominantly politicians could articulate their opinions: Hungarian politicians spoke or were cited 476 times and foreign / international politicians spoke or were cited 56 times. This is altogether 68.5% of all appearances.⁴⁹ The appearing politicians' party distribution was quite balanced in all media outlets. Although, some prominent governing party politicians appeared significantly more often than any other actors. Prime Minister Viktor Orbán was asked or cited 58 times and Zoltán Kovács, spokesperson of the government appeared in all media outlets regarding both topics, altogether 76 times.

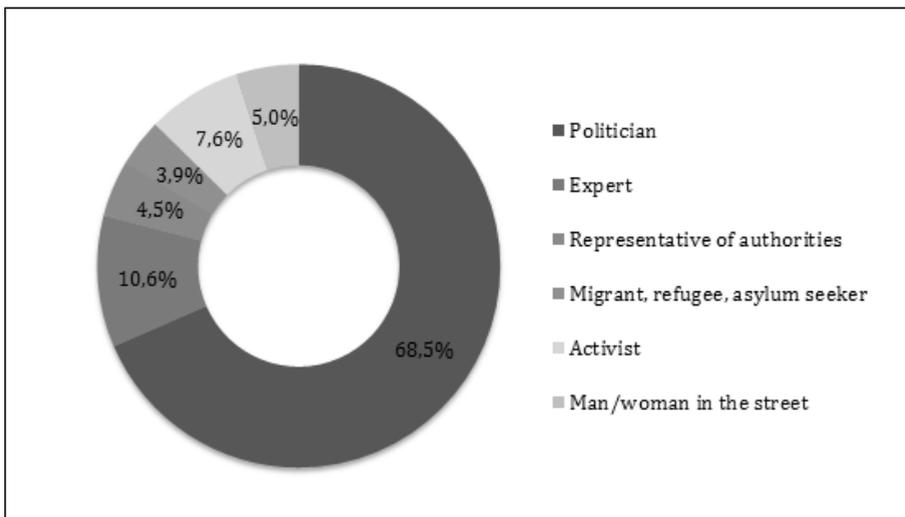


Figure 10: Appearances of actors in different roles

49 Figure 10

Experts could rarely articulate their opinion (82 times, this is 11% of all appearance), although questions like migration policy measures would require deeper professional discussions in the mainstream media. *Index* asked for an expert opinion the most often (26 occasions) and the fewest experts appeared on *TV2* (5 times). However, migration experts or NGOs focusing on migration were asked only 62 times (7.8% of all appearances); the others labelled as experts were pollsters, security, military or law enforcement experts and economists. This differentiation reveals that on the public service television channel (*M1*) no migration expert commented these cases.

Representatives of authorities or authorities themselves appeared 35 times, this is 4.5% of all appearances. The presence of these actors tends to lead to the “securitization”⁵⁰ of the issues in question (i.e. transformation of these issues into matters of security). What’s more, representatives of the police often commented on activists ruining the governmental billboards. This highlighted the criminal nature of these acts over their political motivation. The most representatives of authorities appeared in *Magyar Nemzet* (8 times) and the fewest on *Origo* and *RTL Klub* (both 2 times).

It is very telling that migrants, refugees or asylum seekers could only speak for themselves 30 times altogether (3.9%), although the discussion was about their role in society. Even local people and men/women on the street could articulate their opinion more often (39 times, 5%). The coverage of migrant voices are completely missing from *Magyar Nemzet* and asylum seekers could spoke only 3 times on *M1*. By a more detailed examination one could encounter that migrants appeared anonymously on all media outlets altogether 7 times; marked with only a forename one asylum seeker (“Jusuf”) and one migrant (“Melissa”) spoke together 3 times. Migrants with full name appeared 20 times but none of them was a recently arrived asylum seeker. Those who recently arrived in the country were almost completely silenced in mainstream media.

Compared to other categories, activists who took part in the counter-billboard campaign or ruined, painted, tore off etc. the governmental billboards could appear surprisingly often, altogether 59 times (7.6% of all appearances). However, this proportion is even higher when we count, more precisely, only the appearances connected to the billboard campaign, it is almost 17% of the 331 occasions. This is even more remarkable considering the fact that *M1* never mentioned them. These data indicates that the other media outlets found it important to represent the motivations and views of these activists.

Visual elements

Nowadays visual presentation is becoming an increasingly important part of the media coverage, even in text-based genres. The visuals were also the elements that seemed the most problematic part of representing migrants, refugees and asylum seekers.

50 BUZAN, Barry – WÆVER, Ole – de WILDE, Jaap: *Security: A New Framework for Analysis*. Lynne Rienner Publishers, 1998.

In the majority of cases all media outlets avoided showing migrants, refugees or asylum seekers by using pictures about the Consultation letter and people who were cited. However, when migrants, refugees or asylum seekers appeared, they were generally represented in larger groups. One could rarely see the face of an asylum seeker but it was also problematic when the face of an asylum seeker was visible. They usually seem more threatening than friendly. This portrayal could easily alienate readers. It was also characteristic in all media outlets that asylum seekers were displayed accompanied with police officers. This practice tends to criminalize asylum seekers and portray them as a security threat. The visual representation of migrants, refugees or asylum seekers in *Magyar Nemzet* was exceedingly stereotypical and fear-mongering. In this newspaper the faces of migrants, refugees or asylum seekers were frequently covered as if they were criminals.





Figure 11–14: Photos of asylum seekers published on Index (11–12), in Népszabadság and Magyar Nemzet

All of the above mentioned practices were characteristic on the television channels, as well, with the addition that they used a small amount of different sequences of images. One could easily identify several, frequently repeated sequences, especial-

ly in connection with migrants, refugees and asylum seekers. Besides, most of the portrayed asylum seekers were young men.⁵¹ The following sequences were characteristic on all television channels: barefoot asylum seekers sitting on the ground; a group of asylum seekers walking along the road; asylum seekers captured by a military night-vision camera; police officers at Budapest Keleti railway station and/or accompanied by asylum seekers; asylum seekers arrested by the police and waiting while sitting on the ground; official documents, clothes and waste left behind, allegedly, by asylum seekers; and asylum seekers running away somewhere close to the border. Moreover, the faces of asylum seekers were often covered intentionally and in certain cases all television channels illustrated the Hungarian issues with sequences shot at the Italian shores.⁵² These portrayals are biased and they reinforce the existing stereotypes instead of dissolving them.



51 A document (444.hu, 25. 10. 2015.) was leaked from *MI* in August 2015, which stated that the management suggested not showing asylum seeker children in order “not to demonize” them.

52 Figure 15–22.

“The Hungarians Have Decided: They Do Not Want Illegal Migrants”





Figure 15–22: Characteristic portrayals and sequences of refugees and asylum seekers on the analysed television channels

The visual coverage of “the billboard war” also indicated the attitude of these media outlets. *Index*, *Népszabadság* and *RTL Klub* published several pictures and sequences not only about the ruined governmental billboards, but also about the activists “in action”: in the middle of painting or tearing a billboard off. I would argue that this practice shows that these media outlets were, to a certain extent, engaged in civil disobedience. Meanwhile, *Magyar Nemzet* did not publish a single picture either about the original governmental billboards or about the activists and it displayed only one picture about a counter-billboard in Felcsút.⁵³ It could be interpreted that *Magyar Nemzet* disagreed with both the governmental and the counter-campaign and did not support the civil disobedience of activist who ruined governmental billboards. It was previously highlighted that *M1* did not even mention the counter-billboard campaign. Consistently with that, they showed sequences only about the painted and torn off governmental billboards to illustrate this act of “vandalism”. Furthermore, it is remarkable that both commercial television channels used more diverse sequences to illustrate this spectacular billboard war than to portray refugees or asylum seekers.

53 Felcsút is the small town, where Prime Minister Viktor Orbán owns a house.



Figure 23–24: Photo of activists in action on Index and a frequently repeated sequence about a torn-off governmental billboard on RTL Klub

Conclusion

In this essay I have presented the main findings of a detailed case study on *the National Consultation on Immigration and Terrorism* and the connected billboard campaign. This initiation was able to successfully shape the agenda of the Hungarian mainstream media for a remarkable period. I paid special attention to the media practices of representing migrants, refugees and asylum seekers, which may have influenced significantly the social perception of these issues.

I would argue that his anti-immigration campaign was based on the existing anxiety and xenophobic attitudes of the Hungarian society. It did not only reinforce prejudices, but also fuelled and increased them remarkably. I could also conclude that the media do reflect the polarized nature of the Hungarian society. The govern-

ment-friendly and the government-critical media outlets covered these stories differently; they constructed different narratives of the same cases as if they had been reporting about two different realities. However, the ownership background was not always reflected in the media coverage.

The results of the media representation analysis demonstrated that the media considered these two cases as political and not as social or policy issues. The media portrayal of migrants, especially the coverage of the recently arrived refugees and asylum seekers, was biased and stereotypical; and even the government-critical media outlets misrepresented these groups. Although the critical media outlets showed some effort to be politically correct and they pointed out several inaccuracies in the governmental anti-immigration rhetoric, this was still not enough to compensate the malicious anti-immigration terminology, which was able to dominate the whole media coverage of these cases. Hence the media failed to fulfil its integrative role, which would be crucial in the light of the recent worldwide challenges of migration.

Appendix

Appendix 1: English version of the National Consultation on Immigration and Terrorism

Source: Hungarian Government. (2015d). National Consultation on immigration to begin (24. April 2015.) in Website of the Hungarian Government: www.kormany.hu/en/prime-minister-s-office/news/national-consultation-on-immigration-to-begin (31. 08. 2016.)

Dear Hungarian Citizen,

In 2010 we Hungarians decided to discuss every important issue before decisions are taken. This is why we launched national consultations on issues which have included Hungary's new Fundamental Law, social security as a matter concerning us all, and the improvement of the situation of pensioners. And this is why we are now launching another national consultation, this time on the issue of economic immigration.

I am sure you will remember that at the beginning of the year Europe was shaken by an unprecedented act of terror. In Paris the lives of innocent people were extinguished, in cold blood and with terrifying brutality. We were all shocked by what happened. At the same time, this incomprehensible act of horror also demonstrated that Brussels and the European Union are unable to adequately deal with the issue of immigration.

Economic migrants cross our borders illegally, and while they present themselves as asylum-seekers, in fact they are coming to enjoy our welfare systems and the employment opportunities our countries have to offer. In the last few months alone, in Hungary the number of economic migrants has increased approximately twentyfold. This represents a new type of threat – a threat which we must stop in its tracks.

As Brussels has failed to address immigration appropriately, Hungary must follow its own path. We shall not allow economic migrants to jeopardise the jobs and livelihoods of Hungarians.

We must make a decision on how Hungary should defend itself against illegal immigrants. We must make a decision on how to limit rapidly rising economic immigration.

Please contact us and give us your response to the questions we are asking. Please complete and return the questionnaire. I am counting on your opinion.

With regards,

Viktor Orbán

NATIONAL CONSULTATION on immigration and terrorism

Published by the Prime Minister's Office

Please complete this questionnaire.

1] We hear different views on increasing levels of terrorism. How relevant do you think the spread of terrorism (the bloodshed in France, the shocking acts of ISIS) is to your own life?

Very relevant

Relevant

Not relevant

2] Do you think that Hungary could be the target of an act of terror in the next few years?

There is a very real chance

It could occur

Out of the question

3] There are some who think that mismanagement of the immigration question by Brussels may have something to do with increased terrorism. Do you agree with this view?

I fully agree

I tend to agree

I do not agree

4] Did you know that economic migrants cross the Hungarian border illegally, and that recently the number of immigrants in Hungary has increased twentyfold?

Yes

I have heard about it

I did not know

5] We hear different views on the issue of immigration. There are some who think that economic migrants jeopardise the jobs and livelihoods of Hungarians. Do you agree?

I fully agree

I tend to agree

I do not agree

6] There are some who believe that Brussels' policy on immigration and terrorism has failed, and that we therefore need a new approach to these questions. Do you agree?

I fully agree

I tend to agree

I do not agree

7] Would you support the Hungarian Government in the introduction of more stringent immigration regulations, in contrast to Brussels' lenient policy?

Yes, I would fully support the Government
I would partially support the Government
I would not support the Government

8] Would you support the Hungarian government in the introduction of more stringent regulations, according to which migrants illegally crossing the Hungarian border could be taken into custody?

Yes, I would fully support the Government
I would partially support the Government
I would not support the Government

9] Do you agree with the view that migrants illegally crossing the Hungarian border should be returned to their own countries within the shortest possible time?

I fully agree I tend to agree I do not agree

10] Do you agree with the concept that economic migrants themselves should cover the costs associated with their time in Hungary?

I fully agree I tend to agree I do not agree

11] Do you agree that the best means of combating immigration is for Member States of the European Union to assist in the development of the countries from which migrants arrive?

I fully agree I tend to agree I do not agree

12] Do you agree with the Hungarian government that support should be focused more on Hungarian families and the children they can have, rather than on immigration?

I fully agree I tend to agree I do not agree

Appendix 2: Chronology of events connected to the National Consultation and the billboard campaign (own collection)

Date	Event
02. 06. 2015.	Antal Rogán announces launching a National Consultation on immigration
02. 10. 2015.	Antal Rogán holds a press conference about the National Consultation at Budapest Keleti Railway Station, which is disturbed by counter-demonstrators
02. 11. 2015.	Zoltán Kovács announces that the government supports the launching of a National Consultation on immigration
02. 20. 2015.	Official debate in the Parliament about migration issues with the title "We don't need economic migrants"
04. 24. 2015.	Viktor Orbán introduces the questions of the National Consultation on Immigration and Terrorism in Radio Kossuth. It becomes public that the National Consultation will cost approximately 1 billion HUF
05. 05. 2015.	Zoltán Kovács holds a press conference; he announces that the questionnaires are getting printed. Richárd Barabás (Együtt, opposition party leader) disturbs the event.
05. 13. 2015.	It becomes public that the European Union plans to establish a quota-system to handle the migration crisis.
05. 18. 2015.	Viktor Orbán makes a speech in Debrecen, Hungary. He says that he would close the refugee camp in Debrecen instead of developing it.
05. 19. 2015.	The European Parliament discusses the situation of Hungary, including issues like migration- and asylum policy and the question of death penalty
05. 19. 2015.	Demonstration in Budapest against the National Consultation (organized by MigSzol).
05. 31. 2015.	Announcing that the National Consultation is available online
05. 31. 2015.	Governmental party politicians first mention that the government plans to launch an informational campaign connected to the National Consultation
06. 02. 2015.	The first draft of the governmental billboard campaign is leaked and published on Index.hu

“The Hungarians Have Decided: They Do Not Want Illegal Migrants”

06. 03. 2015.	The government confirms that the leaked draft is real and presents the other two billboard drafts.
06. 06. 2015.	The first governmental billboards are installed. Already on this day some of them are getting ruined, painted, torn off or rewritten.
06. 06. 2015.	It becomes public that the billboard campaign was conducted by HG360, a marketing company, which is owned by the neighbour and friend of Antal Rogán. Allegedly the company won the assignment without any competition. The campaign cost 360 million HUF.
06. 07. 2015.	Based on the information of activists, the media starts to report that the police is observing the governmental billboards operatively.
06. 08. 2015.	The “Hungarian Two-Tailed Dog Party” (MKKP) and “Vastagbőr” blog announce their counter-campaign and start asking donations for it. Their first billboard-drafts are published.
06. 10. 2015.	The European Parliament publishes its joint statement, which denounces the National Consultation and the governmental billboard campaign.
06. 10. 2015.	The UNHCR installs the organization’s billboards about integrated refugees living in Hungary. Originally this campaign was independent from the governmental campaign but inevitably got connected and compared to it.
06. 12. 2015.	Local MSZP (opposition party) leaders install counter-billboards in Szombathely, Hungary.
06. 17. 2015.	Official announcement of building a fence on the Serbian-Hungarian border.
06. 20. 2015.	World Refugee Day. The UNHCR organizes spectacular and popular press events. Dariush Rezai, a former refugee from Afghanistan, now citizen of Hungary guides through the journalists in Budapest.
06. 30. 2015.	Announcement of the extended deadline (originally 1st July) of the National Consultation: 15th July
07. 01. 2015.	MKKP and Vastagbőr install their counter-billboards.
07. 15. 2015.	Deadline of the National Consultation on Immigration and Terrorism. End of the governmental billboard campaign.
07. 16. 2015.	Launching a new governmental billboard campaign, at this time about the reforms conducted by the government.
07. 18. 2015.	Court ruling that in this particular case ruining, painting, ripping off etc. governmental billboards is protected by the freedom of expression; it is an act of expressing opinion.

07. 25. 2015.	Viktor Orbán first speaks about the results of the National Consultation and about migration issues in Tusnádfürdő, Romania
07. 27. 2015.	Official announcement of the results of the National Consultation on Immigration and Terrorism.
07. 31. 2015.	End of the counter-billboard campaign

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EU Minority Protection Policy: Cultural Rights of Traditional Minorities

CSILLA VARGA

Introduction

Traditional/autochthonous minorities. Under the term we mean communities which became minorities as a result of an external decision of power-politics. In many cases these minorities have kin-states in the EU, and form part of the state where they live. Besides their basic human rights their collective rights, identity, language, culture, customs have to be respected and preserved.

The regulations and soft-law measures create a good starting point in dealing with national minority protection, but the question remains whether it is possible and necessary, or whether it is needed, to regulate the situation of traditional minorities. The paper deals with the present stand of national minority protection, and with the „framework” in which traditional minority is understood: it is mainly characterized by cultural rights and identity. This is the reason why in considerable part of the paper the meaning of cultural rights will be analysed. In the last part of the essay the question will be posed how minority protection could be realized, what the possibilities are in order to deal with minority questions more properly.

The general framework of minority rights in Europe in the 1990s

After the fall of communism in Central Eastern Europe minorities found themselves in a better situation in a sense that they started to claim “more” rights in their home states. The dissolution of countries where many minority groups lived already (Yugoslavia, Czechoslovakia, the Soviet Union) had the result that these minorities started to claim “more” rights from states where they lived. It was not an ineffectual endeavour because this was the decade when a lot of recommendations and treaties on minority rights came about.

The biggest problem was that only a negligible part of these regulations were legally binding, and even these documents contained mostly vague wording and lines of conduct in connection with national minority groups.

The problem of interpretation and the unwillingness of states were (and are) the biggest obstacles to deal with the topic effectively. In the absence of enforcement measures states interpret the mentioned documents diversely, and decide on minority topics rather discretionally.

However, it has to be mentioned that starting mainly with the *French Revolution* in 1789 European states were built on the nationality principle, in other words nation

was the main principle on which state were built. The unity of the nation meant the unity of language and culture. This pattern was followed after the end of the First World War when new states came into being. It was realized, though, that more and more minority communities evolved in Europe, and that pattern will continue in the future as well.¹

After the Paris Peace Conference new states with sizeable minority populations emerged. For this reason, many minority treaties were made between European states in the framework of the *League of Nations*, but these treaties were neglected because only some states were subjected to them and kin-state had claims for territorial revision as well. After the Second World War these disregarded minority rights were replaced by the recognition of basic human rights, therefore minority rights were not particularly dealt with until the end of the *Cold War* era.²

In the period of League of Nations the issue of international security came forward, and after that modern European institutions also hoped that by protecting minority rights they can protect international peace. For instance, the Council of Europe Framework Convention also declares that the protection of minority rights is of crucial importance in every little detail in connection with conflict prevention, in order to reach stability, democratic security, and the promotion of cultural diversity enriching each society.³

However, it was clear that in the League of Nations system the Allied governments did not want to create 'States within States' by granting national groups political autonomy. This was the reason they referred to "members of minorities" and not simply "minorities".⁴

From 1945 to 1989 states thought that the universalization of minority protection threatened their internal political, economic and social stability and their prosperity, so they focused on reaching national unity through integration policies. Minority protection was confined to the realm of non-discrimination and of individual human rights. States and the international community rejected the notion of cultural rights.⁵

As it was mentioned before, after the 1990s the minority question came into view, and many instruments came into being. The lack of a universally accepted definition of the term "minority" had and still has advantages as well as drawbacks if one considers it from the point of view of national minorities. Differing characteristics of national minorities make it almost impossible to find a common definition for them,

1 VIZI Balázs: Protection without definition – notes on the concept of "minority rights" in Europe. *Minority Research*, 15., 2013/1., 7. Source: http://bgazrt.hu/_dbfiles/blog_files/7/0000004037/Balazs%20Vizi%20-%20Protection%20without%20definition.pdf (08. 06. 2016.)

2 *Ibid.*, p. 8.

3 Miriam, J., AUKERMAN: Definitions and Justifications: Minority and Indigenous Rights in a Central/East European Context. *Human Rights Quarterly*, 22., Nov. 2000, p. 1044. See also Framework Convention, supra note 6, at pmb.l. and Explanatory memorandum, supra note 51, para. 5.

4 Ana Filipa, VRDOLJAK: Minorities, Cultural Rights and the Protection of Intangible Cultural Heritage. *European Society for International Law, Research Forum on International Law Contemporary Issues*, 2005, p. 3.

5 *Ibid.*, p. 3.

but it is a good question to pose whether a definition is needed to deal with the issue effectively in the EU.

Large number of “soft law” measures (plans, recommendations, etc.) introduced in the 1990s help in securing some guidelines in connection with national minorities, and also set some goals which should be achieved in the near future.

On the other hand, in the Council of Europe and United Nations framework the *European Charter for Regional or Minority Languages* (1992, CoE), the *Framework Convention for Protection of National Minorities* (1995, CoE) and the *UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* (1992) contain some promising regulations concerning traditional minorities, and in the EU law the *Treaty on the European Union* and the *EU Charter of Fundamental Rights* mention the importance of non-discrimination based on ethnicity and nationality, and also the respect for minority rights.

One can say that these documents do not represent a breakthrough in the history of minority protection, but according to some experts it was due to preventative enforcement in the 1990s that most national minority-majority conflicts did not escalate into violent conflicts, mainly between 1990 and 1995. However, the OSCE and COE could adopt only those enforcement measures that were agreed upon by their member countries. International society continued to consist of sovereign states, therefore human and minority rights were mainly jeopardized.⁶

Human rights norms has become fully internationalized, but the international system consists of states, which means that the implementation and the enforcement is almost completely in the hands of national authorities. This also applies to the international protection of minority rights, countries can decide on implementation of these rights, they have a wide range of choice in determining their minority policies. Usually states cannot provide an identity neutral environment for their citizens in order to exercise their civil and political rights. States and international organizations can hardly define identity-specific rights, since shared sovereignty, multi-level governance or autonomy is not specifically defined in international documents.⁷

Analysing the mentioned documents and guidelines is not the aim of the paper because there are many other studies dealing with the question on a legal or political basis.

At the same time it has to be mentioned that in the EU framework, according to some experts, the Treaty of Lisbon impacts minority rights and emphasizes the rights of persons belonging to minorities and diversity in general. Previously in the treaties there were many legal bases emphasized in connection with minorities, for instance provisions on free movement, education, culture, regional development, minority cultures and languages had to be taken into account. However, before the

6 Jennifer, JACKSON PREECE: National Minority Rights Enforcement in Europe: a Difficult Balancing Act. *The International Journal of Peace Studies*, 3., 1998/2., pp. 12–13. Source: www.gmu.edu/programs/icar/ijps/vol3_2/Preece.htm (26. 09. 2016.)

7 VIZI: *op.cit.*, pp. 19–20.

Lisbon Treaty the EU minority protection was equivalent to an EU migration policy. Non-discriminatory frameworks did not provide much protection for minorities within their own state, and the existing measures were not effectively implemented.⁸

The post-2009 EU legal framework develops the area of minority questions in certain ways. There is an increase in provisions and case law which can be used in the minority rights context and the legal and policy direction concerning the protection of minority rights within regions is also developing. However, post-Lisbon developments and the EU's protection of minority rights extend only insofar as these rights and groups are already supported at a domestic level. It means that any benefit to minorities arising from these provisions is dependent on the national level, so new developments do not create new minority rights, but only safeguard the existing legal and political sovereignty of Member States.⁹

A common feature to all instruments is that their standards are unclear and they neglect positive measures. None of the treaties and conventions have any sort of sanctions for non-compliance. The Council of Europe conventions only establish monitoring mechanisms, the UN and the OSCE conventions are silent about monitoring mechanisms. In the EU there is a lack of legislation; even though they always call for the respect of minority rights on the international scene. This can be considered as a double-standard: the EU is instructing others to respect minority rights, but the organization itself does not guarantee special rights for its minorities.¹⁰

It is often argued that the institution has more important problems or areas to deal with and to solve than the rights of national minorities, and it is a valid observation. On the other hand, time will never be just right to build up a minority protection system, and the majority of member states will be probably against the whole idea of a new level of minority protection.

In addition, it is also problematic who the initiators, the forerunners of minority protection system in the EU will be, and how they could influence "big power politics" and win the "players"?

As minority rights are often equated to cultural rights, it is important to get a closer look at these rights as well, examine the real content and meaning of cultural rights. In the following, main part of the paper this subject-matter will be analysed from a wider perspective.

8 Tawhida, AHMED: The Treaty of Lisbon and Beyond: The Evolution of EU Minority Protection? *European Law Review*, 2013/1., pp. 32–33.

9 *Ibid.*, pp. 48–50.

10 PÁL Norbert: *Self-determination and minority rights – a dead end for national minorities in post-communist European states to preserve their cultural identity. Is there hope?* Leiden University, LLM Public International Law, 2012, pp. 19–20. Source: www.academia.edu/2215635/Self-determination_and_minority_rights_-_a_dead_end_for_national_minorities_in_post-communist_European_states_to_preserve_their_cultural_identity_Is_there_hope (27. 09. 2016.)

Minority rights = cultural rights?

Minority rights are often defined as cultural rights, or in other words minority communities are seen as cultural communities. It is a partially valid statement, however, an ethnic or minority community has many other characteristics and determining factors.

Often the issue of culture and cultural rights is transferred to the sphere of politics. In societies where many nations live together the existence of a majority and a minority society is either assumed or outright emphasized, and collective cultural rights become national minority rights. Later, the expression of these collective cultural rights can determine the relationship between the majority and the minority, becoming a source of possible latent problems and of conflict interests.¹¹

A minority cultural community can be defined by the following components:

- *the objective component of common heritage and language,*
- *the subjective component of self-identification with the group.*¹²

In case of cultural autonomy, which should be in some cases secured for national minorities, it provides minorities with increased control over issues concerning them. It is limited compared to territorial autonomy and it allows minorities to live their culture through non-territorial structures, such as different associations, irrespective of where these minorities in a given country reside, it is advantageous for minorities dispersed throughout the whole territory of the country.¹³

Culture, similarly to minority, does not have a generally accepted definition, and anthropologists have collected more than 160 different definitions of culture. However, there are widely accepted definitions and some of them will be provided in the followings:

“culture is not a ‘thing,’ a substance with physical reality of its own, but rather made by people interacting, and at the same time determining further action,”¹⁴

“culture is a set of shared and enduring meanings, values and beliefs that characterize national, ethnic, or other groups and orient their behaviour,”¹⁵

culture is therefore something shared by (almost) all members of a social groups, something one tries to pass on, which shapes (through morals, laws, customs) behaviour, or structures, one’s perception of the world.¹⁶

11 FELFÖLDI Enikő: *Minority Rights, Cultural Identity of Minorities, and Cultural Rights in International Law*. Minorities Research 5/Kisebbségkutatás 2. Source: www.hhrf.org/kisebbssegkutasas/mr_05/cikk.php?id=1207 (09. 06. 2016.)

12 FELFÖLDI Enikő: *The Characteristics of Cultural Minority Rights in International Law: With Special Reference to the Hungarian Status Law. The Hungarian Status Law: Nation Building and/or Minority Protection* Ed. KÁNTOR Zoltán et. al. 2004, p. 435.

13 PÁL: *op.cit.*, p. 28.

14 Referred by: Dr. Christine, LEITNER: *Walking the Tightrope – Cultural Diversity in the Context of European Integration. Eipascope*, 2000/1, p. 20. Originally in: Fons, TROMPENAARS – Charles, HAMPDEN-TURNER: *Riding the Waves of Culture. Understanding Cultural Diversity in Business*. Nicholas Bearley Publishing, London, 1997.

15 *Ibid.*

16 Referred by: LEITNER: *op.cit.*, p. 20. Originally in: J. Nancy, ADLER: *International Dimension of Organizational Behavior*. South Western College Publishing, Cincinnati, 1997.

As it can be seen culture means mainly values and beliefs, but also behaviour and action according to these beliefs. In the EU, where many cultures coexist trying to act in conformity with their beliefs and own values, it is not surprising that many problems arise, also making it hard to develop a general framework for minority/cultural rights.

In the EU it is up to the Member States to deal with the cultural rights of minorities, and countries handle the question differently. This also occurs because the Union does not define exact measures or lines which should be followed by member countries. For instance, Article 151 of the EC Treaty declares that “the Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity” and that “the Community shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures”.¹⁷

Also, Article 6 (3) of the Amsterdam Treaty says that “the Union shall respect the national identities of its Member States”.¹⁸

As it was mentioned previously the real meaning of these lines, the explanation is clearly missing and the interpretation is left to the states or different parties. The generalized framing is more favourable for Member States who can find many loopholes in order to neglect the rights of national minorities.

The *right to identity* is clearly connected to cultural and minority rights and it can usually be perceived as the right to exercise a freedom on a continuous basis. Identity is developed and preserved through culture, and in multinational countries, collective identity is generally a function of the minority-majority relationship, therefore cultural rights become ethnic, minority rights.¹⁹ If one considers that everyone has the rights to identity, and for some people belonging to a minority is part of their identity, the neglect of these rights should not be allowed.

“For national minorities the respect for their rights is important not only by reason of their identity. There are two other common causes why national minorities need special rights. First, these are necessary to enable national minorities to realize permanent, substantive equality. Secondly, they are necessary in order to maintain cultural membership and identity, and it influences all decisions made by national minorities.”²⁰

It is problematic that cultural rights, in the absence of any codifying treaty or declaration, can be interpreted diversely, and the scope of these rights depends mainly

17 Treaty establishing the European Community (Amsterdam consolidated version). *Official Journal*, C 340, 10/11/1997 P. 0245, Article 151 (1) and (4).

18 Treaty of Amsterdam. *Official Journal of the European Communities*, C 340, 10 November 1997, Article 6 (3).

19 FELFÖLDI: The Characteristics... *op.cit.*, p. 433.

20 Kisten, PORTER: The Realisation of National Minority Rights. *Macquarie Law Journal*, 3(2003), p. 56.

on the understanding of the term “culture”.²¹ The interpretation of cultural rights has a rather narrow projection, i.e. it means mainly the participation in cultural life, preservation of culture for minorities, the recognition of the rights to different cultural identities. The question is what these words mean in reality. It depends in large, as mentioned earlier, on states and on the political elite. There are many obstacles because of which the implementation of minority policy is problematic.

Dr. Leitner addresses the issue of cultural barriers as well as mentioning that cultural differences affect many areas at a European level such as several policy areas, decision-making processes, the quality of policy implementation, negotiations, communications, the sharing of information, and the relationship with citizen. She also adds that it would be interesting to examine how these cultural differences are reflected in the structure of the EU institutions and their interaction with the Members States and whether they influence the speed of integration or not.²²

“A very significant step forward would be the elucidation of various terms and concepts used by the standard-setting instruments, for instance, regarding the still undefined term cultural identity. At the national level, states could introduce relevant positions in their legislation and constitution.”²³ Also, in democratic and pluralist societies, ethnic and other minorities not only have the right to express their own identity but they are *discriminated positively*.²⁴ The practice shows that this happens quite rarely, in many cases it is difficult to put into practice positive discriminatory measures. In EU Member States there are different policies followed towards traditional minorities which are basically set by the government of the given country. In other words, there are distinct levels and factors of realization of minority policies.

In Central and Eastern Europe the concept of minority rights is a bit different than in other parts of Europe. It has mainly due to historical reasons that minority rights are emphasized by minority groups more frequently; however these issues are often neglected by the political elite. These Central and Eastern European approaches to minority rights also markedly differ from the Anglo-American non-discrimination and individual rights formulas, which fundamentally shaped the international human rights framework in the post-WW II era. It can be said that these Central European ideas of minority protection are similar to the protection of indigenous peoples. Like indigenous peoples, Central and Eastern European minorities claim the right to self-determination and the preservation of their distinctive cultures.²⁵

21 Symonides, JANUSZ: Cultural rights: A neglected category of human rights. *International Social Science Journal*, 158(1998), p. 560.

22 LEITNER: *op. cit.*, p. 21.

23 JANUSZ: *op. cit.*, p. 570.

24 FELFÖLDI: *Minority Rights...*, *op. cit.*, p. 3.

25 AUKERMAN, *op. cit.*, pp. 1022–1023.

A big problem connected to minority rights in Central-Eastern Europe is that addressing minority rights happened and happens largely at governmental and inter-governmental level, and minority groups, in most cases, could not participate in the discussions about standards and structures aimed at protecting them. It means that regional documents related to minorities reflect mainly the concerns of states, and not those of minorities themselves.²⁶

If one considers the other side of the coin, and tries to understand the whole process from a sociological perspective, belonging to a minority group depends mainly on the *choice of a person*. The question of *assimilation* and *integration* comes into picture: in case of traditional or national minorities members of the group can assimilate into the majority society in a sense that they begin to use majority language, attend majority schools, and so on. There is the possibility to integrate into the majority society, which means they “cooperate” with the majority society, while also trying to maintain their own language, culture, customs, and so on.

The disadvantages of the assimilation process can be threefold, or have three sources: historic oppression that still affects the opportunities of members of the group, intentional or unintentional discrimination in economic markets and in civil society against groups whose members differ from the rest of the majority, and state support for a dominant majority culture while minorities have to maintain their culture through private efforts. The purpose of public recognition would be the creation of equal citizenship for minority members, so they would not be forced to assimilate into the majority culture.²⁷

As cultural rights cannot be easily enforced, mainly because they belong to the *second generation of human rights* (just like economic and social rights), the intervention and active attitude of the state is required so that these rights could prevail. As the aim of cultural rights is to protect the given community, the state has to set rules in order to realize this protection. However, it is very rare that a constitution or other instruments or provisions regard these rights, but different laws can be adopted by the state. It is difficult that states not only have to be active in legislation connected to cultural rights (also can be said: minority rights), but they have to safeguard them which can be very expensive. It follows from all this that these rights are realized continuously and gradually, the state only “make efforts” and “seeks” to ensure them, and very often states only want to achieve or maintain the minimum level of commitment in connection with their domestically or internationally set standards. Since second-generation rights are only indirectly interpreted in judicial applications, for instance political rights are interpreted in the light of economic or cultural rights; these can be often ignored and are rather relative.²⁸

26 AUKERMAN, *Ibid.*, p. 1025.

27 Rainer, BAUBÖCK: *Territorial or cultural autonomy for national minorities?* IWE – Working Paper Series, 22 (December 2001), 3. Source: <https://eif.univie.ac.at/downloads/workingpapers/IWE-Papers/WP22.pdf> (27. 09. 2016).

28 FELFÖLDI: *Minority Rights... op. cit.*, pp. 5–6.

However, as Will Kymlicka explains “the idea of responding to cultural differences with benign neglect makes no sense. The state unavoidably promotes certain cultural identities, and thereby disadvantages others. Group-differentiated rights – such as territorial autonomy, veto powers, guaranteed representation in central institutions, land claims, and language rights – can help rectify this disadvantage, by alleviating the vulnerability of minority cultures to majority decisions. These external protections ensure that members of the minority have the same opportunity to live and work in their own culture as members of the majority.”²⁹

It is evident that minority groups refer to their uniqueness and their differing situation in contrast to the majority. According to members of minority groups they are in a disadvantageous situation, and protective measures and different rights can facilitate their equal situation to majority.

Central-Eastern European minorities, and indigenous peoples as well, have used the concept of “equality in difference” to justify their group-differentiated rights. Also, these minorities justify measures to protect their societies based on the distinctiveness of their cultures as a value in and of itself. The equality justification, which focuses on the need to treat people differently in order to treat them equally, and the cultural diversity justification, which emphasizes the intrinsic value of cultural difference, is the same for indigenous peoples and for Central European minorities as well.³⁰ In reality, the “equality in difference” is not an option for national minorities, as positive discrimination measures have to be waited for as well. Presently, minority groups face negative discrimination more rarely than positive, and states` behaviour have damageable effects on these groups.

Policies of national cultural development often imply a policy of genocide which means that cultural groups suffer destruction. For instance, letting a minority language die out can be seen as a linguistic genocide which has four stages: attempting to kill a language, letting a language die out, unsupported co-existence, partial support for specific language functions.³¹

On the other hand, cultural autonomy could initiate inequalities of resources between national groups. Each community has to finance its own cultural institutions; therefore economically weak groups will be unable to afford a good education system, for instance. It means that for them cultural autonomy or enjoying cultural rights is insufficient to stop the trend of assimilation into the majority which is economically more prosperous (these characteristics are also true for territorial autonomy).³²

It means that in case these groups do not assimilate, and cultural autonomy is not reached in the given country they become completely subordinated to the majority` s rule and decisions.

29 Referred by AUKERMAN: *op. cit.*, pp. 1028–1029. Originally in: Will KYMLICKA: *Multicultural Citizenship. A Liberal Theory of Minority Rights* 46, 1995.

30 AUKERMAN, *op. cit.*, pp. 1037–1038.

31 FELFÖLDI: *op. cit.*, p. 434.

32 BAUBÖCK: *op. cit.*, p. 13.

In other words, an important foundation of democracy is missing in the EU. If democracy means the rule of the majority, then we have to ask: why should a member of a minority group accept the majority's decision as legitimate? They can only do so, if they trust that the majority is benevolent towards the minority, and cares about the collectivity as a whole. True democracy can exist if 'thick' collective identity - resting on the existence of a civil society, on shared experiences and expectations, on ongoing process of public communication - exists. But while a critical public system of communication exist on the level of European nation states, it does exist not on the level of the EU as a whole.³³

The problem is that the only parties wanting to implement the minority rights standards in a given member state are the minority parties, but they are often outvoted by the majority in national parliaments, and so their efforts to adopt legislations for national minorities are also failing. The majority complies with the Framework Convention, for instance, or with other international standards because effective monitoring mechanisms are clearly missing, and it makes this compliance easy without taking any further steps.³⁴

European standards could resolve the question and conflicts connected to minority rights with addressing claims for positive minority rights. The formulation "*right to enjoy one's own culture*" is too weak in order to address the issues underlying ethnolnational conflicts and to solve the problem of national minorities. On the other hand, "*internal self-determination*" is too strong to be accepted by many countries.³⁵ The possible solution should be found halfway between the two extremes and in the next part of the paper some possibilities will be mentioned which could be accepted by the majority and minority as well.

However, as it stands nowadays, states are quite far from adopting positive discriminatory measures towards minorities. It is also true, though, that they could reconcile the individual and the collective side of human rights, and harmonize the principle of equality of citizens with the right to diversity.³⁶ Conflicts and differing interests between majorities and minorities make reconciliation and harmonization in most cases almost impossible, and the "world of politics" also significantly affects these attempts. As the minority question is a very sensitive issue, not only in Europe or in the EU, but globally as well, a *modus vivendi* should be found between the concerned parties.

33 Andreas BUSCH: *The Problems of Representing Diversity. Whose Europe? National Models and the Constitution of the European Union*. Eds. Kalyso NICOLAIDIS, Stephen WEATHERILL, -Papers of a Multi-Disciplinary Conference held in Oxford in April 2003, 121.

34 PÁL: *op.cit.*, 25.

35 Will KYMLICKA: *A European Experiment In Protecting Cultural Rights*. Human Rights Dialogue: "Cultural Rights"(Spring 2005) - Carnegie Council for Ethics in International Affairs, 2016, 4.

36 FELFÖLDI: *op.cit.*, p. 12.

Some possibilities for national minorities

Many experts or thinkers, but also minority representatives try to find the possible solution in order to put national minorities at a better situation in EU Member States, or offer some solution which could be acceptable for the majority and minority as well. The complexity of the minority situation, but also getting the acceptance of European decision-makers in order to put the question to EU agenda is very difficult and also unrealistic at this point. The non-existing minority protection policy of the EU basically shows, among other things, how complicated it is to deal with the topic.

In this section of the paper a possible solution will be presented which according to some experts could be a proper way in handling the topic of minorities in majority-minority relations.

As it was mentioned by some professionals the *European Citizens' Initiative* and the *Open Method of Coordination* would serve as a good starting point in order to deal with minority issues. The Citizens' Initiative is a proposal for the European Commission to pass legislations on certain matters (for instance, minority issues). The initiative has to come from one million EU citizens and at least from seven Member States.

The Open Method of Coordination makes the cooperation among several Member States possible that would like to form partnerships concerning topics affecting them. These Member States can amend their laws based on their goals on the given policy area, but the OMC does not result in binding legislation because it only affects the cooperating States. In minority questions, as it does not concern all members of the EU, the OMC would be a very adequate solution, and also the most probable way for realization.

Besides these possibilities which were analysed by others as well, one way of handling minorities and minority rights would be *national-cultural autonomy*. If one considers the realization of this form of autonomy, it is necessary to reconcile the fear of the nation state of losing its territorial integrity with a nation state system that recognizes territorial control as the basis of legitimacy. Without the support of the nation state it is very difficult for national minorities to protect and promote their rights, they lack the resources to implement programs.³⁷ It is hard to solve the problem based on equality, which would mean the nation state secures rights or even cultural or territorial autonomy for a minority group and the minority group uses it with respect towards the nation state. This would be an ideal, but unlikely situation.

Secondly, the *consociational power-sharing* arrangements have to be mentioned. According to some experts, consociationalism would be a possible solution in interethnic power relations in accession countries (but also in EU Member States).

Arend Lijphart sees consociationalism as a *model of democracy* and government in societies with ethnic, religious or cultural cleavages. It is characterized by a grand

37 PORTER: *op. cit.*, pp. 61. and 65.

coalition of the political leaders of all significant segments of a pluralistic society, veto rights of all partners, a high degree of autonomy for each segment, proportionality in political participation, civil service appointments and allocation of public funds.³⁸ The representation of minorities through political parties is probably the most obvious achievement of consociational power-sharing. Interethnic cooperation exists to some extent realizes in many EU Member States, and the EU also tries to promote cooperation in minority-majority relations on a domestic level.

Consociational power-sharing has been criticized for being ineffective in preventing conflicts. On the other hand, it is also true that it can work well together with institutions facilitating cross-ethnic alignment, and consociational strategies are often linked to such institutions, mainly in Central and Eastern European countries.³⁹

As it was mentioned previously, consociational power sharing is also based on mutual respect, reliance and cooperation between the majority and the minority. It presumes good relations among parties, without which consociational power sharing cannot be realized. However, in most countries this friendly relationship is clearly missing.

Also, in case of cultural autonomy, it can hardly be combined with the representation of minorities in federal governments because the two types of governments are not similar. It is generally not impossible to give non-territorial communities a share in the territorial government of a state, consociationalism achieves this. In spite of this, it is difficult to combine forms of non-territorial autonomy with representation in territorial federal government.⁴⁰

Will Kymlicka argued that nation-building activities of ethnic minorities have to be accepted, and states may restrict these efforts only by ensuring individual liberties. According to him *territorial autonomy* is a possible and legitimate arrangement to protect a national minority. He also referred to Central and Eastern Europe in this context, mentioning that territorial autonomy has functioned well in the West, so it has to be considered in Eastern and Central Europe as well.⁴¹ At the same time it also has to be mentioned that in Central and Eastern Europe the situation and the history of national minorities is very different from other parts of the world. Historical and political reasons make the issue more delicate, and the differing characteristics of minorities put the supporters of national minorities into a complicated situation.

Since in most cases national/traditional minorities do not seek independent statehood; their goal is to have political representation and institutions that guarantee the continued reproduction of the community. In some sense it is analogue to *substate nationalism*, which pertains to groups that view themselves as rightful owners of a

38 Martin BRUSIS: The European Union and Interethnic Power-sharing Arrangements in Accession Countries. *Journal on Ethnopolitics and Minority Issues in Europe*, 14(2015)/4., pp. 65–66.

39 *Ibid.*, p. 74.

40 BAUBÖCK: *op. cit.*, p. 25.

41 BRUSIS: *op. cit.*, p. 73.

homeland, but that have no state to call their own.⁴² Although, national minorities have home countries in most cases, they live in other (mainly neighbouring) states as a result of their own decision or different circumstances.

Beside substate nationalism *transsovereign nationalism* can also be mentioned which applies to nations that reach beyond current state boundaries, but they renounce the idea of border changes. For instance, in case of Hungary the post-communist Hungarian government has designed pluralist minority policies domestically and pursued a non-traditional national project for Hungarians beyond the borders. This is related to substate nationalism, but it is coordinated by the national centre which is also the political centre of the state.⁴³

Transsovereign nationalism can cause problems and animosities between the kin-state and the state of residence of the minorities. It is always a delicate issue: if the kin-state supports its minorities from outside, it can be interpreted as intervention into domestic affairs, which makes the relations between two countries worse.

Homeland community also represents the situation of national minorities. These communities consider the place where they have a lengthy history to be their homeland, they usually have a historiography, geography, and literature that tell the story of the link between the community and the territory, and they seek some form of self-government in that homeland. Many times, the same territory is considered a homeland by more than one community.⁴⁴

The “rise” of substate nationalism or of the homeland community is hugely dependent on the home state, on the given Member State. As it was presented, the EU uses mainly “soft” measures in order to deal with national minorities, so minority questions belong to national competency. In spite of that, national minorities often try to seek help from the EU in legal, political or practical issues connected to their situation and rights.

It seems thus far that the EU puts mainly anti-discriminatory policies into its treaties and other instruments which can be used for minorities in general, and can provide the minimum requirement, or the starting point for future achievements. It is more likely, however, that the institution will remain at the non-discrimination principle, and will not take on other measures valid for the Union as whole. In some sense it seems that ethnic minorities claim “more rights” than the majority possesses. The self-government of the minority is seen by the majority as a right which puts them into a better situation, because these rights cannot be enjoyed by the majority or by other citizens.

42 CSERGŐ Zsuzsa – James M. GOLDGEIER: *Nationalist Strategies and European Integration*. The Hungarian Status Law. Nation Building and/or Minority Protection. Eds. KÁNTOR Zoltán, MAJTÉNYI Balázs, Osamu IEDA, VIZI Balázs, HALÁSZ Iván. Hokkaido University, Slavic Research Center, Sapporo, 2004, p. 279.

43 *Ibid.*, pp. 283–284.

44 *Ibid.*, p. 279.

On the other hand, functional and empirical arguments are against the territorial autonomy of CEE countries. It causes a high security risk because of the perception of majorities, and so it is likely that it exacerbates conflicts. The presence of ethnic kin states makes the situation even more difficult.

It also has to be added that in national minority topics the Central European states are affected the most. In the European Union as a whole the negligence can be to some extent understood, the minority issue does not concern the majority of countries. In States where national minorities live the consociational model would be a proper solution; however, it is hard to realize it because of the clashes of interests among the majority and the minority. Decision-makers are also afraid that minorities will claim more and more rights, as mentioned earlier, which in some cases could lead to territorial autonomy, or other groups of the society will also feel themselves authorized to acquire more benefits. It seems the EU minority protection policy will never be completed: the affected Member States and representatives of minorities have to initiate further negotiations on the topic, and they will have to deal with minority protection domestically.

As Bauböck argues, the conflict between national minorities and nation-states is not primarily about culture, but about the division of state power and the boundaries of political communities. The question is about the organization of multinational polities so that several projects of a political community can coexist. It is possible that cultural autonomy would harden the boundaries of national communities.⁴⁵

As it looks nowadays, consociational power-sharing would be one of the possible solutions for minority issues, however this cooperation needs mature and collaborative parties from both sides in order to successfully implement the project. Only the future will tell whether this or other forms of cooperation will come into existence.

Conclusion

In the paper some topics connected to traditional minorities of the European Union were analysed. It became clear that in spite of EU rules on minorities there are many “soft law” instruments, and a couple of international documents and EU treaties which could serve as a basis for minority protection, declaring mainly the importance of anti-discrimination towards national, ethnic and other minorities.

The rights of traditional minorities are often referred to as cultural rights, but it is only partly correct. National minorities in many cases claim also political rights, rights to self-determination, territorial rights, and so on. These rights in many cases cannot be respected by the decision-makers because, if fulfilled, minorities would be positively discriminated against the rest of the population, gaining “more” rights, which would not be supported by the majority. On the other hand, representatives

45 BAUBÖCK: *op. cit.*, p. 30.

of minorities in many cases can decide whether they would like to be a part of the minority group, assimilate or integrate into the majority society. It is the decision of the individual who enjoys the benefits and also suffer the possible disadvantages of belonging to a minority group.

Considering the evolution of the EU's minority protection system, it can be concluded that the situation and rights of minorities are not really developing. The lack of Member State interest, the pressing or more urgent questions of the organization, the consolidation of the economic and political situation all serve as hindrances from the focus on minorities, and "soft measures" evolve very slowly.

Finding a universal solution would prove almost impossible because minorities, and nations keep changing. Thus, even if there was a single model solution, it would lose its effectiveness over time, and each situation must be considered separately. Everything the nation-states do have significant cultural implications and a direct impact on the self-expression of national minorities.⁴⁶

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46 PORTER: *op. cit.*, p. 70.

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The Framework Convention: a key tool to managing diversity through minority rights

COUNCIL OF EUROPE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES ADVISORY BOARD 4TH THEMATIC COMMENTARY

Executive summary

Diversity has been an integral part and a major asset of European societies for centuries. It remains an essential feature of contemporary societies. The purpose of the Commentary is to consolidate the manner in which the Advisory Committee has interpreted, over the years, the scope of application of the Framework Convention for the Protection of National Minorities (ETS No. 157), bearing in mind specific societal, economic and demographic developments.

The Commentary shows that, since 1995, the Framework Convention has been and continues to be a key tool for states to accommodate increasing pluralism through minority protection in a way that carefully balances broader societal concerns with individual rights. It supports states parties in managing diversity by creating appropriate societal conditions that allow for the expression and acknowledgement of difference, for equal access to rights and resources despite difference and for social interaction and inclusion across difference.

The Framework Convention is based on the principle that the protection of national minorities is essential to stability, democratic security and peace. Its main purpose is to prevent interethnic tensions and to promote dialogue in open and inclusive societies. Accordingly, the Commentary underlines that the Framework Convention addresses society as a whole and not just individuals or specific groups. Rather than asking “who” should be protected, it asks “what” is required to manage diversity most effectively through the protection of minority rights. It is for this reason that the Convention does not contain a definition of the term “person belonging to a national minority”.

The Framework Convention was deliberately conceived as a living instrument. Its interpretation must be adjusted regularly to ensure that minority rights can be enjoyed effectively in societies that are affected by constant transformation, including through mobility and migration. The right to free self-identification is central to minority protection, including multiple and situational affiliations. It must not be disregarded through imposed categorisation based on predetermined characteristics. Individuals self-identify and form communities through a variety of evolving shared practices and through the common exer-

cise of rights. Societal changes also have an impact on identity perceptions of individuals and of communities and thereby on the applicability of minority rights.

Among the broad range of rights contained in the Framework Convention, some explicitly apply to all individuals in the territory of the state, while the application of others may be linked to specific conditions. When examining the implementation of the Framework Convention by states parties, the Advisory Committee has therefore consistently encouraged the authorities to be inclusive and context specific and to consider, on an article-by-article basis, which rights should be made available to whom in order to ensure the most effective implementation of the Framework Convention based on facts rather than status.

The Commentary concludes that access to minority rights can only be ensured in a society where dialogue, understanding and cultural diversity are viewed as sources of enrichment rather than of division.

Part I. Introduction

1. This Commentary is intended to provide guidance to states parties to the Framework Convention, to persons belonging to national minorities, to international organisations and to civil society and academia regarding the ongoing debate on the scope of application of the Framework Convention. It is based on a close comparative and analytical reading of the Opinions adopted by the Advisory Committee throughout four cycles of monitoring in the states parties since 1998,¹ and builds on three previous thematic commentaries that were adopted by the Advisory Committee: on education in 2006;² on effective participation in public life in 2008;³ and on language rights in 2012.⁴ Valuable input has also been collected from national minority and civil society representatives,⁵ academics and other interlocutors, including during broader consultations held in the final stages of the drafting process.

2. Minority rights are granted at the individual level to each person belonging to a national minority. It is further specified in Article 3(2) of the Framework Convention that minority rights are “exercised individually and in community with others”. In fact, a number of rights only make sense if exercised in community with others, and

1 The Commentary makes references to first, second, third or fourth cycle, country-specific Opinions where findings of particular relevance to the scope of application were made. These references are illustrative only.

2 See Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC) First Commentary on Education under the Framework Convention for the Protection of National Minorities, ACFC/25DOC(2006)002, 2 March 2006, www.coe.int/minorities.

3 See ACFC Second Commentary on the Effective Participation of Persons belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs, ACFC/31DOC(2008)001, 27 February 2008, www.coe.int/minorities.

4 See ACFC Third Commentary on the Language Rights of Persons belonging to National Minorities under the Framework Convention, ACFC/44DOC(2012)001, 24 May 2012, www.coe.int/minorities.

5 See ACFC Third Commentary on the Language Rights of Persons belonging to National Minorities under the Framework Convention, ACFC/44DOC(2012)001, 24 May 2012, www.coe.int/minorities.

the enjoyment of some rights presupposes the presence of or even formal association with others. Minority rights therefore have an individual, a social and a collective dimension. Despite the fact that a number of international instruments make reference to minority cultures, languages or traditions, and some common understanding exists as to what the term ‘minority’ entails, there has never been a universally shared definition.⁶ In line with this tradition, the Framework Convention does not contain a definition of the term ‘national minority’ or of the phrase ‘person belonging to a national minority’. As a result, the question of who is to be recognised as a right holder under the Framework Convention has, since its adoption, been the subject of extended debate at international and national, academic and political levels.

3. It is the goal of the Framework Convention to ensure that the space for diversity and for being “different” in society is protected and affirmed, thereby promoting the integration and cohesion of societies.⁷ Broader questions relating to the integration of societies have therefore always featured in the monitoring work of the Advisory Committee, sometimes resulting in disapproval by the respective state party.⁸ Indeed, as a result of the increased diversity of European societies in recent years, increased attention has been paid by a number of actors to the imperative of forming inclusive and integrated societies where diversity is respected and preserved.⁹ With that in mind and in order to clarify both the personal and substantive reach of its work, the Advisory Committee considers it appropriate to devote its Fourth Thematic Commentary to the Framework Convention’s scope of application.

4. The adoption of the Framework Convention in 1995, in the aftermath of violent conflicts in Europe, as the only legally binding international instrument on the rights of persons belonging to national minorities, firmly anchored the protection of minority rights within the universal set of multilaterally recognised human rights. Minority rights, according to Article 1 of the Framework Convention, form part of the international human rights protection system, which is based on the premise that everyone is born free and equal in dignity and rights.¹⁰ The purpose of embracing minority rights as an integral part of human rights was not to challenge the notion of equality

6 See *travaux préparatoires*, various attempts in the Parliamentary Assembly of the Council of Europe (PACE), and, in particular, the Commentary of the Working Group on Minorities to the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

7 See the Preamble of the Framework Convention: “[...] Considering that the creation of a climate of tolerance and dialogue is necessary to enable cultural diversity to be a source and a factor, not of division, but of enrichment for each society [...]”

8 See, *inter alia*, First Opinion on Denmark and Government Comments on the First Opinion on Denmark, and First Opinion on Germany and Government Comments on the First Opinion on Germany.

9 The increased preoccupation with integration-related issues is, for instance, reflected in the work of the OSCE High Commissioner on National Minorities (HCNM) (see Ljubljana Guidelines on Integration of Diverse Societies November 2012) as well as in the fact that the European Commission against Racism and Intolerance (ECRI) has included integration policies in the four topics common to all member states in its fifth round country reports.

10 See Article 1 of the Universal Declaration of Human Rights.

among all individuals, but to advance it further by establishing a set of specific rights for persons belonging to national minorities to ensure that they are enabled to participate fully and equally in society while being protected from assimilation. Importantly, persons belonging to national minorities require guarantees to enable them: (i) to express difference and to have that difference recognised; (ii) to gain equal access to resources and rights despite difference; and (iii) to engage in social interaction on the basis of respect and understanding across difference.

5. The superficial conclusion is sometimes made that the application of the Framework Convention, given the absence of a definition of national minority, is in practice left solely to the discretion of states parties. This interpretation, however, is incorrect. It runs counter to Article 26 of the Vienna Convention on the Law of Treaties and the basic principle of *pacta sunt servanda*. The purpose of this Commentary is to make it clear that the absence of a definition in the Framework Convention is indeed not only intentional but also necessary to ensure that the specific societal, including economic and demographic, circumstances of states parties are duly taken into account when establishing the applicability of minority rights. The Framework Convention was deliberately conceived as a living instrument whose interpretation must evolve and be adjusted regularly to new societal challenges. Multiple identities and increasing mobility, for instance, have become regular features of European societies. However, such features must not limit access to minority rights. This approach is fully in line with the principle of dynamic interpretation developed by the European Court of Human Rights with respect to the European Convention on Human Rights.

6. While the Framework Convention binds states parties from its entry into force within the domestic jurisdiction, its framework character nevertheless requires additional legal instruments at domestic level to make it fully operational. In many states, definitions of rights holders have been established in domestic legislation to give effect to the provisions laid down in the Framework Convention. The Advisory Committee has consistently acknowledged that states parties have a margin of appreciation in this context, but has also noted that this margin must be exercised in accordance with the general rules of international law contained in Articles 31 to 33 of the Vienna Convention on the Law of Treaties. In particular it must be exercised in line with the obligation to interpret a treaty in good faith and in the light of its object and purpose. In the case of the Framework Convention, its fundamental principles set out in the Preamble remind states parties to seek maximum expression of the spirit of friendly relations and co-operation in all of their actions pertaining to minority protection. Moreover, its Article 2 underlines the essential character of the principles of good faith, good neighbourly relations and non-interference in another state's internal affairs to ensure that the many diverse interests that are affected in the implementation of the Framework Convention can be reconciled by states parties.¹¹

11 See also the Framework Convention's Explanatory Report, paragraph 32: "This article provides a set of principles governing the application of the Framework Convention. [...] The principles mentioned in this provision are of a general nature but do have particular relevance to the field covered by the Framework Convention".

7. When examining the approaches taken by states parties with regard to the scope of application of the Framework Convention, the Advisory Committee has therefore consistently encouraged the authorities to be inclusive and context specific and to consider on an article-by-article basis which rights should be made available to whom. Such an approach not only ensures the most effective implementation of the Framework Convention based on fact rather than status, but it also promotes a societal climate of dialogue and understanding, where cultural diversity is viewed as a source of enrichment rather than division.

8. This Commentary begins with an analysis of the right to free self-identification of persons belonging to national minorities as a cornerstone of minority rights (Part II). It thereafter discusses the various practices developed by states parties to define the beneficiaries of minority rights according to personal and other criteria (Part III). Part IV explains the open and contextual approach that has been applied by the Advisory Committee throughout its monitoring activities in line with the basic principles contained in Articles 3-6 of the Framework Convention. Based on the article-by-article approach developed by the Advisory Committee from its inception, Parts V-VII present an analysis of the scope of application of the various rights contained in the Framework Convention. While some articles explicitly address all persons in the territory of the state party (Part V), there are some minority rights with a broad scope of application that, given their nature, must apply to all national minorities (Part VI), while there are other minority rights where states parties may require specific pre-conditions for their enjoyment (Part VII).

Part II The right to free self-identification

1. General considerations

9. The right to free self-identification contained in Article 3 of the Framework Convention is a cornerstone of minority rights.¹² The Advisory Committee has consistently underlined the centrality of this provision. “Free” implies, in this context, the individually established and informed decision to avail oneself of the protection of the Framework Convention. Article 3 is thus necessarily applicable to everyone, as every person must have the right to identify freely as a member of a specific group, or to choose not to do so. The Framework Convention’s Explanatory Report points out, however, that the choice of the individual is not to be arbitrary but must be linked to some objective criteria.¹³

12 According to Article 3(1), “Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.”

13 According to para. 35, Article 3(1) “does not imply a right for an individual to choose arbitrarily to belong to any national minority. The individual’s subjective choice is inseparably linked to objective criteria relevant to the person’s identity.”

10. The Advisory Committee has intentionally refrained from interpreting what such objective criteria may be, as it is clear from the wording of the Explanatory Report that they must only be reviewed vis-à-vis the individual's subjective choice. Thus, objective criteria do not constitute elements of a definition. Self-identification begins with the free decision of the individual which, if no justification exists to the contrary, is to be the basis of any personal identification.¹⁴ In the view of the Advisory Committee, a person's free self-identification may only be questioned in rare cases, such as when it is not based on good faith. Identification with a national minority that is motivated solely by the wish to gain particular advantages or benefits, for instance, may run counter to the principles and purposes of the Framework Convention, in particular if such action diminishes the intended benefits and rights available to persons belonging to national minorities.

11. While the official recording of a self-identification may, in some cases, require the evidence of objective criteria,¹⁵ a minority identity must not be externally imposed. The Advisory Committee has criticised the mandatory recording of ethnicity in identity documents or in internal records of administrative entities, including the police and health care facilities, as contrary to the right to free self-identification.¹⁶ Moreover, it has considered that free self-identification implies the right to choose on a situational basis when to self-identify as a person belonging to a national minority and when not to do so.¹⁷

12. In practice, this means that each person belonging to a national minority may freely decide to claim specific rights contained in the Framework Convention, while under certain circumstances or with respect to certain spheres of rights, he or she may choose not to exercise these rights.¹⁸ Such individual decisions must, however, not result in disadvantages for other individuals identifying with the same minority by precluding them from claiming their minority rights. In this context, the Advisory Committee has reiterated its view that any numerical thresholds established as a precondition for the applicability of certain minority rights must be interpreted flexibly (see also paragraph 82). Otherwise, an indirect obligation to self-identify would be placed on persons belonging to national minorities in order to ensure that access to a specific right is maintained. At the same time, the individual decision to identify or

14 See also General Recommendation VIII of the Committee on the Elimination of Racial Discrimination (1990).

15 See also *Ciubotaru v. Moldova* (application no. 27138/04), Judgment of 27 April 2010, where the European Court of Human Rights acknowledged the right of a government to require the existence of objective evidence of a claimed identity.

16 See Fourth Opinion on the Czech Republic, First Opinion on Germany, Third Opinion on Ireland, First and Third Opinions on the Russian Federation and First and Second Opinions on Ukraine.

17 See Fourth Opinion on the Czech Republic, First Opinion on Germany, Third Opinion on Ireland, First and Third Opinions on the Russian Federation and First and Second Opinions on Ukraine.

18 Persons belonging to national minorities may for instance take an informed decision to enrol their children in mainstream schools without suffering any disadvantages in terms of access to other minority rights as a result, and without such a decision having an impact on the general availability of minority language education to other members of the same group.

not to identify with a particular minority must be respected by others who affiliate themselves with the same group and who equally must not exert pressure one way or the other.

13. The right to free self-identification also extends to multiple affiliations. In fact, the Framework Convention implicitly acknowledges multiple affiliations by promoting the preservation of minority identities in parallel to successful and effective integration in broader public life. Persons belonging to national minorities should never be obliged to choose between preserving their minority identity or claiming the majority culture, as both options must be fully available to them.¹⁹ This implies that practices by which an individual affiliates with a particular minority should not be seen as exclusive, as he or she may simultaneously identify with other minorities or with the majority.²⁰ In some instances, such a choice may be the consequence of previous assimilation processes into the majority or into another dominant minority. However, this must not be used as an argument against the rights of persons belonging to national minorities to self-identify freely and to claim minority protection.

14. The Advisory Committee has further called on states parties to ensure that all persons and groups who may benefit from the Framework Convention are made aware and enabled to avail themselves of the right to self-identify freely in order to access the rights contained in the Framework Convention. This is the case when the choice of affiliating with a minority is not made difficult in practice and when it is assured that the choice is made free of fear of resulting disadvantages or of loss in social prestige.

2. Free self-identification in the context of census and other general data collection processes

15. In countries where data on national, ethnic or religious affiliation are collected in the context of broader population census exercises, such exercises must be organised and conducted in line with internationally recognised principles, including personal data protection standards.²¹ It follows further from the right to free self-identification that any participation in data collection exercises related to ethnic background must be voluntary. In particular, there must be no automatic inference from a particular indication (for example language use) to another indication (for instance religion, ethnicity) and no assumption of certain linguistic, religious or ethnic affiliations is to be made based on a person's name or other characteristics.²²

19 See also First and Third Thematic Commentaries (footnotes 2 and 4).

20 This may for instance occur in mixed families where several languages are spoken on an equal basis.

21 This may for instance occur in mixed families where several languages are spoken on an equal basis.

22 See, for example, consecutive Opinions on Italy and the United Kingdom.

16. The right to free self-identification applies in each data collection exercise separately. This means that persons belonging to national minorities must not be required always to self-identify in the same manner. Lists of possible responses to identity-related questions should be open not closed, and the opportunity to express multiple affiliations should be provided explicitly. Given the importance attached in some states parties to the size of a minority population for access to minority rights, multiple affiliations must also not only be recorded but also adequately processed, analysed and displayed. These considerations on the collection, processing and reporting of data must also be applied to other situations (for example school enrolment) that can imply self-identification.

17. In situations where the enjoyment of particular minority rights is linked to numerical thresholds,²³ the right to free self-identification further requires that persons belonging to national minorities are informed of the importance attached by the authorities to census and other data collection exercises. The Advisory Committee has therefore systematically encouraged states parties to make all information on the methodology and aim of data collection available in the languages of national minorities, and to include persons belonging to national minorities in the organisation and operation of such processes, particularly in areas where national minorities are settled in substantial numbers.²⁴

18. At the same time, the Advisory Committee has cautioned states parties against exclusively relying on official statistics and figures, as these, for a variety of reasons, may not fully reflect reality.²⁵ Results should be reassessed periodically and analysed flexibly, in close consultation with minority representatives. Authorities should also further avail themselves of other sources of information, including the general labour force and other surveys, as well as independent qualitative and quantitative research available on issues pertaining to the access to rights of persons belonging to national minorities.

23 The opening of minority language schools or the official use of minority languages at local level, for instance, may be linked to the actual number of persons belonging to national minorities (see also Part VII).

24 See, for example, Third Opinion on Hungary and Second Opinion on Slovenia.

25 Due to a history of past disadvantage, discrimination or even persecution based on ethnic origin, some persons belonging to national minorities are still unwilling to indicate their ethnic background to any official entity. Misperceptions about the use or apparent dangers inherent in census exercises are sometimes disseminated among minority communities for political purposes with the very aim of preventing them from being counted in high numbers.

Part III Approaches taken by states parties to the scope of application of the Framework Convention

1. Declarations and reservations at the time of ratification

19. The Framework Convention is open for signature by member states of the Council of Europe and, in principle, also by other states.²⁶ There are currently 39 states parties to the Framework Convention, all of them member states of the Council of Europe. The last ratification took place in 2006 when Montenegro became a party to the Convention.²⁷ In addition to the 39 states parties, where the implementation of the Framework Convention is monitored by the Advisory Committee, Kosovo* is subject to a specific monitoring arrangement in conformity with the 2004 Agreement between the United Nations Interim Administration in Kosovo (UNMIK) and the Council of Europe.

20. Eight Council of Europe member states are not parties to the Framework Convention. Belgium, Greece, Iceland and Luxembourg have signed the Framework Convention and have therefore committed themselves to act in line with the objectives and purpose of the Framework Convention,²⁸ while Andorra, France, Monaco and Turkey have neither signed nor ratified the treaty.

21. The Advisory Committee considers that the implementation of the rights contained in the Framework Convention, given its objectives of managing diversity through the effective protection of minority rights,²⁹ and promoting balanced approaches to the sometimes conflicting goals of individual rights protection and the safeguarding of broader state interests, is beneficial to all societies. It notes that any reasoning provided in the 1990s for not ratifying the Framework Convention must be regularly reassessed as societies have substantially changed since then. Similarly, the argument that no national minorities exist in the country may well no longer reflect contemporary realities. For the same reason, the Advisory Committee also regularly invites states parties that have not yet done so to ratify the European Charter for Regional or Minority Languages (ECRML, ETS No. 148). While placing the emphasis on the obligation of the state to protect and promote regional or minority languages as part of cultural heritage, rather than granting individual rights to the speakers of these languages, the Charter represents a unique international instrument in this field and plays a complementary role to the Framework Convention.³⁰

26 See the wording of Article 27 of the Framework Convention.

27 Following the declaration of independence on 3 June 2006, the Framework Convention was ratified on 6 June 2006. * All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

28 See Article 18 of the Vienna Convention on the Law of Treaties.

29 See Explanatory Report, paragraph 28.

30 See also Third Thematic Commentary (footnote 4), paragraph 11.

22. According to Article 27 of the Framework Convention, non-member states of the Council of Europe may ratify the Framework Convention upon invitation by the Committee of Ministers. The Explanatory Report makes it clear that Article 27 refers to participating states of the Organization for Security and Co-operation in Europe (OSCE). The Advisory Committee agrees that the Framework Convention could indeed be particularly relevant in some OSCE participating states, such as Central Asian states, due to the broad diversity of their societies. It further notes that some interest in this regard has already been expressed. In line with its general principle of dynamic interpretation, it considers however that the Explanatory Report should not be understood as preventing other states that co-operate with the Council of Europe in a variety of ways, including as observer states, from becoming a party to the Framework Convention.

23. States parties to the Framework Convention have developed various approaches to establish the beneficiaries of the rights contained in the Framework Convention. In 18 cases, declarations and reservations were deposited at the time of ratification or signature, clarifying to whom the rights contained in the Framework Convention are to be applied or how certain provisions are to be interpreted.³¹ The declarations typically either establish a general definition with specific criteria that must be met,³² list explicitly which groups are to be covered,³³ or state that there are no national minorities present in the territory.³⁴ Reservations at the time of signature or ratification were declared in two cases.³⁵

24. The Advisory Committee has systematically reviewed the effects of these declarations and reservations on persons belonging to national minorities and on their access to rights. Given that, in many cases, the declarations date back to the late 1990s, and taking into account the substantially changed conditions in states parties since then, their pertinence should be reviewed at regular intervals by the states parties concerned to ensure that the approach to the scope of application accurately reflects the present-day societal context.

25. Other states parties have incorporated statements into the first state report or have adopted national legislation containing references to the groups of persons who are to be considered as belonging to national minorities. These definitions, again, are usually formulated as delimitations to the scope of application, either by explicitly

31 See Full List of Reservations and Declarations for Framework Convention for the Protection of National Minorities (ETS No. 157) www.coe.int/en/web/dlapil/treaty-office.

32 See the declarations by Austria, Estonia, Latvia, Luxembourg, Poland and Switzerland.

33 See the declarations by Albania, Denmark, Germany, the Netherlands, Norway, Sweden, the Slovak Republic, Slovenia and “the former Yugoslav Republic of Macedonia”.

34 See the declarations by Liechtenstein, Luxembourg and San Marino. Some states declared that they viewed the ratification of the Framework Convention as an act of solidarity with the objectives of the Convention. See First State Reports submitted by Liechtenstein and by Malta.

35 Belgium declared that the Framework Convention should apply without prejudice to the constitutional provisions and principles and the legislative rules governing the use of languages, and that the notion of national minority would be defined at national level. Malta reserved the right not to be bound in some respects by the provisions of Article 15.

naming specific groups of beneficiaries, or by enlisting the preconditions that must be met in order for individuals to become eligible to benefit from the Framework Convention.³⁶

26. According to Article 26 of the Framework Convention, the Committee of Ministers is to be assisted by the Advisory Committee in evaluating the adequacy of the measures taken to give effect to the principles set out in the Framework Convention. In doing so, the Advisory Committee has reviewed the measures taken by states parties with respect to the scope of application in the same way as any other measure aimed at implementing the Framework Convention. In particular, the Advisory Committee has considered it to be its duty to assess whether the approach taken to the scope of application is in good faith and does not constitute a source of arbitrary or unjustified distinction among communities with regard to access to rights.³⁷ In its work, it has thus assessed the various approaches and delimitations established by states parties in order for the Framework Convention to become applicable, which are often based on the elements below.

2. Criteria applied by states parties

a) Formal recognition

27. The formal recognition of a national minority as such is required in a number of states parties in order for persons belonging to these groups to access minority rights. The Advisory Committee has consistently criticised such an approach as *per se* exclusionary and not in line with the principles contained in the Framework Convention. While some states parties have explicitly acknowledged the impracticality of relying on a formal recognition for the application of minority rights,³⁸ a number of other states have, on a *de facto* basis, disregarded a requirement for formal recognition, thereby broadening the scope of application of the Framework Convention in practice.³⁹ Such developments have always been welcomed by the Advisory Committee and understood as efforts to correct the shortcomings that arise from applying formal criteria that are either too rigid or no longer reflect the actual situation. This further reaffirms that the Framework Convention is not suited for static definitions or criteria.

28. The Advisory Committee has further observed that the *de facto* inclusion of beneficiaries under the protection of the Framework Convention or of certain of its

³⁶ See First State Reports submitted by Armenia, Bulgaria and Hungary.

³⁷ References to this duty can be found in all First Opinions of the Advisory Committee.

³⁸ See First State Report submitted by Finland, stating that “the existence of minorities does not depend on a declaration by the Government but on the factual situation in the country”.

³⁹ Roma have, for instance, been included under the protection offered by the Framework Convention in Cyprus, despite not officially being recognised as national minorities. See Second State Report submitted by Cyprus. Finland has applied guarantees provided to “Old Russians” as well as to newer Russian-speaking arrivals. See Third Opinion on Finland.

articles often forms part of an evolutionary process that eventually may lead to formal recognition. Beginning with the free self-identification of individuals who are acknowledged by society as forming a distinct – albeit equally valued – minority, access to rights is then granted to promote and preserve the practices by which the group defines itself, leading in some cases to the inclusion of the minority in formal mechanisms of national minority protection.⁴⁰ Thus, official recognition as a national minority or the granting of a specific status, do not constitute the beginning of the process of minority rights protection, nor are they essential for the application of the Framework Convention or of specific articles of it. Recognition as a national minority has a declaratory rather than a constitutive character. Access to minority rights should therefore not depend on formal recognition.

b) Citizenship

29. A recurrent precondition used by states parties is the requirement that a person belonging to a national minority must be a citizen in order to benefit from the protection of the Framework Convention. The Advisory Committee has pointed out in this regard that the inclusion of the citizenship requirement may have a restrictive and discriminatory effect, given that it is often the members of particularly disadvantaged groups and minorities, including those who have suffered or been displaced as a result of conflict, who face difficulties in obtaining citizenship and are therefore affected by this restriction.

30. In a number of regions in Europe, persons belonging to national minorities have lost their citizenship or even become stateless due to the creation of new states, despite having long-lasting ties to their places of residence. The Advisory Committee has consistently underlined the specific challenges faced by persons belonging to national minorities who are *de jure* or *de facto* stateless and has drawn attention in this context to the right of each person to a nationality in line with the European Convention on Nationality (ETS No. 166).⁴¹ Indeed, it should be considered for each right separately whether there are legitimate grounds to differentiate its application based on citizenship.⁴² The Advisory Committee has always welcomed instances in which states parties have extended minority rights to noncitizens, thereby in practice disregarding an officially still existing precondition of citizenship.⁴³ In some instanc-

40 In the Czech Republic and Finland, for instance, immigrant groups such as Somalis and Vietnamese are also represented in cultural consultation mechanisms and receive state support for their activities.

41 See in particular Article 4 of the European Convention on Nationality (ETS No. 166).

42 See also the Venice Commission Report on Non-citizens and Minority Rights (CDL-AD(2007)001) adopted at its 69th plenary session (Venice, 15-16 December 2006), comprehensively analysing international and European standards and practice as regards the relevance of citizenship and other criteria for defining beneficiaries of minority rights, and calling for a nuanced approach to the citizenship criterion for the applicability of minority rights, depending on the specific right in question.

43 See Third Opinion on the Czech Republic, for instance.

es, it has explicitly recommended the more consistent application of minority rights to “non-citizens”.⁴⁴

c) Length of residency

31. In their definitions of national minorities, a number of states parties refer to the length of residency of a particular group in the territory of the state.⁴⁵ Attempts at creating time limits in definitions such as “prior to the 20th century”,⁴⁶ or “approximately 100 years”,⁴⁷ have been used in this context. Less absolute concepts that are subject to interpretation have also been developed, including the notion of “traditional residence”, “traditional minorities” or the term “autochthonous national minorities”.⁴⁸ In some cases the notion of “long-lasting ties to a particular region” is applied, including with regard to non-residents who express a willingness to return to this region and to benefit from the protection of the Framework Convention.⁴⁹ The Advisory Committee considers that it follows by implication from the fact that only Articles 10(2), 11(3) and 14(2) of the Framework Convention establish specific guarantees in areas traditionally inhabited by persons belonging to national minorities, that the length of residency in the country is not to be considered a determining factor for the applicability of the Framework Convention as a whole (see also Part VII).⁵⁰ It has further consistently held that any temporal restrictions should be regarded flexibly and that distinctions in the treatment of otherwise similar groups based solely on the length of their residency in the territory can be unjust.⁵¹

44 See Second Opinion on Latvia.

45 See, *inter alia*, Austria, Denmark, Germany and Hungary. The request for access to minority rights by the Polish minority in Austria, for instance, has been rejected based on the argument that there has not been uninterrupted and “traditional” residence. See Fourth State Report of Austria.

46 See, for instance, First State Report of Sweden.

47 See, for instance, First State Report of Austria.

48 At the time of depositing the instrument of ratification, Slovenia declared, for instance, that it would consider as national minorities “the autochthonous Italian and Hungarian National Minorities”, and that “the Framework Convention shall apply also to the members of the Roma community, who live in the Republic of Slovenia.”

49 See, for instance, Second Opinion on Georgia, welcoming the government’s open approach towards Meshketians and Ossetians who were deported or displaced by conflict.

50 The length of residency within the state is irrelevant in terms of the applicability of minority rights arising under Article 27 of the International Covenant on Civil and Political Rights (ICCPR). See General Comment of the UN Human Rights Committee No. 23(50), CCPR/C/21/Rev.1/Add5/26 April 1994.

51 See Third Opinion on Austria. See also Fourth Opinion on Denmark, where Roma are not recognised as national minorities with the argument that they “have no historical or long-term and unbroken association with Denmark”.

d) Territoriality

32. A number of states parties have also applied territorial criteria for the identification of rights holders under the Framework Convention, establishing that minority rights may only be enjoyed within specific areas. The Advisory Committee has argued that flexibility should be applied and that persons belonging to a national minority who live outside such areas should not be disproportionately disadvantaged.⁵² In particular the fact that only some rights (that is Articles 10(2), 11(3) and 14(2)) allow for territorial limitations implies again that the applicability of other rights should not in principle be restricted to certain regions. The Advisory Committee has indicated on a number of occasions that this approach is in line with Article 29 of the Vienna Convention on the Law of Treaties which determines that a treaty is binding in respect of the state party's entire territory unless a different intention is ascertained. In addition, territorial limitations may constitute an a priori exclusion of persons belonging to national minorities from the scope of application which is incompatible with the principles contained in the Framework Convention.⁵³

33. The Advisory Committee has further criticised situations in which imposed differentiations between members of a group based on territorial features lead to the weakening of a group and, as a result, to the reduced access to rights for persons belonging to that national minority.⁵⁴ It has in particular argued that demographic changes over time must be taken into account.⁵⁵ Increased mobility in many countries has resulted in a high number of persons belonging to national minorities moving from areas of their traditional settlement to other regions that offer more favourable economic conditions or educational opportunities, such as industrialised areas or urban centres.⁵⁶ While residence in a specific area might thus be conducive to the more effective enjoyment of some minority rights, it must not result in the arbitrary denial of the enjoyment of all minority rights.⁵⁷

e) Substantial numbers

34. Also linked to the territorial criteria is the notion of "in substantial numbers", as found in Articles 10(2) and 14(3) and in Article 11(3) (see also Part VII). As with other criteria contained in these articles, various interpretations by states parties have been made. In some cases, the term 'compact settlement' has been used to define the specific rights holders.⁵⁸ While acknowledging that it may be more problematic to ensure

52 For instance, Third Opinion on the Slovak Republic.

53 See, for instance, First Opinion on Denmark and First Opinion on Italy.

54 See Second Opinion on Austria with regard to the differentiation between Burgenland Croats and Croats.

55 See, for instance, Fourth Opinion on the Slovak Republic.

56 See Third Opinions on Finland and Germany.

57 See, for instance, consecutive Opinions on Denmark, Italy and Portugal.

58 See, *inter alia*, First State Reports submitted by Austria, Azerbaijan and Germany.

access to some minority rights for persons belonging to national minorities who live dispersed throughout the country, the Advisory Committee has pointed out repeatedly that their recognition as national minorities and their access to minority rights in general must not be impeded through the use of numerical criteria. It has expressed its deep concern, for instance, when Roma⁵⁹ have been excluded altogether from the scope of application of the Framework Convention and thereby entirely denied protection as a national minority, because of the fact that they live territorially dispersed and not settled in substantial numbers anywhere in the country.⁶⁰

f) Support by “kin-states”

35. A number of states parties define the term ‘national minorities’ as those groups who have a link with a “kin-state”, classifying those without such link as ‘ethnic minorities’ or ‘ethno-linguistic groups’. The Advisory Committee considers that the question whether support is or is not available from another state cannot be used as a relevant point of differentiation with respect to recognition or access to rights. While not favouring any particular terminology, it has criticised cases when different categories lead to the formation of hierarchies and different “categories” of minorities, as this may result in unjustified distinctions with respect to applicable rights.⁶¹

36. The Advisory Committee has welcomed bilateral agreements to facilitate cross-border relations and co-operation, for instance regarding the supply of textbooks and exchanges of teachers for the benefit of high-quality education in minority language schools. However, it has disapproved of agreements that outsource such fundamental aspects of minority protection to another state.⁶² It follows from the international law principle of state sovereignty that states hold the single jurisdiction over their territory and population, a jurisdiction that can be restricted only within the limits of international law. Overall, the responsibility to protect minority rights, as part of general human rights, lies primarily with the state where the minority resides.⁶³ While the Advisory Committee interprets Article 17 to imply that states parties must not interfere with the enjoyment of benefits from other countries, they must not rely on them instead of striving themselves for the realisation of minority rights.

59 The term “Roma and Travellers” is used at the Council of Europe to encompass the wide diversity of the groups covered by the work of the Council of Europe in this field: on the one hand a) Roma, Sinti/Manush, Calé, Kaale, Romanichals, Boyash/Rudari; b) Balkan Egyptians (Egyptians and Ashkali); c) Eastern groups (Dom, Lom and Abdal); and, on the other hand, groups such as Travellers, Yenish, and the populations designated under the administrative term “*Gens du voyage*”, as well as persons who identify themselves as Gypsies.

60 See First Opinion on the Netherlands.

61 See, for instance, Second and Third Opinions on Albania and First Opinion on Poland.

62 See Second Opinion on Albania and First Opinion on Germany.

63 See also OSCE HCNM Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations, June 2008.

g) Specific identity markers and ascribed categories

37. In a variety of states parties, the understanding of the term ‘national minority’ is linked to specific characteristics that are often considered as emblematic for identity and for differentiating the minority from the majority, including language, religion, culture, ethnic background, specific traditions or visible features. These markers are often based on common perceptions that are shared within society, by members of the majority and minorities alike. Nevertheless, employing such externally defined markers entails the danger of including or excluding individuals against their will.⁶⁴ The Advisory Committee reiterates its position that a person’s identification must be based on free self-identification, unless there is a valid justification for not doing so (see paragraph 10).

38. Moreover, caution must be applied in the use of externally defined markers, as they are often based on presumptions. The categorisation of the minority as a static and homogeneous group may reinforce stereotypes and does not pay adequate attention to the broad diversity and intersectionality that exists within minorities, as within all groups (see also paragraph 40). In some states parties, legislation makes reference to other externally imposed criteria, such as “ethnic minority threatened by social exclusion” or “citizens in a vulnerable socio-economic situation,”⁶⁵ while in others, an affiliation with a particular national minority may be presumed based on names.⁶⁶ The Advisory Committee considers such practices of association of persons with a specific group based, without consent, on presumptions such as names, language, or visible features, as incompatible with Article 3(1) and the right to free self-identification (see also paragraph 15).⁶⁷

Part IV Context-specific article-by-article approach developed by the Advisory Committee

1. Fundamental principles

39. The Framework Convention contains a catalogue of rights in different spheres of public life, ranging from individual freedoms, to media, language and education rights and the right to effective participation. Given their different nature, the scope of application of the various rights must be adjusted accordingly: the right to manifest one’s religion, for instance, as also stipulated in Article 9 of the European Convention on Human Rights, must be extended to all persons belonging to national minorities,

64 The Advisory Committee considered, for instance, that the over-reliance on the “racial group” criterion applied in the United Kingdom might, despite its wide application, result in a priori exclusions of groups that have legitimate claims. See Third Opinion on the United Kingdom.

65 See, *inter alia*, Third Opinion on Bulgaria.

66 See, *inter alia*, First Opinion on Italy.

67 See Third Thematic Commentary (footnote 4).

while the right to display a minority language on topographical signs may, for legitimate reasons, be made available only under certain preconditions. Depending on the nature of the minority rights contained therein, the scope of application of the Framework Convention must therefore be established separately for each article, which is why, from its first monitoring cycle, the Advisory Committee has referred to its article-by-article approach.⁶⁸ Overall, the implementation of the Framework Convention must always be based on the fundamental principles contained in its Articles 3-6, which are interlinked and which must inform the interpretation of the instrument as a whole.

40. National minorities within one country typically vary in number and size, and they may live compactly or be more or less dispersed throughout the territory. It is also important to consider the diversity that exists within minorities as in any population group, including on the basis of gender, sexual orientation, age, disability, religion, political beliefs or access to economic resources. Accordingly, the priorities of minority communities and the individual priorities of persons belonging to these communities often diverge. For some persons belonging to minorities, the main priorities are equality and integration; for others, it may be the quest for a protected space to maintain and promote their minority identity. These priorities may further change over time, depending on the context, the political climate and socio-economic conditions. It is the Advisory Committee's view that the diversity within and among national minorities must be acknowledged and respected in the implementation of all minority rights, regardless of their specific nature.

41. With respect to the obligation of states parties to promote the conditions for the preservation and development of national minority cultures, this also implies that the term 'minority culture' must not be interpreted in a static, unitary or limiting sense. It is each person belonging to a national minority who, in line with the right to free self-identification, decides how he or she will practise the minority culture or identity. Accordingly, not only is the right to preserve traditions protected but also the right to develop a minority culture in line with broader societal evolution, and to form contemporary expressions of minority identity.

42. Equality considerations are essential for the promotion of all minority rights, not only with respect to relations between national minorities and the majority but also, importantly, regarding relations between the various minorities. In the view of the Advisory Committee, the general equality principle is called into question when altogether different principles or disproportionately different protection mechanisms are applied to the various minorities, or when separate government bodies are re-

68 See all First Opinions of the Advisory Committee.

sponsible for the protection and promotion of their respective rights.⁶⁹ While efforts to promote equal opportunities for all persons belonging to national minorities must be tailored to the specific needs and situations of the various groups in order to be effective, the basic approaches and rights standards that are applied must be equal.

43. Full equality cannot be effectively achieved when diversity as such is perceived negatively or when only certain forms of diversity are accepted and tolerated. The Advisory Committee has repeatedly criticised situations where hierarchies are created among the various minorities and existing inequalities are reinforced through uneven attention and support.⁷⁰ In addition, an environment in which diversity is viewed as “alien” or “imported” and rather disconnected from mainstream society does not offer the appropriate conditions for the expression, preservation and development of minority cultures. Article 6 therefore calls for deliberate efforts to foster a climate of mutual respect, understanding and cooperation where persons belonging to national minorities are recognised as integral elements of society, who effectively enjoy equal access to rights and resources, while being provided with opportunities for social interaction and inclusion across difference. Given its purpose, as established by the Preamble, of promoting broader societal peace and stability through the enhancement of minority rights, the Framework Convention has an immediate relevance for the whole society.

44. The Advisory Committee’s established position is that integration is a process of give-and-take and affects society as a whole. Efforts cannot therefore be expected only from persons belonging to minority communities, but they must also be made by members of the majority population.⁷¹ This is particularly relevant in distinguishing successful integration from forced assimilation, which is explicitly prohibited in Article 5(2) of the Framework Convention. While assimilation forces persons belonging to a minority to relinquish their specific characteristics to blend into a society that is dominated by the majority, integration requires both the majority and the minorities to mutually adapt and change through an ongoing negotiation and accommodation process.

45. In the view of the Advisory Committee, the above fundamental principles of the Framework Convention contained in Articles 3-6 must be considered in the interpretation of all further articles in order to ensure that the rights of persons belonging to national minorities are effectively enjoyed.

69 In a variety of states, the protection of the rights of Roma is considered to be a socio-economic and sometimes even a security issue. As a result, protection and promotion measures are frequently co-ordinated separately from those related to other minority groups which may result in the application of different standards. While the Advisory Committee values the specific attention that is paid to the particular socioeconomic disadvantages that many Roma face, it considers that these measures must be additional to other minority rights’ protection measures, such as those related to the preservation of Roma cultures, languages and traditions.

70 See, for instance, Third Opinion on Romania and Second Opinion on Georgia.

71 See, for instance, Third Opinion on Estonia. See also Third Thematic Commentary (footnote 4).

2. Practice

46. In line with its article-by-article approach, the Advisory Committee has repeatedly considered the application of the Framework Convention to persons who do not belong to national minorities but live in a similar situation. Persons belonging to the majority population who live in areas that are mainly inhabited by minority communities, for instance, have been considered in the context of the education rights under the Framework Convention.

47. The Advisory Committee has emphasised in this context that the same protective measures that are applied in minority-language schools, such as the requirement of fewer pupils per class, should also apply to state schools that teach in the official language in otherwise minority-language dominated areas.⁷² Furthermore, the Advisory Committee has considered that other groups which enjoy special protection but are not recognised as national minorities may, in addition, benefit from the protection of the Framework Convention.⁷³ In some contexts, it has also noted that extending the protection of the Framework Convention on a case-by-case basis to persons belonging to the constituent peoples who live in a minority situation could provide an additional tool for promoting their access to rights and addressing the issues they are faced with, without implying a weakening of their status. Indeed, the applicability of minority rights to them is considered by the Advisory Committee as fully in line with the objective and aim of the Framework Convention.⁷⁴

48. In addition, the Advisory Committee has emphasised that the protection offered by the Framework Convention also extends to persons belonging to indigenous peoples without this having an effect on their status as members of indigenous peoples. Specific rights may be applicable to them, whether or not they are formally recognised as a national minority, and without implying recognition as a national minority.⁷⁵ This means that individuals are free to avail themselves, beyond the rights they hold as members of indigenous groups, of the protection under the Framework Convention, or to refuse to do so. This has been particularly relevant with respect to the rights contained in Article 5 of the Framework Convention where the Advisory Committee has held that the protection from assimilation also implies that affected individuals must be supported in their efforts to adjust their traditional practices to contemporary challenges, or to engage in economic activities in order to be able to preserve their culture.⁷⁶

72 See Third Opinions on Estonia and Lithuania.

73 See, for instance, Fourth Opinion on Spain with respect to speakers of Catalan, Basque and Galician, namely languages with co-official or protected status. The Advisory Committee found here that language rights can particularly benefit speakers of languages who live outside the designated areas.

74 See Third Opinion on Bosnia and Herzegovina.

75 The Norwegian Sami Parliament stated, for instance, that the Sami did not wish to be considered a national minority as they wished to maintain their status as an indigenous people. The Advisory Committee, however, considered that both protection schemes are not exclusive and may provide parallel benefits to individuals of the group. See First and consecutive Opinions on Norway. See also consecutive Opinions on Denmark, Finland, the Russian Federation and Sweden.

76 See, for instance, Third Opinion on the Russian Federation.

49. As regards disputed territories or regions of states parties to the Framework Convention that are de facto outside the control of the authorities, the Advisory Committee observes that the applicability of the rights contained in the Framework Convention is not altered as a result of the change in de facto authority. On the contrary, the rights of persons belonging to national minorities remain in force and often gain a particular urgency in times of conflict.⁷⁷ International access and the continuation of regular monitoring activities, however, are deeply affected if not entirely stalled by such territorial disputes. The Advisory Committee has repeatedly called on all parties to take a constructive approach in line with the general principles of international law and of the Framework Convention, with a view to safeguarding the rights of persons belonging to national minorities as an integral part of universally applicable human rights throughout the territories of all states parties to the Framework Convention.⁷⁸

Part V Framework Convention rights applying to all persons

50. A number of articles of the Framework Convention apply to all persons on the territory of states parties, including those not belonging to national minorities, either explicitly or by implication through their specific link with provisions that are applicable to all.

1. Protection against discrimination – Article 6

51. Article 6 of the Framework Convention explicitly applies to “all persons” living in the territory of states parties. Its protection extends into two areas: firstly, effective measures must be taken to promote mutual respect, understanding and co-operation among all persons irrespective of their ethnic, cultural, linguistic or religious identities. Secondly, all persons must be protected against discrimination based on those aspects of their identities.

52. The Advisory Committee has consistently underlined this broad application of Article 6 as the lack of respect for or ill-treatment of migrants, asylum seekers, refugees and/or other individuals who are, for whatever reason, considered to be different from the majority population, may prompt a general environment of fear. This may entice persons belonging to minorities to strive for conformity rather than for the active enjoyment of their rights. Based on Article 6, the Advisory Committee has also evaluated the implementation of the Framework Convention in states parties where, according to the authorities, no persons belonging to national minorities reside.⁷⁹

⁷⁷ See also the Advisory Committee ad hoc report on the situation of national minorities in Ukraine, April 2014.

⁷⁸ See the Advisory Committee Open Statement on the situation of national minorities in Crimea, May 2014, at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168069faed>.

⁷⁹ See, for instance, Fourth Opinion on Liechtenstein or Third Opinion on Malta

This has allowed the Advisory Committee to engage in comprehensive discussions with state authorities on “measures taken in pursuance of their general integration policies.”⁸⁰

a) Promotion of mutual respect and intercultural dialogue

53. Some states parties have argued against the relevance of societal cohesion and broader concepts of tolerance and respect for diversity in the protection of national minorities. The Advisory Committee has consistently held, however, that an exclusive view that separates the issue of traditional minority protection from broader questions surrounding the integration of society does not do justice to the aim and purpose of the Framework Convention but rather hinders the enjoyment of the rights of persons belonging to national minorities.⁸¹ In fact, the promotion of tolerance and openness towards diversity in society is essential not only for the development and implementation of successful integration strategies, but it is also a central precondition for persons belonging to national minorities to self-identify as such without hesitation and proactively claim the rights contained in the Framework Convention.

54. Openness and tolerance in society can only be genuine if they are not limited to certain predefined groups but embrace everyone. The Advisory Committee therefore considers questions surrounding the formulation and implementation of effective integration strategies as one of its important concerns. Integration strategies are being developed in many European states today, chiefly in order to address the situation of often large communities of immigrants, some second and third generation, who share linguistic and cultural practices and backgrounds, and who often live in the country as citizens, whether naturalised or by birth.⁸² It is essential that all segments of society, majorities and minorities alike, are addressed in order for integration strategies to effectively facilitate the formation of societal structures where diversity and respect for difference are acknowledged and encouraged as normal, through recognition, mutual accommodation and active engagement on all sides.⁸³

80 See Article 5(2) of the Framework Convention.

81 Broader concerns related to the integration of society and effective mechanisms regarding protection from discrimination have also consistently been raised in Council of Europe Committee of Ministers' resolutions on the implementation of the Framework Convention, such as, *inter alia*, in the Fourth Resolution on Denmark, the Third Resolution on Estonia, the Fourth Resolution on Germany, and the Third Resolution on Malta.

82 See consecutive Opinions on Liechtenstein, for example.

83 The OSCE HCNM has taken a similar approach. The Ljubljana Guidelines on Integration of Diverse Societies, adopted in 2012, define integration as a process that requires all members of society to accept and create a shared sense of belonging to a given state and common public institutions. See the Ljubljana Guidelines on Integration of Diverse Societies, OSCE HCNM, November 2012.

b) *Protection from hostility and hate crime*

55. Article 6(2) contains the obligation of states parties to protect all persons against violence and discrimination on ethnic grounds, in other words not only persons belonging to national minorities. Minorities cannot thrive in a society in which diversity is not tolerated or even serves as a pretext for hate crimes and discrimination. This is why it is vital that all states parties strive to apply and achieve the aims of Article 6 of the Framework Convention fully, even those states parties that have explicitly declared that they have only ratified the Framework Convention out of solidarity.

56. The Advisory Committee considers that ethnically based violence must be recognised as an especially nefarious form of violence that concerns and threatens society as a whole, and must thus be resolutely opposed and prevented. In order to address hate crime in a comprehensive manner, criminal codes must contain appropriate provisions that criminalise hate speech, threats and violence based on ethnic grounds as well as public incitement to violence and hatred. In addition, racial motivation must be considered an aggravating circumstance of any offence and law enforcement agents should be appropriately trained to ensure that racially or ethnically motivated attacks and discrimination are identified and recorded, as well as duly investigated and punished through targeted, specialised and prompt action.

57. Fear of discrimination or even violent attack may discourage persons belonging to national minorities from enjoying their right to free self-identification. The downplaying of ethnically based violence as “hooliganism” or the usual wrongdoings of youth can lead to perceptions of tacit approval of such actions by law enforcement agents and thereby dramatically weaken efforts to promote respect and dialogue among different groups. In order to protect individuals from such attacks, it is therefore of equal importance that any such incidents are promptly and unequivocally condemned by senior public figures and community leaders at all levels, and that appropriate messages are communicated to the public through the media and government information channels.

58. The Advisory Committee refers in this context to other bodies with the specific mandate and expertise to address issues related to racial discrimination and protection from hate crime.⁸⁴ It notes in particular the role of the European Commission against Racism and Intolerance (ECRI) in assessing the applicability and effectiveness of anti-discrimination tools and mechanisms, whose monitoring work and reports are central for a systematic interpretation of the Framework Convention in an evolving society.⁸⁵ It is the goal of the Framework Convention to affirm differences in cohesive and integrated societies. Striving for *de facto* equality in the context of the

84 See in particular the UN Committee on the Elimination of Racial Discrimination and the OSCE/ODIHR hate crime reporting initiative.

85 See in particular in this context ECRI General Policy Recommendation (GPR) No. 15 on Combating Hate Speech, adopted on 8 December 2015. This GPR builds on the findings and recommendations published by ECRI during its fifth monitoring cycle, providing additional guidance to member states.

Framework Convention requires adequate and effective strategies to support different identities, including the effective protection from discrimination that is based on any of these differences. In addition, the right to be effectively protected from discriminatory threats or violence contained in Article 6(2) plays an important role in complementing the enjoyment of a number of rights contained in the Framework Convention, in particular those related to political freedoms, such as the freedom of expression, by obliging states parties effectively to sanction any undue interferences or attempts at its limitation.

2. Education and the media as tools for integration – Articles 6(1) and 12

59. Article 6(1) explicitly refers to education, culture and the media as particular fields of importance to the objective of promoting tolerance and intercultural dialogue. In addition, the special significance of education for the integration of society and for the promotion of respect for diversity is reflected in Article 12 of the Framework Convention. Article 12(1) provides that education and research should foster knowledge of the history, cultures, languages and religions of the minorities and of the majority, thereby clearly addressing society as a whole.⁸⁶ In addition, Article 12(2) calls for the development of intercultural exchanges and competencies through the facilitation of “contacts among students and teachers of different communities”. Adequate information on the composition of society, including national and other minorities, must form part of the public curriculum and of textbooks and education materials used in all schools throughout the territories of states parties, not only to promote intercultural understanding and respect among all students, but also to raise the prestige and self-awareness of persons belonging to numerically smaller or disadvantaged groups.

60. Education materials featuring content on minorities must further be prepared in close consultation with representatives of the respective groups and must not be limited to stereotyped images. Moreover, adequate professional development opportunities and training must therefore be available to all teachers to prepare them for the handling of linguistically and culturally diverse environments.⁸⁷ With respect to the teaching of history throughout states parties, critical thinking and the accommodation of multiple perspectives must be promoted in all efforts.

61. The work of the Advisory Committee is based on the recognition and appreciation of the benefits of intercultural dialogue and multilingualism to promote tolerance and respect for diversity in societies. Language and cultural policies must therefore ensure that all languages and cultures that exist in society are visibly and audibly present in the public domain, so that everybody is aware of the diverse character of society and recognises himself or herself as an integral part of it.

86 A similar provision is also contained in Article 7(3) of the ECRML, calling on states to promote, by appropriate measures, mutual understanding between all the linguistic groups of the country.

87 See, *inter alia*, Third Opinion on Estonia, Second Opinion on Georgia, Third Opinion on Kosovo and Fourth Opinion on the Slovak Republic.

62. The Advisory Committee has therefore consistently encouraged language policies that promote the use of different languages in public places and in the media in order to create respect for lesser-used languages and enhance their visibility and prestige. Overall, inclusive language policies should cater for the needs of everybody based on their different characteristics and needs, including persons belonging to national minorities living outside their traditional areas of settlement, immigrants and “non-citizens”.⁸⁸ In view of the overarching aim of establishing integrated societies that are respectful of their diversities, the Advisory Committee has also encouraged measures that promote the knowledge and the use of minority languages by persons belonging to majority communities.

63. Article 6(1) of the Framework Convention also underlines the role of the media as a tool for the promotion of intercultural understanding and a sense of solidarity in society. Given the immediate amplification of messages and values, the Advisory Committee has consistently called on states parties to ensure that public broadcasters take their responsibilities seriously and promote respect for diversity and ethical journalism in all their programmes. Efforts in states parties to promote ethical standards among journalists and media professionals, and to promote media literacy in society more generally, must include minority representatives. Furthermore, it is important for the formation of an open and pluralist media environment that issues of concern and interest to minority communities generally are given weight in the broader public media debate and that persons belonging to such minorities are portrayed as integral members of society, be it in the role of journalists, presenters and/or interviewees.

Part VI Minority rights with a broad scope of application

64. The Framework Convention’s Explanatory Report refers to minority rights being exercised “in community with others”, pointing to the fact that communities are formed around a variety of shared practices and the common exercise of rights. The practices by which persons seek to identify themselves are dynamic and evolving, built on what people have in common rather than on differences. They include transmitted knowledge or shared memories that may not always be actively demonstrated. As such, they may vary in intensity and scope, depending on the circumstances. They may evolve over time and they may also be performed from a distance. Given its task to monitor the effective implementation of rights contained in the Framework Convention, the Advisory Committee has primarily been concerned with access to rights and only secondarily with questions surrounding status. Indeed, it considers formal recognition of national minorities an act of a declaratory rather than a constitutive nature (see paragraph 28). In order to ensure that minority rights are not arbitrarily withheld from persons belonging to national minorities who should be protected under the Framework Convention, the Advisory Committee has consistently employed

88 See Third Thematic Commentary (footnote 4), paragraph 53.

a broad scope of application with respect to the rights contained in the Framework Convention and has commended states parties which do the same. In particular it considers that the following articles of the Framework Convention, given their nature, have a broad scope of application, also including under their protection therefore persons belonging to national minorities who are not recognised as such by the respective state party.

1. Equality – Article 4

65. All persons belonging to national minorities, irrespective of their status or recognition, must be guaranteed the right to equality before the law and equal protection of the law. This general principle of human rights contained in Article 4(1) has not been contested by states parties. The Advisory Committee has repeatedly emphasised the gender dimension in this context, drawing the attention of states parties to the phenomenon of multiple discrimination, as frequently experienced by women belonging to national minorities.⁸⁹ Article 4(2) further calls for special measures to overcome structural disadvantages between the minority and the majority in all spheres. These must be developed and implemented in close consultation with those affected and due account must be taken of the specific conditions of the persons concerned in their design.

66. The Advisory Committee has consistently encouraged states parties to base their equality promotion policy instruments or special measures on comprehensive data related to the situation and access to rights of persons belonging to national minorities, also taking into account the various manifestations of multiple discrimination that may be experienced, including those arising from factors that are unrelated to the national minority background such as age, gender, sexual orientation and lifestyle markers. Moreover, particular attention must be paid to members of the most disadvantaged segments of society, that is those who have been disempowered economically, socially or geographically, due to their size or because of past experiences of conflict. In this context of special and targeted measures for the promotion of effective equality, the Advisory Committee has consistently emphasised the importance of regularly collecting reliable and disaggregated equality data related to the number and situation of persons belonging to national minorities. It has, however, cautioned states parties against the over-reliance on statistics and encouraged the authorities also to avail themselves of independent research, in particular when carried out by persons belonging to national minorities themselves, in order to assess and comprehensively address the particular shortcomings faced by persons belonging to national minorities (see also paragraph 18).

2. Culture – Article 5

67. Article 5 of the Framework Convention and the obligation of states parties to promote the conditions for the preservation and development of national minority

⁸⁹ See, *inter alia*, Third Opinions on Azerbaijan and Finland.

cultures and identities are best served if the scope of application is interpreted widely. The article's aim is to ensure that persons belonging to national minorities do not assimilate but are enabled to maintain and develop their distinct identities and to actively enjoy minority rights. The Advisory Committee has welcomed the availability of assistance schemes not only to recognised national minorities but also to other groups who would otherwise not be able to maintain their distinct features.⁹⁰ All support measures must be tailored to the specific needs and situations of the various groups, to ensure that the cultural differences that are regarded as specific to each group are affirmed and protected. This may often require targeted efforts by the authorities to revitalise essential elements of the minority culture, without which the expression of some aspects of that identity may not be possible.⁹¹ Numerically larger minorities whose cultures are well represented will usually not experience the same reliance on government support as numerically smaller groups or dispersed national minorities which may be struggling to preserve their distinct characteristics and resist assimilation.⁹² While it is often the cultural associations that are the recipients of funds, the Advisory Committee considers that all national minority representatives, including those not formally linked with such associations or those representing different views, must be consulted and provided with effective opportunities to obtain funding for the preservation of their identities and cultures. 3. Association and religion – Articles 7 and 8

68. The rights to freedom of assembly, freedom of association, freedom of expression, thought and conscience, as well as the right to hold and manifest a religion or belief, as stipulated in Articles 7 and 8 of the Framework Convention, are based on corresponding articles of the European Convention on Human Rights. The Explanatory Report underlines explicitly that they apply to every person, whether belonging to a national minority or not, but that they are considered of such specific importance to persons belonging to national minorities that they were deemed to merit special attention.⁹³ The Advisory Committee has therefore interpreted their scope of application in the broadest sense, in line with the case law of the European Court of Human Rights. It has in particular expressed its deep concern when the overall working conditions for non-governmental organisations engaged in the protection of minority rights have been made difficult, as their role in promoting the awareness and understanding of human and minority rights standards in society is crucial and must be supported rather than hindered.⁹⁴ The Advisory Committee has further held

90 See Third Opinions on the Czech Republic and Finland.

91 See Third Opinion on Finland, welcoming the specific efforts of the authorities to revitalise the Sami culture through “language nests” and other similar activities.

92 See, however, Committee on the Elimination of Racial Discrimination (CERD) General Recommendation No. 32 underlining the distinction between permanent rights (such as those contained in Article 5 of the Framework Convention) and the additional and temporary benefits of special measures as provided for in Article 4(2).

93 See paragraphs 51 and 54 of the Explanatory Report.

94 See Third Opinions on Azerbaijan and the Russian Federation.

that any measures taken by the authorities to restrict the freedom of assembly or the freedom of expression, which necessarily includes the freedom to express criticism of the government or diverging opinions, can have a direct, negative impact on the enjoyment of rights contained in the Framework Convention as they are likely to deter persons belonging to national minorities, like other members of society, from exercising their rights and to create an intimidating environment that is not conducive to the implementation of minority rights and human rights generally. In this context, the Advisory Committee has also underlined that persons belonging to national minorities should not be banned from forming political parties in order to formulate and better pursue their interests and rights,⁹⁵ or from registering religious organisations in order to manifest their beliefs in community with others.⁹⁶

4. Media – Article 9

69. Article 9 and the media-related rights contained in the Framework Convention have a particular significance for the protection and promotion of minority rights. The availability of print, broadcast and electronic media in minority languages has very specific emblematic value for national minorities, in particular for the numerically smaller ones. Through them, persons belonging to national minorities not only gain access to information, but minority language media also raise the visibility and prestige of the minority language as an active tool of communication. In particular, these media can play a significant role for persons belonging to national minorities who are dispersed for, among other reasons, increased mobility, as they allow for communication and contact over distances. This, in turn, can encourage persons belonging to national minorities to enjoy their rights more actively. The active participation of members of national minority communities in a pluralist media environment may further require targeted training and awareness-raising activities, including in the use of electronic and social media.⁹⁷ In this respect, the Advisory Committee has stressed that the possibility to participate actively in the media and to receive and impart information of interest to persons belonging to national minorities, presupposes access to relevant infrastructure such as high-speed Internet throughout the country, including in remote areas which are often inhabited by national minority communities.

70. The marginalisation of minority identities in the local media, including through the exclusive use of minority languages only for certain programmes, often about folklore, traditional costumes, food and habits, may contribute to the stereotyping of minorities as separate entities and does not promote their respect and

95 See Third Opinion on Bulgaria, Second Opinion on Georgia and Third Opinion on the Russian Federation.

96 See Third Opinions on Azerbaijan and the Russian Federation.

97 See Fourth Opinion on Cyprus.

prestige in society.⁹⁸ In addition, the division of media audiences according to linguistic backgrounds may enhance the formation of separated and mutually exclusive public spheres. Support for media in national minority languages must therefore be accompanied by targeted steps towards the training of journalists and other media professionals to promote their awareness of and sensitivity towards the specific needs and concerns of diverse groups in society. Moreover, it is important to ensure that minority representatives effectively participate in relevant decision-making processes as well as in media supervisory bodies. The more minority representatives take part in shaping their image in the public media, the more the negative effects of “misrecognition” and stereotyping can be reduced.⁹⁹

5. Language – Articles 10(1), 10(3), 11(1) and 11(2)

71. The right to use one’s language in public and in private, contained in Article 10(1) of the Framework Convention, the right to use one’s personal name in the minority language and to have it officially recognised (Article 11(1)), and the right to put up signs of a private nature in minority languages (Article 11(2)) carry a particular weight for the personal identity, dignity and self-awareness of persons belonging to national minorities.¹⁰⁰ The Advisory Committee considers that, as such, they must be applicable to everyone and any restrictions must be carefully reviewed to ensure that they do not infringe upon the personal dignity and privacy of the individual.¹⁰¹ States may adopt laws aimed at strengthening and protecting the state language. This legitimate aim, however, must be pursued in a manner that is in line with the rights contained in Articles 10 and 11 and other relevant provisions of the Framework Convention and its general spirit of encouraging tolerance and mutual understanding within society. Laws and other measures that are aimed at promoting the state or official languages must not, in particular, infringe on the private sphere of a person but must be implemented in a way that respects the identities and the linguistic needs present in society.

72. Article 10(3), similarly to Articles 7 and 8, reflects the individual human right of being promptly informed in a known language, if necessary through an interpreter, of the reasons for an arrest and of the nature and cause of any accusation. According to the Explanatory Report, the provision, which is based on guarantees contained in Articles 5 and 6 of the European Convention on Human Rights, does not go beyond those safeguards. Thus, it does not imply a right to legal process and trial in one’s minority language and applies to all persons belonging to national minorities.

98 See also Second Opinion on Georgia.

99 See also Third Opinion on Croatia.

100 For a comprehensive analysis and discussion of the Advisory Committee’s findings on access to language rights of persons belonging to national minorities, reference is made to its Third Thematic Commentary (footnote 4).

101 See also Communication No. 1621/2007 *Leonid Raihman v. Latvia*, made public by decision of the Human Rights Committee UN Doc. CCPR/C/100/D/1621/2007 (2010), finding a violation of Article 17 of the ICCPR with respect to the unilateral change of the author’s name by the state party.

6. Education – Articles 12(3), 14(1) and 14(3)

73. According to Article 12(3), equal opportunities for access to education at all levels for persons belonging to national minorities must be promoted.¹⁰² Given the particular link to Article 4 and the general principle of equality, the Advisory Committee has consistently encouraged a broad and inclusive approach, referring also to the United Nations Convention on the Rights of the Child. Accordingly, the Advisory Committee has strongly condemned all instances of segregated education and has urged states parties to take all necessary measures to ensure equal access to integrated education for all children.¹⁰³ In addition, Article 14(1) makes provision for the right to learn one's minority language, while Article 14(3) stresses the right to learn or be taught in the official language or languages.

74. The Advisory Committee has repeatedly expressed its view that both opportunities to learn a minority language and adequate opportunities to learn the official languages are applicable to all persons belonging to national minorities and must be available in parallel.¹⁰⁴ It has generally pointed to the substantial research that suggests noticeable benefits of first language learning for the learning of other languages, including official languages, and has expressed its general preference for bilingual and multilingual approaches in education that are equipped to accommodate more than one language in integrated classrooms. While consistently acknowledging the importance of language for the integration of a diverse society, the Advisory Committee has reiterated its standpoint that pressure and conditionality are generally inappropriate tools for the promotion of integration, and that the relevant strategies meant to promote skills in the official language must not rely disproportionately on efforts to be made by persons belonging to national minorities.¹⁰⁵

7. Participation – Article 15

75. Undue exclusions from the right to effective participation in public life can result in significant obstacles to the enjoyment of a variety of minority rights.¹⁰⁶ Public life in this context does not only extend to public affairs and decision making but is equal-

102 For a comprehensive analysis and discussion of the Advisory Committee's findings on access to education rights of persons belonging to national minorities, reference is made to its First Thematic Commentary (footnote 2).

103 See, *inter alia*, Third Opinion on Bulgaria, Third and Fourth Opinions on the Czech Republic and Third and Fourth Opinions on the Slovak Republic.

104 Different modules may be applied depending on the size of the group wishing to learn the minority language.

105 See, for instance, Second Opinion on Latvia and Fourth Opinion on Liechtenstein.

106 For a comprehensive analysis and discussion of the Advisory Committee's findings on the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, as contained in Article 15, reference is made to its Second Thematic Commentary (footnote 3).

ly important with respect to economic and social life.¹⁰⁷ The Advisory Committee has therefore consistently underlined the importance of an inclusive approach to the application of Article 15, as effective participation is often a precondition to gaining access to the rights contained in the Framework Convention. Consultation mechanisms and advisory bodies on issues pertaining to minority rights protection that are intended to enhance, for instance, discussion and dialogue among different groups in society, should be open to all, including groups that are not recognised as national minorities but might have expressed an interest in the protection of the Framework Convention.

76. The availability of effective platforms for the discussion of relevant concerns with such groups may not only promote trust among minority communities, but it may also serve to facilitate open and flexible solutions to issues that prevent access to rights, and may thereby promote societal cohesion and stability. In its discussions of Article 15 of the Framework Convention, the Advisory Committee has also further applied a broad scope of application with respect to the comprehensiveness of the matters on which representatives of national minorities should be consulted. These should not be limited to questions related to the preservation of national minority cultures or the allocation of funding, but should include all issues of broader concern to society, including national minority communities.¹⁰⁸

77. Due to the centrality of effective participation of national minorities in public life, particular attention must be paid to ensure that the views and concerns within the various minority communities are adequately taken into account. National minority communities, as is the case in any community, are diverse and their members often hold divergent views. This means that the diversity within the minorities, including women and young people, as well as their various needs and concerns, must be effectively represented in all relevant decision making.

78. Controversies may arise between factions among or within minorities and it is the responsibility of the state authorities to seek flexible solutions that can accommodate them, ensuring that they are all enabled to participate effectively. It is therefore essential for governments to have standards and procedures available to put in place suitable arrangements for the promotion of the effective participation of persons belonging to minorities, in consultation with those concerned. In addition, these arrangements must be sufficiently flexible to allow for renegotiations when conditions or priorities change. In a number of states parties, the granting of different forms of self-governance or autonomy (territorial and non-territorial) is used at regional level, to varying degrees, in order to protect further and more thoroughly and to promote

107 The term 'economic and social life' covers a wide range of issues, from access to adequate housing, health care and social protection (social insurance and social benefits), to social welfare services and access to the public and private labour market, as well as access to business and other self-employment opportunities, which are closely linked to property rights and privatisation processes. See Second Thematic Commentary (footnote 3), paragraphs 23ff.

108 See Third Opinion on Estonia and on "the former Yugoslav Republic of Macedonia".

the rights of persons belonging to national minorities. These instruments are fully in line with the international law principle of territorial integrity and can be a useful tool to promote the enjoyment of minority rights, particularly with respect to the preservation and development of minority identities and cultures.¹⁰⁹

Part VII Minority rights with a specific scope of application

79. Given the particular financial and administrative commitment required in order to give effect to some language rights contained in the Framework Convention, states parties may establish special conditions for their enjoyment.¹¹⁰ The right to use a minority language in relations with local administrative authorities (Article 10(2)), the right to have topographical indications and signposts also displayed in the minority language (Article 11(3)), and the right to learn minority languages or receive instruction in minority languages (Article 14(2)) therefore have a specific scope of application, in that their availability may be limited to certain areas where persons belonging to national minorities reside traditionally (see also paragraph 31) and/or in substantial numbers (see also paragraph 34). In accordance with the express wording of the Framework Convention, the right to use a minority language with local authorities must be guaranteed either in areas where national minorities are settled in substantial numbers or in areas that are traditionally inhabited by national minorities; one of the two alternatives suffices. However, an accumulation of these two criteria, namely traditional settlement and substantial numbers, may be required for the implementation of the right to display topographical signposts in minority languages. Overall, the Advisory Committee has repeatedly encouraged states parties also to promote the enjoyment of the rights contained in Articles 10(2), 11(3) and 14(2) in situations where the conditions are not formally met but where implementation would serve to promote an open society, where multilingualism is encouraged as a reflection of diversity.¹¹¹

80. Given the particular significance of language for the expression and preservation of minority identity, as well as for promoting access to rights and social interaction,¹¹² the Advisory Committee has consistently recommended a flexible and context-specific approach with respect to these conditions and in particular with respect to numerical thresholds. It has purposefully refrained from proposing an acceptable threshold for the applicability of minority rights because it considers that the specific context, history and conditions in the state party must be considered on a case-by-case basis and in consultation with the concerned minority representatives.

109 See also OSCE HCNM Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note, September 1999.

110 See also Explanatory Report, paragraph 64.

111 See, *inter alia*, Third Opinion on Finland, Second Opinion on Latvia and Third Opinion on Lithuania.

112 See also Third Thematic Commentary (footnote 4).

81. It is important to underline that any threshold must be applied in a flexible manner so that situations are avoided where a negligible decrease in the minority population or the decision of some persons belonging to national minorities no longer to avail themselves of a specific right, alter the accessibility of the right because a predetermined threshold is no longer met. States parties are explicitly obliged to refrain from any measures, including territorial reforms, which alter the proportions of the population in areas inhabited by persons belonging to national minorities and aim to restrict access to minority rights.¹¹³ It is therefore essential that the specific impact on national minorities and the use of minority languages is taken into account in close consultation with national minority representatives when reviewing administrative borders, as the creation of larger self-government units may indeed result in certain thresholds no longer being met.

82. In the view of the Advisory Committee, increased population mobility in all states requires a careful and flexible approach with respect to numerical or territorial delimitations to the enjoyment of minority rights. This is particularly the case with respect to persons belonging to numerically smaller minorities for whom the use of their minority language in official communications may have a distinct emblematic value. Overall, the Advisory Committee has consistently held that numerical thresholds should be considered indicative and should be flexibly used,¹¹⁴ as regular consultations with the national minority representatives concerned are more apt to promote the enjoyment of minority rights than fixed thresholds. Attention must further be paid to ensure that multiple affiliations are not used as a pretext to lower the numerical size of national minorities. Any self-identification as a person belonging to a national minority must be recorded and processed as such, also when part of a multiple affiliation (see also paragraph 16).

83. The right to learn the minority language or receive instruction in it (Article 14(2)) may also be made available only in certain areas where persons belonging to national minorities reside traditionally or in substantial numbers. In addition, this right also presupposes demand for such education. It is essential therefore to ensure that parents are adequately made aware of the possibility contained in Article 14(2) to have instruction in the minority language, as well as of the benefits attached to first language education for the learning of other languages. State obligations to ensure opportunities for minority-language education contained in Article 14(2) are further limited to “as far as possible”, which again indicates that the resources of the state party must be taken into account.¹¹⁵ Yet, the Advisory Committee has encouraged states parties also to extend the ability to access education in and of minority languages to persons belonging to national minorities who live in capitals or other urban centres,

113 See Article 16 of the Framework Convention.

114 Flexibility in this context may mean, for instance, that it is decided on a case-by-case basis whether the number of learners is sufficient to open a class in the specific context and what the modalities of teaching may entail. See Third Opinion on Finland.

115 See Explanatory Report, paragraph 75.

including through making contemporary and online learning tools available as such provision does not always have to be cost-intensive.¹¹⁶

Part VIII Conclusions

84. The common understanding of the protection of national minorities and what it entails has changed over the two decades since the adoption of the Framework Convention in 1995. At that time the concept of minority rights was mainly associated with the preservation of minority identities and with their protection from assimilation during partially violent state-formation and nation-building processes. Since then, the increased global and regional mobility of populations has transformed the demographic profile of European societies, and attention has shifted to the challenge of forming integrated and inclusive societies where diversity is acknowledged and welcomed as their integral feature. The present-day European context is further marked by migratory movements of an unprecedented scale which, coupled with the effects of recurrent economic crises and with growing security concerns, are destabilising societies and altering the manner in which minority rights are perceived in society and by policy makers.¹¹⁷

85. The Framework Convention was deliberately designed as a living instrument that is neither constrained by static definitions, nor by the question of who should be considered as a national minority or who should not. Rather, its interpretation must evolve and be adjusted to the prevailing societal context to ensure effective implementation. Adopted as a result of the courage and commitment shown by state leaders in the 1990s to prevent further interethnic violence through the promotion of individual rights and in the spirit of dialogue and solidarity, it is based on the understanding that minority identities are not exclusive. Persons belonging to national minorities must be allowed both to preserve their identities and to participate effectively in public life as an integral part of society. The Framework Convention therefore lays out a catalogue of rights that are of particular importance in order to maintain and encourage diversity while also promoting integration and social interaction.

86. While in some cases increasing diversity is embraced and conceived as a resource for societal development, in other cases there are references to the dangers of diversity and the threat to an asserted cultural homogeneity of the nation state. The latter perspectives disregard the fact that linguistic, ethnic and cultural diversity has been an integral part and an asset of European society over centuries. Moreover, they lay the foundations for two increasing trends that are of deep concern to the Advisory Committee. Firstly, hate speech and racist, xenophobic and extremist discourse, which is on the rise throughout Europe, often directed at anybody who is perceived as “different”, including persons belonging to national minorities. Secondly, a deep-

116 See Second and Third Opinions on Austria and Second and Third Opinions on Finland.

117 See also the Tenth Activity Report of the Advisory Committee, covering the period from 1 June 2014 to 31 May 2016.

ening polarisation along ethnic and linguistic, and at times religious lines, which has in some countries been cemented in parallel education systems that deepen divisions over generations.

87. The Framework Convention was designed as a tool for states to manage diversity in a way that carefully balances broader societal concerns, such as cohesion and democratic stability, with the protection of individual rights. As such, it is of particular relevance today when courage and commitment are again needed to meet the contemporary societal challenges, such as intensifying polarisation, the continued exclusion of some minorities, and the resultant threat of radicalisation in many European countries. Europe today must again meet urgent societal challenges that undermine stability, democratic security and peace. Courage and commitment are again needed to overcome the existing divisions through the enhancement of the principles on which the Council of Europe was founded, including the effective protection of minority rights. The Framework Convention is a powerful tool to assist states to address these challenges and create stable and sustainable societies where difference is expressed and affirmed, where equal access to rights and resources is facilitated despite difference, and where social interaction and constant dialogue is promoted and encouraged across difference.



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